

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

Present: Hon'ble Mr. Rajendra Singh,
.....Vice Chairman (J)
Hon'ble Mr. A.S.Rawat,
.....Vice Chairman (A)

CLAIM PETITION NO. 02/NB/DB/2020

Malkeet Singh S/O Shri Kuldeep Singh aged 40 years years, S/o Sri
Kuldeep Singh, R/O Village Dharampur, PO Chhatarpur, Tehsil
Rudrapur, District Udham Singh Nagar.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Principal Secretary, Home
Department, Dehradun.
2. Inspector General, PAC, Uttarakhand Distt. Dehradun.
3. Commandant 40th Battalion, PAC Haridwar, Distt Dehradun.

.....**Respondents**

Present: Sri N.K Papnoi, Advocate for the petitioner
Sri Kishore Kumar, APO for the Respondents

JUDGMENT

DATED: OCTOBER 11, 2024

Per: Sri A.S.Rawat, Chairman (A)

By means of this claim petition, the petitioner seeks the
following reliefs:

*(i) To quash the impugned order dated
02.09.2019 and order dated 12.06.2015 along with its
effect and operation also after calling the entire record
and further direct the respondents to reinstate the
petitioner in service with full back wages and
consequential benefits, had it been the impugned
orders are never in existence, keeping in view of the
facts highlighted in the body of the petition or mould
the relief appropriately and to allow the petition in toto.*

(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The facts of the case, in brief, are that the petitioner was appointed as Constable no. 1547 in the year 1998 and he was posted in E Company 40th Battalion P.A.C. Haridwar. The wife of the petitioner fell ill and he applied for leave. The officer concerned on the application of the petitioner sanctioned three days leave from 04.06.2008. But on 05.06.2008, the petitioner also fell ill and could not attend duty from 08.06.2008 to 09.02.2010. Meanwhile, the petitioner kept on getting medical treatment both from private as well as from the doctors of the 31st Battalion of PAC at Rudrapur. The petitioner has informed the authorities time to time through his applications. The disciplinary authority through its letter dated 03.07.2008, 25.07.2008, 11.08.2008, 26.08.2008 and 06.09.2008 informed the petitioner that he is absent from his duties from 08.06.2008 without any reasons and warned that if the petitioner not joined his services then the authority concerned initiate the proceedings according to rules. The petitioner was suspended on 25.11.2008 on account absence from duty from 08.06.2008 and also passed order that during the suspension period, the suspension allowance will be paid only when the petitioner submitted the certificate that during the suspension period, he had not worked anywhere. Petitioner submitted his application for withdrawing of the suspension allowance and stating that the doctor advised him to take complete rest.

2.1 The Inquiry Officer/Dy. Commandant issued the charge sheet on 21.04.2009 and directed to submit the reply on or before 02.05.2009. The petitioner replied the charges through his letter dated 26.04.2009. The Deputy Commandant 40th Battalion PAC, Haridwar to submit the list of witnesses in his favour vide letter dated 23.5.2009 and to appear on 30.05.2009 at Battalion Headquarters. The Deputy Commandant again directed the petitioner to appear on

04.09.2009 and 10.11.2009 to report in his office with all medical certificates.

2.2 The Deputy Commandant, Yogendra Singh Rawat was appointed as enquiry officer, who submitted his report on 16.01.2010, holding the petitioner guilty of absence from duty and further recommended for dismissal of the petitioner from the service. The petitioner submitted detailed reply vide the letter dated 30.01.2010. The disciplinary authority passed the order of dismissal on 09.02.2010 on the ground that the petitioner has been found guilty of absence from duty.

