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.46/DB/2014.

Surendra Singh Rana S/o Sri Trilok Singh Rana aged about 41 Years Sub Inspector Civil Police, Thana Chamba District Tehri Garhwal.

……Petitioner.

VERSUS

1. State of Uttarakhand through Secretary (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Garhwal Circle, Uttarakhand, Dehradun.
3. Superintendent of Police, District Tehri Garhwal.

……Respondents

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: JULY 13, 2015.

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

1. The petitioner has filed this claim petition for seeking following relief:-

"In view of facts and reasons stated in foregoing paras, the petitioner most respectfully prays for the following relief:-

(i) To issue an order or direction to set aside the impugned order dated 10.04.2013 (Annexure A-1), and 04.05.2013(Annexure A-2) passed by the respondent No. 3 and appellate order dated 23.02.2014 (Annexure A-3) passed by the respondent No.2 declaring the same as against the rules and law.

(ii) To issue an order or direction to the respondents to pay the entire salary of the suspension period to the petitioner.

(iii) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) *Award the cost of the petition to the petitioner."*

2. In nutshell it is admitted case of the parties that the petitioner was posted as Station Officer, Ghansali on 16.08.2012. It was alleged against the petitioner that a theft was committed within the jurisdiction of the petitioner. The petitioner had allowed Constable Shameem to take the money of the theft and Scooty from the place of occurrence. Apart from that the so called notorious thief Arjun Singh was allowed to stay in Ghansali. The petitioner also assisted Constable Shameem to leave the station without any entry in the G.D. In these circumstances the appointing authority suspended the petitioner on 16.08.2012. Immediately thereafter a charge sheet was given to the petitioner on 8.11.2012. The petitioner also replied the said charge sheet on 4.12.2012 and he denied all the allegations made in the charge sheet. After completing the inquiry, the inquiry officer submitted his report to the disciplinary authority (S.P., Tehri). The S.P., Tehri issued a show cause notice to the petitioner along with the copy of the findings of the inquiry vide order dated 10.4.2013 asking him as to why his integrity be not withheld as a punishment. Thereafter the petitioner was punished by withholding his integrity for the year 2012. Thereafter the petitioner preferred statutory appeal which was rejected by the appellate authority, hence this petition.

3. The petitioner has challenged the said impugned order on the ground that the punishment which has been awarded to him, does not find place in the rules of The U.P. Police Officers of Subordinate Rank(Punishment & Appeal) Rules, 1991 (hereinafter referred to as Rules, 1991). Apart from that he also alleged in the claim petition that the respondents have not conducted the inquiry as required under law. He further alleged in the claim petition that the appellate authority has not applied his mind while passing the order in appeal and passed it arbitrarily.

4. Respondents have filed their counter affidavit/ written statement in which they have denied all the allegations made against them in the claim petition. The respondents have supported the order of the competent authority and alleged that the order has been passed totally in consonance with the provisions of the law. Ultimately the respondents have prayed to dismiss the petition.
5. We have heard the learned counsel for the parties and perused the record.
6. Ld. Counsel for the petitioner contended that the punishment imposed upon the petitioner is not provided under Rule-4 of the 1991 Rules. Integrity of a person can be withheld for sufficient reasons at the time of filling of the annual confidential report. If statutory rule does not provide the punishment, which has been awarded to the petitioner, it cannot be sustained. Ld. A.P.O. appearing on behalf of the respondents refuted the contention and contended that the petition is liable to be dismissed.
7. Very short question which is to be decided in this claim petition is that whether the punishment imposed upon the petitioner is a punishment as provided under relevant rules or not.
8. Rule-4 of 1991 Rules provides as under:-

"4. Punishment- (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-

(a) Major Penalties-

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

(b) Minor Penalties-

(i) Withholding of promotion.

(ii) Fine not exceeding one month's pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure.

(2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments-

(i) confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).

(ii) Punishment Drill not exceeding fifteen days.

(iii)Extra guard duty not exceeding seven days.

(iv)Deprivation of good-conduct pay.

(3) In addition to the punishments mentioned in sub-rules (1) and (2) constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:

(i) Tent pitching;
(ii) Drain digging
(iii)Cutting grass, cleaning jungle and picking stones from parade grounds;
(iv)Repairing huts and butts and similar work in the lines;
(v)Cleaning Arms."

