

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, DEHRA DUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.Kotia

----- Vice Chairman (A)

CLAIM PETITIOIN NO. 01/2012

Kirat Singh Bisht, S/o Late Sri Jot Singh Bisht, R/o Village, and
Post Office, Tunwala, Dehradun

.....Petitioner

VERSUS

1. State Uttarakhand through Secretary, Home, Uttarakhand,
Secretariat, Dehradun,
2. Additional Director General of Police (Law & Order),
Uttarakhand, Dehradun,
3. Director General of Police, Garhwal Region, Uttarakhand,
Dehradun,
4. Senior Superintendent of Police, Dehradun.

.....Respondents

And

CLAIM PETITIOIN NO. 02 /2012

Narendra Singh, S/o Sri Madan Singh, R/o Police Line,
Dehradun

.....Petitioner

VERSUS

1. State Uttarakhand through Secretary, Home, Uttarakhand,
Secretariat, Dehradun,
2. Additional Director General of Police (Law & Order),
Uttarakhand, Dehradun,

3. Director General of Police, Garhwal Region, Uttarakhand, Dehradun,
4. Senior Superintendent of Police, Dehradun.

.....Respondents

And

CLAIM PETITIOIN NO. 03/2012

Anil Shah, S/o Sri Santan Singh, R/o Police Line, Dehradun

.....Petitioner

VERSUS

1. State Uttarakhand through Secretary, Home, Uttarakhand, Secretariat, Dehradun,
2. Additional Director General of Police (Law & Order), Uttarakhand, Dehradun,
3. Director General of Police, Garhwal Region, Uttarakhand, Dehradun,
4. Senior Superintendent of Police, Dehradun.

.....Respondents

Present: Sri V.P.Sharma, Counsel
for the petitioners

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: JANUARY 06, 2014

DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)

1. All the above mentioned petitions have arisen out of the same incident, and same questions are involved therein, therefore, all these can be decided by a common judgment, so all of the above petitions are taken up together and are being decided by a common judgment. The petition no. 01 of 2012 shall be treated as the leading petition.

2. Petitioners, Kirat Singh Bisht, Anil Shah and Narendra Singh were awarded penalty by the Senior Suppt. Police, Dehradun by putting them on the basic scale of pay for a period of three years vide separate orders dated 5.11.2009, 12.11.2009 and 11.11.2009 respectively. The order of penalty in the case of Kirat Singh Bisht keeping in view of his superannuation was modified in revision vide order dated 23.5.2011 (Consequential order was passed by the S.S.P., Dehradun on 4.6.2011) and the period of three years was reduced to one year,

3. The facts in brief as stated in the petition are that the petitioner, Kirat Singh Bisht posted as Head Constable in Police Line, Dehradun was deputed along with other constables namely; Anil Shah, Narendra Singh (also petitioners), Ved Prakash and Harendra Singh to produce one under trial namely; Sunil Rathi lodged in jail at Dehradun before a court at Muzaffarnagar on 24.2.2009 and thereafter before another court at Kashipur, District Udham Singh Nagar on 25.2.2009. So they took the custody of the above named criminal from District Jail, Dehradun on 24.2.2009 and took him to Muzaffarnagar by Govt. vehicle No. UA-07-0251, which was driven by driver, V.P.Thapa. After producing the accused Sunil Rathi before the court at Muzaffarnagar, he was taken to Kashipur. On the way, near Bairaj, all the constables asked the Kirat Singh Bisht, Head Constable, leader of the police party to take a halt for dinner, so they stopped at a road side restaurant for dinner, but the driver V.P.Thapa instead of taking dinner, took the vehicle on the pretext to return soon, but he did not. After waiting for some time, a search was made and driver V.P.Thapa was found lying in the Govt. vehicle in drunken state and was not in a position to drive the vehicle. Therefore, the vehicle was driven by another Constable namely, Narendra Singh, a petitioner. They reached upto Jaspur and took rest for the night and on 25.2.2009, the accused Sunil Rathi was produced before the concerned court in time at Kashipur.

4. The driver V.P.Thapa got annoyed and apprehended action against himself for taking Govt vehicle and on being found in drunken state, made a false complaint to Inspector, Police Line, Dehradun wherein he stated that while traveling from Muzzafarnagar to Kashipur, the accused Sunil Rathi was taken out from the Govt. vehicle by the police party accompanying him got into another private vehicle (Santro Car) and he was instructed to take Govt. Vehicle to Meerapur a town in district Muzaffar Nagar where they would join him again for further journey. The driver, V.P.Thapa took the Govt. vehicle to Meerapur, but neither the constables nor the accused were found there, so, he (V.P. Thapa) intimated this incident by telephone to Inspector, Police Line, Dehradun. Consequently, an enquiry was instituted, in which the petitioners were found guilty and penalty was imposed on each petitioner by a separate order of reverting them to the lowest scale of pay for a period of three years by the S.S.P, Dehradun by way of separate orders mentioned above. The petitioners preferred a departmental appeal against these orders, which were also dismissed on 10.8.2010. Thereafter, revisions were preferred. The revision filed by Kirat Singh Bisht was partly allowed on 23.5.2011 and period of three years was modified to one year as his superannuation was due in that period. Rests of the two revisions were dismissed. Hence these petitions.

