

**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. 34/NB/DB/2023

Dinesh Singh Parihar (Constable-69) Male, aged about 42 years, S/o Late Mahendra Singh Parihar, R/o Village Selta, Post Mostgaon, Tehsil and District Bageshwar.

..... Petitioner

Versus

1. State of Uttarakhand, through the Secretary Home Affairs, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, 12, Subhash Road, Dehradun.
3. Deputy Inspector General of Police, Kumaun Range, Commissioner Office (Kumaun), Tallital, Nainital.
4. Superintendent of Police, Takana Road, Pithoragarh.

..... Respondents

Present: Sri Tribhuvan Chandra Pandey, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

Dated: 19th December, 2024

Hon'ble Mr. A.S. Rawat, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:-

- “1. To issue an order to quash/set-aside the impugned appellate order dated 31.12.2022 passed by the Deputy Inspector General of Police, Kumaun Range/Respondent No. 3 (Annexure No. 1) as*

well as the impugned dismissal order dated 28.10.2021 passed by the Superintendent of Police, Pithoragarh/respondent No. 4 (Annexure No. 2).

- II. To issue an order directing the respondent authorities to reinstate the petitioner on his post alongwith all consequential benefits.*
- III. An order or direction allowing the claim petition with cost.*
- IV. Any other order or further order or direction which this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case in favour of the applicant."*

2. In brief, the facts of the case are as follows:

2.1 On 10.10.2001, the petitioner was appointed on the post of Constable in Uttarakhand Police Force and his first appointment was in District Chamoli. The petitioner was transferred to Police Lines, Pithoragarh and he was placed on duty as a Security Guard at Bhatkot in the residence of District Magistrate, Pithoragarh.

2.2 An enquiry was conducted against the petitioner and the Enquiry Officer submitted his enquiry report dated 04.08.2021 that the petitioner remained absent from his duties for 40 days without any permission and also found guilty of consuming liquor on 08.01.2020. As per enquiry report dated 04.08.2021, respondent No. 4 issued a show-cause notice dated 19.08.2021 to the petitioner with the charges that during the checking he was found absent from his duty from 07.01.2020 to 11.01.2020 for 05 days, from 11.01.2020 to 14.01.2020 for 03 days and from 10.02.2020 to 10.03.2020 for 32 days, total 40 days he remained absent without leave of permission. On 08.01.2020, the petitioner had made a nuisance in Police Lines in drunken state and the petitioner was called to submit his written clarification against the charges within 15 days.

2.3 The petitioner replied to the show-cause notice on 02.09.2021 in which it was replied that on the alleged day, i.e., on 07.10.2021 while petitioner was placed on duty at Bhatkot in the residence of District Magistrate, Pithoragarh, for a short-time, he went

to Police Lines to bring his necessary luggage, at that moment the Checking Officer marked him absent from duty and he has not committed any nuisance by drinking liquor and further due to ill-health and adverse condition by family problems, the petitioner could not remain present on duty and at that time he was also under medicine. He never disobeyed any order of his seniors and the petitioner further ensured, in future he will not repeat any mistake and will do his duty with full dedication and honesty. He may be pardoned to continue to serve under police force. Totally ignoring enquiry/finding of the Enquiry Officer, the Superintendent of Police, Pithoragarh/respondent No. 4 terminated the services of the petitioner vide order dated 28.10.2021 under Rule 14 (1) Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (Adaptation and Modification Order, 2002) and Section 23 (1) (d) of Uttarakhand Police Act, 2007 (Annexure No. 2 in Compilation-1).

2.4 Against the termination order dated 28.10.2021, the petitioner filed a departmental appeal under Section 26 of the Uttarakhand Police Act, 2007 before the Deputy Inspector General of Police, Kumaun Range, Nainital on 27.01.2022. The Appellate Authority rejected the appeal of the petitioner and upheld the termination order out-rightly vide order dated 31.12.2022. Enquiry was conducted only on two charges that (i) he was found absent from his duty from 07.01.2020 to 11.01.2020 for 05 days, from 11.01.2020 to 14.01.2020 for 03 days and from 10.02.2020 to 10.03.2020 for 32 days, total 40 days; he remained absent for 40 days without leave of permission, (ii) on 08.01.2020, the petitioner made a nuisance in Police Lines in drunken state while the Disciplinary Authority/respondent No. 4 issued a show-cause on various charges without making any inquiry thereon and given his own finding thereon and passed a final order of termination. Respondent No. 4 has passed the termination order on 28.10.2021 beyond its jurisdiction by giving its' own finding without making any enquiry.

