

**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. 66/DB/2023**

Constable 185/270 (now CP1681) Yogesh Kumar, aged about 38 years, s/o Sri Pratap Singh, r/o Nijampur Harchanpur, Post Office Gurkul Narsan, District Haridwar, presently posted as CP 1681 at Police Station Sahaspur, District Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home Affairs, Civil Secretariat, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Garhwal Region, Dehradun.
4. Senior Superintendent of Police, Dehradun, District Dehradun.

..... Respondents

Present: Sri Amar Murti Shukla, Advocate, for the petitioner (*online*)  
Sri V.P. Devrani, A.P.O. for the respondents

**Judgement**

**Dated: 02<sup>nd</sup> May, 2023**

**Justice U.C. Dhyani (Oral)**

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 14.03.2023 in WPSS No. 132 of

2020, Constable 185/270 (Now CP 1681) Yogesh Kumar vs. State of Uttarakhand and others, which (order) reads as under:

“Mr. Anand Singh Mer, Advocate, i/b

Mr. Amar Murti Shukla, Advocate, for the petitioner

Mr. P.S. Rawat, Additional CSC, for the State/respondents.

Petitioner, who is a government servant, has raised a service dispute in this writ petition. Since petitioner is a public servant, as defined under Section 2(b) of U.P. Public Service (Tribunal) Act, 1976, (as applicable to the State of Uttarakhand), therefore, he has remedy of approaching the Tribunal constituted under the aforesaid Act.

Accordingly, writ petition is dismissed on the ground of alternative remedy.

Registry is directed to relegate the record of this case to the Public Services Tribunal, Dehradun.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 5226/UHC/Service Section-II/ PST/ Nainital dated 24.03.2023 of the Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 66/DB/2023.

3. Facts of the case, in brief, are that in March, 2010, the petitioner was posted at Police Lines, Dehradun. He, along with his wife, was living in a private house. He left his private house on 13.03.2010 and went to his village in district Haridwar. He returned on 17.03.2010 to find that his carbine with magazine and 35 cartridges were missing.

3.1 Petitioner lodged an FIR against unknown thief on 17.03.2010. The same was registered as case crime no. 45/2010 under Sections 457 and 380 IPC.

3.2 He was suspended with immediate effect on 17.03.2010 (order Annexure No. 2). Charge sheet was issued against him on 03.06.2010 (Annexure No. 3). Enquiry officer

found him guilty *vide* report dated 01.09.2010 (Annexure No. 4). Copy of the enquiry report was given to him *vide* show cause notice dated 04.09.2010 (Annexure No. 5). Final order was passed on 05.10.2010 (Annexure No. 6). He was dismissed from service.

3.3 Petitioner filed department appeal, which was dismissed *vide* order dated 19.09.2011 (Annexure No. 7). Petitioner filed revision against the same, which was also dismissed *vide* order dated 28.08.2012 (Annexure No. 8).

3.4 Aggrieved against the same, he preferred writ petition being WPSS No. 1297 of 2013, which was decided by Hon'ble High Court of Uttarakhand on 12.04.2017, as follows (copy Annexure No. 9):

“Mr. A.V. Pundir, Advocate for the petitioner.

Mr. B.P.S. Mer, Brief Holder for the State.

Heard.

Petitioner was working as permanent employee. The preliminary inquiry was conducted against the petitioner for alleged theft of two magazines and 60 live cartridges. Thereafter, the services of the petitioner were terminated.

The fact of the matter is that though the petitioner is permanent employee and no regular enquiry as per law has been instituted against the petitioner. Since, the petitioner was a permanent employee, therefore, regular enquiry should have been instituted as per U.P. Police Regulations adopted in the State of Uttarakhand. There is detailed procedure the manner in which the disciplinary proceedings are to be instituted against the police officers/officials.

The services of the petitioner have been terminated merely on the basis of preliminary inquiry. Preliminary inquiry is not substitute of regular inquiry.

Accordingly, the writ petition is allowed. The dismissal order dated 05.10.2010 is quashed and set aside. However, liberty is reserved to the respondents to proceed with the matter in accordance with law.”