5. The petitions have been opposed on behalf of the respondents and it is stated that Kirat Singh Bisht, Head Constable-98, Constable-148 Anil Shah, Constable- 332 Narendra Singh, Constable-364 Ved Prakash and Constable-549 Harendra Singh were posted in Police Line, Dehradun and on 24.2.2009, they were deputed to take a under trial Sunil Rathi from District Jail, Dehradun and to produce him before the Court of Judicial Magistrate, Muzaffarnagar in connection with case crime no. 60/2001 u/s 392/411 IPC same day and thereafter,

before the court of Additional Sessions Judge, Kashipur, District Udham Singh Nagar next day ie on 25.2.2009 in connection with case Crime No. 1431/2006 U/S 386/307/120 B IPC. They were given the handcuffs as well as weapons. A Govt. Vehicle bearing Registration no. UK-07-GA 0251 was also deputed, which was driven by driver V.P.Thapa. Head Constable-98 Kirat Singh Bisht was the leader of the Police Party. After producing the accused Sunil Rathi before the court of Judicial Magistrate at Muzaffar Nagar, they proceeded for Kashipur. While taking the accused Sunil Rathi from Muzaffarnagar to Kashipur, Head Constable, Kirat Singh Bisht asked the driver V.P.Thapa to stop the Govt. Vehicle on 24.2.2009 at 1:00 P.M. at Bijnor Road on the pretext of urination and Kirat Singh Bisht, Head Constable along with other Constables and accused left the Govt. vehicle and all of them took a private Santro Car, which was following the Govt. vehicle. Driver V.P.Thapa stayed in the Govt. Vehicle who was directed by Head Constable, Kirat Singh Bisht to join them again at Meerapur. The driver V.P.Thapa waited for them at Police outpost Bairaj, but none of them returned back, he had given intimation of this fact to Police Line, Dehradun at 7:00 p.m. same day, which was received by H.C. M.T., Gopal Singh Rana. On this information, the Inspector, Police Line, Dehradun contacted Head Constable, Kirat Singh Bisht on his mobile phone. He thereafter, talked with Constable Narendra Singh who informed that they are between Jaspur and Kashipur. However, Constable Narendra Singh could not disconnect the cell, so the Inspector, Police Line, Dehradun could overhear the conversation between Kirat Singh Bisht and Constable Narendra Singh. They were talking to take fuel of Rs.1500/- in the vehicle and traveling via Meerut. The Inspector Police Line, Dehradun also wanted to have a word with Driver V.P.Thapa, but could not do it as Head Constable, Kirat Singh Bisht could not give phone to Driver. The petitioners along with other constables and accused Sunil Rathi returned back at about 12:30 in the night and asked the driver, V.P.Thapa to take the vehicle to

Dhampur. The Govt. Vehicle was driven by Constable, Narendra Singh upto Jashpur, where they stayed at Punjabi Dhaba. Whereas they should have stayed at some police station.

6. Driver, V.P. Thapa thereafter lodged a written complaint on 26.2.2009. The Inspector, Police Line, Dehradun submitted a report to S.S.P., who instituted a preliminary enquiry and the Police Superintendent, Transport was appointed enquiry officer, who after conducting the enquiry submitted his enquiry report on 1.4.2009. Thereafter, final enquiry was conducted by Superintendent of Police, Rural, after framing proper charges. All the petitioners were found guilty in the enquiry and report was submitted to SSP Dehradun. Thereafter, a show cause notice was issued by the Senior Superintendent of Police, Dehradun. After considering the reply of show cause notice, the petitioners were punished by way of separate orders. It is further stated that the petitioners were guilty of misconduct and they have rightly been punished. There is no scope of interference in the impugned orders and the petitions are liable to be dismissed.

