

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL DEHRADUN
BENCH AT NAINITAL**

Claim Petition No. 13/N.B./2012

Suraj Singh, S/o Sri Gopal Singh
R/o Nayak Goth, Tanakpur,
District Champawat, Uttarakhand.

..... Petitioner

Versus

1. State of Uttarakhand through Secretary
Home, Government of Uttarakhand, Dehradun.
2. Director General of Police, State of Uttarakhand,
Dehradun.
3. Deputy Inspector General of Police, Kumaun Region,
Nainital.
4. Superintendent of Police, Pithoragarh, District Pithoragarh.

..... Respondents

Coram: Hon'ble Justice J. C. S. Rawat

..... Chairman

&

Hon'ble U. D. Chaube

..... Member (A)

Present: Sri D. S. Mehta, Advocate for the petitioner.
Sri V.P. Devrani, A.P.O. for the respondents.

JUDGMENT**DATE: 23-05-2013****Justice J. C. S. Rawat (Oral)**

This claim petition has been filed by the petitioner for seeking the following relief:-

- “a) In view of the facts and grounds as mentioned above the applicant prays that this Hon’ble Tribunal may graciously be pleased to call the entire record and quash the impugned order dated 11.3.2008 passed by Superintendent of Police, Pithoragarh whereby the services of the petitioners have been terminated and the order dated 21.7.08 passed by Deputy Inspector General of Police, Kumaun Region, Nainital whereby the appeal of the petitioner filed against order dated 11.3.08 has been rejected and order dated 15.7.2010 passed by Director General of Police (Technical Services) Dehradun whereby revision/review filed by the petitioner has been rejected and the applicant/petitioner be reinstated in service forthwith along with all consequential benefits.
- b) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.
- c) Award cost of the petition.”

2. The petitioner, who had been working as a Constable in the Police Department was proceeded departmentally on 13-12-2007 as is revealed from the pleadings of the parties. The following charge was framed against the petitioner:-

"1- जब आप पुलिस लाइन पिथौरागढ़ में नियुक्त थे तो आप दिनांक 7-10-2007 को पुलिस लाइन की प्रातःकालीन गणना से बिना अनुमति व अवकाश से अनधिकृत रूप से अनुपस्थित हो गये थे, जिसका गैरहाजिरी तजकरा पुलिस लाइन के रो0आम की रपट सं0 08 समय 7.30 बजे दिनांक 7-10-2007 को अंकित की गयी है। इसके बाद आप दिनांक 28-11-2005 को पुलिस लाइन के रो0आम की रपट सं0 21 समय 1830 बजे 53 दिन 11 घन्टा अनाधिकृत रूप से अनुपस्थित होकर वापस पुलिस लाइन आये है।"

3. Thereafter, the petitioner submitted reply alleging therein that he cannot submit his reply without consulting his Lawyer and he sought permission for the same. Thereafter, enquiry proceeded against the petitioner. The statements were recorded during the course of enquiry by the departmental authority. The departmental authority has held in his enquiry report that the petitioner is guilty of the charge levelled against him. He further held that the petitioner had been punished on several occasions for the minor punishment and he had been a habitual absentee during the duties' hours.

4. After conclusion of the enquiry report, the departmental authority submitted an enquiry report; and the copy thereof alongwith show-cause notice was given to the petitioner. The reply was submitted by the petitioner against the show-cause notice. The petitioner has submitted that due to divine calamity and family circumstances and due to Jaundice his absence was not a wilful absence. After considering the reply as well the enquiry report, the departmental authority, namely, Superintendent of Police, Pithoragarh awarded impugned punishment to the petitioner.

5. An appeal was preferred against the above impugned order before the D.I.G., Kumaon Range, Nainital. The appellate authority has held that the impugned order of punishment was served upon the petitioner on 17-3-2008 and appeal was preferred by the petitioner on 24-6-2008. The appellate authority holding the appeal beyond the time of limitation dismissed it summarily without going into merits of the case. Thereafter, he preferred a revision before the competent authority which was also dismissed by competent authority. Thereafter, this petition was preferred.

6. The petitioner has challenged the impugned orders passed by the departmental authority, appellate authority and revisional authority before the Tribunal.

7. We have heard learned counsel for the parties and perused the records.

8. Learned counsel for the petitioner Mr. D. S. Mehta contended that punishment imposed upon the petitioner is extremely harsh, disproportionate and shocking, therefore, the impugned orders are liable to be set-aside. He further contended that the authorities have failed to take into consideration of the fact that the petitioner was suffering from mental agonies and other calamities as well as he was suffering from Jaundice. He also produced medical certificates before the competent authority. He further contended that respondents have conducted adverse attitude towards the petitioner while passing the impugned orders. He further contended that the previous punishments awarded by authorities have also been considered in the impugned order which is bad in law; the authorities have failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice

thereof and generally the charge-sheet should contain such an averment or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment. He relied upon the judgment of Hon'ble Apex Court in the case of **Mohd. Yunus Khan Vs. State of U.P. & others 2010 (7) S.C. C. 970**; he emphasized that enquiry officer should have considered the aspect of the matter that the petitioner was absent from the duties and it was not wilful absence. He also relied upon the decision of Hon'ble Apex Court in the case of **Krushnakant B. Parmar Vs. Union of India and another (2012) 3 S.C.C. 178**.

9. Learned A.P.O. Mr. V. P. Devrani, appearing for the State refuted the above contentions. He contended that the petitioner has taken different stand at different stages of enquiry; the punishment awarded by departmental authority is correct and it is appropriate and proportionate to the charge levelled against him; the medical certificate submitted by the petitioner was considered by the enquiry officer as well as by the departmental authority. The appeal and revision was correctly decided by the respondents.

10. At the outset, we would like to observe that the petitioner was awarded a punishment of dismissal from services and he preferred the departmental appeal before the appellate authority, the appellate authority has jurisdiction to appreciate or re-appreciate the evidence and go into the factual aspects of the case. There was no such delay which could have been dismissed the appeal in limini even without prior information to the petitioner that appeal was time barred. The contention raised by the petitioner before this Tribunal is totally factual as to decide whether the petitioner's absence was wilful absence in the circumstances narrated by the petitioner. The petitioner was not even noticed at the time of charge-sheet about the previous conduct, so it could have been considered by the appellate authority whether the

punishment awarded by departmental authority is appropriate or not? We are of the considered view that the impugned orders are liable to be quashed. The appellate authority is directed to decide the matter afresh in the light of contention raised by the petitioner before the appellate authority. The appellate authority may also consider the grounds which have been taken before this Tribunal at the time of deciding of the petition. The appeal of the petitioner may be disposed off as expeditious as possible within a period of 3 months from today. The petition is disposed off accordingly. No order as to costs.

The record which was submitted before the court in sealed cover which was opened before the parties may be sealed again in the presence of parties by Reader and it may also be given to Mr. V. P. Devrani, A. P.O.

Sd/-

U. D. Chaube
Member (A)

Sd/-

Justice J.C.S. Rawat
Chairman

Date: - **23-05-2013**

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