2.3 The petitioner filed a statutory appeal on 20.05.2010 against the dismissal order dated 09.02.2010 before the Appellate Authority, which was partly allowed vide order dated 20.09.2010 and further submitted that the order of the appellate authority itself made clear that the earlier proceedings initiated against the petitioner are de hors the rule and nullity therefore, he has allowed the appeal but the remaining part of the appellate order without effecting the punishment order of dismissal to conduct enquiry under the Uttar Pradesh Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 as adopted by the State of Uttarakhand by modification order dated 2002 is totally illegal, because the same is against the Rules of 1991. It is stated that gross illegality in the appellate order is that on the one hand he has held that the entire disciplinary proceedings conducted against the petitioner is de hors the rules but on the other hand, he has maintained the punishment order and remanded it back to proceed in accordance with Rules, 1991, which is a post decisional exercise and is not sustainable in the eyes of law.

2.4 After the aforesaid order in appeal, the respondent issued a charge sheet on 18.11.2010 against the petitioner for the same charges and allegations which was given in the earlier disciplinary proceedings, which was quashed by the appellate

authority. The charge sheet has been given by same enquiry officer who had conducted the earlier enquiry and has given its findings by recommending punishment for dismissal. It is well settled law that the enquiry officer cannot give the charge sheet and in the relevant service rules, the disciplinary authority is authorized to give the charge sheet and after issuance of the charge sheet, the enquiry officer will be appointed to conduct the enquiry but in the instant case, the disciplinary authority has not discharged his duties as per law thus, on this ground, the entire disciplinary proceedings is liable to be quashed and petitioner is liable to be reinstated in service.

2.5 Feeling aggrieved by the aforesaid action of the respondents, the petitioner approached the Hon'ble High Court of Uttarakhand by way of filing writ petition no. 1132 of 2010 S/S and the Hon'ble High Court vide order dated 02.12.2010 stayed the disciplinary proceedings initiated against the petitioner. The writ petition dismissed in default on 13.08.2014 and the petitioner filed restoration application for restoring the same and the Hon'ble Court on 16.04.2015, restored the writ petition but the petitioner on the same day, withdrew the writ petition.

2.6 It is further submitted that the disciplinary authority again appointed the same enquiry officer who earlier recommended the punishment of dismissal of the petitioner and thereafter, again issued charge sheet on 18.11.2010 but due to stay granted by the Hon'ble High Court, no further proceedings were initiated after dismissal of the writ petition, the enquiry officer completed the ex-parte enquiry and submitted his report on 28.04.2015 and again recommended/suggested the punishment of termination. The action of the enquiry officer is illegal, arbitrary and against the provisions of law as well as against the judgments of Hon'ble Apex Court passed in State of Uttarakhand and other vs. Kharag Singh, reported in (2008) 2 SCC(L&S) 698, which the Hon'ble Apex Court has held that enquiry officer can offer his views but cannot make strong recommendation for imposition of a particular punishment. The action of the enquiry

officer is also against the judgment passed by Hon'ble Supreme Court of India in case of State of Uttar Pradesh vs Saroj Kumar Sinha, reported in (2010) 2 SCC 772, in which it has been held that enquiry officer should be wholly unbiased. The enquiry officer should not act as prosecutor as well as judge.

2.7 The disciplinary authority vide order dated 29-04-2015 issued show cause notice along with copy of the conclusion of enquiry officer dated 28-04-2015 and the disciplinary authority also opened his mind that in case no reply be filed within the time the services of the petitioner will be dismissed. The aforesaid act of the disciplinary authority is against the provisions of law laid down by the Hon'ble Apex Court in case of M.D. ECIL V/s B. Karunakaran.

2.8 The petitioner received the aforesaid notice on 05-05-2015 and thereafter the petitioner vide its reply denied the findings of the enquiry officer and requested to cancel the notice and also requested to permit the petitioner to join his service. But surprisingly the disciplinary authority in utter hot haste by agreeing with the report of the enquiry officer, the impugned order was issued, which is not tenable in the eyes of law. The respondent no.3 without application of mind and also ignoring the rules and preposition of law as given by the Hon'ble Apex Court as well as various Hon'ble High Court passed the order of dismissal on 12-06-2015 and dismissed the petitioner from service.