2.5 The Enquiry Officer has proposed the punishment for reduction to a lower scale for 03 years under Rule 14 (1) Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (Adaptation and Modification Order, 2002) and Section 23(1)(d) of Uttarakhand Police Act, 2007 while the respondent No. 4 illegally passed an order of dismissal of the petitioner in its own finding which were never enquired by any Inquiry Officer. The charges and enquiry thereon clearly show that if it was proved satisfactory against the petitioner, then he may be punished by minor punishment only as enumerated under Section 85 of the Uttarakhand Police Act, 2007 and the charges levelled against the petitioner do not in any manner merit the major penalty. The order of dismissal of the petitioner is not in accordance to the provisions of Section 22 and Section 23 of the Police Act. The dismissal order of the respondent No. 4 is entirely against the enquiry report and has distinct findings from the enquiry report and the dismissal order is passed in arbitrary and whimsical manner and hence, the said dismissal order is not sustainable. Disciplinary proceedings are required to be conducted strictly on the basis of Article 311 of the Constitution of India as is mandatory under Section 22 of the Uttarakhand Police Act, 2007. While the said disciplinary proceedings is totally against the provisions of Section 22 of the Uttarakhand Police Act, 2007, thus, the enquiry report and dismissal report are not in accordance to Article 311 of the Constitution of India and hence, the same has no force in the eyes of law.

3. C.A./W.S. has filed on behalf of respondents No. 1, 2, 3 & 4 in which it has been stated as under:-

3.1. वर्ष 2020 में जब याची कानि० दिनेश सिंह परिहार पुलिस लाईन्स, पिथौरागढ़ में नियुक्त था तो दिनांक 07.01.2020 को याची की भाटकोट जिलाधिकारी आवास गार्द में सुरक्षा ड्यूटी लगायी गयी थी। दिनांक 07.01.2020 को दिवासाधिकारी/रात्रि अधिकारी पुलिस लाईन्स, पिथौरागढ़ द्वारा जिलाधिकारी आवास गार्द ड्यूटी चैक की गयी तो याची बिना किसी अवकाश/अनुमति के अनुपस्थित पाया गया तथा दिनांक 07.01.2020 से 11.01.2020 तक 05 दिवस, दिनांक 11.01.2020 से 14.01.2020 तक 03 दिवस एवं दिनांक 10.02.2020 से 12.03.2020 तक 32 दिवस अर्थात् कुल 40 दिवस अनाधिकृत रूप से

अनुपस्थित रहा एवं दिनांक 07.01.2020 को शराब का सेवन कर पुलिस लाईन्स परिसर में हल्ला-गुल्ला, गाली गलौच कर अपने कर्तव्य के प्रति अनुशासनहीनता, लापरवाही बरती गयी, जिसके उपरान्त याची को दिनांक 10.01.2020 को निलम्बित कर प्रकरण की प्रा0 जॉच क्षेत्राधिकारी, पिथौरागढ़ को आवंटित की गयी।

3.2 क्षेत्राधिकारी द्वारा प्रकरण में सम्पादित जॉच आख्या दिनांक 28.04.2020 उपलब्ध कराते हुये याची को उपरोक्त कृत्यों का दोषी पाया गया, जिसके उपरान्त प्रतिवादी संख्या 04 द्वारा याची के विरुद्ध विभागीय कार्यवाही का निर्णय लिया गया व याची कानि0 69 स0पु0 दिनेश सिंह परिहार के विरुद्ध उ0प्र0/उत्तराखण्ड अधीनस्थ श्रेणी के पुलिस अधि0/कर्म0 की (दण्ड एवं अपील) नियमावली-1991 अनुकूलन एवं उपान्तरण आदेश-2002 के नियम-14 (1) के अन्तर्गत विभागीय कार्यवाही पुलिस उपाधीक्षक धारचूला को जॉच अधिकारी नामित करते हुये विभागीय जॉच आवंटित की गयी। जॉच अधिकारी के 31 वीं वाहिनी पीएसी स्थानान्तरण होने के उपरान्त पुलिस महानिरीक्षक, कुमायूँ परिक्षेत्र, नैनीताल द्वारा उक्त विभागीय कार्यवाही जनपद चम्पावत से कराये जाने हेतु आदेशित किया गया, तत्पश्चात् पुलिस अधीक्षक, चम्पावत के आदेशानुसार उक्त विभागीय कार्यवाही श्री अविनाश वर्मा, पुलिस उपाधीक्षक, टनकपुर को आवंटित की गयी। विभागीय कार्यवाही में जॉच अधिकारी द्वारा दिये गये निष्कर्ष (फाईन्डिंग) दिनांकित 04.08.2021 की प्रति, जिसमें याची कानि0 दिनेश सिंह परिहार को उत्तराखण्ड पुलिस एक्ट की धारा 23(1) एवं [उ0प्र0/उत्तराखण्ड अधीनस्थ श्रेणी के पुलिस अधि0/कर्म0 की दण्ड एवं अपील नियमावली-1991] अनुकूलन एवं उपान्तरण आदेश-2002 के नियम-14 (1) के अन्तर्गत "तीन वर्ष के लिए कानि0 के न्यूनतम वेतनमान पर अवनत" किये जाने की संस्तुति की गयी। परन्तु याची के कार्य आचरण/अनुशासनहीनता को दृष्टिगत रखते हुए जॉच अधिकारी द्वारा की गयी संस्तुति से सहमत न होते हुए आरोपी कानि0 को [उ0प्र0/उत्तराखण्ड अधीनस्थ श्रेणी के पुलिस अधि0/कर्म0 की दण्ड एवं अपील) नियमावली-1991] अनुकूलन एवं उपान्तरण आदेश-2002 के नियम-14 (1) एवं उत्तराखण्ड पुलिस एक्ट की धारा 23 (1) (घ) के अन्तर्गत पुलिस बल की सेवा से पदच्युत (डिसमिस) किये जाने हेतु कारण-बताओ नोटिस दिनांक 19.08.2021 मय जॉच अधिकारी द्वारा दिये गये निष्कर्ष की प्रति सहित निर्गत करते हुये नोटिस प्राप्ति के 15 दिवस के अन्दर स्पष्टीकरण प्रस्तुत किये जाने हेतु निर्देशित किया गया था।

