

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.27/SB/2014.

Narendra Singh Negi, S/o Late Sri B.S. Negi aged about 51 Years, posted as Sub Inspector (M) Anubhag-II, Police Headquarters, Dehradun.

.....Petitioner.

VERSUS

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

.....Respondents

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiya, Ld. P.O.
for the respondents.

JUDGMENT

DATED: NOVEMBER 30, 2015.

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

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

- “(i) To issue order or direction to quash the impugned orders dated 23.7.2012 (Annexure No.A-1), Appellate order dated 7.2.2013 (Annexure No.A-2) and the revisional order dated 5.10.2013 (Annexure A-3) and expunge the adverse remark from the service record of the petitioner along with all consequential benefits.

(ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) To award cost of this petition to the petitioner."

2. The petitioner was posted as Sub Inspector (CRK) in the office of S.S.P., Dehradun. While the petitioner was posted there as CRK, a letter from the Headquarter was received to the S.S.P. in which the names of certain Sub Inspectors, called C.I. List -II, were sent and report was called for with regard to the facts as to whether any inquiry proceedings or investigation or any prosecution is pending before the Court. The said information was collected by the petitioner after sending a letter to the concerned department and prepared a draft letter which was to be sent to the Headquarter. It is further alleged that the petitioner had not shown a case pending before the Court investigated by the C.B. C.I.D. against Surendra Singh Bisht, Sub Inspector. It is alleged that the C.B.C.I.D. investigated a case pertaining to offence of the year 1989 against Surendra Singh Bisht and filed a charge sheet before the Meerut Court in the year 1996. The petitioner sent a letter to the C.B. C.I.D. in which he has called for a report of the pending investigations against the Sub Inspectors. It is alleged in the show cause notice that he did not mention in the letter that the C.B. C.I.D. had to furnish a report with regard to those Sub Inspectors mentioned in the list that they had any criminal case pending in the Court also. Thereafter, the report was submitted to the Headquarter indicating that there is no case pending in the Court against Surendra Singh Bisht also. When it was revealed that Sri Surendra Singh Bisht had a case pending in the Meerut Court investigated by C.B.C.I.D., the petitioner was given a show cause notice to that effect and the petitioner gave its reply to the appointing authority. The first show cause notice, which was given, is already mentioned in the order of the punishing authority (Sri Alok Sharma, I.G., P.A.C., Haridwar) of the petitioner dated 13.4.2011, copy of the notice, which is indicated in the order is as under:-