2.9 After the order dated 02.12.2010 passed by the Hon'ble High Court of Uttarakhand in writ petition no. 1132 of 2010 S/S "Malkeet Singh v/s State of Uttarakhand and others. The respondent no.3 did not permit the petitioner to join his duties and did not pass any order of reinstatement thus without permitting the petitioner to join the service how again the disciplinary proceedings were initiated against the petitioner. Hence the entire disciplinary proceedings are liable to be quashed.

2.10 The order, by which proceedings initiated against the petitioner under Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 was stayed by the Hon'ble High Court and subsequently the writ petition was dismissed for non-prosecution on 13-08-2014 and subsequently restored vide order dated 16-04-2015. The respondent did not allow the petitioner to join his duty nor any reinstatement order was passed but in the impugned order dated 29-06-2015, the respondent has held that the petitioner has remained absent from duty since seven years is totally illegal and arbitrary in the eyes of law.

2.11 Feeling aggrieved by the dismissal order dated 29-06-2015 the petitioner approached the Hon'ble High Court of Uttarakhand by way of filing writ petition no. 1240 of 2019 S/S and the Hon'ble High Court on 29-05-2019 after hearing the petitioner on admission directed the petitioner to avail the statutory alternative remedy of appeal before the appellate authority and dismissed the writ petition on the ground of alternative remedy. The petitioner preferred statutory appeal before the respondent no. 2 on 02.07.2019 and requested the appellate authority to cancel the punishment order dated 29.06.2015. The petitioner again in the month of September 2019 submitted reminder to the respondent no. 2 and requested him to decide his appeal sympathetically. The appellate authority failed to discharge his obligatory duties and rejected the appeal on 02.12.2019 in a cursory and stereo type manner.

2.12 The Hon'ble High Court of Uttarakhand in its catena of judgments hold that the enquiry officer shall not conclude the inquiry in an unbiased. He cannot make recommendation for particular punishment. In this regard the petitioner is enclosing the copy of the judgment and order dated 20-4-2017 **passed in writ petition no. 620 of 2016 S/S Vijay Raj Singh V/s State of Uttarakhand and others**. The aforesaid matter is also related to the Police department and in which the enquiry officer suggested punishment of termination

and the Hon'ble High Court quashed the termination order on this ground and reinstated the petitioner of that writ petition with liberty to the respondent department to proceed with the matter from the stage of issuance of show cause notice to the inquiry report.

2.13 As per the provision of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 specifically Rule 20, 21 and 22 shows that there is no provision to keep an employee out of employment in case where the re-enquiry is ordered and appellate authority should have passed the speaking orders to reinstate the petitioner in service and thereafter can direct to proceed further but in the instant case when the appellate authority in appeal itself admits that the disciplinary authority by invoking wrong provision of law then there is no occasion to deprive the petitioner from the back salary and from employment which is patently erroneous.

2.14 It is also submitted that after completing more than 17 years of service, the respondent authorities ousted the petitioner from service at the very threshold and without making proper enquiry and not given opportunity of hearing and put the petitioner in mid stream of his life to suffer from starvation along with his dependents and family members. Since the very initiation of the entire disciplinary proceedings from the stage of charge sheet is bad and the entire act including the proposed notice is illegal and not tenable in the eyes of law. The departmental enquiry is not an empty formality and the enquiry officer as well as disciplinary authority are exercising quasi-judicial function which requires to follow the principle of natural justice and fairness in every act because the fate of an employee is involved and in the instant case the entire exercise is against the principle of natural justice and fair play thus liable to be quashed at the very threshold.

2.15 There is glaring error in the order of dismissal to this effect that he has applied the rules 'no work no pay'. In the instant

case, the right to livelihood of the petitioner has been taken away by the departmental authorities by applying wrong provisions of law, hence from their own wrong, the petitioner cannot be subjected to the aforesaid rules, because he has not left or denied the work at his own will but due to compelling circumstances on account of malafide act of the respondents by passing the illegal orders.

