UTTARAKHAND PUBLIC SERVICES TRIBUNAL DEHRADUN BENCH AT NAINITAL

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

------ Chairman

Hon'ble Mr. U. D. Chaube

-------Member (A)

Claim Petition No. 01/N.B./2012

Rajesh Kumar, Son of Sri Kashmeer Singh
R/o Maloodhigarhi, District Muzaffar Nagar (U.P.).

……Petitioner/Applicant

Versus.

1. State Uttarakhand through its Home Secretary.
2. Director General of Police, Uttarakhand at Dehradun.
3. Dy. Inspector General of Police, Range Nainital, Uttarakhand.
4. Superintendent of Police, Almora, State of Uttarakhand.

…….Respondents.

Present: Sri K. K. Tewari, Advocate for the petitioner.
Sri V.P. Devrani, A.P.O. for the respondents.

JUDGMENT

DATED: 25 July , 2013.

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

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

"In view of the facts and grounds as mentioned in the paragraph 4 & 5 of the instant application, the applicants prays for the following relief:

I. to set aside the impugned order dated 28.11.2000 passed by Superintendent of Police Almora.

II. To direct the respondents not to give effect to the impugned order dated 28.11.2000.

III. To direct the respondents to transmit ex-parte proceedings before the competent authority of U.P.

IV. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

V. To allow the claim petition with cost."

2. It is admitted case to the parties that the petitioner was a Constable posted in Moradabad Police Line. The D.I.G. Bareilly transferred the petitioner vide order dated 14.5.1999 to district Almora and it was directed to the S.S.P. Moradabad to relieve the petitioner on 19.5.1999, if not possible on 14.5.1999 and in any manner the petitioner may be relieved by 21.5.1999. The S.S.P, Moradabad relieved the petitioner on 25.5.1999. The petitioner did not report the duties in Almora district within the stipulated period after availing journey as well as joining time. Thereafter, the S.P., Almora directed the petitioner to report the duties within the stipulated time but he failed to join the duties in district Almora. Thereafter, the S.P., Almora appointed the Circle Officer, Almora preliminary enquiry officer and he was asked to hold preliminary enquiry about the absence of the petitioner. The preliminary enquiry officer submitted his report alleging therein that he remained absent unauthorizedly for 357 days. It was further alleged in the preliminary enquiry report that the petitioner reported his duties in Almora on 15.5.2000, thereafter on 4.7.2000 he sought permission to leave the station for 15 days and he had to return on 18.7.2000. But he did not turn up on duties. Meanwhile the petitioner was also suspended by the S.P., Almora. After receiving the preliminary enquiry report, the departmental authority, S.P., Almora himself conducted departmental enquiry

after framing charges against the petitioner. The petitioner was held liable for unlawful absence from his duties without any lawful excuse. The departmental authority, after assessing the entire facts of the case, proposed the punishment of dismissal from service. A show cause notice was issued to the petitioner and the petitioner did not reply to the said show cause notice and ultimately the final order was passed by the S.P., Almora on 28.11.2000 dismissing the petitioner from service. The petitioner neither participated during the enquiry nor replied to the show cause notice issued by the departmental authority to show cause as to why he should not be dismissed. The petitioner only appeared during the preliminary enquiry and his statement was recorded by the preliminary enquiry officer. Feeling aggrieved by the said order the petitioner preferred an appeal before the appellate authority. The appellate authority after going through the entire grounds alleged in the memo of appeal as well as the record of the enquiry, dismissed the appeal. Hence, this petition has been filed by the petitioner.

3. The petitioner has alleged in his claim petition that the petitioner was ill and during his illness the D.I.G., Bareilly Zone passed his transfer order and he was relieved in his absence. The petitioner has also alleged that he joined the duties in Almora after the absence of 349 days because the petitioner had been suffering from Hepatitis since 5.5.1999. His treatment was going on with the different doctors. He further alleged that the enquiry proceeded against the petitioner without any intimation to the petitioner and no opportunity had been given to him. The enquiry was conducted by the S.P., Almora, who himself is a departmental authority, as such the order is vitiated under the U.P. Reorganization Act, 2000. He further alleged that the S.P., Almora had no jurisdiction to initiate the enquiry against the petitioner

under Rule-6 of the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules 1991 (hereinafter referred to as Punishment Rules, 1991). The S.P., Almora had not sought approval for the dismissal of the petitioner from the D.I.G., which was mandatory under the Punishment Rules, 1991. It was further alleged that the petitioner made a representation to the S.P., Almora by registered post, but no order was passed by the S.P., Almora, hence he preferred the appeal before the D.I.G., Nainital.

