

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

Claim Petition No. 11/2011

Sushil Kumar Raghuvanshi aged 46 years, S/o Sri Dilawer Singh presently resident of Village Ratanpur Sukhro, B.E.L. Road Kotdwar, District Pauri Garhwal
.....Petitioner

Versus.

1. State of Uttarakhand through Principal Secretary, Home Department, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Police Headquarters Uttarakhand, Dehradun.
3. Inspector General of Police (Radio Communications) Police Head Quarters, Uttarakhand, Dehradun.
4. Deputy Inspector General of Police (Radio Communications) Police Head Quarters, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Jugal Tiwari, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiya, Ld. P.O.
for the Respondent.

JUDGMENT

DATED: MAY 28, 2013.

Justice J.C.S. Rawat, (Oral)

1. This petitioner has been filed for seeking following relief:-

“In view of the facts stated in para 4 and grounds taken in para 5 of the petition, it is prayed that:-

- (i) The impugned punishment order of removal dated 24 January 2009 of the Dy. Inspector General of Police (Door Sanchar) Police Headquarters Dehradun may be quashed along with the impugned Appellate order dated 09 September 2009 and Revisional order dated 25 Sept. 2010.

- (ii) The petitioner may be reinstated with full back wages and other consequential benefits to which he had been entitled had he not been removed from service.”
2. Petitioner, an employee of the Police Department of the State of Uttarakhand working as Head Radio Operator has been dismissed by the impugned order dated 24.1.2009. Thereafter petitioner preferred an appeal to the Inspector General of Police, Garhwal Range and subsequently he preferred a revision petition before the Addl. Director General of Police, Uttarakhand at Dehradun. His appeal and revision petition were also rejected vide orders dated 9.9.2009 and 25.9.2010 respectively.
 3. We have heard Ld. counsel for the parties and perused the record.
 4. Ld. counsel for the petitioner Sri Jugal Tiwari contended that the charge sheet was issued to the petitioner, but it was never served to him as required under law. He further contended that the disciplinary authority has taken into account the previous conduct of the petitioner without giving due notice to the petitioner.
 5. Ld. P.O. appearing on behalf of State contended that the charge sheet was served to the petitioner by the special messenger, who refused to take the said charge sheet. Thereafter the enquiry officer sent it again to his residence to affix the copy of the charge sheet at his residence. The said copy was affixed at the door of his residence after the refusal of the petitioner to take the copy of the charge sheet. Thereafter, again the enquiry officer sent the copy of the charge sheet to his permanent residence, where it was served upon his father and as such there is sufficient service upon the petitioner. Ld. P.O. further contended that the impugned order has wrongly mentioned the date of the charge sheet as 22.10.2008 instead of 8.7.2008; he has categorically made this averment in Para 10 of his written statement.
 6. From the perusal of the enquiry report it is evident that initially the copy of the charge sheet was sent to the petitioner on 18.9.2008 and the said charge sheet could not be served upon the petitioner as the petitioner refused to take the same. After receipt of the said report, the enquiry officer again sent the copy of charge sheet on 25.9.2008 to the petitioner for its service and it was directed that in case the

petitioner refuses to take the same, the said charge sheet may be affixed at the door of his house. The special messenger, sent for the same, tendered the copy of the charge sheet to the petitioner, but the petitioner refused to take the charge sheet and the copy of the charge sheet was affixed at the door of the house of the petitioner in presence of the witnesses. After the receipt of the said report the enquiry officer again sent a special messenger to serve the charge sheet upon the petitioner, but the petitioner was not available at his residence and the said charge sheet was tendered to his father who received the same. It is apparent from the perusal of the enquiry report that the charge sheet, which was sent on 18.9.2008 & 25.9.2008 were not found sufficient service upon the petitioner, so it was sent again to the petitioner to his permanent address at Bijnor which was received by his father. The enquiry report further reveals that on 3.10.2008 also, a copy of the charge sheet was sent through registered post, which was received back to the office on 18.10.2008 with the endorsement that the petitioner was not available at his residence and he has gone outside his residence; 4.10.2008, 6.10.2008 and 7.10.2008. Thereafter, again on 22.10.2008 a special messenger was sent to his address and it was further directed to the messenger, who was carrying the copy of the charge sheet, to affix the copy of the charge sheet at the residence of the petitioner in case the petitioner refuses to take the same. The petitioner was not available at his residence on 24.10.2008, so the copy of the charge sheet was given to his father. It is apparent from the perusal of the enquiry report that the copy of the charge sheet has not been served upon the petitioner. The enquiry officer has not taken the evidence of those persons who tendered the copy of the charge sheet to the petitioner and the petitioner, before whom refused to take the said copies of the charge sheet. It is also apparent from the record that the enquiry officer was not satisfied with the earlier reports that the charge sheet has been served upon the petitioner by way of refusal, therefore he again sent process to the petitioner for its service and when the charge sheet was served upon his father, then the enquiry officer proceeded further.