“प्रकरण में सेनानायक 40वीं वाहिनी पीएसी हरिद्वार द्वारा पत्र सं० द-13/2010 दिनांक 02.08.2010 के माध्यम से श्री नरेन्द्र सिंह नेगी, उप निरीक्षक (एम) आंकिक 40वीं वाहिनी पीएसी हरिद्वार को कारण बताओ नोटिस निर्गत किया गया कि “वर्ष 2007 में जब यह ए०एस०आई०(एम) पुलिस कार्यालय देहरादून में सी०आर०के०-प्रथम के पद पर नियुक्त थे तो इनके द्वारा दिनांक 10.6.2007 को सी०आई० लिस्ट-2 हेतु नामांकित उप निरीक्षकगण के सम्बन्ध में उनके विरुद्ध प्रचलित /प्रस्तावित कार्यवाही का विवरण उपलब्ध कराने हेतु खण्डाधिकारी अपराध अनुसंधान विभाग, खण्ड देहरादून को प्रेषित पत्र संख्या न-11/2007 का आलेख तैयार किया गया था उक्त लेख में इनके द्वारा 23 उप निरीक्षकों की सूची प्रेषित कर आख्या मांगी गयी” कि संलग्न सूची में अंकित उप निरीक्षक ना०पु० के विरुद्ध आपकी इकाई में यदि कोई जांच आदि के प्रकरण लम्बित/प्रस्तावित हो तो उनका पूर्ण विवरण उपलब्ध कराने का कष्ट करें। इनके द्वारा अपराध अनुसंधान विभाग से अपराधिक प्रकरण/न्यायालय में विचाराधीन अभियोगों का विवरण नहीं मांगा गया। जबकि अपर पुलिस महानिदेशक, प्रशासन, उत्तराखण्ड, देहरादून द्वारा अपने पत्र सं० डी०जी-एक 103-2006 दिनांक 17.2.2007 में सी०आई०लिस्ट-2 के नामांकन हेतु दिये गये निर्देशों के बिन्दु संख्या 15 में स्पष्ट अंकित किया गया है “यदि किसी उप निरीक्षक के विरुद्ध सी०आई०डी०/सतकर्ता एवं अन्य ऐजेन्सियों में जांच/विवेचना लम्बित या पचलित हो तो उसका स्पष्ट उल्लेख किया जाए, इसी प्रकार, किसी उप निरीक्षक के विरुद्ध कोई प्रकरण न्यायालय में विचाराधीन हो तो उसका भी विवरण उपलब्ध कराया जाय। इनके द्वारा एक ही प्रकरण में अलग-अलग पत्र ड्राफ्ट कर सूचना संकलित की गयी, उक्त त्रुटि के कारण ही अपराध अनुसंधान विभाग खण्ड, देहरादून द्वारा उपलब्ध करायी गयी आख्या में श्री सुरेन्द्र सिंह विष्ट के विरुद्ध न्यायालय में प्रचलित अभियोग का विवरण अंकित नहीं हो पाया। इनके इस अविवेक एवं लापरवाहीपूर्ण तरीके से कार्य करने एवं कर्तव्यहीनता की घोर भर्त्सना की जाती है।”

3. After going through the entire notice as well as the reply of the petitioner, the appointing authority exonerated the petitioner and held the petitioner not guilty of the misconduct. However, it was observed that further inquiry, if required may be made at the option of the C.B.C.I.D. to fix the responsibility of the employees in the office of C.B.C.I.D. Cell.
4. Thereafter the C.B. C.I.D. started the inquiry in the matter as to how the mistake was committed by the C.B.C.I.D in this regard. We have also summoned the original record of the inquiry from the department. There is a letter of D.I.G., C.B. C.I.D., Dehradun in which it is proposed that Sri Jeevan Chandra Pant, Sub Inspector, Sri Narandra Singh Negi, Sub Inspector be punished after conducting the departmental

proceedings under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. This report was sent on 15.02.2011. On the said report the S.S.P., Dehradun again issued a show cause notice to the petitioner (Annexure-4), in which the following entry as punishment was proposed to the petitioner:-

“वर्ष-2007 में जब यह एस0एस0आई0(एम) पुलिस कार्यालय देहरादून में सी0आर0के0 प्रथम के पद पर नियुक्त थे तो इनके द्वारा दिनांक 10.6.2007 को सी0आई0लिस्ट-2 हेतु नामांकित उप निरीक्षणगण के सम्बन्ध में उनके विरुद्ध प्रचलित/ प्रस्तावित जांच/ विभागीय कार्यवाही का विवरण उपलब्ध कराने हेतु खण्डाधिकारी अपराध अनुसंधान विभाग खण्ड देहरादून को प्रेषित पत्र संख्या: न-11/2007 का आलेख तैयार किया गया था, उक्त आलेख में इनके द्वारा 23 उपनिरीक्षकों की सूची प्रेषित कर आख्या मांगी गयी ” कि संलग्नक सूची में अंकित उप निरीक्षक ना0पु0 के विरुद्ध आपकी इकाई में यदि कोई जांच आदि प्रकरण लम्बित /प्रस्तावित हो तो उनका पूर्ण विवरण उपलब्ध कराने का कष्ट करें। इनके द्वारा अपराध अनुसंधान विभाग से अपराधिक प्रकरण/न्यायालय में विचाराधीन अभियोगों का विवरण नहीं मांगा गया जबकि अपर पुलिस महानिदेशक प्रशासन उत्तराखण्ड देहरादून द्वारा अपने पत्र संख्या: डीजी-01-103-2003-2006 दिनांक 17-2-2007 में सीआईलिस्ट-2 के नामांकन हेतु दिये गये निर्देशों के बिन्दु संख्या: 15 स्पष्ट अंकित किया गया है, यदि किसी उपनिरीक्षक के विरुद्ध सीआईडी/सर्तकता एवं अन्य एजेन्सियों में जांच /विवेचना लम्बित या प्रचलित हो तो उसका स्पष्ट उल्लेख किया जाये। इसी प्रकार किसी उ0नि0 के विरुद्ध कोई प्रकरण न्यायालय में विचाराधीन हो तो उसका भी विवरण उपलब्ध कराया जाये। इनके द्वारा एक ही प्रकरण में अलग-अलग पत्र ड्राफ्ट कर सूचना संकलित की गयी, उक्त त्रुटि के कारण ही अपराध अनुसंधान विभाग खण्ड देहरादून द्वारा उपलब्ध करायी गयी आख्या में श्री सुरेन्द्र सिंह बिष्ट के विरुद्ध न्यायालय में प्रचलित अभियोग का विवरण अंकित नहीं हो पाया । इनके इस अविवेक एवं लापरवाही पूर्ण तरीके से कार्य करने एवं कर्तव्यहीनता की घोर भर्त्सना की जाती है।”