4. The State filed its counter affidavit and submitted that S.P., Almora was legally competent to pass the impugned order against the petitioner under the Punishment Rules, 1991. There was no need to seek the approval of the D.I.G., Range for the dismissal of the petitioner. The punishment order was passed on 28.11.2000 and the new State of Uttaranchal (now Uttarakhand) was carved out on 9.11.2000. Proceedings against the petitioner had been initiated prior to the creation of the State. The charge sheet was served upon the petitioner personally and his signature had been obtained in the copy of the charge sheet. The petitioner was also served the notice to join the duties, which was received by him and he also submitted a reply of the said letter to the S.P., Almora, in which he has categorically stated that he could not inform about his absence because he was sick and week, so he could not join the duties and he sought one month' time, which is Annexure-2 to the W.S. The respondents have further alleged that the allegations of the petitioner that he remained absent for 349 days, is incorrect, in fact the petitioner was absent for the duties for 357 days plus some hours. The petitioner also reported duties on 15.5.2000, he has also given a statement before the preliminary enquiry officer. The petitioner has submitted the medical certificate, which is not duly countersigned by the Chief Medical Officer, Muzzaffar Nagar. The petitioner had joined Police Line, Almora on

15.5.2000 before the creation of the State of Uttarakhand and after giving the statement before the Circle Officer, Almora, the petitioner again went on leave for 15 days on 24.6.2000 so the judgment referred by the petitioner in the petition is not applicable in the case of the petitioner. The cause of action arose in Almora, as such the enquiry can be conducted by the S.P., Almora under Rule-6 of the Punishment Rules, 1991. It was further alleged that there is no need to seek the approval of the D.I.G., Range in the case of dismissal of the petitioner. The S.P. was competent to pass the said impugned order.

5. We have heard learned counsel for the parties and perused the record.

6. Ld. Counsel for the petitioner vehemently argued that the petitioner had not been given any opportunity or any notice was ever served upon the petitioner for the initiation of the enquiry or for the preliminary enquiry or for the final order. He further contended that the order passed by the authority is non-est and against the law and the order of dismissal is not sustainable in law. Ld. A.P.O. contended that the petitioner had been served sufficiently and intentionally he did not participate in the enquiry. The petitioner did not report the duties inspite of the direction made by the S.P., Almora to resume his duties within the stipulated time. The registered letter was sent on 2.11.1999 and thereafter special messengers served other letters on 20.11.1999 and 30.11.1999 upon the petitioner to report the duties, but the petitioner did not report the duties in spite of the said communication, as such he being a member of the disciplined force, committed graver misconduct for which he has rightly been punished. It was further contended that the charge sheet was served upon the petitioner personally. The endorsement of the petitioner is on the back of the copy of the charge sheet and

thereafter a communication was sent to reply the charge sheet again, but the petitioner did not submit any reply to the charge sheet. Thereafter evidence was recorded after due information to the petitioner and the petitioner did not participate in the departmental enquiry. He has further contended that the petitioner has submitted certain medical certificates along with the petition, but those certificates had not been countersigned by the Chief Medical Officer, Muzzaffar Nagar. Ld. A.P.O. also contended that this Court has a right of judicial review of the order passed by the departmental authority and the appellate authority. This Court has no jurisdiction to entertain a fresh evidence. In the petition, if the petitioner would have felt that the medical certificates are necessary to be considered by the departmental authorities/ enquiry officer, he should have produced those certificates before the departmental authorities while the enquiry was in progress; the petitioner has not even produced those medical certificates at the time of the representation made by him passing of the impugned order to the S.S.P.; perusal of the appellate file summoned by the Court further reveals that he had not submitted any certificates before the appellate authority obtained by him from the hospital; this shows that the petitioner's contention is an afterthought. He further contended that the petitioner appeared as a witness before the preliminary enquiry officer. The preliminary enquiry officer has categorically asked him about the illness and the exact days of hospitalization etc. The petitioner has given evasive reply to the said questions. Ld. A.P.O. emphasized the following portion of the statement of the petitioner which is as under:-

"प्रार्थी को क्षमा करने की कृपा करें।

प्रश्नः— आपने अपना उपचार वोहरा क्लीनिक/नरसिंह होम में कब से कब तक कराया ?

उत्तरः– मुझे ठीक याद नहीं है मैंने ढाई–तीन महिने अपना उपचार कराया और अस्पताल में भर्ती रहा।

प्रश्नः– जिला चिकित्सालय में कब से कब तक अपना उपचार कराया ?

उत्तरः– वोहरा नरसिंह होम में अल्ट्रासाउण्ड मशीन न होने के कारण जिला चिकित्सालय में भर्ती रहा, कब से कब तक रहा ठीक मालूम नहीं है।

प्रश्नः– आपके पास मूल मेडीकल प्रमाण पत्र आपके पास है?

