

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 11/NB/DB/2012

Constable 55385, Rajesh Kumar Tripathi aged about 45 years, S/o Sri Ram Pyarey Tripathi, R/o Village- Mahatawani, Post Office, Azgain, P.S. Azgain, District Unnao.

.....Petitioner

VERSUS

1. The State of Uttarakhand through the Principal Secretary, Home Department, Civil Secretariat, Dehradun, Uttarakhand.
2. The Director General of Police, 12, Subhash Marg, Dehradun, Uttarakhand.
3. The Inspector General of Police, PAC, Uttarakhand, District-Dehradun.
4. The Commandant, 46th Battalion, PAC Task force, Rudrapur, District Udham Singh Nagar, Uttarakhand.

.....Respondents

Present: Ms. Menka Tripathi, Ld. Counsel
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: NOVEMBER 13, 2018

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this petition for the following reliefs:-

"a. To issue/pass an order or direction setting aside the punishment of Dismissal Order dated 13.10.2005; passed by the Opp. Party No. 4 and the order dated 01.03.2007 received to the petitioner on 22.11.2011 vide communication letter

dated 16.11.2011 as are contained in Annexure No. 1 & 2 to this petition.

b. To issue/Pass an order or direction directing the Opp. Parties to reinstate the petitioner and take him back in service by allowing him to join and further he may also be paid arrears of salary and other consequential benefits for which he is legally entitled, had he not been dismissed from his service.

c. To issue/pass an order or direction which this Hon'ble Tribunal may deem just fit and proper in the circumstances of this case and in favour of the petitioner may also be passed, along with cost."

2. As per averments of the petition, while working as Constable in PAC, on 18.06.2002, the petitioner was sanctioned one month's leave, on half pay for the treatment of his daughter. On 01.08.2002, he applied for extension of leave from 18.07.2002 to 30.02.2002 and again for 35 more days. During his leave, in district Lucknow, while petitioner was going to the hospital for the treatment of his daughter, an accident took place on 31.07.2002, in which the Village Pradhan, Smt. Malti Devi sustained serious injury and ultimately, she died. Her family members having enmity with the petitioner, lodged an FIR under Section 302/ 307/427 IPC against the petitioner, including his father and three others. The petitioner surrendered before the Criminal Court on 21.08.2002 and on 02.09.2002, he was suspended.

3. The petitioner was bailed out from Jail on 22.01.2003, the respondent department revoked his suspension on 09.08.2003 and directed him to attend his duty immediately. According to the petition, the petitioner was not permitted to go anywhere by sureties hence, he submitted a letter to the department on 13.02.2004, informing that he was falsely implicated in the criminal case and the sureties are not permitting him to go anywhere hence, he is unable to attend his duty. The petitioner also informed respondent no.4, by writing several letters about the difficulty in not attending the office. However, a

charge sheet was issued against him on 13.07.2004 by the respondents. The petitioner's sureties also wrote letter to respondent No. 4 on 25.04.2004 stating that unless the matter is finally decided, they will not permit the petitioner to go anywhere. The petitioner also submitted his reply to charge through registered post on 17.12.2004, with the request not to proceed further with the departmental proceedings.

4. According to the petition, the petitioner was unable to attend his duty and in his absence, the inquiry officer was appointed, who completed the inquiry on the basis of the wrong statement, submitted by the witnesses and recommended for the punishment of dismissal on 31.05.2005. A show cause notice issued on 09.08.2005, was replied by the petitioner on 07.09.2005 but without considering his reply, petitioner was dismissed from service on 13.10.2005. Thereafter, appeal submitted by the petitioner through post on 21.11.2005, was not decided in time and after reminder on 01.08.2006, the appeal of the petitioner was rejected on 01.03.2007 but its communication was never made to him.

5. After acquittal of the criminal charges on 18.09.2007, petitioner submitted his representation/reminder to respondent No. 3 on 15.2.2011, requesting for disposal of his appeal, but of no avail. Since the appeal was not decided, hence, petitioner filed a writ petition no. 1321 (S/S) of 2011, before the Hon'ble High Court of Uttarakhand at Nainital in the month of September 2011, which was decided by the Hon'ble High Court with the direction to the respondent no. 3 to decide the departmental appeal of the petitioner, allegedly pending before him, as expeditiously as possible.

