

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

**Writ Petition No. 901 (S/S) of 2021**

**[Reclassified and Renumbered as Claim Petition No. 05/NB/SB/2023]**

Baal Sugriv Singh, aged about 56 years, s/o late Sri Amar Singh, r/o Village-Matiha, Police Station-Nanakmatta, District Udham Singh Nagar, presently posted as Warder, District Jail Haridwar, Uttarakhand.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Inspector General, Prison, Uttarakhand, Dehradun.
3. Inquiry Officer/ Superintendent, District Jail, Dehradun.

..... Respondents

Present: Sri Sanjay Bhatt, Advocate, for the Petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents

**JUDGEMENT**

**Dated: 15<sup>th</sup> July, 2024**

**Justice U.C. Dhyani (Oral)**

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 3.1.2024 in WPSS No. 901 of 2021, Baal Sugriv Singh vs. State of Uttarakhand and others, which (order) reads as under:

"Mr. Sanjay Bhatt, Advocate for the petitioners.

2. Mr. Puran Singh Bisht, Addl. CSC for the State of Uttarakhand.

3. In this writ petition, petitioner has challenged the order passed by Disciplinary Authority as affirmed by Appellate Authority and Revisional Authority.

4. Admittedly, petitioner is a Public Servant, therefore, amenable to jurisdiction of Public Service Tribunal established under Uttar Pradesh Public Service (Tribunals) Act, 1976.

5. Accordingly, the record of writ petition is remitted to learned Tribunal with a request to decide the case at an early date.

6. The writ petition stands disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 1015/UHC/Service Section-II(S/S)/Nainital dated 12.01.2024 of the Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 02/NB/SB/2024.

3. By means of present petition, the petitioner seeks following reliefs:

“(i) A writ, order or direction in the nature of certiorari to quash the impugned orders dated 05-06-2020 (Annexure No. 6) and 23-06-2020 (Annexure No. 7) passed by Respondent No. 2 and order dated 03-05-2021 (Annexure No. 9) passed by Respondent No. 1.

(ii) A writ, order or direction in the nature of mandamus declaring the entire disciplinary proceedings initiated against the Petitioner pursuant to order of suspension dated 05-08-2011 and charge sheet dated 30-09-2011 as illegal, arbitrary and consequently direct the Respondents to release the arrears of salary with interest for the period 05-08-2011 to 27-11-2012 while the Petitioner was kept under suspension.

(iii) A writ, order or direction in the nature of mandamus commanding the Respondents to sanction and release benefit of second ACP and third ACP from its due date along with arrears accrued thereon with penal rate of interest and also to release annual increments with consequential benefit which were withheld in compliance of order dated 05-06-2020.

(iv) A writ, order or direction in the nature of mandamus the Respondents to restore the promotion of Petitioner on the post of Head Warder granted *vide* order dated 07-09-2017 and pay all the consequential benefits.

(v) Any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(vi) Award the cost of the Petition to the present Petitioner.”

4. Petitioner was Jail Warder on 03.08.2011, when a jail inmate escaped from jail. In relation to such incident (which occurred on 03.08.2011), preliminary enquiry was conducted by Sri Manoj Kumar, Superintendent, Sampurnanand Camp, Sitarganj,

Udham Singh Nagar. Prima facie, the petitioner was found guilty (Annexure No. 2). He was put under suspension on 05.08.2011. Sri Mahendra Singh Gwal, Superintendent, District Jail, Haridwar, was appointed as enquiry officer. Sri Gwal, enquiry officer/ Superintendent, District Jail, Dehradun, submitted enquiry report to I.G., Prison, Uttarakhand, on 06.12.2016 (Annexure No. 4). He was found guilty of charge under para 1118(10), 1194(a), (b), (h), (i) of Jail Manual and Rule 3 of Government Servants Conduct Rules, 1956. The delinquent petitioner was found guilty of carelessness, as a result of which, Shabbir, s/o Kallan escaped from the jail.

5. Considering the period of suspension, he was reinstated in service *vide* order dated 27.11.2012 (Annexure No. 5).

6. On the basis of enquiry report, Additional D.G.P./ I.G., Prison, *vide* order dated 05.06.2020, directed that the petitioner shall be punished with withholding of five annual increments without cumulative effect. *Vide* order dated 23.06.2020, he was reverted from the post of *ad-hoc* Head Jail Warder to Jail Warder (Annexure No. 7).