5. After receipt of the said notice, the petitioner submitted his reply to the punishing authority and the punishing authority punished the petitioner vide Annexure-1 making the notice absolute. Feeling aggrieved by the said punishment order, the petitioner preferred an appeal and revision before the competent authorities, which were also dismissed by the respective authorities. Feeling aggrieved by the said order, the petitioner has preferred this claim petition.

6. Respondents filed their written statement and supported the order of the respondents. Respondents have further alleged that no illegality has been committed in awarding the punishment by the punishing authority. It is further alleged that there was sufficient evidence against the petitioner, so the petitioner had been awarded the punishment. Ultimately, respondents have prayed that the petition of the petitioner be dismissed.
7. Ld. Counsel for the petitioner contended that the punishing authority while awarding the punishment to the petitioner had not applied his mind in accordance with law and passed the punishment order in a mechanical manner. He further pointed out that if the punishing authority would have gone through the record, he could have known to the fact that at an earlier point of time the punishing authority had exonerated the petitioner and the finding recorded by the punishing authority had attained finality. He further contended that the punishing authority even had not gone through the entire record because the earlier punishing authority Sri Alok Sharma, I.G., P.A.C. had issued a notice under Rule 14(2) of the Punishment & Appeal Rules, 1991. Thereafter, the petitioner submitted his reply to the said show cause notice and after going through the entire discussion the punishing authority, who was also experienced officer of the rank of I.G., considered the entire record and held that the petitioner is not guilty of the misconduct and exonerated the petitioner from the misconduct. Ld. Counsel for the petitioner further pointed out that the order of the earlier punishing authority is clear that the matter was to be investigated by the C.B.C.I.D. with regard to their mistake and misconduct. He further contended that instead of conducting the inter departmental inquiry, the punishing authority exonerated the petitioner and the department again put the petitioner guilty for the said misconduct. It was further contended that the Punishment & Appeal Rules, 1991 did not provide any such provision in which the punishing authority has a power again to start the disciplinary proceedings in the same matter once which has been closed or finally

decided. He further contended that if Rules did not permit, the punishing authority had no power to reopen the matter again and to punish the petitioner. He further contended that the principle of autre fois acquit is applicable in the case of the departmental proceedings also. Ld. A.P.O. refuted the contention.