उत्तरः– यहॉ पर नहीं है। घर पर है। मैं मॅगाकर 10 दिवस के अन्दर प्रस्तुत करूॅगा।

प्रश्नः– आपने अपनी बीमारी/अनुपस्थिति की सूचना पुलिस अधीक्षक अल्मोड़ा अथवा मुरादाबाद को दी थी?

उत्तरः– मैंने पुलिस अधीक्षक व क्षेत्राधिकारी महोदय के नाम पर पंजीकृत पत्र भेजा था, रसीद मेरे पास नहीं है।"

Ld. A.P.O. further contended that the petitioner had come to join the duties and he would have been aware that it would be a natural consequence that he will be asked as to why he remained absent for such a long period; it would have been his natural conduct if he would have the medical certificates, he could have produced those medical certificates before the authorities. Ld. A.P.O. further contended that the petitioner has stated before the preliminary enquiry officer that he was not discharged in absence from Moradabad because he has stated in his statement that he was informed about his relieving and he had also recorded his departure from Police Line Moradabad to Almora. After recording his departure entries on G.D., he started to go to his village, during the travelling and joining holidays to settle his home, during the journey he met with an accident, in which his leg got fractured. Thereafter he had been suffering from the abdominal pain and he got his treatment from Muzzaffar Nagar hospital as well as other

nursing homes. Ld. A.P.O. further submitted that in Para 3 he has given a contrary statement that he was relieved from Moradabad in absentia. Ld. A.P.O. further relied upon the statutory statement of joining of the petitioner which was given on 16.5.2000 in which he has stated as under:-

"महोदय निवेदन है कि प्रार्थी के पैर में रवानगी होने से पहले ही पैर में चोट लगने व पेट में सोई (सूजन) होने के कारण समय से नहीं आ सका

अतः निवेदन है कि सहानुभूति पूर्वक विचार करने का कष्ट करें मेडिकल कागज की फोटो स्टेट संलग्न है ।

प्रार्थी
232 AP
राजेश कुमार

Ld. A.P.O. further contended that he has stated that his leg was fractured before recording the departure entry in the G.D. on 21.5.1999 and he has also stated in the said statement that he was suffering from swelling in his abdomen; Ld. A.P.O. contended that he has made an inconsistent and contradictory statement to condone his absence.

7. Ld. Counsel for the petitioner also contended that the petitioner had not been informed about the preliminary enquiry and he had not been given the right to cross examine the witnesses, as such the whole enquiry is liable to be vitiated. Ld. A.P.O. refuted the contention of the petitioner. It is a well settled proposition of law that the purpose of holding the preliminary enquiry in respect of a particular alleged misconduct is only to find out prima-facie as to whether there is some substance to proceed further in the matter. The Hon'ble Apex Court in the case of **Nirmala J Jhala Vs. State of Gujrat 2013 (4) SCC 304** has held as under:-

*"(**41**). In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side a s well on judicial*

side, had placed a very heavy reliance on the statement made by Sri C.B. Gajjar, Advocate, Mr. G.G. Jani, complainant and that of Sri P.K. Pancholi, Advocate in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.

***(42)**. A Constitution Bench of this Court in Amalendu Ghosh Vs. North Eastern Railway A.I.R. 1960 S.C. 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary enquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.*

***(43).** Similarly in Champaklal Chimanlal Shah Vs. Union of India (1971) 1 SCC 734 a constitution Bench of this Court while taking a similar view held that preliminary enquiry should not be confused with regular enquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex-parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the Government servant even at such an inquiry. But at that stage, he has no right to be heard as the enquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under: (AIRp. 1862, para 12)*

"12…….There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the Government servant is entitled to the protection of the article [,nor prior to that]"

(44) *In Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra (1997) 1 SCC 299 this Court dealt with the issue and held as under:*

"…….a preliminary enquiry has nothing to do with the enquiry conducted after issue of charge sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence. (emphasis added)

(45) *In view of the above, it is evident that the evidence recorded in preliminary enquiry cannot be used in regularly enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such enquiry is not given. Using such evidence would be violative of the principles of natural justice.*

(51). *There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant-accused or Shri C.B. Gajjar, Advocate, had been exhibited in regular enquiry. In the absence of information in the charge-sheet that such report/statements would be relied upon against the appellant, it was not permissible for the enquiry office or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness*

and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance vide S. L. Kapoor vs. Jagmohan (1980) 4 SCC 379; D. K. Yadav vs. JMA Industries Ltd. (1993) 3 S.C.C. 259; and Mohd. Yunis Khan vs. State of U.P. (2010) 10 SCC 539."

