

**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. 01/N.B./2011

Rakesh Upreti, S/o Vipin Chandra Upreti, Aged 30 Years, R/o Police Kotwali Rudrappur, District Udham Singh Nagar, presently posted as Constable, C.P. No.221 in Police Kotwali Rudrapur, district Udham Singh Nagar.

.....Petitioner

Versus.

1. State of Uttarakhad through Secretary, Home Government of Uttarakhand at Dehradun.
2. Additional Director General of Police, Crime and Law-Order, Uttarakhand.
3. Inspector General of Police, Kumaon Region, Nainital.
4. Senior Police Superintendent, Udham Singh Nagar.
5. Circle Officer, Police Department, Rudrapur,

.....Respondents.

Present: Sri Devesh Upreti, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: MAY 14, 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 narrated above the applicant prays for the following relief:-

The Hon’ble Tribunal may kindly be pleased to issue:-

- i. Suitable order or direction by quashing the order dated 30.11.2008 passed by the respondent No.4, order dated 16.4.2009 passed by the respondent No. 3 and order dated 11.2.2010 passed by the respondent No.2.
 - ii. Any other relief which in the ends of justice and under the circumstances of the case the Hon’ble Tribunal may deem fit and proper be also given to the applicant.”
2. The admitted facts to the parties are that petitioner is a Constable in the Police Department. The petitioner was suspended on 30.4.2007 on the ground that in the night of 27.4.2007 the petitioner was posted at Police Station Sitarganj and Sri Nilesh Anand Bharne, A.S.P./ Station Incharge found him making unlawful collection through a private person from the vehicles at the Police Post Sarkara. Thereafter the petitioner was reinstated on 15.5.2007. The petitioner was served a charge sheet on 5.2.2008 by the Respondent No.4. The applicant submitted his reply against the charge sheet to the Respondents alleging therein that on 27.4.2007 he was not on duty at the Police Post Sarkara within Police Station Sitarganj and he also denied all the charges. Thereafter the evidence was recorded on the different dates and the enquiry officer submitted its report on 20.8.2008 holding the petitioner guilty of the charges leveled against him.. After receiving the enquiry report, the Respondent No.4 gave a show cause notice to the petitioner and the petitioner submitted his reply to the notice. In the show cause notice it was proposed as to why his pay scale should not be reduced to the minimum scale for three

years. The petitioner was found guilty and was awarded the punishment of reduction of pay to the minimum scale of pay for three years by Respondent No.4. The petitioner preferred a departmental appeal before Respondent No.3 against the order of Respondent No.4 which was dismissed by the appellate authority. Thereafter he preferred a revision before Respondent No. 2 which was also dismissed. Thereafter this claim petition has been filed by the petitioner.

3. The petitioner has alleged in his claim petition that the petitioner was not posted at Police Post Sarkara on the eventful day. The enquiry officer has not summoned the witnesses and the documents which could prove that he was posted at Thana Sitarganj, Police Post Sarkara. It is further alleged in the petition that the petitioner was not allowed to cross-examine Sri Nilesh Anand Bharne and the enquiry officer has wrongly mentioned in his report that the applicant did not want to cross-examine Sri Nilesh Anand Bharne. The petitioner was denied the opportunity of hearing and the punishment order was passed by the Respondent No.4 without any evidence on record and against the principle of natural justice.
4. Respondents have contested this petition on the ground that the charge leveled against the petitioner was proved. There was sufficient evidence against the petitioner to prove the charges. Sri Nilesh Anand Bharne, A.S.P. was examined by the enquiry officer and the petitioner was given opportunity to cross examine him but the petitioner did not cross-examine the witness namely, Sri Nilesh Anand Bharne. Thereafter the enquiry officer has rightly mentioned at the place of the cross examination that the petitioner was given an opportunity to cross examine the witness but he did

not avail the said opportunity. The respondents have further alleged in their written statement that the order was passed by applying the mind by the departmental authority and other competent authorities and there was sufficient evidence against the petitioner that petitioner was collecting money through a private person viz Shakeel. A number of witnesses were recorded by the enquiry officer and thereafter he found the petitioner guilty of negligence, indiscipline and illegally collecting the money from the truck driver through Shakeel, a private person. Thereafter the punishment was awarded after serving a show cause notice along with the enquiry report upon the petitioner.

5. Ld. counsel for the petitioner Sri Devesh Upreti submitted that the petitioner has been falsely implicated in the matter. The S.S.P., Rudrapur Respondent No.4 has taken into account the version of the applicant and further the appellate authority and revisional authority also did not apply their mind while dismissing the appeal and revision respectively. Ld. counsel for the petitioner further contended that the duty register of the petitioner was not summoned as to show the presence of the petitioner at the spot. The enquiry officer did not care to examine the Driver or the cleaner of the truck from whom, it is alleged that the illegal collection was made. No G.D. of Sri Bharne has been taken on record by the enquiry officer as to whether he was present at the spot or not. Ld. counsel for the petitioner further contended that the applicant was not allowed to cross examine Sri Nilesh Anand Bharne during the enquiry. The enquiry officer has wrongly mentioned in the report that the applicant did not want to cross examine Sri Bharne while the applicant was not allowed to do so. He further alleged that Sri Nilesh Anand Bharne being a senior

officer then the enquiry officer, the enquiry officer was influenced by the reporter Sri Bharne and prepared the enquiry report under his pressure. The appellate authority and the revisional authority have not applied their mind while hearing and deciding the appeal and revision respectively; the petitioner was denied the opportunity of hearing during the enquiry. The money which was alleged to be recovered, was not found in his possession; neither the applicant took the money from the truck driver nor the note was produced before the enquiry officer.

