

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. 30/DB/2014**

Sunil Kumar aged about 44 years S/o Sri Om Prakash Permanent resident of Village Mohamedpur PS Bhorakalan Distt. Muzaffarnagar & presently residing at Mohanpur Mohamedpur, South Civil Line, PS Civil Line, Roorkee, Distt. Haridwar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Home Department, Subhash Road, Dehradun.
2. Addl. Director General of Police (Administration), Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Pauri Region, Pauri (Uttarakhand).
4. Superintendent of Police, Pauri Garhwal (Uttarakhand).

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiya, Ld. P.O.  
for the respondents.

**JUDGMENT**

**DATED: OCTOBER 31, 2014.**

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

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

*“Therefore, the petitioner most humbly prays this Hon'ble Tribunal;*

*(a) That the above impugned 4 orders (Annexure A 1, A 2, A 3 & A 4) be kindly held wrong, illegal, against law, rules and principles of natural justice and accordingly the same be kindly quashed and set aside with all consequential benefits to the petitioner;*

*(b) That the respondents be kindly ordered and directed to reinstate the petitioner on duty and pay to the petitioner pay, allowance and other consequential benefits for the period from 22.11.2001 till the date of his reinstatement, which had been admissible to the petitioner if he would have continued in the services;*

*(c) Any other relief, in addition to, modification or substitution of the above relief, which the Hon'ble Tribunal deem fit and proper in the circumstances of the case and facts on record, be kindly allowed to the petitioner against the respondents; and*

*(d) Rs. 20,000/- as cost of this petition be allowed to the petitioner against the respondents. "*

2. It is admitted case of the parties that the petitioner was a Police Constable in the Police Department. An incident of theft occurred under the Police Chowki Gum Khal P.S. Lansdown and the petitioner went at the spot and some 'Marpeet' took place at the spot and it is alleged that he abused some persons at the spot. Thereafter a complaint was made against the petitioner. The Police filed the charge sheet against the petitioner under Section 323, 504, 506 IPC and also under Section 3(1) (X) of S.C. S.T.( Prevention of Atrocities ) Act 1989. The trial court convicted the petitioner on 31.1.2009. He preferred an appeal before the Hon'ble High Court of Uttarakhand. During the pendency of the appeal, the complainant died and the widow of the complainant filed a compromise before the Court and Hon'ble High Court accepted the said compromise under Section 323, 504 & 506 IPC and Section 3 of the SC, ST Act was not compoundable , hence the appeal was heard on merit on that point. The Hon'ble High Court came to the conclusion that the offence under Section 3 of the SC, ST Act is not made out and he was acquitted accordingly by the Hon'ble High Court. The Government did not prefer any appeal against the said judgment. In the meantime the copy of the judgment dated 31.1.2001 passed by the Session Judge was received to the S.P., Pauri and the S.P.Pauri passed the impugned order on the basis of the conviction recorded against the petitioner under Article 311 (2) proviso 2a) of the Constitution and also Rule 493 of the U.P. Police Regulation, as applicable to the Uttarakhand and the services of the petitioner were dismissed by the impugned order. Feeling aggrieved by the said order, the petitioner preferred an appeal before the DIG, Police, Garhwal Region and the said appeal was also rejected on 8.4.2013. The petitioner again preferred a revision petition

before the Additional Director General of Police and he could not get any relief from the revisional authority also.