In view of the law laid down by the Hon'ble Apex Court, there was no need to call for the petitioner to participate in the preliminary enquiry. However in the instant case the petitioner was informed to appear and to participate in the enquiry. The statement of the petitioner was also recorded during the preliminary enquiry. It is also settled principle of law that there is no need to give an opportunity to the petitioner to cross-examine the witnesses at the stage of the preliminary enquiry. It is further held that the statement recorded or the evidence collected is of no avail during the regular enquiry until or unless the copies thereof have not been supplied and relied upon in the charge sheet as an evidence against the petitioner; in that case the petitioner would have an opportunity to cross-examine the witnesses during departmental enquiry and he will have full opportunity to defend himself. In view of the above, we do not find any force in the contention of the Ld. Counsel for the petitioner.

8. Ld. Counsel for the petitioner further contended that the petitioner had not been given information about the regular departmental enquiry initiated against him. Ld. A.P.O. refuted the contention. The departmental authority after perusal of the preliminary enquiry report prepared the charge sheet on 18.8.2000 and the said charge sheet was served to the petitioner in person on 23.8.2000 and he was called upon to submit his reply within 8 days after the

receipt of the charge sheet. Thereafter the petitioner did not reply to the charge sheet and the departmental authority proceeded the enquiry and fixed 28.9.2000 for recording the oral evidence of the witnesses and he was informed about the same and the notice was served personally on 25.9.2000, but the petitioner on the date fixed did not participate in the enquiry and the statements of the witnesses were recorded. Thereafter, again the petitioner was informed that the statement of the witnesses against the petitioner has been recorded in his absence and he was called upon to produce his defence before the S.P., Almora and it was also informed to him that within 8 days from the receipt of the said information, he may produce the defence before the authority. The said notice was also served on 4.10.2000 personally, but the petitioner did not bother to come and participate in the enquiry and an endorsement was made on the back of the notice that 'he is not able to come'. Thereafter enquiry was concluded on 23.10.2000 and also punishment of dismissal from service was proposed against the petitioner. A copy of the said show cause notice along with the copy of the enquiry report was also served upon the petitioner on 26.10.2000 personally but the petitioner did not respond to the said notice also and he did not participate in the second time of the enquiry and the punishment order was passed by the departmental authority i.e. S.P., Almora on 28.11.2000 awarding him the punishment of dismissal from service. Thus, the perusal of the original record, which we have summoned from the department, clearly reveals that the petitioner has been given due opportunity but he has not availed any of such opportunities to defend his case before the punishing authority. Thus, we do not find any force in the contention of the Ld. Counsel for the petitioner.

9. Ld. Counsel for the petitioner further contended that the departmental proceedings were initiated by the S.P., Almora, who has done the preliminary enquiry himself and had passed the final order as such the dismissal order is without jurisdiction. Ld. Counsel for the respondents contended that the preliminary enquiry was conducted by the D.S.P., Almora and he held that the petitioner is guilty for remaining absent from duties without permission of the authorities. Thereafter, the punishing authority himself conducted the departmental enquiry and also issued the show cause notice proposing him the punishment of dismissal. Ultimately the petitioner was dismissed from the service by the impugned order. There is no illegality or irregularity if the punishing authority conducts the departmental enquiry himself, the departmental authority is competent to hold the departmental enquiry by himself or he may appoint any enquiry officer for the same. There is no such bar in the Punishment Rules 1991, thus, the S.P., Almora, the punishing authority was competent to hold the departmental enquiry to punish the petitioner by way of dismissal. We do not find any force in the contention of the Ld. Counsel for the petitioner.

10. Ld. Counsel for the petitioner further contended that the petitioner was suffering from Hepatitis since 5.5.1999 and he was under treatment of various doctors. He also filed certain medical certificates Annexure-5 to the claim petition indicating that he had taken the treatment from the Civil Hospital, Moradabad w.e.f. 26.8.1999 to 13.2.2000 and the photocopies of the said medical certificates have been filed along with the claim petition. The petitioner further contended that the petitioner's illness was not considered by the respondents and he had been dismissed from the service, thus, his argument is of two folds, one is that his dismissal is bad because his plea of illness had not been considered by the

