

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 63/DB/2013

Jai Prakash Rana, S/o Shri Shurvir Singh Rana, at present R/o Roshan Niwas, Polo Ground Road, Happy Valley, Mussoorie, District Dehradun.

.....Petitioner.

VERSUS

1. State of Uttarakhand through Secretary, Department of Home Affairs, Secretariat, Dehradun.
2. The Senior Superintendent of Police, Dehradun.
3. The Inspector General of Police (Garhwal Region), Uttarakhand.

.....Respondents

Present: Sri Aman Rab, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: FEBRUARY 27, 2016.

(Justice J.C.S. Rawat, (Oral))

1. This claim petition has been filed for seeking the following relief:-

“Set aside/quash the impugned order passed by the Senior Superintendent of Police, Dehradun 9th November, 2012 (Letter NO. PF,-07/2011), Annexure A)

Set aside/ quash the impugned order dated 12th August, 2013 passed by the respondent No. 3, Inspector General of Police (Garhwal Region), Uttarakhand (Annexure-B)

Direct the respondents to reinstate the petitioner along with all consequential benefits and declare that the petitioner's period of suspension and dismissal be treated as period spent on duty in accordance with Rule 54 of the Financial Handbook, Vol. II, Part II to IV and direct the respondents to release salary for the said period along with interest thereon.

Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case.

Award the cost of the petition to the petitioner against the respondents.

Award special cost to the petitioner against the respondents for this second round of litigation."

2. The petitioner was a Constable in the Uttarakhand Police and was posted at Police Station Raipur, District Dehradun. It is alleged against the petitioner that he absented himself from the duties as Police Constable at P.S.Raipur w.e.f. 09.01.2009 to 11.01.2009 in Beat No. 7. The petitioner was never granted any permission or leave to leave the said Beat of P.S. Raipur. It is further alleged that the petitioner went to P.S.Laksar, District Haridwar. In the meantime he along with some other persons threatened Sri Brahm Singh, Sri Ravindra Kumar and Sri Raj Kumar to send them to jail on the pretext that they are engaged in the business of fake medicines. The petitioner along with one person took away Rs.70,000/- and a mobile phone which was recovered from the search of these persons and fled away from the place of occurrence on the pretext to bring the Police vehicle at the spot. An F.I.R. was lodged under Section 385 and 420 of IPC. An investigation started in the matter and Rs.50,000/- were recovered from the possession of Rajpal who is said to be co-accused in the matter. It is further alleged that a recovery of Rs.10,000/- and a motorcycle bearing registration No. U.A. 08B-8387 was recovered from the possession of the petitioner. Thereafter the petitioner was placed under suspension and a preliminary inquiry was directed to be conducted against him. The preliminary inquiry officer

submitted his report to the appointing authority on 9.4.2009. Thereafter, a show cause notice was given to the petitioner and his services were dispensed with under Rule 8(2)(B) of the Uttarakhand Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (hereinafter referred to as Punishment & Appeal Rules, 1991). Thereafter, he preferred a claim petition before the Tribunal and the Tribunal set aside the punishment order vide order dated 4.11.2011 holding that the order did not contain the reasons as contemplated under Rule 8(2)(B) of Punishment & Appeal Rules, 1991 and matter was again remitted back to the inquiry officer setting aside all the consequential orders to reinstate the petitioner and to proceed further in accordance with law if so desired by the department.

3. Thereafter, the petitioner was reinstated and a fresh charge sheet was issued to the petitioner. The charge sheet was issued alleging therein that he absented himself from the duties from 09.01.2009 to 11.01.2009 and he committed an offence and involved in crime no. 07/-9 punishable under sections 385, 34 IPC at P.S.Laksar, District Haridwar. The charge sheet was served upon the petitioner and the petitioner submitted his reply to the charge sheet on 17.2.2012 and clearly refuted all the allegations made in the charge sheet. Apart from that explanation, he submitted a separate application on the same date that he will like to adduce the defence evidence. Thereafter the inquiry officer on 27.7.2012 specifically asked for the list of witnesses in support of his defence, the order is Annexure-8 to the claim petition. Petitioner also submitted reply to that notice on 30.7.2012, Annexure-9 to the claim petition, that he will like to produce Sri Bharat Singh, Constable Clerk who was posted in P.S. Raipur along with G.D. dated 10.1.2009 and other two witnesses namely Sri Anand Panwar and Sri Swaraj Rana, who were Home Guards posted in Mussoorie and the petitioner wanted to prove the fact that he was present in the P.S. Raipur and he was illegally arrested by the Police. Apart from that he also wanted to tell that mobile no. 9411385892 had not been allotted to the petitioner in any chart.

4. After receiving the aforesaid explanation and chart of the witnesses, the inquiry officer started recording evidence of the witnesses. The petitioner has admitted that the statement of witnesses named in the charge sheet have been recorded by the inquiry officer. From the perusal of the original record, Ld. A.P.O. pointed out, all the statements of witnesses referred in the inquiry report are also available on record. Apart from that the application of the petitioner for calling the defence witnesses was said to have been disposed of by the inquiry officer in the inquiry report which is available on record Annexure-10 colly and it is mentioned at Pg. 87 of the inquiry report that Bharat Singh has already been examined by the inquiry officer and rest two Home guards Anand Panwar and Swaraj Rana were not posted in P.S. Raipur on 9.1.2009 to 11.1.2009, so they were not summoned.
5. Ld. Counsel for the petitioner contended that the petitioner was not given opportunity to produce all the defence witnesses named in the list Annexure A-9 to the claim petition, during the course of inquiry and also the main witnesses of the charge sheet namely Ravindra Kumar, Brahm Singh and Raj Kumar were not examined because they were the only eye witnesses of the fact and to identify the petitioner. He further contended that the petitioner filed an application as Annexure-7, summoning those witnesses have not been disposed.
6. Ld. A.P.O. refuted the contention and contended that the said application has been disposed of in the inquiry report. Ld. A.P.O. could not demonstrate from the original record that the said application was disposed of by the inquiry officer by a separate speaking order during the inquiry. Ld. A.P.O. could not demonstrate that the report of the Station Officer and other relevant note of the Police Station and G.D. report have been shown to the petitioner.
7. It is further clear from the perusal of the report that the inquiry officer has held that Anand Panwar and Swaraj Rana, Home Guards were not posted in Raipur Thana on the relevant dates so their examination was not made by the inquiry officer. It is very relevant to note that the Application, Annexure-9, which itself mentions that these two persons

