

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. U.D.Chaube

-----Member(A)

Claim Petition No. 04/N.B./2011

Devendra Singh, aged 30 years, S/o Sri Mohan Singh, R/o Village Barsimi P/O
Lodhiya, District- Almora.

.....Petitioner

Versus.

1. State of Uttarakhand through Secretary, Ministry of Home, Uttarakhand, Dehradun.
2. Additional Director General of Police, (Crime & Law) Police Headquarter, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Region, Nainital, Uttarakhand.
4. Senior Superintendent of Police, Udham Singh Nagar, Uttarakhand.

.....Respondents.

Present: Sri A.D.Tripathi, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: 4 July, 2013.

(Delivered by Hon'ble Mr. Justice J.C.S. Rawat, Chairman

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

“In view of the facts mentioned in paragraphs above the applicant prays that the Hon’ble Tribunal may graciously be pleased to direct the opposite parties:-

- (i) To quash the order dated 12.1.2009 and 24.9.2009 and 25.3.2010 passed by respondents without affording any opportunity contained in (Annexure Nos. 4, 6 & 8) respectively.
- (ii) Any other equitable relief as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.
- (iii) Cost of the petition may be awarded in favour of the petitioner.”

2. The petitioner was a Constable posted in the Police Line, Udham Singh Nagar. The petitioner had been working in Treasury Guard duty since 22.7.2008. The Head Constable Darban Singh was the incharge of the Treasury Guards posted in the Treasury duties. Constable Devendra Singh, (the petitioner) and Constable Kuldeep Singh were on Guard duties under the Head Constable for the security of the Treasury along with their arms. On 31.7.2008, Assistant Police Superintendent / Circle Officer, Police Line made a surprise inspection of Guard duties at about 11.45 P.M. and found that all the Police personnel present at the spot were sleeping on their beds. One of the rifles belonging to Constable Kuldeep Singh was kept near the door unattended. The other arms were kept inside the lock in the room of the Head Constable Darban Singh and the said room was found locked. The Police security personnel, in spite of the entry of the Assistant Police Superintendent, did not wake up and the Assistant Police Superintendent took away the rifle of Constable Kuldeep Singh, which was kept near the door.

Thereafter, he submitted a report to the S.S.P., Udham Singh Nagar about the negligence and the carelessness of the Police personnel posted in the security of the Treasury.

3. The Sr. Superintendent of Police, Udham Singh Nagar vide order dated 4.8.2008 nominated Dy. Police Superintendent of Police, Udham Singh Nagar to conduct a preliminary enquiry and submit his report at the earliest. Pursuant to the said order Sri Amit Srivastav, the Circle Officer, Traffic, Udham Singh Nagar submitted his report after recording the statement of the witnesses as well the petitioner on 15.9.2008 holding that the Constable Harish Lal was the Incharge of the Police Guards because the Head Constable Darban Singh had to place the attendance register on every Friday before the S.S.P. and also had to attend the morning parade to be held in the Police Line, so he had already left to the Police Line in the evening and was not present there. Sri Harish Lal was the Incharge of the Police Guards and he had to perform the security duty from 3 A.M. to 6 A.M. in the morning of the next day, so he was sleeping at the time of the surprise inspection. Constable Kuldeep Singh was deputed as duty Guard from 9 P.M. to 12 night, but he was found absent from duty because he was sleeping. The petitioner Constable Devendra Singh was also found sleeping and his duty was to start from 12 night to morning 3 A.M. and he had to report to his duty 5 minutes before the duty hours. . He reported his duties at 2 A.M. in the next morning, so he was also not found on duty. The Circle Officer further held that Constable Kuldeep Singh and Constable Devendra Singh, the petitioner, were guilty of not discharging their duties during their duty hours.

4. After receipt of the said preliminary enquiry report, a show cause notice was given to the petitioner and an adverse entry was proposed to the petitioner by the S.S.P., the appointing authority, on October 3, 2008. After receipt of the show cause notice the petitioner also submitted his reply and thereafter he was punished by the impugned punishment order. The petitioner preferred an appeal, which was dismissed on 24.9.2009. Thereafter he preferred a revision against both the order passed by the competent authorities and the revision was also rejected on 25.3.2010. Hence this petition has been filed by the petitioner.
5. We have heard learned counsel for the parties and perused the record.
6. Sri A. D. Tripathi Ld. counsel appearing on behalf of the petitioner contended that Constable Kuldeep Singh, who was on Guard duty just before the petitioner, it was his duty to inform the petitioner that he has completed his duty and now the petitioner has to start his duty; but the Constable Kuldeep Singh did not inform the petitioner, so he remained sleeping at the time of the inspection. He further contended that the punishment imposed upon the petitioner is too harsh and disproportionate to the nature of the charges established against him. The punishment does not commensurate with the charges. Ld. counsel for the petitioner further contended that the reasonable opportunity has not been given to the petitioner to defend himself and no details of the misconduct have been given in the show cause notice.
7. Ld. A.P.O. Sri V.P. Devrani appearing on behalf of the State contended that the petitioner has been given due opportunity to defend himself and the show cause notice was served upon him and