departmental authorities and secondly the punishment awarded by the departmental authority is disproportionate, harsh and shocking to the conscience of the Court because he was ill therefore could not join the duties. Ld. A.P.O. for the State refuted the contention. Whereas the contention of the Ld. Counsel for the petitioner regarding the consideration of his medical certificate and illness is concerned, the petitioner did not participate in the enquiry and he had not taken any plea by way of the written statement or by way of his oral statement given in the departmental enquiry that he was ill and could not join the duties. The W.S. filed by the respondents has alleged that the petitioner was transferred from Moradabad to Almora on 14.5.1999 and he was relieved on 21.5.1999. Thereafter several notices were sent to him to join in Almora, but of no avail. He did not participate in the departmental enquiry and even he did not reply to the second show cause notice. He did not furnish any medical certificate before the appointing authority. If no medical certificate had been furnished by the petitioner before the departmental authority, then there is no question of the departmental authority to consider the fact of the illness of the petitioner. The petitioner preferred a representation after awarding him the punishment of dismissal, which was received on 3.2.2001 wherein he has alleged that he was ill and was getting his treatment done in the hospital and he further requested that his absence be condoned in the above circumstance. He did not file any medical certificate along with this letter or he has not disclosed any name of the hospital from where he had been treated. Thereafter he preferred an appeal. The original file of the appeal clearly reveals that the petitioner alleged in the memo of appeal that he was ill since 05.5.1999 and he has not given the details from where he was being treated or what was his ailment. The appellate authority also considered this aspect while passing

the order and it was held by the appellate authority, if the petitioner was ill, he should have sent the information to the higher authorities, which has not been given, no medical certificate has been given with the ground of appeal. Thus, during the departmental appeal as well as before the departmental authority there was no medical certificate and no details of his treatment and hospitals from where he was treated and no original or photocopies have been submitted along with the appeal or representation. Thus, the appellate authority could not have verified as to whether he was ill or not. The conduct of the petitioner seems to be very casual during the course of the enquiry also. Once he appeared before the preliminary enquiry officer and he stated that he could not tell the dates when he was admitted to the hospital where he has taken the treatment. As we have noticed earlier that the preliminary enquiry report or the evidence taken at that time cannot be taken into consideration; now the petitioner for the first time has come before this Court filing certain medical certificates (Annexure-5 to the claim petition), which are said to have been given by the Doctor V.P. Singh, Senior Surgeon, District Hospital, Muzzaffar Nagar. It pertains to 26.8.1999 onwards and in the first medical certificate the reference has been made of the O.P.D. patient, thus, it is clear that he was not admitted to the hospital and has not filed any document in which he could show that he was admitted to the hospital. Thus, it is apparent that no medical certificates were furnished during the enquiry or during the reply of the second show cause notice or in the representation after the dismissal or during the appeal. If the medical certificates annexure-5 had not been produced before the authorities, can this Court consider those medical certificates which have been filed before this Court and hold that the absence of the petitioner was not wilful and sufficient to condone the

absence. It is well settled principle of law that judicial review is not akin to the adjudication on merit by re-appreciating of the evidence as an appellate authority. The Court while exercising the jurisdiction of judicial review consider whether the conclusion is based on evidence on record and supports the findings or whether the conclusion is based on no evidence. The adequacy and reliability of the evidence is not a matter which could be permitted to be canvassed before the Tribunal. The appellate authority while exercising the appellate jurisdiction can re-appreciate the evidence on merit and also can admit the additional evidence in support of the contention of the parties but in the judicial review the Court and the Tribunal can only consider the evidence which is on the record of the authorities who have passed the impugned orders. While exercising the jurisdiction of the judicial review, the Tribunal cannot exercise the power to take into account the other evidence except the evidence on record of the punishing authority and the appellate authority. The Hon'ble Apex Court in the case of **Nirmala J.Jhala Vs. State of Gujrat and another Civil Appeal No. 2668 of 2005** decided on March 18, 2013 has held as under:-

*"**22**. It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration the Court/ Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.*

***23**. **In Jora Singh v. J.M. Tandonn (1971) 3 S.C.C. 834** this Court while dealing with the issue of scope of Judicial review, held as under: (SCC p. 838, para 10)*

"10. ... The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior court would not interfere if the finding can be sustained on the rest of the evidence. 'The reason is that in a writ petition for certiorari the superior court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence."

24. *The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. 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 mala fides, dishonest/corrupt practice. 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-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."

11. Thus, the Court or the Tribunal can interfere only in the matter of decision making process and the Tribunal cannot interfere on the ground of the insufficiency of the evidence or cannot re-appreciate the evidence. In the instant case the petitioner has not adduced any evidence regarding illness before the authorities and he has filed medical certificates before this Court; this court cannot consider these medical certificates to judge the correctness of the findings recorded by the punishing authority and the appellate authority. Thus, the evidence cannot be taken into account. Apart from that, on merit these certificates do not disclose that the petitioner had been an indoor patient and had been admitted during his absence period. Nowadays the telecommunication system is so advanced, he could have informed to the authority concerned. Apart from that the medical certificate could have been furnished at the first instance before the authorities. He had failed to explain as to why he did not file these certificates before the authorities and as to why he did not participate in the departmental enquiry. Thus, the medical certificates, which have been filed along with the petition,

are of no avail to the petitioner. We do not find any force in the contention of the petitioner and we are completely **in** agreement **with** contentions of Ld. A.P.O.