2.16 In the instant case, no opportunity has been given to the petitioner to make his submission against the report of enquiry committee and to prove the perversity against the same but in utter haste by agreeing with the report of the enquiry officer passed impugned order. The Hon'ble Apex Court in the case of *Deokinandan Sharma vs. Union of India & others*, reported in 2001(5) SCC 340, has held that the appellate authority is duty bound to pass reasoned order dealing with the petitioner's contentions. The appellate authority not complied the aforesaid directions of the Hon'ble Apex Court and thus kind indulgence of this Hon'ble Court is required. In the case of *Ram Chander vs. Union of India vs. Tulsiram Patel*, the Hon'ble Apex Court has held that while deciding statutory appeal, the appellate authority is required to give hearing to the government servant concerned and also pass reasoned order dealing with the contentions raised in the appeal. In the case of **State of Uttarakhand & others vs. Kharag Singh, reported in 2008 (8) SCC**, the Hon'ble Apex Court has held that the appellate authority is required to support his decision with reference to enquiry records. The Hon'ble Supreme Court of India in case of **Uttar Pradesh and other vs. Saroj Kumar Sinha report (2010) 2 SCC 772**, has held that the enquiry officer should be wholly unbiased. The enquiry officer should not act as prosecutor as well as judge. But in the instant case, the enquiry officer himself suggested the punishment, thus kind indulgence of this Hon'ble Court is required and the impugned orders are liable to be quashed.

2.17 The act of the respondents is arbitrary, malafide and illegal and against the provisions of the Article 14, 16 and 21 of the

Constitution of India and also opposes the public policy which is violative to Article 23 of the Constitution of India.

2.18 The charges are vague, without any basis and the entire proceedings including punishment order is not tenable in the eyes of law and is liable to be quashed.

3. C.A./W.S. has been filed on behalf of the respondents. It has been stated that the petitioner was appointed on 12.10.1998 as Constable P.A.C. and in the year 2006 from 18.09.2006 to 05.12.2006 for 90 days the petitioner was unauthorized absent and due to this suspended for 26 days. The petitioner preferred appeal which was considered with due transparency and on the basis of the records, no illegality was found in the order dated 29.04.2019 passed by the respondent No. 2/Disciplinary Authority and the appeal was rejected. The disciplinary authority has passed the punishment order in pursuance to the provisions contained in Rule-4 (Ka) (Ek) Uttar Pradesh Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 Adaption and Modification Orders, 2002. The disciplinary authority has given an opportunity of hearing to the petitioner for his defence, but the petitioner has not produced any record/logic so that he may be exonerated from the charges. Thus, the punishment order has been passed against the petitioner as per the Government Orders/Departmental Rules. The petitioner has quoted the judgment of Hon'ble Court in the case of MD ECIL Vs. B. Karunakaran which is not applicable in the case of the petitioner because the departmental proceedings were communicated to the petitioner by a special messenger/registered post on the permanent address of the petitioner, but having knowledge of the same the petitioner abstained himself from the proceedings on the date fixed and was not present before the enquiry officer. Sufficient opportunity to his defence was granted to the petitioner but due to unauthorized absence, the petitioner negligently and adamantly was not present before the enquiry officer and was continuously unauthorized absent. Due to this act of the

petitioner, the department with intention that other officials will be affected, the disciplinary authority on the basis of the government orders/departmental rules in vogue has passed the punishment orders.

3.1 The enquiry officer pursuant to the government orders and departmental rules concluded the enquiry and found petitioner guilty of unauthorized absence and recommended for his dismissal from service. After due consideration of the explanation of the petitioner the disciplinary authority has passed the punishment order which suffers from no illegality.