6. Ld. P.O. Sri V.P. Devrani appearing on behalf of respondents refuted the contention and contended that the petitioner has rightly been punished. The petitioner was given full opportunity of hearing. The enquiry officer has recorded the statement of Constable Matloob Khan, Sri Nilesh Anand Bharne and Sri Promod Kumar on the different dates. The allegation of the petitioner is totally wrong that no evidence was recorded on several dates by the enquiry officer. At the last the respondents have prayed that the petition may be dismissed.
7. We also summoned the original enquiry file from the department. We have heard the learned counsel for the parties and perused the record.
8. From the perusal of the original record it is revealed that a report was submitted by Sri Nilesh Anand Bharne, A.S.P./Incharge P.S. Sitarganj to the S.S.P. that the petitioner was found illegally collecting unauthorized money through a private person on 27.4.2007 from the vehicles passing through Police post Sarkara, P.S.Sitarganj and he also stated that he took a truck driver into confidence and gave a note of Rs.50/- signed by him (Sri Nilesh Anand Bharne, A.S.P./Station Incharge) to the truck driver only to

verify whether the said note would be accepted by the unauthorized person for the petitioner. Sri Nilesh Anand Bharne, A.S.P./Station Incharge also boarded on the said truck along with a Constable. When he reached at the Police Outpost, the private person demanded money and the driver handed over the said note to the private person Sri Shakeel and the petitioner was standing behind the said private person at some distance. Thereafter, the A.S.P. came out of the truck and tried to catch the private person Sri Shakeel, but he escaped from the spot and it was alleged that there was a connivance between the petitioner and the private person to collect unauthorized money. On the said report, the S.S.P. Udham Singh Nagar deputed Sri Pramod Kumar, Circle Officer, Sitarganj to conduct a preliminary enquiry against the petitioner on 30.4.2007. Thereafter preliminary enquiry was conducted and the preliminary enquiry officer vide report dated 19.12.2007 held the petitioner guilty of collecting unauthorized money of Rs. 50/- through a private person namely, Sri Shakeel for the petitioner. The report was submitted to the S.S.P., Udham Singh Nagar. Thereafter, the charges were framed against the petitioner and the charge sheet was handed over to the petitioner on 5.2.2008. The petitioner submitted reply to the charge sheet on 24.2.2008 stating therein that the petitioner has been falsely implicated in this case. He has denied all the allegations made in the charge sheet. After receipt of the reply, the enquiry proceeded against the petitioner. The prosecution witnesses including Sri Nilesh Anand Bharne, A.S.P./Station Incharge was also examined by the enquiry officer and the enquiry report was submitted to the S.S.P., Udham Singh Nagar holding the

petitioner guilty of collecting the unauthorized money through private person, Sri Shakeel.

9. Perusal of the original record reveals that sufficient opportunity has been given to the petitioner to cross examine the witnesses who were adduced by the State. The petitioner was found guilty by the enquiry officer who submitted his report to the S.S.P., Rudrapur and thereafter the S.S.P. gave show cause notice along with the enquiry report to the petitioner and the petitioner also submitted his reply to the show cause notice within the stipulated period. Thereafter the petitioner was punished by the impugned order.
10. Now we have to examine whether the allegations of the petitioner that he was not given a reasonable opportunity to cross-examine Sri Nilesh Anand Bharne, A.S.P., has to be examined in the light of the record available before us. The original record clearly reveals that the examination of Sri Bharne was recorded on 19.7.2008 and on the same day it is written by the enquiry officer that the petitioner has refused to cross examine Sri Bharne. The petitioner has alleged that the enquiry officer has wrongly mentioned this fact in the statement of Sri Bharne, but the petitioner has signed both the statements before the cross examination and after the cross examination and he had not made any endorsement that he has not denied to cross examine Sri Bharne. In addition to that if the petitioner was denied to cross examine by the enquiry officer on 19.7.2008, immediately thereafter he could have given application before the examination of any other witness that he has been denied the opportunity to cross examine Sri Bharne and the endorsement has been wrongly made in the statement and he could have called the said witness

again for cross examination. The petitioner submitted his reply to the second show cause notice to the S.S.P., Rudrapur, (annexure-8 to the C.p.), but the petitioner has alleged in that reply that he was not allowed to cross examine the witness Sri Bharne. Thus, from the record it is revealed that the petitioner himself has not availed the opportunity to cross examine Sri Nilesh Anand Bharne when the opportunity was offered to him. Thus, we hold that the petitioner was given sufficient opportunity to cross examine Sri Nilesh Anand Bharne and we do not find any force in the contention of the learned counsel for the petitioner.