the petitioner has submitted his reply to the show cause notice; in which he has admitted that his Guard duty was to start from 12 night to 3 A.M., but the petitioner remained sleeping till 2 A.M. and joined his duty at about 2 A.M. in the night. The punishment, which has been awarded to the petitioner is appropriate and it commensurate with the charges which have been leveled against him.

8. The petitioner has merely relied upon a fact that the Constable Kuldeep Singh, who was on the Guard duty and had been performing his duties since 9 P.M. to 12 night, had a duty to inform the petitioner to come and attend the duty at 12 night. His further case is that due to non information by Constable Kuldeep Singh, the petitioner could not discharge his duties. Ld. counsel for the petitioner could not demonstrate any rules or regulations to the effect that before leaving the Guard duty, Constable Kuldeep Singh had a duty to inform and wake up the petitioner from his sleep. There is no such provision under any of the rules framed under the Police Act. It was the petitioner's duty to be ready to perform his Guard duty at 12 night to 3 A.M. and he absented himself till 2 A.M., so he is guilty of the misconduct. The petitioner himself has admitted this fact in his reply to the show cause notice. The claim petition is also based on the same ground which have been stated in the reply to the show cause notice. The judicial review is not akin to adjudicate on merit by re-appreciation of the evidence as an appellate authority. An order can be set aside if it is based on extraneous consideration or when there are no grounds at all for passing or when the grounds are such that no one reasonably arrive at the conclusion. The Court does not sit as a Court of appeal, but it

merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafide, dishonest/ corrupt practices. In other words the authority must act in good faith, neither the question as to whether there was sufficient evidence before the authority can be raised/ examined nor the question of re-appreciation of evidence to examine the correctness of the orders under challenge. In the instant case the petitioner has himself admitted the fact that he remained absent from the duty till 2 A.M. in the morning and the Ld. counsel for the petitioner could not demonstrate that there is any rule or regulation that it was the duty of Constable Kuldeep Singh to wake up the petitioner to discharge his duty at 12 night. Thus, there is sufficient evidence on record to substantiate that the petitioner was not on duty during the duty hours.

9. We have also perused the show cause notice, which was sent to the petitioner, in which the imputation has clearly been depicted in the first paragraph. Thereafter, show cause notice has been given by the S.S.P., Udham Singh Nagar and the proposed entry has also been indicated in the said show cause notice. Thus, the show cause notice confirms all the requirements of law; as such the show cause notice is sufficient to inform the petitioner about the impugned adverse entry. The petitioner has also submitted his reply to the show cause notice. The sufficient opportunity has been given to the petitioner. Thus, the S.S.P. Udham Singh Nagar has applied his mind to punish the petitioner. There is no violation of the principles of natural justice in the present case.

10. The next issue is as to whether the punishment awarded commensurate with the charges leveled against the petitioner or not? The petitioner was posted on the Guard duty in the Treasury at Gadarpur, District Udham Singh Nagar and his duty hours were from 12 night to 3 A.M. He was found sleeping during the duty hours. The Police personnel are the members of disciplined force. The entire society feels safe and secure by virtue of the presence of the Police personnel in the society. The duty of Treasury Guard is an important duty, they also keep arms with them while discharging their duties. If the Police personnel are found sleeping on duty and their arms are found laying unattended, it a great concerned to public at large and not only to the Police Department. If any miscreant comes and takes away the arms or enters into the Treasury, the public at large has to suffer and not only the Police Department. In these circumstances, we found that the punishment which has been awarded to the petitioner is not shocking or harsh. It is a very simple punishment. Absence from Guard duty is a very serious misconduct, though it has been dealt by the S.S.P. by awarding the only adverse entry. In these circumstances, we do not find that the punishment is harsh and does not commensurate with the misconduct committed by the petitioner.
11. We have also enquired as to whether the other Constable Kuldeep Singh, who was also found sleeping during the duty hours , was punished or not. The Respondents have filed an affidavit before this Court to that effect that he was also punished with censure entry. Thus, the other Constable who was also absent from duty, has also been punished by the censure entry and he has not preferred any claim petition before any court and it has attained finality, so the

case of the petitioner is also akin to the case of the other Constable Kuldeep Singh and now it cannot be said that the petitioner has been given harsh punishment. In view of the above, the petition is liable to be dismissed.

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

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: 4 July, 2013
NAINITAL