3.2 The appeal preferred by the petitioner himself stated that the proceedings be initiated under the Uttarakhand Subordinate Category Police Officers (Punishment and Appeal) Rules, 1991 Adaption and Modification Orders, 2002 and in pursuance to the appellate order the disciplinary authority conducted the departmental proceedings in view of the provisions of the Uttarakhand Subordinate Category Police Officers (Punishment and Appeal) Rules, 1991 Adaption and Modification Orders, 2002. In pursuance to the orders passed in the appeal, departmental proceedings were started against the petitioner and in the proceedings, the petitioner was found guilty of unauthorized absence for 07 years.

3.3 The appellate authority directed for re-inquiry but the petitioner has challenged the same in writ petition No. 1132/SS/2010 Malkeet Singh Vs. State & others and the Hon'ble High Court vide order dated 02.12.2010 passed the stay order in pursuance to that, the departmental proceedings were kept in abeyance. The Hon'ble High Court in its order dated 02.12.2010 observed that the petitioner be reinstated in service. The Hon'ble Court in its order dated 02.12.2010 has only ordered to stay the re-inquiry for further orders. The Hon'ble High Court on 16.04.2015 passed an order and in pursuance to that again the departmental inquiry was started in which the petitioner has been given time to submit the

evidence/records in his defence regarding his illness. On the basis of the facts and records submitted by the petitioner and the available records the petitioner was dismissed from service on 29.06.2015 and the procedure adopted by the disciplinary authority is well with accordance to law and service rules.

3.4 It is stated that the petitioner was served written notice again-and-again, but he failed to countersign the medical certificates from District Health Superintendent and he was also failed to cure his illness in the hospital. If, the petitioner was really ill, then he has to submit the prescriptions, bills of the medicines and the fitness certificate but the petitioner has not done so and just to put out of sight his illegal absence prepared the medical certificates. The petitioner was directed to appear before C.M.O., Divisional Medical Board, Pauri Garhwal for his medical examination, but the petitioner was not present before the Medical Board which shows that the petitioner for his defence produced false medical certificate for his illness and having the knowledge that his conduct will be exposed, he has not appeared before the Medical Board.

3.5 The disciplinary authority has passed the punishment order in pursuance to the provisions of Uttarakhand Subordinate Category Police Officers (Punishment and Appeal) Rules, 1991 Adaption and Modification Orders, 2002 and the government orders.

3.6 The punishment order passed against the petitioner in accordance with provisions contained in Rule-4 (1) (Ka) (Ek) of Uttarakhand Subordinate Category Police Officers (Punishment and Appeal) Rules, 1991 Adaption and Modification Orders, 2002 and the appeal filed by the petitioner was decided on its merit after due consideration and perusal of records. The claim petition is liable to be dismissed with costs.

4. R.A. has been filed on behalf of the petitioner denying the contents of the C.A. and has reiterated the averments made in the claim petition.

5. Learned Counsel for the petitioner has argued that Shri Jagat Ram Joshi, Deputy Commandant and the Enquiry officer in this case issued the charge Sheet to Shri Malkeet Singh on 21.04.2009 and asked him to file his reply by 02.05.2009. He further asked him to appear before him on 30/05/09 and to submit the list of the witnesses in the case from his side for his defense. He was given an opportunity by the Deputy commandant Mr. Yogendra Rawat, the new enquiry officer to submit all the medical certificates. He completed the enquiry and submitted the report on 16/01/2010. Enquiry officer recommended the punishment in the enquiry report itself. The Disciplinary Authority sent a show cause on 23/01/2010 and asked the petitioner to file the reply by 30/01/2010. The petitioner submitted that despite his submitting the medical certificate from Distt Authorities the enquiry officer rejected them. The disciplinary authority passed the order of dismissal of petitioner from the service and also withholding the salary for the period of absence. The Appellate authority remanded the case to the Disciplinary Authority with instructions to re-initiate the case as per Uttar Pradesh Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991.