3. When the petitioner was acquitted by the Hon'ble High Court, he preferred a representation for his reinstatement on the ground that the petitioner has been acquitted by the Hon'ble High Court of Uttarakhand, but the said representation was rejected by the appointing authority on 28.1.2013, (Annexure-A 2 to the C.P.).
4. Feeling aggrieved by this order, he preferred this claim petition. The petitioner has pleaded that the petitioner has already been acquitted by the Hon'ble High Court and he is entitled to be reinstated in his employment. He further pleaded that Regulation 493 clearly envisages that in case the petitioner has been punished only on the ground of the criminal prosecution and his conviction under Article 311(2) proviso 2(a) of the Constitution of India and Rule 493, he is entitled to be reinstated immediately. The petitioner further alleged in his petition that the order passed by the punishing authority, appellate authority as well as revisional authority are not consistent to the provisions of law, hence the claim petition is liable to be allowed and the impugned orders are liable to be quashed.
5. The respondents have also filed the written statement in which they have taken the plea that the petitioner was given notice prior to the dismissal and it is admitted that no enquiry was made as contemplated under Article 311 (2) as well as under the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. It was further alleged that the judgment of the Hon'ble High Court clearly depicts that the wife of the complainant entered into compromise and the compromise was accepted by the Court and the acquittal is based on the compromise, hence the petitioner is not entitled to be reinstated in the services. Respondents have also supported the orders passed by the departmental authority, appellate authority as well as the revisional authority. He at the last prayed that the petition may be dismissed.
6. We have heard the learned counsel for the parties and perused the record.
7. Ld. Counsel for the petitioner contended that the petitioner had been acquitted and his dismissal under Rule 493(K), should be revoked and he should be reinstated into the service with full wages. He further contended that no independent departmental enquiry was conducted against him and the petitioner was dismissed from the services under Article 311(2) proviso

2(a) read with 493 of U.P. Police Regulation applicable to Uttarakhand. Ld. Counsel for the respondents refuted the contentions.

8. It is very clear that if the petitioner had been convicted and had been dismissed from the services without any departmental enquiry as contemplated under Article 311 (2) and his case has been dealt under Article 311(2) proviso 2(a), the petitioner is entitled to get the reinstatement. Where the departmental enquiry has been held independently on the criminal proceedings, acquittal of the criminal court is of no help in some of the cases. Even a person stood acquitted by a Criminal Court in a regular domestic enquiry can be held, reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. However, for that difference a plethora of judgments have been considered. The above controversy has been settled down by the Hon'ble Supreme Court in the case of Divisional Controller Karnataka SRTC Vs. M.G.Vittal Rao 2012 (1) SCC 442, where it has been held by the Hon'ble Apex court in Para 11:-

**“DEPARTMENTAL ENQUIRY AND ACQUITTAL IN CRIMINAL CASE**

The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311 (2) (b)[sic Article 311(2) second proviso (a)] of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.”

9. From the perusal of the above quoted para it is clear that if any delinquent has been dismissed only on the basis of Article 311(2) proviso 2(a) of the Constitution, he is entitled to be reinstated.
10. This case falls within the ambit of 493 as well as Article 311(2) proviso 2(a). The petitioner has been acquitted by the Hon'ble High Court, Thus the basis of the dismissal had fallen down so petitioner is entitled to be reinstated.
11. The Ld. A.P.O. appearing for the respondents contended that the petitioner had been acquitted on the ground that widow of the complainant entered

into the compromise after the death of the complainant, so it is not a clean acquittal. The contention of the respondents that he had been acquitted only on the ground of the compromise, is not correct. Sections 323, 504 & 506 IPC are triable by the Magistrate and Section 3 of the SC, ST Act is triable by a Special Judge (Session Judge), specially authorized for hearing of such cases. Meaning thereby Section 3 of SC, ST Act is for graver offence rather than the IPC offences. Hon'ble High Court has acquitted the petitioner on merit under SC, ST Act. In these circumstances the contention of the Ld. A.P.O. on behalf of respondents that the petitioner has been acquitted only on the ground of compromise is of no avail. Even if the petitioner would have been acquitted only on the basis of the compromise, even then petitioner would have been entitled to be reinstated.

12. It is also provided under Rule 493 (K) that if there was any grievance against the petitioner, they could have initiated departmental enquiry against him, which has not been done in this case.

13. In view of the above discussion, the petition is liable to be allowed

### **ORDER**

The petition is allowed. The impugned order dated 22.11.2001 (Annexure-A 1), order dated 28.1.2013 (Annexure-A 2), Appellate order dated 14.2.2013 (Annexure-A 3) and revisional order dated 25.9.2013 (Annexure- A 4) are hereby quashed. Respondents are directed to reinstate the petitioner in services within 15 days after presentation of this order to the S.P. Pauri and the matter of the pay and other allowances would be decided by the appointing authority by a speaking order within a period of two months from the date of presentation of this order to the respondents. No order as to costs.

Sd/-

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

Sd/-

**(JUSTICE J.C.S.RAWAT)**  
CHAIRMAN

DATED: OCTOBER 31, 2014  
DEHRADUN

VM