7. From the enquiry report it is evident that till 22.10.2008 there was no service upon the petitioner and the enquiry officer was in process to serve the copy of the charge sheet. The original file reveals that the statement of Sri Narendra Singh, Sri J.K. Sharma, Sri Revadhar Mathpal, Sri Jasbeer Singh and Sri B.S. Khatri were recorded on 8.9.2008, 8.9.2008, 15.9.2008, 9.9.2008 and 9.9.2008 respectively. It is apparent that the statement of witnesses has been taken prior to the service of charge sheet upon the petitioner.
8. From the perusal of the record it is clearly revealed that petitioner in Para 4 (i) has alleged that the charge sheet was sent through special messenger, but it was never received to him. The petitioner further averred that the charge sheet was served upon the father of the petitioner in district Bijnor not upon the petitioner as alleged by the respondents.
9. Para 9 of the W.S. also indicates that the charge sheet was never served personally upon him. Averments as stated in Para-9, are as under:-

“याचिका के प्रस्तर 4(i) जिस प्रकार से वर्णित है स्वीकार नहीं है। इस सम्बन्ध में अवगत कराना है कि आरोप पत्र दिनांक 08.07.2008 को जारी किया गया था। आरोप पत्र विशेष वाहक उ0नि0 श्री अजयपाल सिंह के द्वारा याची के घर के पते पर याची के पिता को प्राप्त करवाकर तामील करायी गयी जिसकी पुष्टि गवाहों ने अपने बयानों में की है। यह भी उल्लेखनीय है कि आरोप पत्र उसके मूल एवं ज्ञात पते पर पंजीकृत डाक से भी भेजे गये ।”
10. The facts remain as is evident from the record, produced in the Court that the charge sheet issued against the petitioner by the disciplinary authority was sent by the messenger in his native place Bijnor, which was not served upon the petitioner, but it was by the father of the petitioner. The proper procedure of conducting the enquiry was not adhered by the enquiry officer.
11. The above state of affairs clearly depicts that the petitioner was never informed of the charges personally and the person could not be dismissed inasmuch as Article 311 (2) of the Constitution of India mandates the State to inform its employee the charge against him before dismissing such an employee. The Honble High Court of Uttarakhand at Nainital in Special Leave Petition No. 183/07 in Suresh Pal Singh Va. State of Uttarakhand and others, the Division

Bench comprising of Hon'ble Mr. Justice Barin Ghosh, C.J. and Hon'ble Mr. Justice Sudhanshu Dhulia has held as under:-

“Inasmuch as, the said state of affair clearly depicts that the petitioner was never informed of the charges, the petitioner could not be dismissed from service inasmuch as such Article (2) of the Article 311 of the Constitution of India mandates the State to inform its employee the charges against him before dismissing such an employees

We accordingly, allow the writ petition, set aside the order of dismissal dated 20.8.2004. We direct the learned counsel for the State to handover a copy of the chargesheet to the learned counsel for the petitioner in Court today. Copy of the chargesheet has been handed over in the Court. The petitioner will be permitted to reply to the charge sheet within one month from today. The State is directed to dispose of the matter as quickly as possible. The order staying the suspension is vacated and accordingly the petitioner shall be deemed to be on suspension with effect from 20.8.2004, on which date the petitioner was purportedly dismissed from service.”

12. Hon'ble Apex Court in the similar circumstances in the case of Dr. Ramesh Chandra Tyagi Vs. Union of India and others 1996(1) SLR 703 has also held that

“But that is writ large on the face of it. No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement “left without address” and on other occasion, “on repeated visits people in the house said that he has gone out and they do not disclose where he has gone. Therefore, it is being returned.” May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry officer to proceed ex-parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it

was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement, it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and non-est the order of dismissal falls automatically.”

12. Hon’ble Apex Court in the case of Union of India Vs. Dinanath Shantaram Karekar 1998 AIR SC 2722 has also held that,

“Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated”

13. In view of the above, we find that sufficient notice of charge sheet was not given to the petitioner. Hence the enquiry proceedings as well the impugned orders dated 24.1.2009, 9.9.2009 & 25.9.2010 are liable to be set aside.
14. The next point which was urged by the Ld. counsel for the petitioner that at the time of awarding the punishment, the authorities have failed to appreciate that the disciplinary authority, if they wanted to consider

the past conduct of the petitioner in imposing the punishment, the delinquent is entitled to a notice thereof and generally the charge sheet should contain such an article or at least he should be informed about the same before imposing the punishment. In the instant case no such charge sheet has been framed against the petitioner and no such notice has been given. The Hon'ble Apex Court in *Mohd. Yunus Khan Vs. State of U.P. & others* 2010(7) 970 has held as under:-

33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the post conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in Union of India & others Vs. Bishamber Das Dogra, ²⁶ (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam Vs. Bimal Kumar Pandit, ²⁷ AIR 1963 SC 1612; India Marine Service (P) Ltd. Vs. Their Workmen, ²⁸, AIR 1963 SC 528; State of Mysore Vs. K Manche Gowda, ²⁹ AIR 1964 SC 506; Colour-Chem Ltd. Vs. A.L. Alaspurkar & others, ³⁰ AIR 1998 SC 948; Director General, RPF Vs. Ch. Sai Babu, ³¹ (2003) 4 SCC 331, Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, ³² (2005) 2 SCC 489; and Govt. of A.P. & others Vs. Mohd Taher Ali, ³³ (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/ service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

15. In view of the above proposition of law, the previous conduct of the petitioner could not have been considered by the disciplinary authority.

ORDER

We, accordingly allow the petition and set aside the impugned punishment order of dismissal dated 24.1.2009, appellate order 9.9.2009 & revisional order dated 25.9.2010. The proceedings against the petitioner will start from the stage of the charge sheet at the discretion of the respondents. If the State proceeds against the petitioner from the stage of the charge sheet, a copy of the charge sheet along with the documents will be handed over to the petitioner at the earliest. The respondents are directed to dispose of the matter as early as possible preferably within a period of six months from the date of the presentation of the copy of this order before the disciplinary authority. The salary and other benefits arising during the period of dismissal, will be subject to the result of the enquiry. No order as to costs.

Sd/-

(D.K.KOTIA)
VICE CHAIRMAN (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: MAY 30, 2013
DEHRADUN