6. In compliance of the order of the Appellate authority Mr. Yogendra Singh Rawat enquiry officer issued a fresh charge sheet, the charges and the list of the witnesses were the same as in the earlier charge sheet. The enquiry remained suspended for some time due the writ petition filed in the Hon'ble High Court by the petitioner against the order of the Appellate authority to re-initiate the enquiry without cancelling the order of punishment passed by the disciplinary authority earlier. The enquiry officer again submitted the report on 28/04/2015 and again recommended punishment as in earlier enquiry. The disciplinary authority sent the show cause notice on the report of the enquiry officer.

7. The petitioner again replied that he followed the advice of the doctors in the Distt Hospital Udham Singh Nagar for his

treatment and the findings of the enquiry officer are not acceptable. The disciplinary authority also passed the order of termination of petitioner from the service. The Disciplinary Authority ignored the fact that the petitioner was on casual leave and he applied for the medical leave from 07/06/2008 to 04/07/2008 and again from 31/07/20028 to 07/09/2008. But the disciplinary authority ignored the applications for leave and time to time asked petitioner to join the duties and subsequently put petitioner on suspension on 25/11//2008. Petitioner requested for the suspension allowance on 4/12/2008 which shows that the petitioner was in regular touch of the authorities. The authorities then terminated petitioner from the service. The appellate authority remanded the case to the disciplinary authority but did not quash the termination order passed by the disciplinary authority. The appellate authority directed to initiate the enquiry under the Uttar Pradesh Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991. The appellate authority upheld the decision of the disciplinary authority.

8. The learned counsel on behalf of the petitioner submitted that the departmental proceeding suffers from the following defects:

- i) The charge sheet was given by the enquiry officer and not the disciplinary authority.
- ii) The recommendation was made by the enquiry officer for the punishment.

9. The recommendation of the enquiry officer for the punishment is against the decision of the Hon'ble Apex Court, Hon'ble High Court of Nainital and the Hon'ble Tribunal in the following cases:

- i) **State of Uttarakhand and others vs Kharak Singh reported in (2008) 2 SCC (L&S) 698**
- ii) **State of Uttarakhand and others vs. Saroj Kumar Sinha reported in (2010) 2 SCC (772)**

- iii) **The judgement and the order dated 20/4/2017 passed by the Hon'ble High Court in W.P. No. 620 of 2016 S/S Vijay Raj Singh Vs state of Uttarakhand and others.**
- iv) **The Judgement and the order dated 02/05/2023 passed by this Tribunal in the Claim petition No 66/DB/2023 Constable 185/270(now CP 1681) Yogesh Kumar vs State of Uttarakhand and others.**

In the above judgements the Hon'ble Apex Court held that the enquiry officer can not make the strong recommendations for imposition of a particular punishment. Enquiry officer should not act as prosecutor and the judge. The respondent after remand of the case to the commandant did not withdraw the order dated 29/06/2015 and the petitioner remained out of job for seven years which is totally wrong.

10. There is no provision under the **Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and appeal) Rules, 1991** specifically under Rule 20, 21, 22 to keep the employee out of employment in case where the re-enquiry is ordered. The Appellate authority should have ordered the reinstatement of the petitioner. In this case the Appellate authority instructed the Disciplinary Authority to re-enquire the case and remanded the case for invoking the wrong provisions of the law but did not reinstate the petitioner. The petitioner has been deprived of his livelihood and forced to remain out of employment.

11. The appellate authority did not pass the reasoned order and also did not give reasonable opportunity for hearing to the petitioner as per guidelines given by the Hon'ble the Apex Court in **Deokinandan Sharma Vs Union of India & others reported in 2001 (5) SCC 340**. The enquiry officer should be wholly unbiased, he should not act as prosecutor as well as the judge. The Hon'ble High court in case of Vijay Raj Singh vs State of Uttarakhand and

others has followed the same analogy as mentioned in the judgement of the Hon'ble Apex Court.