7. The petitioner preferred appeal to the Govt. in Home Department. The Secretary, Home, Govt. of Uttarakhand, *vide* office order dated 03.05.2021 (Annexure No. 9) dismissed petitioner's departmental appeal. The orders of I.G., Prison and Secretary, Home, Govt. of Uttarakhand (Disciplinary Authority as well as Appellate Authority), are under challenge in present petition.

8. It is the submission of Sri Sanjay Bhatt, learned Counsel for the petitioner that the petitioner has been exonerated of the charge leveled against him by the Judicial Magistrate, Khatima, District Udham Singh Nagar, *vide* order dated 15.10.2016 (Annexure No. 1). Sri Bhatt submitted that the petitioner faced charge under Section 223 IPC as an accused in the Court and he was acquitted of such charge. In the body of judgement dated 15.10.2015 (Annexure No. 1), it has been mentioned that the prosecution has not been able to prove the case against the accused beyond reasonable doubt but the appellate authority has

not considered this fact in his appellate order dated 03.05.2021 (Annexure No. 9).

9. In reply, learned A.P.O. submitted that the said fact finds mention at internal page no. 7 of the order dated 05.06.2020 (Annexure No. 6) of the disciplinary authority (I.G. Prison).

10. Sri Sanjay Bhatt, learned Counsel for the petitioner, reiterated that the said fact has although been mentioned at internal page no. 7 of report dated 05.06.2020 but the said plea of the delinquent petitioner has not been properly dealt with or discussed in the order dated 03.05.2021 of the appellate authority.

11. Learned Counsel for the petitioner drew attention of the Bench towards para nos. 11 to 22 of the petition to submit that the petitioner has wrongly been held guilty in departmental proceedings. Sri Bhatt further submitted that material error of law has occurred, which has the effect of changing the nature of the case, therefore, liberty may be granted to the petitioner to file representation for reviewing the order passed by authorities below.

12. Rule 14 of the Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010) (for short, 'Rules of 2003') reads as under:

**"14. Review—** The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case."

*[Emphasis Supplied]*

13. Learned A.P.O. submitted that the petitioner can file representation (for reviewing the order) as a matter of right. It is his entitlement, hence, liberty of the Tribunal is not required to file the review application.

14. Before parting with, it will be worthwhile to reproduce relevant observations of Hon'ble Supreme Court in Civil Appeal No. 7935 of 2023, Ram Lal vs. State of Rajasthan and others, herein below for convenience:

“Questions for consideration:

9. The following two questions arise for consideration:

a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified?

b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

Legal Position:

11. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the Disciplinary Authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. [See State Bank of India vs. A.G.D. Reddy, 2023:INSC:766 = 2023 (11) Scale 530]. As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence and if it so finds, courts are not powerless to interfere. [See United Bank of India vs. Biswanath Bhattacharjee, 2022:INSC:117 = (2022) 13 SCC 329]

13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]

Effect of Acquittal in the Criminal Proceeding – Question No. 2:

23. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained

recruitment to the post of Constable. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

“...Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed.”

[Emphasis Supplied]

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [ See S. Samuthiram (Supra).]

25. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand.

28. Apart from the above, one other aspect is to be noted. The Enquiry Officer's report makes a reference to the appellant passing 10th standard, and to a 10th standard marksheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.

29. This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10th standard marksheet. It is their positive case that the appellant sought employment on the basis of his 8th standard marksheet. Shraavan Lal-PW-4 in the departmental enquiry had also furnished the 10th standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard marksheet, and he admitted that there was no alteration in the 8th standard marksheet.

30. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable."

15. The petition thus stands disposed of, with the consent of learned Counsel for the parties, leaving it open to the petitioner to file statutory review under Rule 14 of the Rules of 2003, as prayed for by him. Delay in filing the same is condoned in the interest of justice. No order as to costs.

16. Rival contentions are left open. The Tribunal has not expressed any opinion on the merits of the case.

**(JUSTICE U.C. DHYANI)**  
CHAIRMAN

*DATE: 15<sup>th</sup> July, 2024*  
*DEHRADUN*  
*RS*