6. On the basis of the judgment of the Hon'ble High Court, the petitioner submitted his application to the respondents through registered post along with copy of the judgment of the Hon'ble High

Court on 31.10.2011. Thereafter, respondent no. 4, for the first time, through his letter dated 16.11.2011, communicated him the Appellate Order dated 01.03.2007. Since the communication of appeal rejection order was made on 16.11.2011 to the petitioner, hence, dismissal order dated 13.10.2005, based on ex-parte inquiry as well as Appellate Order dated 01.03.2007 has been challenged by the petitioner on the following grounds:-

- i. That the dismissal order dated 13.10.2005 is based on ex-parte inquiry and the reply submitted by the petitioner against the charge sheet and against the show cause notice, were not taken into consideration in its true sense and merely on the basis of presumption, the petitioner was dismissed from service. The petitioner was never given opportunity of hearing at any stage and his appeal was also rejected illegally. The punishment order as well as appellate order is against the principles of natural justice, due procedure of inquiry was not adopted as per Rules and punishment is too harsh/excessive and as such, the punishment order as well as appellate order is liable to be set aside. Hence, this petition.

7. The petition was opposed by the respondents on the ground that being a member of the police force, the petitioner was duty bound to join his duty after completion of his leave, but he remained unauthorizedly absent. The petitioner, who was suspended on account of his detention in a criminal trial, was later on released on bail by the order of the Hon'ble High Court of Allahabad. Thereafter, he was reinstated by the department and was informed to join his duty, but inspite of several reminders, petitioner did not report on duty and was continuously absent, without any sufficient cause. Accordingly, after preliminary inquiry, the charge sheet was issued and detailed final inquiry was conducted against him. Due and sufficient notices were issued to the petitioner to participate in the inquiry and

were lawfully served upon him. After receipt of the information that he was residing with sureties, the petitioner was also issued a notice on his given address to participate in the inquiry, but he did not appear and tried every best to delay the inquiry proceedings.

8. According to the respondents, after affording sufficient opportunity of hearing in the inquiry proceedings, to which the petitioner did not avail and inquiry was concluded ex-parte. On the basis of the statements of the witnesses and finding that the petitioner was residing with sureties, and did not resume his duty after revocation of his suspension, he was found guilty of willful absence. The inquiry report submitted by the inquiry officer was also served along with the show cause notice upon the petitioner, which was replied by him on 07.09.2005. His reply to the show cause notice was found totally unsatisfactory, hence, after considering all the circumstances, the petitioner was dismissed from the service vide impugned order dated 13.10.2005. His appeal was also decided on merit in the year 2007 which was never challenged before any court of law in due time, but to cover up the period of limitation, he deliberately filed a writ petition before the Hon'ble High Court after a delay of 4 to 5 years and his petition is also time barred.

9. According to the respondents, after release on bail, petitioner was bound to resume his duty. Even as per the law of bail, the sureties' responsibility was only to ensure the presence of the petitioner before the Court on the date of hearing and the sureties were having no legal right to keep and confine him in their custody without his consent. Such explanation, as submitted by the petitioner cannot be accepted in any circumstances. Being a member of police force, his service was urgently required by the State to maintain law and order and willful absence from duty was a serious misconduct, showing dereliction toward duty, which the petitioner willfully did and he was lawfully punished after giving due opportunity of hearing.

There is no legal lacuna in passing the punishment order and order, deciding the appeal. The petitioner cannot claim the benefit of his own willful conduct/negligence and his petition has no merit and also being time barred, deserves to be dismissed.