12. Now we have to consider as to whether the punishment of the dismissal is exorbitant, harsh and does not commensurate with the misconduct or not. At the out set we would like to state that it is settled principle of law that the punishment to the delinquent should not be harsh, shocking and it should commensurate with the misconduct. The punishment regarding absence from duties is punishable by way of dismissal or any other major punishment to a Government employee. But it has to be kept in mind if the punishment is awarded to an individual who is a member of uniformed force if he behaves in an indisciplined manner and if it goes unpunished, it affects discipline of the force. The uniformed forces are sometimes kept in peace and sometimes they have to undergo a regress terrain to meet the exigency of the day. If a uniformed personal abstains from duty without any information, it not only causes harm to the department but it affects the public at large. For example a Police personnel is posted in a riot affected area and it is expected from him to deal with the situation and the officer, who deputed him feels that the Police personnel is present there and they will be informed about any mis-happening and the public at large would feel safe at the place where he had been posted. But if he abstains from duty from the place where he had been deputed, it betrays the confidence of his higher officers as well as public looses the confidence upon the uniformed forces as an institution. Thus, the absence from duties of uniformed force personnel is very serious and it cannot be dealt with very lightly. It has occasionally been seen that if the uniformed force personnel are posted in difficult areas, they try to avoid to join the duties. If such acts are not dealt with firmly, at times there will be

indiscipline among the forces. Keeping in view of the above situation the Hon'ble Apex Court in **Union of India & others Vs. Datta Linga Toshatwad 2005(13) SCC 709**

*"**6**. One cannot ignore the large number of cases which come to this Court of members of uniformed forces remaining absent from duty without any reasonable explanation. Whenever action is taken, the usual plea taken is of having been ill or some, such false pretext, and even fake or false medical certificates arc produced in support of such a plea. We would not have taken a serious view of the matter had it not been a case of a constable belonging to CRPF remaining absent for an definite period. Even if we assume that the respondent was suffering from depression and was being treated as an outdoor patient, the medical certificates produced by him show that he was restored to normalcy on 4-4-1998 yet the respondent did not choose to report for duty. The order of dismissal was passed seven months later i.e. on 2-11-1998. This itself discloses the hollowness of the claim of the respondent regarding mental depression and imbalance which he claims to have suffered.*

***7**. Reliance was placed on a judgment of this Court in Union of India v. Giriraj Shamw[1], which was also a case of a constable employed in CRPF. In that case the respondent had been punished by an order of dismissal for overstaying on leave by 12 days . The High Court took the view that for such misconduct the punishment of dismissal from service was not justified and was also harsh. This Court. While agreeing with the High Court, dismissed the appeal by holding that in the facts of the case, instead of a major penalty, a minor penalty would have been sufficient.*

***8**. The present case is not a case of a constable merely overstaying his leave by 12 days. The respondent took leave from 16-6-1997 and never reported for duty thereafter. Instead he filed*

a writ petition before the High Court in which the impugned order has been passed. Members of the uniformed forces cannot absent themselves on frivolous pleas, having regard to the nature of the duties enjoined on these forces. Such indiscipline, if it goes unpunished, will greatly affect the discipline of the forces. In such forces desertion is a serious matter. Cases of this nature, in whatever manner described, are cases of desertion particularly when there is apprehension of the member of the force being called upon to perform onerous duties in difficult terrains or an order of deputation which he finds inconvenient, is passed. We cannot take such matters lightly, particularly when it relates to uniformed forces of this country. A member of a uniformed force who overstays his leave by a few days must be able to give a satisfactory explanation. However, a member of the force who goes on leave and never reports for duties thereafter, cannot be said to be one merely overstaying his leave. He must be treated as a deserter. He appears on the scene for the first time when he files a writ petition before the High Court, rather than reporting to his Commanding Officer. We are satisfied that in cases of this nature, dismissal from the force is a justified disciplinary action and cannot be described as disproportionate to the misconduct alleged."

13. Second charge which is against the petitioner is that he was directed to report the duties vide letter dated 2.11.1999 by the registered post; 20.11.1999 and 30.11.1999 by special messenger respectively. Thereafter on 7.3.2000 and 25.3.2000 the petitioner was informed to be present immediately by registered post. In spite of the communication he remained absent from the duties and he did not obey the orders of the disciplinary authority. The W.S. of the respondents also alleged that the petitioner was directed to report the duties on different dates, but; he did not

report to the duties in Almora as stipulated in the order. The said letters are Annexure-R-5 to the W.S. in which it has been stipulated that he should report immediately within 2 days after the receipt of the said letter. Annexures 5 & 6 clearly reveal that the said letters have been received by the petitioner and the original file also reveals the above fact. Thus, the petitioner was also informed to report the duties, but he failed to report within the stipulated period. Thus, it is apparent that the departmental authority was justified in holding that he did not report the duties in spite of the direction made by the departmental authority. Thus, the departmental authority came to the conclusion that the charges against the petitioner were proved.

14. Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Mohd Ayub Naz 2006 I AD (SC) 308** has held as under:-

"9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principle cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a Government servant remains willfully absent for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can be deemed

to have retired after seeking of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was willfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service."

We have occasion to see the judgment **of Hon'ble Delhi High Court in K.S. Pundir Vs. Union of India, MANU/DE/1770/2011**, where the petitioner was absent from duties for a period of 259 days, the Division Bench of this Court upheld the order of removal from service on account of unauthorized absence from duty for a period of 259 days. The Hon'ble Court observed as under:-

"32. There is evidence that the Petitioner was not wanting to work in Uri and thus he feigned sickness. All Force Personnel have to serve in hard areas and those who unjustifiably do not so cause hardship to others, inasmuch as their burden would have to be shared by others, and indeed if this kind of deviant behaviour is overlooked, others would be tempted to do so. We concur with the view taken by the authorities concerned that such kind of deviant behaviour has to be suppressed with a heavy hand. Keeping in view the past service profile of the Petitioner we do not find the penalty inflicted to be disproportionate to the gravity of the offence and hence we dismiss the writ petition."

In **Dharambir Singh v. Union of India, MANU/DE/3824/2011** - The Division Bench of Hon'ble Delhi High Court held as under:-

"23. We prefer to decide on the facts of the instant case. The Petitioner is not armed with any medical certificate that he was

unfit for duties except for a short period of 3 weeks, when he was hospitalized at CRPF Base Hospital. He was taking treatment as an OPD Patient. This shows that the Petitioner was in his house. It may be true that first class eye treatment is not available at Tripura where the battalion of the Petitioner was stationed, but we see no reason why the Petitioner could not have joined duties and requested that he should be attached to a battalion of CRPF which was stationed for duties at Delhi or Chandigarh. He could have produced the medical papers pertaining to his treatment before the Commandant who could have obtained an opinion whether medical treatment required by the Petitioner required him to be stationed at either Delhi or Chandigarh. If the Petitioner required periodic visits to AIIMS, the alternative of sanctioning medical leave for short durations to enable Petitioner to present himself before the Ophthalmologist would also have been considered as an alternative. 24. The Petitioner could not become a judge in his own cause. He could not just stay back at Delhi. 25. We must highlight that all cases of unauthorized absence or desertion being brought before us pertained to when battalions of CRPF or BSF are transferred to hard areas and it surprises us that when stationed at peace places, no officer of CRPF or BSF complains of sickness. Not a single case of desertion, or unauthorized absence, out of over 250 decided by us till today pertains to a CRPF or BSF jawan of a battalion posted in a peace station. Whenever we have called upon counsel for CRPF or BSF to advance arguments on the quantum of punishment, they have always highlighted that there is a tendency of the force personnel to feign sickness or exaggerate minor illnesses to avoid working in hard areas and if this deviancy is overlooked, it would breed insubordination in the force because jawans would not obey lawful commands of the superiors to

report back. This would encourage deviant behaviour by others. Secondly, it has been pointed out to us that force personnel are sent on leave by rotation and where one jawan overstays leave, he does so at the cost to some other(s)."

The punishment awarded to the petitioner is not exorbitant, harsh and shocking. We do not agree with the contention of the learned counsel for the petitioner and we are completely in agreement with the contention of the learned A.P.O.

15. The petitioner has taken a ground in the grounds of the petition that the Rule-6 of the aforesaid rules provides that the proceedings against the Police official can be initiated only where the cause of action arose; in the present case the proceedings have been initiated by S.P., Almora though the cause of action arose at Moradabad for the non compliance of the order passed by the D.I.G., Zone in whose jurisdiction Moradabad falls. Ld. Counsel for the State refuted the contention. Rule-6 of the Punishment Rules, 1991 provides as under:-

"An enquiry against a Police officer may be held either in the district in which the act or omission regarding which enquiry is proposed to be made took place or where the police officer may be posted at the time of institution of the Inquiry."

Perusal of the rule clearly reveals that the departmental enquiry can be initiated at any place in which the act or omission has been committed by the delinquent. Thus, the petitioner has committed an omission by not joining at Almora pursuant to the order of the D.I.G., Bareilly Zone, so the cause of action also arose in Almora, as such the S.P., Almora has the jurisdiction to initiate the enquiry against the petitioner. However, Ld. Counsel for the petitioner did not press this contention at the time of the arguments.

16. It is also alleged in the claim petition that the dismissal order has been passed without approval of the D.I.G. Range. The State has

refuted the said allegation. **Rule-8(3) of the Punishment Rules 1991** provides as under:-

"8 (3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector-General concerned for orders".