12. The learned Counsel for the petitioner has further argued that in the instant case the enquiry officer has made the recommendations of punishment in the enquiry report itself. Disciplinary proceedings are vitiated on the ground as mentioned above. The disciplinary proceedings culminated in the termination of the petitioner vide impugned order dated 12.06.2015 and the appeal order dated 02.12.2019 are liable to be quashed and the petitioner is liable to be reinstated in service.

13. The learned A.P.O. has pleaded that the petitioner was given the opportunity to be heard by the Disciplinary authority as per the provisions of the act. But he did not turn up for the hearing and the judgement has been passed after following the due procedure as laid down in the law. The petitioner was sent repeated reminders to submit the medical certificates countersigned from the Distt Health superintendent as he took treatment from the private hospitals for the treatment. But he did not submit the certificates and bill for the expenses incurred in the treatment. He did not appear in front of the Division Medical board at Pauri. The petitioner was suspended and sanctioned the subsistence allowance also, but he did not present himself to get the allowance. The petitioner was found guilty in the findings of the departmental enquiry. There are no defects in the procedure for dismissal from the service. Learned A.P.O. further pleaded that the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, deals with 'procedure relating to the conduct of departmental proceedings against police officer' to submit that according to the form of charge sheet to be used in proceedings under Section 7 of the Police Act, 1961 (Form-1), enquiry officer is entitled to issue the charge sheet for and on behalf of disciplinary authority.

14. On perusal of the aforesaid record and hearing the arguments of learned Counsel, we are of the opinion that the

respondents gave sufficient opportunity to petitioner to submit the documents in his defense and also to appear in person for the hearing and examination of the witness and submit the list of the witness in his defense. But petitioner did not appear and submit the medical certificates signed by the superintendent of the distt hospital. Petitioner did not appear for examination before the Divisional Medical Board at Pauri. Petitioner has cited the reason that he was advised by the doctor to take complete rest. However, the petitioner was found to be in good health by the officials of the PAC who went to serve him the notices.

15. The charge sheet was given to petitioner by the enquiry officer and not by the disciplinary authority. A reference of the judgment dated 02.05.2023, passed by this Tribunal in Claim Petition No. No 66/DB/ 2023, Yogesh Kumar vs State of Uttarakhand & others has been given. The relevant paragraphs of this judgment are as under:

“4. Learned Counsel for the petitioner submitted that the departmental enquiry suffers from two vices viz. (i) the charge sheet was given by the enquiry officer and not the disciplinary authority and (ii) the recommendation was made by the enquiry officer for punishment.

5. Learned Counsel for the petitioner drew attention of the Bench towards Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010), which is reproduced herein below:

“ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

4. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1)

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3)

(17)

In reply, learned A.P.O. submitted that there are specific rules for the police officers of subordinate ranks known as the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable to the State of Uttarakhand) and therefore specific rules for police officers will apply.