1. The next contention of the petitioner is that the petitioner has been falsely implicated in this case and there is no evidence on record against him to hold him guilty that the private person Sri Shakeel was collecting unauthorized money for the petitioner. He further alleged that the finding recorded by the departmental authority that the S.S.P. Udham Singh Nagar is perverse and without evidence. It is settled position of law, the court would not interfere with the findings arrived at in the enquiry proceedings excepting in a case of malafide or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot reappraise the evidence like an appellate authority, so long as there is some evidence to support the conclusion arrived at by the enquiry officer, the same has to be sustained. Whether the findings are perverse or not it is to be examined in the light of the evidence recorded by the enquiry officer. The enquiry officer examined Constable Matloob Khan, who was posted at Police Post Sarkara on the eventful day. He has stated in his statement when Sri Nilesh Anand Bharne came to the Police Post Sarkara, he was

not present at the time of incident. He stated that he has no knowledge about the incident. Mr. Ramesh Kumar was examined by the State against the petitioner. He has stated in his deposition that about one year ago, he was waiting for a bus at about 11.30 P.M. in front of Chauki Sarkara and was standing there, when A.S.P. came at the Police Chauki. He further stated that he did not see any Policeman collecting money at the spot. He does not know Sri Shakeel and the petitioner. Thereafter, the enquiry officer recorded Sri Nilesh Anand Bharne, who has narrated the entire incident. He stated, on 24.7.2007 he boarded on a truck and he gave a note of Rs. 50/- to the truck driver for handing it over to the private person named Sri Shakeel when he demands money from him. When they reached at the Police Outpost Sarkara, the private person Sri Shakeel demanded a sum of Rs.50/- from the driver in presence of the witnesses and the said note was handed over to Shakil by the driver. The petitioner was standing behind Sri Shakeel. There was no other Police Constable in uniform except the petitioner. There were two boys standing at the spot in the private dress, who were identified as Shahuddin and Ramesh Kumar. Sri Nilesh Anand Bharne further stated that when Sri Shakeel took Rs. 50/- from the Driver, Sri Bharne immediately jumped from the truck and he was in the private dress and Sri Shakeel was apprehended by him and the petitioner identified him as Shakil Khan, but after some scuffle in between Sri Shakeel and Sri Bharne, Sri Shakeel escaped from the custody of Sri Nilesh Anand Bharne, A.S.P.. The incident took place on 27.4.2007. Thereafter C.O. Pramod Kumar was examined. He has stated that he conducted the preliminary enquiry and he submitted his report; he is not the eye witness of the incident. Next witness

Vahabuddin has stated that while he was standing at Post Sarkara bus stand waiting for his bus, a truck came at the spot near the Police Chauki and 2-3 persons came out from the truck and there was a scuffle in between a person standing there and the person who came out of the truck but he has not seen any Policeman at the spot and he is not aware about the incident and has not seen anybody taking money at the spot. Thus, this is the entire evidence against the petitioner which has been recorded by the enquiry officer. The charge, which has been framed against the petitioner, is that the petitioner was collecting unauthorized money through a private person known as Sri Shakeel Khan, for him. There is no iota of evidence that when Rs.50/- was collected by Sri Shakeel at the spot, either that was handed over to the petitioner or it was collected for the petitioner. The entire evidence on record i.e. only the statement of Sri Nilesh Anand Bharne that the money was demanded by Sri Shakeel and there is no iota of evidence that the said note was handed over to the petitioner or the petitioner had demanded the said note from Sri Shakeel or Sri Shakeel has stated that he collected this money for the petitioner. Contra to this the evidence is, that immediately after the receipt of the note, the man was apprehended by Sri Nilesh Anand Bharne and immediately after the incident, he escaped from his custody. There is no evidence of Sri Shakeel that he has collected the money for the petitioner. It is also not in the evidence that Sri Shakeel has said to the driver that the money is required to be handed over to the Police or to give him Rs.50/ for him. Thus, in the absence of such evidence, it can be concluded that there is no evidence at all against the petitioner that the petitioner was collecting money through Sri Shakeel for him.

2. Thus as we have already stated above, if there would have been an iota of the above fact in the un-rebutted evidence of Sri Nilesh Anand Bharne, the evidence would have been said to be sufficient for the purpose of holding the petitioner guilty of the charge, the Court could not have interfered in the matter but if the evidence of the above fact is not available, the finding of the enquiry officer and the S.S.P. awarding the punishment would be perverse i.e. there is no evidence for the fact that there was a connivance of collecting unauthorized money for the petitioner by Sri Shakeel.
3. In view of the above the impugned order is not liable to be sustained and consequently the impugned orders are liable to be set aside.

ORDER

The punishment order dated 30.11.2008, appellate order dated 16.4.2009 and the revisional order dated 11.2.2010 are here by set aside. No order as to costs.

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: MAY 14, 2013
NAINITAL