

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 30/DB/2021

Krishan Kumar Dixit (Constable No. CP-114) s/o Shri Horam Dixit, aged about 40 years, r/o 162, Brahmpuri, Haridwar.

.....Petitioner

VS.

1. State of Uttarakhand through its Principal Secretary, Home Department, Uttarakhand Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Tehri Garhwal, district Tehri Garhwal.

.....Respondents

Present: Sri J.P.Kansal, Advocate ,for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: JANUARY 07, 2023

Mr. Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:

“(a) The impugned orders Annexure-A1 and Annexure-A2 be kindly held illegal, against rules, orders and principles of natural justice, wrong and be kindly quashed and set aside and the petitioner be kindly reinstated in the services from the date of dismissal with all consequential benefits including pay and allowances to the petitioner; or in the alterative lesser punishment than dismissal of the petitioner be kindly ordered;

(b) The respondents be kindly ordered to pay salary of the petitioner from the date of dismissal and other benefits that he would have been entitled had he not dismissed.

(c) The petitioner be kindly allowed against the respondents any other relief in addition to or in substitution or modification of the above reliefs as this Hon'ble Tribunal

deems fit and proper in the context of the facts and law of this claim petition; and

(d) Rs. 20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."

2. Brief facts of the case are that the petitioner was appointed as a Constable, Civil Police on 10.04.2006. In the year 2016 and 2017, due to his long unauthorized absence (not returning after sanctioned leave), the petitioner was placed under suspension by the respondent no. 3 and disciplinary proceedings were initiated against him. Ms. Jaya Baloni, Deputy S.P., Dehradun was appointed as the inquiry officer who served a charge sheet dated 28.03.2018 upon the petitioner to which, petitioner submitted his reply on 10.05.2018. Ms. Jaya Baloni had recorded the statements of the witnesses and at that stage, the inquiry was transferred to Sri J.P. Juyal, Deputy S.P., Tehri Garhwal, who recorded his findings and recommended dismissal of the petitioner. On these findings, the Disciplinary Authority (respondent no. 3) issued a show cause notice to the petitioner about the quantum of punishment and without waiting for the petitioner's reply, issued the impugned order dated 14.06.2019 (Annexure-A1) for dismissal of the petitioner from service. The petitioner submitted appeal against this punishment to respondent no. 2 who has rejected the appeal by the impugned order dated 29.02.2020 (Annexure-A2).

3. The impugned order of dismissal (Annexure-A1) mentions that the orders of dismissal are passed under Rule 14(1) of the Uttarakhand Police officers of the Subordinate Ranks (Punishment and Appeal) Rules, 2008. This Tribunal sought a copy of the gazette notification of these Rules from the parties. Learned A.P.O. during hearing on 11.04.2022 submitted that the Uttarakhand Police officers of the Subordinate Ranks (Punishment and Appeal) Rules, 2008 have not been notified and moved an application along with copy of the amended order no. PF-01/2019 dated 03.04.2022 of the respondent no. 3 for taking such document on record, against which objections were filed by learned Counsel for the petitioner. This order dated 03.04.2022 states that the then S.S.P., Tehri Garhwal had wrongly

mentioned the Uttarakhand Police officers of the Subordinate Ranks (Punishment and Appeal) Rules, 2008 due to clerical mistake, while Uttarakhand (Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991), Adoption and Modification Order 2002 should have been mentioned and to this extent, the impugned order dated 14.06.2019 (Annexure-A1) has been amended.

4. It has been argued, *inter-alia*, by learned Counsel for the petitioner that the charge sheet issued to the petitioner was neither approved by the Disciplinary Authority nor the Disciplinary Authority had authorized the inquiry officer to sign the charge sheet for and on his behalf. In Civil Appeal, Union of India & others vs. B.V. Gopinath and other connected Civil Appeals reported in 2013(6) SLR 124(S.C.), the Hon'ble Supreme Court has held that the charge sheet having not been approved by the disciplinary authority was non-est in the eye of law. Therefore, the charge sheet given to the petitioner is void, non-est and is not sustainable in law. Accordingly, action taken by the respondents based on the said charge sheet is wholly against law, rules, principles of natural justice and is not sustainable.