3.5 Petitioner was reinstated in service *vide* order dated 24.07.2017 (Annexure No. 10). Again, charge sheet was issued to him on 03.08.2017 (Annexure No. 11). Petitioner filed a representation against the same (Annexure No. 12). Detailed enquiry report was submitted by the enquiry officer on 06.12.2017, holding him guilty of charges leveled against him (Annexure No. 13). It was recommended that he is not entitled to any salary on the principle of 'no work no pay'. Show cause notice was given to him on 15.01.2018 (Annexure No. 14). A show cause notice was also given to him for depositing the cost of carbine, magazine and cartridges (Rs. 16,176/-) *vide* order dated 24.02.2018. Show cause notice was also given to him for 'no work no pay' from 13.03.2010 to 16.03.2010 (order dated 15.01.2018). A show cause notice was also given to him that he will be given only subsistence allowance during the suspension period. He replied to such notices (copy Annexure No. 15).

3.6 A sum of Rs. 16,176/- was directed to be paid in the Govt. Treasury *vide* order dated 24.02.2018 (Annexure No. 16). Only subsistence allowance was directed to be paid to him for the period 17.03.2010 to 18.06.2010 *vide* order dated 24.02.2018 (Annexure No. 17). 'No work no pay' was adopted in his case for unauthorized absence of 04 days *vide* order dated 24.02.2018 (Annexure No. 18). He was awarded minimum pay scale for 03 years *vide* order dated 24.02.2018 (Annexure No. 19). He was treated under 'no work no pay' from 05.10.2010 to 24.07.2017 *vide* order dated 24.02.2018. He filed departmental appeal on 26.04.2018 (Annexure No. 21), which was dismissed by the appellate authority *vide* order dated 10.08.2018.

4. Learned Counsel for the petitioner submitted that the departmental enquiry suffers from two vices *viz.* (i) the charge sheet was given by the enquiry officer and not the

disciplinary authority and (ii) the recommendation was made by the enquiry officer for punishment.

5. Learned Counsel for the petitioner drew attention of the Bench towards Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010), which is reproduced herein below:

“ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

7. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) .....

(2) 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 signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) .....

.....

(17) .....”

In reply, learned A.P.O. submitted that there are specific rules for the police officers of subordinate ranks known as the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable to the State of Uttarakhand) and therefore specific rules for police officers will apply.

6. Learned A.P.O. submitted that when, on the basis of preliminary enquiry, S.S.P. (disciplinary authority) was satisfied that departmental enquiry should be conducted, he nominated S.P. (crime) as enquiry officer. Enquiry officer [S.P.

(crime)] supplied copy of charge sheet to the delinquent constable. Learned A.P.O. drew the attention of the Bench towards Appendix-I to U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, which deals with 'procedure relating to the conduct of departmental proceedings against police officer' to submit that according to the form of charge sheet to be used in proceedings under Section 7 of the Police Act, 1961 (Form-1), enquiry officer is entitled to issue the charge sheet for and on behalf of disciplinary authority.

7. According to Cambridge Dictionary, 'on behalf of' means "done for another person's benefit or support, or representing the interests of a person." The meaning assigned to the words 'on behalf of' by Oxford English Dictionary are "in the interests of (a person, group or principle); 'as a representative of' and 'on the part of'."

**8. On a perusal of the original record, the Bench finds that before issuing the charge sheet, approval of the disciplinary authority has not been obtained by the enquiry officer.**

9. Even though under the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, enquiry officer may issue the charge sheet, but the same is 'for and on behalf of the disciplinary authority', which has not been done in the instant case.

10. Learned Counsel for the petitioner submitted that the enquiry officer is not entitled to recommend the punishment to the disciplinary authority.

11. In reply, learned A.P.O. submitted that the language of Appendix-I 'procedure relating to the conduct of departmental proceedings against police officer' is clear that the enquiry

officer may make his recommendation regarding the punishment to be imposed on the charged police officer.

12. The Tribunal finds that the language used in Appendix-I, which is related to Rule 14(1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, has used the words 'the enquiry officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.' In the instant case, the enquiry officer has made the recommendation, not separately, but in the enquiry report itself. Disciplinary proceedings are vitiated on these two grounds alone.

13. The impugned punishment order, therefore, cannot sustain. The same is liable to be set aside and is, accordingly, set aside leaving it open to the respondent authority to initiate fresh departmental proceedings against the delinquent, in accordance with law.

14. Petition is disposed of by setting aside the impugned orders dated 24.02.2018, passed by the disciplinary authority and impugned order dated 10.07.2018, passed by the appellate authority leaving it open to the respondent-department to initiate fresh departmental proceedings against the petitioner, in accordance with law. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: 02<sup>nd</sup> May, 2023*  
*DEHRADUN*  
*RS*