9. It is clear from the perusal of the above rules that the appointing authority cannot withhold integrity of a person while awarding the departmental punishment. Perusal of the above rules reveals that the said punishment is not provided in the said rules. The appointing authority had withheld the integrity of the petitioner for the year 2012. Thus, we are of the view that the punishment order itself is liable to be quashed. In the case of **Vijay Singh Vs. State of U.P. and others 2012(3) RSJ 620 in Para 8 & 9** the above view has been reiterated by the Hon'ble Court which is as under:-

"8 Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose b

9. This Court in State of U.P. & Ors. v. Madhav Prasad Sharma, (2011) 2 SCC 212, dealt with the aforesaid Rules 1991 and after quoting Rule 4 thereof held as under-

16. We are not concerned about other rules. The perusal of major and minor penalties prescribed in the above Rule makes it clear that "sanctioning leave without pay" is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear

that sanction of leave without pay is not one of the punishment prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of `no work no pay' cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms."

10. Ld. Counsel for the petitioner further contended that the show cause notice which was issued by the appointing authority, which is Annexure-8 A to the claim petition, clearly reveals that the appointing authority has not mentioned in the body of the show cause notice that the inquiry officer has found him guilty of the charges leveled against him. He further contended that no opportunity has been given to the petitioner to rebut the said findings recorded by the inquiry officer. Ld. Counsel for the petitioner also relied upon the judgment of the Hon'ble Apex Court in **Managing Director ECIL, Hyderabad and others Vs. B. Karunakar and others 1993 SCC(L&S) 1184** in which it has been provided that after the 42nd constitutional amendment it is obligatory on the part of the appointing authority that he will issue a show cause notice to rebut/ challenge the findings recorded by the inquiry officer. In this case perusal of Annexure-8-A does not depict the rule laid down by the aforesaid judgment has been followed. Ld. A.P.O. refuted the contention and contended that notice itself is sufficient show cause to comply the requirement of Rules.

11. We have considered the contention of the Ld. Counsel for the parties. We are of the opinion that it is mandatory in view of the judgment Managing Director ECIL, Hyderabad and others Vs. B. Karunakar and others (supra) that the petitioner should have been given an opportunity to rebut the findings of the inquiry officer and he should have recorded the findings after considering the reply of the petitioner that he is agreeable to the findings of the inquiry officer. In **Managing Director ECIL, Hyderabad and others Vs. B. Karunakar and others** (supra) the Hon'ble Apex Court in para 28 has held as under:-

"**28**. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employees shall be given a "reasonable opportunity of being heard in respect of the charges against him". The

findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employees and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges".

12. Perusal of the show cause notice Annexure-A 8 and the punishment order Annexure-A1 clearly reveals that the appointing authority had not indicated in the notice that in view of the findings of the inquiry officer's report he was of the opinion to proceed further against the petitioner and he is called upon to reply to the findings of the inquiry officer. Nor he has indicated in his order that he had given the considerable thoughts to the inquiry report vis-à-vis the reply. The

appellate order passed by the appellate authority is not sustainable in law in view of the above findings recorded by us.

13. Ld. Counsel for the petitioner further contended that there are certain inconsistencies in the statement recorded by the inquiry officer and findings recorded by the inquiry officer. He also contended that the whole inquiry report is liable to be quashed on this ground alone. Ld. A.P.O. refuted the contention and contended that appreciation of evidence is basic work of the appointing authority and the inquiry officer. They can appreciate or re-appreciate the evidence in accordance with law. This Court cannot appreciate or re-appreciate the evidence at this stage because the Court has come to the conclusion that the notice issued by the competent authority is not in accordance with law, so the said fact of appreciation of evidence could be recorded only by the appointing authority. The petitioner can agitate this point at the time of second show cause notice, if issued to him. We are completely in agreement with the contention of Ld. A.P.O.. We are of the view that the statutory requirement has not been complied with by the appointing authority as such a fresh show cause notice may be issued to the petitioner by the appointing authority, if he so desires and in such circumstances the petitioner will have a right to agitate all the factual aspects before the appointing authority as well as the appellate authority. In view of the above we do not find any substance at this stage in the contention of the Ld. Counsel for the petitioner.

14. In view of the above, we set aside the inquiry proceedings from the stage of issuance of the show cause notice to the issuance of the punishment order as well as appellate order passed by the respondents to the petitioner and we also feel that this matter should be remitted to the appointing authority to start the inquiry afresh from the stage of the second show cause notice if he so desires.

ORDER

In view of the above, the petition is hereby allowed. The punishment order dated 10.04.2013 (Annexure A-1) and the appellate order dated 23.02.2014 (Annexure-A-3) are hereby quashed. The matter be

remitted to the appointing authority to decide the matter afresh from the stage of the issuance of the second show cause notice, if he so desires, as has been discussed above. The parties shall bear their own costs.

The original record be returned to the Ld. A.P.O. to send it back to the department.

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

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED**:** JULY 13, 2015
DEHRADUN

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