

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

**Claim Petition No. 15/NB/DB/2014**

Kishore Singh, S/o Sri Govind Singh,  
R/o Village Shantipuri No. 4, P.S. Rudrapur,  
Udham Singh Nagar.

.....Petitioner

**Versus**

1. State of Uttarakhand, through Secretary, Home,  
Government of Uttarakhand, Dehradun.
2. Director General of Police, State of Uttarakhand, Dehradun.
3. Additional Director General of Police (Administration),  
Uttarakhand, Dehradun.
4. Deputy Inspector General of Police, Pithoragarh Region,  
Pithoragarh.
5. Superintendent of Police, Almora, District Almora.

.....Respondents.

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

----- Chairman

**Hon'ble Mr. 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****DATED: 08<sup>th</sup> July, 2015****(Delivered by Hon'ble Mr. Justice J.C.S. Rawat, Chairman**

The petitioner has filed this petition 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 3.4.2012 passed by respondent no. 5 by which the petitioner has been removed from service, order dated 13.7.2012 passed by respondent no. 4 by which statutory appeal of the petitioner has been rejected and order dated 12.8.2013 passed by respondent no. 3 by which the statutory revision of the petitioner has been rejected.

II. to direct the respondents to reinstate the petitioner in service along with all consequential benefits.

III. to issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

IV. Award cost of the petition.”

2. In nut shell, it is admitted case to the parties that the petitioner was a Constable in Uttarakhand Police and a F.I.R. was lodged against the petitioner as Case Crime No. 1171/2003 under Section 498A I.P.C., ¾ of Dowry Prohibition Act and 3(10)/15 SC/ST Act and pursuant to the said F.I.R., a charge-sheet was submitted before the Court and he was tried by the Court. Meanwhile, the petitioner was suspended during the trial and the petitioner was ultimately convicted by the trial court on 25<sup>th</sup> January, 2011.

Against the aforesaid conviction, the petitioner preferred a criminal appeal before the Hon'ble High Court of Uttarakhand at Nainital, when the said conviction of the petitioner came to the knowledge of the appointing authority consequent thereupon he was removed from service under Article 311 (B) of the Constitution of India vide Annexure-1 to the claim petition and Rule 8 (2) (a) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred as "Punishment Rules, 1991"). Meanwhile, during the course of hearing of the appeal as it being a matrimonial dispute it was amicably settled between the parties outside the Court and they filed a compromise before the Hon'ble High Court. On 16<sup>th</sup> October, 2012 the Hon'ble High Court allowed the appeal on the basis of the said compromise and the petitioner was acquitted from charges levelled against him. At the same, the petitioner also preferred an appeal before the competent authority against the punishment order passed by the punishing authority. The said appeal was dismissed by the competent authority on 13.07.2012 before the disposal of the criminal appeal before the Hon'ble High Court. The petitioner also preferred a revision petition against the appellate order. The revisional authority also rejected the revision petition vide its order dated 12.08.2013 even after the judgment of the Hon'ble High Court. Feeling aggrieved by the said judgment/orders of the revisional authority, the petitioner preferred the said claim petition before this Tribunal. He has alleged in it that if he had been acquitted by the criminal court and the basis of the conviction had led to the dismissal of the petitioner and his conviction has already been set-aside by the appellate court, the petitioner must be reinstated in service and as such the punishment order suffers from the manifest error both of law and fact. At this place we would like to mention that the petitioner moved an application on 24.10.2012 before the S.S.P., Almora apprising him with the fact that he had been acquitted by

Hon'ble High Court and he also requested to reinstate him in the service but no heed was paid to request of the petitioner.

3. Claim petition has been contested on the ground that after lodging the F.I.R. the petitioner was suspended from service he did not inform to the competent authority that he had been convicted by the trial court. The competent authority could not proceed against the petitioner immediately to remove him from service. When the authority came to know about the conviction then he was immediately removed from service under Article 311 (2) of the Constitution of India and Rule 8 (2) (Ka) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The petitioner has exhausted all the remedies and all orders remained against the petitioner and as such, the competent authority could not reinstate the petitioner. It is further alleged that in the said criminal appeal the conviction was set-aside on the basis of the compromise and as such, the petitioner is not entitled to get the benefit of reinstatement. It was further alleged that acquittal in a criminal case would not be bar either to draw up a disciplinary proceeding against a delinquent employee or to set-aside the punishment order passed by disciplinary authority under the departmental enquiry against the delinquent employee. The respondents have denied all the legal averments of the petitioner in the claim petition and ultimately had prayed for the dismissal of the claim petition.

4. We have heard Mr. D.S. Mehta, Advocate for the petitioner and Mr. V.P. Devrani, A.P.O. appearing for all the respondents.

5. Learned counsel for the petitioner contended that the punishment order has been passed under Article 311 (2) of the Constitution of India and Rule 8

(2) (Ka) of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 and the punishment order is totally based on the conviction of the petitioner by the criminal court. He has further contended that Regulation 492 of the U.P. Police Regulations provides that whenever a police officer has been judicially tried, the Superintendent must await the decision of the judicial competent court, if any, before deciding whether further departmental action is necessary. He has further contended that if no departmental enquiry had been conducted against him, he was merely removed under Article 311 (2) of the Constitution of India as well as under Rule 8 (2) (Ka) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991; thus, the petitioner is entitled to be reinstated in service and order of punishment is liable to be set-aside.