Thus perusal of the above rule clearly reveals that the dismissal and removal of the Constable/ Head Constable can be made by the Superintendent of Police. Thus, this allegation made in the claim petition has no force. Ld. Counsel for the petitioner also did not press this contention at the time of arguments.

17. The petitioner has further tried to make out a case that after the creation of the State of Uttarakhand, the S.P., Almora had no jurisdiction to initiate the enquiry against the petitioner. The enquiry was initiated prior to the creation of the State and the enquiry was also concluded prior to the creation of the State of Uttarakhand and the impugned order was passed after creation of the State. The enquiry was initiated at the time when the State was undivided and the petitioner had also joined Almora, Police Line on 15.5.2000, thus, he was a part of Almora Police Line prior to the creation of the State, so the contention and the order referred by the petitioner is of no avail. Ld. Counsel for the petitioner did not press this contention also.

18. In the instant case, the petitioner has alleged in para-4 (16) that the petitioner feeling aggrieved by the order of departmental authority preferred an appeal before the D.I.G., Uttarakhand, but no order has been passed by the appellate authority. The State in its in para-20 of counter affidavit it has been categorically stated that the petitioner has submitted an appeal before the D.I.G., Uttarakhand

at Dehradun at highly belated stage on 19-09-2001 and the same has been rejected by the D.I.G., Uttarakhand on 03-10-2001 (copy of order has been annexed as Annexure R 9 to the counter affidavit). The claim petition has been filed before this court on 16-02-2012. This petition was originally filed before the Hon'ble High Court and the Hon'ble High Court has relegated the matter to this Court. Thereafter, the petitioner has filed this claim petition before this Bench. While deciding the writ petition the Hon'ble High Court also remitted the original record of the writ petition. The petitioner even after informed by the respondents by way of counter affidavit that the appeal has been decided, he has not preferred to seek the amendment and to seek the relief to quash the appellate order passed by D.I.G., Uttarakhand. The petitioner has only sought the relief to quash the impugned order of punishment passed by the S.P., Almora, he has not sought any relief to quash the appellate order passed by the D.I.G.; even if the impugned order is quashed, the order of appeal will stand on the record and the petitioner may not avail any benefit if his petition is allowed. The petitioner has not sought the consequential relief for quashing the appellate order passed by D.I.G., Uttarakhand at Dehradun dated 03-10-2001. As such the petition is not maintainable.

19. In the case in hand the petitioner does not dispute that he remained absent without leave w.e.f. 21.5.1999 and he did not report his duties till 15.6.2000. Thereafter again petitioner went out of the station with the permission of the senior officers and he did not resume the duties thereafter. The petitioner did not produce any evidence before the departmental authority during the departmental enquiry to prove his contentions despite sufficient opportunity given to him. On the other hand the charge against the petitioner has been proved by sufficient evidence. If he would

have appeared and produced the medical certificates, he could have come forward and would have filed the written statement before the departmental authority along with the medical certificates, so that the departmental authority could have summon the doctor concerned or could have satisfied himself that the petitioner was ill. Even he did not avail the opportunity to reply to the show cause notice given to the petitioner for the proposed punishment. Thus, there was no occasion to the departmental authority to visualize the situation that the petitioner had been treated by the doctors even he had not bothered to give the details of his illness and hospital where he had been treated by the doctors. The petitioner filed the appeal and at the time of the appeal, he had not filed any document relating to his illness so as to satisfy the appellate authority to condone his absence. This mater is squarely covered by the judgment of the Hon'ble Apex Court in Union of India Vs. Datta Linga Toshatwad and Dharambir Singh Vs. Union of India (supra)

20. In view of the above there is no infirmity in the order of dismissal of the petitioner from service who absented without leave w.e.f. 21.5.1999 for a period of 357 days without permission of the competent authority and further he disobeyed the orders of the departmental authority requiring him to attend his duties but he absented himself. Thus, he wilfully abstained from the duties. The petitioner could not make out any irregularity, illegality and perversity which would require the interference by the Tribunal in exercise of its jurisdiction under the Act. The petition has no merit, therefore dismissed.

21. No other points were pointed out by the learned counsel for the petitioner.

22. The claim petition is dismissed. No order as to costs. Let the

original record of the writ petition No. 4223/S/S/2001 be transmitted to the Hon'ble High Court. Original record of the case which has been summoned from the respondents be returned to the learned A.P.O. to transmit the said record to the concerned respondent.

Sd/-	Sd/-
(U.D.CHAUBE)	(JUSTICE J.C.S.RAWAT)
MEMBER (A)	CHAIRMAN

DATE: July 25, 2013
NAINITAL