7. Rejoinders affidavits were also filed by each petitioner reiterating the same facts as stated in the main petition.

8. We have heard both the parties at length and perused the material available on record carefully.

9. First of all, it has been contended on behalf of the petitioners that Driver V.P. Thapa got intoxicated on the way and was not in a position to drive the vehicle from Muzaffar Nagar for onwards journey, so the vehicle was driven by one of the petitioner Narendra Singh. Apprehending action against himself, driver V.P.Thapa had made a false complaint against the petitioners. In fact, the action should have been taken against the Driver, V.P.Thapa, which has not

been done in the present case rather action has been taken against the petitioners who are not at fault. It has further been contended that the accused Sunil Rathi was produced before the courts first at Muzaffar Nagar and thereafter at Kashipur in time on 24.2.2009 and 25.2.2009 respectively. It is also contended that the said incident of taking the accused Sunil Rathi in another Santro Car at 1:00 P.M. is not practically possible as the accused was taken from the District Jail, Dehradun on 24.2.2009 at 10:00 a.m. Thereafter, he was taken to Muzaffar Nagar and was produced before the court. He was then taken to Kashipur and it was not possible to reach at the place told by the driver by 1:00 p.m. It is also contended that the intimation of the said incident is said to have been given at 7:00 p.m. which is grossly delayed and there is no explanation of the delay. It is further contended that driver V.P.Thapa has not given any registration number or the colour of the Santro Car in which the accused Sunil Rathi is said to have been taken. On the above grounds, the proceedings of the enquiry is said to have got vitiated. We have carefully considered the above contentions. In fact, all these contentions relate to factual aspects and generally the Tribunal does not go into the factual aspect, unless there is miscarriage of justice. It is imperative upon the enquiry officer to consider the factual aspects. In the present case, the disciplinary authority has considered all these aspects and thereafter imposed the impugned penalty upon the petitioners. These contentions have rightly been considered by the enquiry officer as well as by the disciplinary authority. We do not find any reason to interfere in the findings arrived at by the enquiry officer. Moreover, these contentions are of the nature which does not cause any miscarriage of justice to the petitioners. So, we are of the considered opinion that petitioners are not entitled for any benefit on the basis of the above contention.

10. It is further contended that the proper enquiry was not conducted and there is material defect in the charge levelled against

the petitioners by which they have been prejudiced in making their defense. We have carefully gone through the record. Copy of charge is available on record. It is true that in the charge the year of incident has been shown as 2008 and date of incident has been shown, was 24.4.2008, whereas the correct year of incident is 2009 and date of incident is 24.2.2009. But we have to see whether the petitioners were in anyway prejudiced in making their defense because of the above defects. In this contest, we have carefully gone through the reply submitted by the petitioners in enquiry as well as against the show cause notice. We have also carefully gone through the memo of departmental appeal submitted on behalf of the petitioners. In all these replies and memos of appeals submitted by the petitioners, the correct year and date of the incident have been mentioned. As the correct year and date of the incident has been mentioned in the reply and memos of appeal submitted by the petitioners, it cannot be said that they were in anyway prejudiced by the above mentioned defects in the charge. The so called defect is simply a clerical error and the petitioners are not prejudiced in making defence in any way. Under the above set of circumstances, we do not find any force in the contention raised by the petitioners. We reach to the conclusion that mentioning the wrong dates in the charge is simply a clerical error and the petitioners are not entitled for any benefit on this count.

11. It has also been contended that the statement of witnesses recorded in the preliminary enquiry cannot be read in evidence in final enquiry and a witness cannot be an enquiry officer. Therefore, the proceedings of enquiry were simply a formality, which is not proper and whole proceedings become illegal. In support of this contention, learned counsel for the petitioner drew our attention towards the principle laid down by Hon'ble Supreme Court in State of Uttaranchal & others Vs. Kharak Singh, (2008) 2 Supreme Court Cases (L&S) 698 and Jagdish Kumar Vs. The State of Punjab & others, 1995(1) SLR, 451. We have gone through these cases

carefully. In fact, the petitioners have been afforded opportunity of cross-examination of the witnesses and they have cross-examined the witnesses also. No witness has been appointed as enquiry officer. So, there is no defect in the proceedings of the enquiry and petitioners are not entitled for any benefit by the principle laid down in the cases cited by them. The original record of enquiry has also been submitted on behalf of the respondents. We have also gone through the record of enquiry and we find that in the present cases, proper enquiry was conducted and sufficient opportunity of making defense was afforded to the petitioners. There is no illegality or irregularity in the proceedings of the enquiry. The punishment is also not excessive or inappropriate; therefore, we do not find any scope of interference in the orders of punishment.

12. Considering the above discussion, we do not find any substance in the petitions and all the petitions are liable to be dismissed, but without any order of costs.

ORDER

The claim petitions are hereby dismissed. No order as to costs.
Let a copy of this judgment be placed in each petition.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JANUARY 06, 2014
DEHRADUN