5. In the above Civil Appeals, the Hon'ble Apex Court held that the charge sheet can be issued only on approval of the Appointing Authority/Disciplinary Authority. To say that on approval of the Disciplinary Authority for initiating proceedings, charge sheet could be drawn up by other authority, would violate the protection under Article 311 of the Constitution of India. Para 49 of the judgment in the above Civil Appeals, reads as below:

"49. Although number of collateral issues had been raised by the learned counsel for the appellants as well as the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of law."

6. Learned A.P.O. submitted that the charge sheet was subsequently approved by the S.S.P., Tehri Garhwal (respondent no. 3). He produced a copy of the order dated 27.05.2018 of respondent no. 3 which states that

in the ongoing departmental proceedings against the petitioner, the charge sheet issued on 11.05.2018 is hereby approved.

7. A perusal of the record shows that the charge sheet was issued to the petitioner on 28.03.2018 (Annexure-A8) which has been signed by Ms. Jaya Baloni as *Peethaseen Adhikari/Deputy S.P.* **and not for and on behalf of the Disciplinary Authority.** The petitioner has submitted his reply to this charge sheet on 10.05.2018, which has been annexed as Annexure-A9 to the claim petition. Subsequently, Ms. Jaya Baloni in her capacity as *Peethaseen Adhikari/Deputy S.P.*, has issued a letter dated 11.05.2018 to the petitioner which starts with the imputation of the charges and then states that the petitioner has filed his written reply personally on 10.05.2018 and further informs that the next date 28.05.2018 has been fixed for recording of statements of witnesses of the prosecution side and directs the petitioner to be present in her office on 28.05.2018 so that statements of the witnesses of prosecution side may be recorded before him. This letter dated 11.05.2018 has been approved by the order dated 27.05.2018 of the respondent no. 3, wrongly treating it to be the charge sheet.

8. In the opinion of this Tribunal, non-approval of the charge-sheet by the disciplinary authority (respondent no. 3) is a vital lapse which renders the charge sheet given to the petitioner to be non-est. It is possible that the respondent no. 3 by mistake treated letter dated 11.05.2018 to be the charge sheet as it starts with mention of the charges against the petitioner but merely on this presumption, the lacuna in the disciplinary proceedings cannot be validated.

9. A perusal of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the 'Rules of 1991') which have been adopted in Uttarakhand shows that the form of the charge sheet to be issued under the proceedings under Rule 14(1) thereof is Form-1 in Appendix-I of these Rules. This form provides for signing of the charge sheet by the Inquiry Officer for and on behalf of the

Disciplinary Authority, meaning thereby that the Inquiry Officer has been authorized to issue the charge sheet on behalf of the Disciplinary Authority, which is not so in the instant case. The Uttarakhand Govt. Servants (Discipline and Appeal) Rules, 2003, as amended in 2010 also require that the charge sheet should be approved by the Disciplinary Authority, according to Rule 7(ii) which reads as below:

“7(ii). The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be approved by the Principal Secretary or Secretary, as the case may be, of the concerned department.”

10. Non-approval of the charge sheet by the Disciplinary Authority is a major flaw that vitiates the entire disciplinary proceedings. Without going into other arguments advanced by learned Counsel for the parties, the Tribunal deems it proper that the impugned punishment order (Annexure-A1) and consequently, the appellate order (Annexure-A2) be set aside and a fresh charge sheet duly approved by the Disciplinary Authority be issued to the petitioner and from that stage, the disciplinary inquiry needs to be conducted afresh as per law. The petitioner was under suspension at the time of the disciplinary inquiry and he shall be deemed to have remained under suspension since then.

11. Order as above.

12. The claim petition is accordingly disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: JANUARY 07, 2023
DEHRADUN.

KNP