6. The learned A.P.O. refuted the contention and contended that the petitioner was convicted by trial court and thereafter he preferred a criminal appeal before the Hon'ble High Court of Uttarakhand at Nainital and the matter was not decided on merit by Hon'ble High Court. The parties had amicably settled their matrimonial dispute outside the Court and filed their compromise before the Hon'ble High Court to decide the matter according to the compromise. The Hon'ble High Court acquitted the petitioner on the basis of compromise arrived at between the parties. Thus, it is not clear acquittal by the Hon'ble High Court and he is not entitled to get the benefit of the said acquittal.

7. From the perusal of record, it is clear that it is the case of considering the reinstatement after decision of acquittal or the discharge by criminal competent authority on the ground that the dismissal from service was based on conviction by the criminal trial court in view of the provisions of Article

311 (2) of the Constitution of India or analogous provisions applicable in the case. When the punishment order is made after holding a departmental enquiry the law is that if a person is acquitted by criminal court even departmental enquiry can be held: reason being that consideration of provisions required under the disciplinary enquiry and that in a criminal case are all the same different. In a criminal case the prosecution has to prove the guilt in the case against the accused beyond reasonable doubt; while in the departmental enquiry it is also based on preponderance of probability. Thus the appreciation of evidence in both the proceedings are totally different.

In the case of Divisional Controller Karnataka, State Road Transport Corporation Vs. M. G. Vittal Rao 2012 (1) SCC 442, it was held that the proposition of law which as **stood** on today is as the charges levelled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same, there were no additional or extra witnesses; and without considering the gravity of the charge, if he had been acquitted by regular court, the delinquent would be entitled to be reinstated in service. There are different witnesses and there is additional charge apart from minor charge, the Court would not warrant the reinstatement of the delinquent. The Hon'ble Apex Court has decided as under:-

“33. In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges levelled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same, there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference. Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not

challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled to the said relief.”

In the case in hand, the appointing authority had not conducted regular inquiry but he was punished under Rule 8 (2) (A) of Punishment Rules, 1991 and Article 311 (2) of the Constitution without holding the inquiry. Thus, the law laid down by the Hon’ble Apex Court regarding holding the departmental inquiry side-by-side of the criminal case would not apply in this case. The appointing authority has opted to proceed under the summary procedure of Article 311 (2) and he did not frame the charges against the petitioner and did not order the regular departmental enquiry.

8. Now, the question arises if a regular departmental enquiry had not been initiated and he was dismissed from service under Article 311 (2) read with Rule 8 (2) (Ka) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 then what will be the effect of the said punishment order if the criminal court acquits the petitioner in the regular criminal trial. Thus, now we will have to examine the legal position of punishment awarded under Article 311 (2) of the Constitution of India and Rule 8 (2) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The Hon’ble Supreme Court in the case of **Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao (2012) 1 Supreme Court Cases 442** has held as under:-

“11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from service was based on conviction by the criminal court in view of the provisions of Article 311 (2) (b) of the Constitution of India , or analogous provisions in the statutory rules applicable in a case. In a case

where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.”

9. It is admitted case of the parties that the petitioner has been punished under Article 311 (2) of the Constitution and Rule 8 (2) (a) of the Punishment Rules, 1991. Article 311 (2) provides as under:-

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.;

Provided further that this clause shall not apply-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;”

10. Similarly Rule 8 (2) (a) of Punishment Rules, 1991 also provides as under:-



“8 (2) (a):- Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;”

11. It is also undisputed that the petitioner had been removed without holding any domestic inquiry. When the petitioner had been punished under Article 311 (2), the punishment had been based only on the ground of conviction by the competent court. In such cases the appointing authority considers the conviction awarded by the Criminal Court only. The punishing authority did not require any further proceeding in this case. In such cases the petitioner is acquitted by the appellate court in appeal, automatically the punishment order is liable to be quashed and the person to whom the punishment has been awarded, is liable to be reinstated in service. This is the automatic act of the reinstatement of the delinquent into service. In this case the petitioner was convicted by the Trial Court and he was acquitted by the Appellate Court. As soon as the conviction was made by the Trial Court and the appeal was pending before the Hon’ble High Court, the petitioner was dismissed from the service on the basis of the above conviction order. When the appeal of the petitioner was allowed irrespective of the fact that it was a clear acquittal or it was a benefit of doubt, the petitioner is entitled to be reinstated into service immediately.

12. In view of the above the petition of the petitioner is liable to be allowed. The petitioner is liable to be reinstated into service forthwith on the post of Constable.

**ORDER**

The claim petition is allowed. Impugned order dated 03.04.2012, Appellate Order dated 13.07.2012 and revisional order dated 12.08.2013 are hereby quashed. Respondents are directed to reinstate the petitioner into service immediately when he presents the copy of the judgment before the authority concerned.

**(U.D.CHAUBE)**  
**MEMBER (A)**

**(JUSTICE J.C.S.RAWAT)**  
**CHAIRMAN**

**DATE: 08<sup>th</sup> July, 2015**  
**NAINITAL**