10. The petitioner also filed rejoinder affidavit reiterating the averments as mentioned in the claim petition.

11. We have heard both the sides and perused the record.

12. Some facts are admitted to both the parties that petitioner was on leave at his home place w.e.f. 18.06.2002. During that period, he was involved in a criminal case under section 302 IPC and after his arrest, he was sent to Jail and his suspension order was passed on 02.09.2002. The petitioner remained in Jail till 22.1.2003. He was released on bail by the order of the Court, but he did not report back on duty and submitted his request that he is not being permitted by his sureties to leave that place, hence, he was continuously asking permission for that, but the department did not grant any such permission for being absent for such long period.

13. On 07.08.2003, his suspension was revoked and he was directed to attend his duty in the month of August, 2003. According to the charge, such information was received by him on 19.08.2003 personally but he remained absent continuously without permission of his department. According to the petitioner, he informed the department that sureties are not permitting him to go anywhere. The department started disciplinary proceedings against the petitioner. He was also informed on 19.02.2003, 26.03.2003, 03.06.2003 through special messenger and by registered post to join his duty and the information of the revocation of suspension was also duly served. Preliminary inquiry was also conducted, in which the inquiry officer, Sri Anand Singh Dhoni, Officer on Special duty, 46 PAC, Rudrapur recorded some statements of relevant persons and even after the

report of the preliminary inquiry officer, the petitioner remained continuously, unauthorizedly absent from duty.

14. However, after having the information of revocation of suspension order and the order to resume his duty, the charge sheet was prepared on 27.05.2004 by the Assistant Commandant and it was sent for service on the petitioner through S.P., Unnao as well as it was also sent through special messenger on the address of the petitioner, the service of the same was affected by affixing its copies at his residence on 30.05.2004 and after having information of his another address with the sureties, the charge sheet was also sent on that address on 17.06.2004 and the petitioner was directed to participate in the inquiry, but he knowingly remained absent and did not to participate in the inquiry. He was further informed about the date on 21.07.2004, and was also directed to submit his answer by 04.08.2004 but the petitioner knowingly remained absent and did not avail that opportunity.

15. Thereafter, the inquiry officer informed the date of hearing in inquiry on 19.11.2011 through S.P. Unnao. The series of letters dated 07.02.2005 and 16.02.2005 were also issued and finally the inquiry was conducted ex-parte. After concluding the inquiry, the petitioner was held guilty for willful absence from duty. The inquiry report dated 31.05.2005, was submitted and the Disciplinary Authority agreeing with the same, issued a show cause notice dated 09.08.2005 along with the inquiry report, which was replied by the petitioner in the month of September 2005.

16. After considering his reply to the show cause notice, the Disciplinary Authority passed the order of dismissal dated 13.10.2005, against which appeal was also filed, which was also dismissed by the Appellate Authority vide order dated 01.03.2007 through a detailed and reasoned order. The information of the same was also sent on the

address of the petitioner on 06.03.2007, but no action against the order of dismissal or appeal was undertaken by the petitioner till the year 2011. Whereas, the petitioner has submitted that he was not informed about the decision of the appeal and only after filing the writ petition No. 1321 (S/S) of 2011, before the Hon'ble High Court, he was informed about the same in the year 2011.

17. The petitioner has contended that the dismissal order as well as order passed by the appellate authority are against the principles of natural justice and Article 311 (2) of the Constitution because he was not given due opportunity of hearing, neither in the inquiry proceedings nor at the appellate stage and he was dismissed without taking into consideration, the reply submitted by him.

18. This has been answered by the respondents and this court also agree with the same that the petitioner was given every opportunity to defend himself during the inquiry. He was repeatedly informed about the dates of inquiry and was required to participate in the same but petitioner knowingly remained absent and the reason for his absence is willful. There were no compelling circumstances, and the opportunity afforded to the petitioner, was not availed by him. Hence, the inquiry was conducted as per rules. The record reveals that the petitioner was having information of revocation of suspension and being a government servant, he was expected to resume his duty, after notice of suspension but he remained absent and the reason for not resuming the duty was narrated that his sureties of the criminal case did not permit him to go anywhere, as they stood sureties for him. This reason was not found sufficient by the Disciplinary Authority.

