

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

Present: Sri V. K. Maheshwari

----- Vice Chairman (J)

&

Sri U.D. Chaube

----- Member (A)

CLAIM PETITION NO. 05/N.B./2013

Ramesh Ram, S/o Joga Ram, R/o Village Kakar Nari, P.O. Barakot,
District Champawat, presently posted as Head Constable, Police
Line Nainital, District Nainital

.....Petitioner

VERSUS

1. State of Uttarkahand through Secretary Home, Dehradun
2. Director General of Police, Uttarakhand, Dehradun
3. Additional Director General of Police,(Administration)
Police Head Quarters, Dehradun
4. Inspector General of Police, Kumaun Division, Nainital
5. Superintendent of Police, Almora, District Almora

.....Respondents

Present: Sri D.S. Mehta, Advocate for the petitioner

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

JUDGMENT**DATE: April 03, 2014****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

The petitioner has challenged the order dated 20.11.2010 passed by the S.P., Almora by which following punishments have been awarded to the petitioner:-

- (i) A special adverse remark in the character roll of the petitioner
- (ii) Imposition of fine of 15 days' salary

The petitioner has also challenged separate order passed on the same date by which the salary of two days has been deducted from the pay of the petitioner.

2. The facts as alleged in the petition are that the petitioner after joining as Constable on 1.11.1985 was promoted to the post of Head Constable on 1.3.1997. While posted at Police Line, Almora, the petitioner as Guard Commander along with three constables Dinesh Kumar, Girish Chand Kapdi and Vijay Kumar were deputed on 4.9.2010 for the duty on Helipad at Salt because of the visit of Hon'ble Chief Minister, scheduled on 5.9.2010. They were also given a jeep also for travelling. The petitioner alongwith his colleagues remained present on duty. Reserve Police Inspector also checked them at 10.45 A.M. Two constables were found there and the

petitioner and one Constable had gone to take tea and reached there on call by the Inspector. Before that Inspector had also checked and all were found present but Reserve Police Inspector made a false report of absence of the petitioner on the basis of which the Circle Officer has submitted a report that petitioner and his colleagues were found absent from duty, therefore, a notice was issued against the petitioner on 1.11.2010 for showing-cause as to why action be not taken against him for not discharging duties efficiently. The petitioner had submitted a detailed reply of the notice but the abovementioned punishments were awarded to the petitioner. The petitioner had filed a departmental appeal against these orders which was also dismissed vide order dated 10.3.2011. The petitioner had preferred a revision which was also dismissed vide order dated 12.3.2013, hence this petition.

3. The petitioner has challenged the impugned orders on the following grounds:-

- (i). that the petitioner has an unblemished record of 28 years and impugned order is a stigma on his service career,
- (ii). that the petitioner along with his colleagues who are also deputed for the duty, remained present on duty and discharged their functions efficiently and there are no ground for awarding punishment to the petitioner,

- (iii). that two colleagues of the petitioner have been exonerated from the charges of remaining absent, therefore, petitioner is also entitled for parity,
- (iv). that the impugned orders are passed in violation of Article 14, 16, 19, 21 & 311 of the Constitution of India.

Hence, the petitioner has requested for setting-aside the abovementioned orders.

4. Petition has been opposed on the behalf of the respondents and it has been stated that the petitioner was posted at Police Lines, Almora and he was deputed as a Guard Commander on 4.9.2010 and was sent for V.V.I.P. Helipad security duty at Salt. The Reserved Police Inspector, Almora had also directed them for doing security of the A.T.F. (Fuel of Helicopter). Reserved Police Inspector checked the Helipad On 5.9.2010 at 10.15 A.M and found that the petitioner and other personnel deputed with him absent, so the Reserved Police Inspector made a report of their absence from the spot to the C.O. who submitted a report to S.P., Almora. After issuing the show-cause notice, the S.P., Almora found the petitioner guilty and imposed the aforesaid punishments in which there is no illegality or irregularity. Thus, the petition has no force and is liable to be dismissed.

5. Rejoinder affidavit has also been filed on behalf of the petitioner reiterating the same facts which are alleged in the claim petition.

6. We have heard Mr. D.S. Mehta, Advocate for the petitioner and Mr. V.P. Devrani, A.P.O. for the respondents and perused the material available on record carefully.

7. The learned counsel for the petitioner has vehemently argued that it is wrong to say that the petitioner was not present at the spot and he has stated that the petitioner remained present at the Helipad and he has been punished because of false report made by Reserved Police Inspector. But this is a simply a factual aspect and generally Tribunal does not scrutinize the factual aspect unless and until there is gross miscarriage of justice. In the present case, there appears no miscarriage of justice and there is nothing on record by which it may become clear that the petitioner were present for discharging his duties at helipad and for security of A.T.F. Therefore, we are not inclined to scrutinize the factual aspect. The Tribunal is not meant to re-inquire the matter in controversy and thus we do not find any force in the contention of the petitioner. It is also pointed to mention that there appears no ground for making false report against the petitioner by the Reserved Police Inspector and Circle Officer.

8. It has further been contended that the departmental proceedings were initiated against two other employees who have been exonerated from the charges. In support of this contention, a copy of information received under R.T.I. Act, 2005 has been filed (which is Annexure-

10), which reveals that the departmental proceedings were initiated against these Constables, namely, Vijay Kumar & Girish Chandra Kapdi, but they were found innocent and were discharged from the allegations. It is not clear from the copy of information submitted by the petitioner as to what were the grounds for not awarding the punishment to these Constables. We do not find it enough to hold the petitioner innocent. So, he is not entitled to claim parity with the other constables. The petitioner was deputed as a Guard Commander, so he was expected to discharge duties more responsibly and cannot escape from his responsibility on the ground of innocence of other Police Personnel deputed with him, so we do not find any force in the contention of the petitioner and hold that the petitioner is not entitled for any parity.

9. The impugned punishments have been passed after affording sufficient opportunity of hearing to the petitioner. It is the subjective satisfaction of the disciplinary authority. The Tribunal cannot enter into the shoes of the disciplinary authority. We do not find any violation of Article 14, 16 or 311 of the Constitution of India. It is also stated that the petitioner has unblemished record of 28 years, but this is no ground for holding the impugned orders defective.

10. On the basis of above discussion, we do not find any force in the petition and thus is liable to be dismissed.

ORDER

The petition is dismissed. No orders as to costs.

Sd/-

U.D. CHAUBE
MEMBER (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: April 03, 2014

B.K.