5. Learned A.P.O. submitted that when, on the basis of preliminary enquiry, S.S.P. (disciplinary authority) was satisfied that departmental enquiry should be conducted, he nominated S.P. (crime) as enquiry officer. Enquiry officer [S.P. (crime)] supplied copy of charge sheet to the delinquent constable. Learned A.P.O. drew the attention of the Bench towards Appendix-I to U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, which deals with 'procedure relating to the conduct of departmental proceedings against police officer' to submit that according to the form of charge sheet to be used in proceedings under Section 7 of the Police Act, 1961 (Form-1), enquiry officer is entitled to issue the charge sheet for and on behalf of disciplinary authority.
7. According to Cambridge Dictionary, 'on behalf of' means "done for another person's benefit or support, or representing the interests of a person." The meaning assigned to the words 'on behalf of' by Oxford English Dictionary are "in the interests of (a person, group or principle); 'as a representative of' and 'on the part of'."
6. On a perusal of the original record, the Bench finds that before issuing the charge sheet, approval of the disciplinary authority has not been obtained by the enquiry officer.
9. Even though under the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, enquiry officer may issue the charge sheet, but the same is 'for and on behalf of the disciplinary authority', which has not been done in the instant case.
10. Learned Counsel for the petitioner submitted that the enquiry officer is not entitled to recommend the punishment to the disciplinary authority.
11. In reply, learned A.P.O. submitted that the language of Appendix-I 'procedure relating to the conduct of departmental proceedings against police officer' is clear that the enquiry officer may make his recommendation regarding the punishment to be imposed on the charged police officer.
12. The Tribunal finds that the language used in Appendix-I, which is related to Rule 14(1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, has used the words 'the enquiry officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.' In the instant case, the enquiry officer has made the recommendation, not separately, but in the enquiry report itself. Disciplinary proceedings are vitiated on these two grounds alone.
13. The impugned punishment order, therefore, cannot sustain. The same is liable to be set aside and is, accordingly, set aside leaving it open to the respondent authority to initiate fresh

departmental proceedings against the delinquent, in accordance with law.

14. Petition is disposed of by setting aside the impugned orders dated 24.02.2018, passed by the disciplinary authority and impugned order dated 10.07.2018, passed by the appellate authority leaving it open to the respondent department to initiate fresh departmental proceedings against the petitioner, in accordance with law. No order as to costs.”

16. In the above noted case, the Tribunal found that the language used in Appendix-I, which is related to Rule 14(1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, has used the words ‘the enquiry officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.’ In that case, the enquiry officer has made the recommendation, not separately, but in the enquiry report itself. Disciplinary proceedings are vitiated on this ground alone.

17. The petitioner pointed various defects in the enquiry report and pleaded that the enquiry officer was biased as he has made recommendation for the punishment in the report. The element of biasness as manifested in the report is against the decision of the Apex Court. In this regard, the petitioner referred to the judgment and order dated 20.04.2017, passed by the Hon’ble High Court of Uttarakhand in WPSS no. 620 of 2017, Vijay Raj Singh vs. State of Uttarakhand & others, in which, the Hon’ble High Court also referred the decision of Hon’ble Apex Court, in State of **U.P. & others vs. Saroj Kumar Sinha (2010)2 SCC (772)**, the following paragraphs of which are quoted as below:

“27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry

officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

18. In the above judgments the Hon'ble Apex Court held that the enquiry officer cannot make the strong recommendations for imposition of a particular punishment. He should not act as prosecutor and the judge. It is further held that the the enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

19. In view of the above pleadings and the arguments of learned Counsel for the parties, it is clear that enquiry officer has given charge sheet and later on appellate authority remanded the case of the petitioner to carry out enquiry again under the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 as adopted by State of Uttarakhand by Modification order 2002, but the appellate authority did not quash the punishment order of dismissal of the petitioner from service. Thereafter, the

disciplinary authority initiated the enquiry again under the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 but the charge sheet has been again issued by the enquiry officer and he again made recommendation of the punishment in the enquiry report itself. This act of the enquiry officer shows that the enquiry has been conducted in a biased manner and against the law.

20. In the instant case, the enquiry officer has made recommendation regarding the punishment, not separately, but in the enquiry report itself. Hence, the impugned punishment orders cannot be sustained and the same are liable to be set aside, leaving it open to the respondent authority to initiate fresh departmental proceedings against the delinquent, in accordance with law.

ORDER

The claim petition is allowed. The impugned order dated 12.06.2015 of Disciplinary authority and order dated 02.12.2019 of the Appellate authority are quashed and the Respondents are directed to reinstate the petitioner in service along with all consequential benefits. However, liberty is reserved to the respondent authority to initiate fresh departmental proceedings against the petitioner, in accordance with law. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: OCTOBER 11, 2024
DEHRADUN
KNP