19. This court is also of the view that after release on bail, the petitioner was not forcefully confined by the sureties at their place. However, any such confinement is also not permitted under the law and it is an offence. It shows that the petitioner was willfully absent

from his duty. The government servant, even if involved in the criminal case, could not remain absent from duty, for completion of the trial, as such, because the trial may take a long time to conclude. When the petitioner, who was a member of police force, was ordered by his authority to resume his duty, he was bound to report on duty and after taking leave, he was having opportunity to go for attending his trial with the permission of his employer. It appears that the reasons of absence from duty, was rightly found non-sufficient by the Disciplinary Authority.

20. Furthermore, if the petitioner was directed and ordered to participate in the inquiry, he could not claim to remain absent, just because of the reason that he was involved in a criminal case and was not permitted by his sureties to go anywhere because he might be doing all the acts of his daily needs and there was no such proof by the petitioner that he was completely confined by the sureties and was not permitted to go anywhere and simply because of such statement, his contention cannot be accepted.

21. However, this court cannot go into subjective satisfaction of the Disciplinary Authority and only the procedural lacuna is to be seen. It is clear that after long absence of the petitioner from his department w.e.f. 07.08.2002 to 13.10.2005 (the period of dismissal from service), the petitioner never reported on duty, inspite of notice issued to him. This court is of the view that the notices were duly served on the petitioner and he was having knowledge of the inquiry proceedings in which he was given opportunity of hearing, which he did not avail. After the inquiry report, the Disciplinary Authority agreeing with the inquiry report, issued a show cause notice which was received by the petitioner and the same was replied by him. Even at that stage, the petitioner was having another opportunity to appear personally before the Disciplinary Authority and was having one more opportunity of resuming his duty but he remained absent. Finding his

reply unsatisfactory, dismissal order was passed on 13.10.2005. This court is of the view that due procedure was followed/adopted and it was the petitioner, who avoided from his duty as well as did not participate in the inquiry knowingly. There is no procedural lacuna/fault in the proceedings.

22. Learned counsel for the petitioner has also argued that the charge sheet was issued under the signature of the inquiry officer and it is the violation of the judgment of the Hon'ble High Court of Uttarakhand in the case of Lalita Verma Vs. State of Uttarakhand and others, in writ petition No.118/2008. Respondents have submitted that the matter pertains to the year of 2004, much before the decision of the Hon'ble High Court in the Lalita Verma's case in 2008. The judgment is having prospective effect. This court is of the view that the disciplinary proceeding was finally concluded on 13.10.2005. Moreover, a departmental appeal was also decided in the month of March 2007 much before the above case law.

23. The petitioner is governed by the U.P. Police Officers of the Subordinate in Rank (Punishment & Appeal) Rules, 1991, which were followed. The petitioner has also raised a point that Rule 54 of the Financial Hand Book was not followed and he was not granted the salary of the period before his dismissal. Respondents have argued that in the inquiry, the petitioner was found guilty and was punished, hence, he is not entitled for such benefit. This court agrees with the argument of the respondents. The petitioner approached the Hon'ble High Court in the year 2011, confining his relief to the extent that his pending departmental appeal should be decided. Respondents have stated that his departmental appeal was already decided in 2007. Accordingly, he was informed in time but later on just to cover the period of limitation, such proceedings were adopted. According to the respondents, his petition is time barred.

24. This court is of the view that the petitioner approached the Court very late. However, for hearing of such proceedings, this claim petition cannot be thrown away, solely on the basis of delay but this fact is also very relevant and important that the petitioner has approached the Hon'ble High Court and this Tribunal very late and his petition has no merit. The petitioner has not been able to prove any irregularity or illegality in the proceedings; the principles of natural justice were followed, every opportunity of hearing and defence was granted to petitioner, to which he himself did not avail. Being a police personnel, who is assigned the duty to maintain law and order, he cannot remain unauthorizedly absent from duty for such a long time. In spite of notices of his department to resume his duty, he remained absent hence, his conduct was of a very serious nature and in view of the Court, the punishment of dismissal was not excessive rather it was appropriate for the misconduct committed by him.

25. This court is also of the view that there is no ground to interfere, hence, claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 13, 2018

NAINITAL

KNP