are not posted in Raipur Thana but they are posted in Mussoorie Thana. The purpose of summoning these witnesses was to prove his alibi but at the time of offence committed at Laksar, District Haridwar these witnesses were present in Raipur, Dehradun. Apart from that he only called the witnesses to prove the fact that he was present in the beat in Raipur. It was the duty of the inquiry officer firstly to dispose of the said application by a speaking order. The inquiry officer has failed to dispose of the application by a speaking order that too should have been communicated to the petitioner. Apart from that the reasons which have been assigned in the inquiry report that these two witnesses Anand Panwar and Swaraj Rana were not posted at P.S.Raiput from 9.1.2009 to 11.1.2009, is irrelevant, the petitioner himself has stated in the application that they were posted in Mussoorie at that time. It is also relevant if the inquiry officer was not satisfied to summon those witnesses on the basis of the report obtained from the P.S.; the report should have been communicated to the petitioner and thereafter the inquiry officer should have passed the order on the application. Thus, reasons assigned in the inquiry report as well as non passing of the order on the application is itself bad in law. That will amount negation of the reasonable opportunity to the petitioner in the eye of law.

8. In pursuance of the said inquiry report a show cause notice was given to the petitioner by the S.S.P., Dehradun in which he concluded that the petitioner is guilty of the misconduct as alleged in the charge sheet and he agreed to the findings of the inquiry report and the petitioner was asked to furnish the show cause by the stipulated date. In the meantime the petitioner preferred a writ petition before the Hon'ble High Court of Uttarakhand, Pg. 89 Annexure-11 to the C.P., in which the Hon'ble High Court has held that the show cause notice has already been issued to the delinquent and the punishment is to be awarded by the S.S.P., Dehradun, however, an opportunity was given before dismissing the writ petition that he can give his response in the light in reply to the show cause notice as alleged in the writ petition. The

petitioner in response of his reply in para 13 has alleged that he wanted to produce two Home guards Anand Panwar and Swaraj Rana who were under training at the time of the alleged incident, who can corroborate the presence of the delinquent at P.S. Raipur on the date of alleged incident. It was further pointed out and prayed to the S.S.P. that the inquiry officer may be ordered to summon the duty chart and list of mobile numbers 9411355892 & 9411385892 of P.S. Raipur. Thus, according to the direction of the Hon'ble High Court, he also submitted his explanation about the said fact apart from other explanations. The S.S.P. in Para-3 of his impugned order, Annexure-1 has stated that Constable Clerk Bharat Singh was summoned by the inquiry officer as such the petitioner was given right of defence, whereas in para-2 of his order he has mentioned that Anand Panwar and Swaraj Rana could not be summoned as the reasons to call the witnesses were found baseless. It was further alleged that both the Home Guards were not posted at the P.S. Raipur on the relevant dates, so their evidence was not relevant. Thus, the plea of the petitioner was rejected. Ultimately, the petitioner was dismissed from the service by the impugned order.

9. As we have discussed above, the petitioner has not disputed other aspect of the inquiry except depriving him from calling the defence witnesses. We hold that the petitioner was not given a reasonable and proper opportunity to defend himself because the defence witnesses were not summoned by the inquiry officer or it was not ordered by the departmental authority to remit the inquiry to record the witnesses when this fact was brought to the notice of the departmental authority; so, a proper opportunity has not been given to the petitioner. The petitioner was deprived of his valuable legal right during the inquiry. Thus, we are of the opinion that the order of punishing authority as well as the order of appellate authority are liable to be set aside.
10. As the inquiry officer and the departmental authorities have not afforded the petitioner a reasonable opportunity to defend himself, as such the whole inquiry is liable to be quashed in addition to the orders passed by the aforesaid orders. The matter is remitted back to the

departmental authority to hold a fresh inquiry from the stage of recording of the prosecution witnesses and the defence witnesses as desired by the petitioner and thereafter the inquiry officer will submit the inquiry report to the appointing authority and the appointing authority will proceed in accordance with law in the said inquiry report. The petitioner be reinstated forthwith and after reinstatement of the petitioner it would be at the discretion of the appointing authority either to suspend him or to continue him during the departmental inquiry in his service. The salary and other benefits accrued to the petitioner by setting aside the order of dismissal would be determined by the competent authority in accordance with law after the conclusion of the departmental inquiry or during the inquiry as law permits him.

ORDER

The impugned punishment order passed by the S.S.P., Dehradun dated 09.11.2012 (Annexure-A) as well as the appellate order dated 12.08.2013(Annexure:B) passed by the Inspector General of Police are hereby set aside. The petitioner be reinstated forthwith and after reinstatement the payment of wages will be determined by the competent authority in accordance with Rules. The matter is remitted back to the departmental authority to hold a fresh inquiry from the stage of recording of the prosecution witnesses and the defence witnesses as desired by the petitioner and thereafter the inquiry officer will submit the inquiry report to the appointing authority and the appointing authority will proceed in accordance with law in the said inquiry report. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: FEBRUARY 27, 2016
DEHRADUN

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