8. At the outset we would like to refer the findings recorded by the C.B.C.I.D. in which it is specifically mentioned at Page 2 of the report that the S.S.P. Office has already destroyed the register and the file with regard to the Surendra Singh Bisht, S.I. in the year 1996. The report further pointed out that this fact was revealed from the earlier inquiry. Relevant portion of the said report is as under:-

“यह विचारणीय बिन्दु है कि पुलिस कार्यालय देहरादून से तत्कालीन उ० नि० सुरेन्द्र सिंह बिष्ट से सम्बन्धित पत्रावली एवं रजिस्टर 1996 में ही नष्ट कर दिया गया । पत्रावली क्यों बंद की गयी तथा क्यों नष्ट की गयी, इसका कोई उल्लेख पुलिस कार्यालय से प्राप्त अभिलेखों में न होना पूर्ववर्ती जांच आख्या से स्पष्ट हुआ है ।”

9. We have gone through the relevant rule of Rules 1991 in which there is no provision once the petitioner has been exonerated from the charges, his matter can be reopened again by the punishing authority. There is a provision of appeal under Rule, 20, where the armed Police Officer/official has been given the power to file an appeal against the order of punishing authority.
10. There is a power vested under Rule 25 of Punishment & Appeal Rules, 1991 in the State Government in which the State Government has the power suo motu to call for and examine the record of any decided matter by any subordinate to it in exercise of the power conferred upon such authority by these rules and against which no appeal has been preferred under these rules. Thus, the State Government has ample power to make such other orders in the case as the State Government may deem fit. Thus, the Rule, 25 is very wide and the punishing authority should have referred the matter to the State Government and the State Government was competent to set aside the order of the previous punishing authority and to direct the inquiry in the matter as the Government could have deemed appropriate. It was not for the appointing authority to proceed further immediately. Ld.

A.P.O. could not demonstrate any other provision in which the inquiry can be reopened at the behest of the appointing authority.

11. In a similar matter the Hon'ble apex Court in **K.R. Deb Vs. The Collector of Central Excise, Shilong 1971 (2) SCC 102** while considering the provisions contained in Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 held as under:-

" 12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant".

12. The above judgment has been followed in the case of Kanailal Bera Vs. Union of India 2007 AIR SCW 6329. In this case Appellant was appointed as a Constable in the Central Reserve Police Force and he allegedly proceeded on medical leave on 17.2.1992. He reported for duty on 1.4.1992. He was found medically fit and declared as such on 6.4.1992. He again applied for medical leave and without such leave being sanctioned he unauthorisedly left his place of posting on 9.4.1992. He remained unauthorisedly absent for a period of 67 days. He returned back to his duty only on 12.7.1992. On the charges of having remained unauthorisedly absent, he was sentenced to seven days confinement to Civil Lines. As against the said order, he made a

representation. The said representation, however, was not routed through proper channel, whereupon a proceeding was again initiated against him. He was directed to be confined for ten days in the Civil Lines and on the premise that he refused to comply with the requirements of such confinement to Civil Lines, another disciplinary proceeding was initiated against him. In the said proceedings the charges against him were held to be partially proved. He was dismissed from service but then another disciplinary proceeding was directed to be initiated. Thereafter an order of dismissal was passed in the year 1994 and the said dismissal order was challenged in the year 1997 before the Hon'ble High Court. The Hon'ble High Court dismissed the writ petition on the ground of delay. The Hon'ble Supreme Court has held that the first punishment which was awarded to the petitioner was of the confinement to the Civil Lines, though it was not provided under the Rules the punishment order became final.

13. Hon'ble Apex Court further held in Para 5 of the **Kanailal Bera** as under:-

“ The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5.4.1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules 1955 , inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry.”

12. In view of the above, we find that the punishment order Annexure- A-1 dated 23.07.2012 passed by the Superintendent of Police, Karmik, Uttarakhand, Dehradun is not sustainable in the eye of law. The impugned orders dated 23.7.2012 (Annexure No.A-1), Appellate order dated 7.2.2013 (Annexure No.A-2) and the revisional order dated 5.10.2013 (Annexure A-3) are liable to be set aside.

ORDER

The impugned orders dated 23.7.2012 (Annexure No.A-1), Appellate order dated 7.2.2013 (Annexure No.A-2) and the revisional order dated 5.10.2013 (Annexure A-3) are hereby set aside. No order as to costs.

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

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

DATED: NOVEMBER 30, 2015
DEHRADUN

VM