3.3 याची द्वारा प्रस्तुत स्पष्टीकरण में अंकित तथ्यों/तर्कों के सम्बन्ध में एवं सम्बन्धित पत्रावली पर उपलब्ध अभिलेखों एवं आरोपी कानि0 के स्पष्टीकरण आदि का प्रतिवादी संख्या 04 अनुशासनिक अधिकारी द्वारा गहनता एवं गम्भीरता से अध्ययन कर मनन किया गया। याची को पूर्व में बिना अवकाश/अनुमति के अनाधिकृत रूप से अनुपस्थित रहने के कारण कुल 174 दिवस का "काम नहीं तो दाम नहीं" के सिद्धान्त पर बिना वेतन अवकाश स्वीकृत किया गया है व याची को 06 परिनिन्दा लेख, 04 बार अर्थदण्ड एवं 09 क्षुद्र दण्ड के दण्डों से दण्डित किया गया है, जिससे स्पष्ट है कि याची को इतनी अल्प अवधि के सेवाकाल में बार-बार दण्डित करने के उपरान्त भी याची के कार्य एवं आचरण

में कोई सुधार परिलक्षित नहीं हो रहा है जबकि याची को कार्य आचरण में सुधार लाने हेतु पर्याप्त अवसर प्रदान किये गये हैं। याची पुलिस जैसे अनुशासित विभाग में नियुक्त रखने योग्य नहीं था। इस प्रकार आरोपी कानि० का स्पष्टीकरण, विश्लेषण से सन्तोषजनक नहीं पाया गया। जिसके उपरान्त सम्बन्धित पत्रावली पर उपलब्ध अभिलेखों एवं प्रकरण की गहन सन्निरोक्षा के उपरान्त, याची कानि० 69 स०पु० दिनेश सिंह परिहार द्वारा प्रस्तुत लिखित स्पष्टीकरण को सन्तोषजनक न पाते हुये अनुशासनिक अधिकारी/प्रतिवादी सं०-04 द्वारा[उ०प्र०/उत्तराखण्ड अधीनस्थ श्रेणी के पुलिस अधि०/कर्म० की दण्ड एवं अपील नियमावली-1991] अनुकूलन एवं उपान्तरण आदेश-2002 के नियम-14 (1) एवं उत्तराखण्ड पुलिस एक्ट की धारा 23 (1) (घ) के अन्तर्गत आदेश संख्या: पी०एफ०-03/2020 दिनांक 28.10.2022 के द्वारा तत्काल प्रभाव से पुलिस बल की सेवा से पदच्युत (डिसमिस) किये जाने के आदेश पारित किये गये हैं।

3.4 उक्त आदेश के विरुद्ध याची द्वारा पुलिस महानिरीक्षक, कुमायूँ परिक्षेत्र, नैनीताल को अपील प्रस्तुत की गयी। पुलिस महानिरीक्षक, कुमायूँ परिक्षेत्र, नैनीताल के आदेश संख्या सीओके-अपील-03/2022 दिनांक 31.12.2022 के द्वारा याची की अपील बलहीन होने के कारण अपील अस्वीकृत की गयी है। प्रतिवाद पत्र के उपरोक्त कथनों के आधार पर याचिका सव्यय अस्वीकार होने योग्य है।

4. Rejoinder Affidavit has also been filed by the learned Counsel for the petitioner in which it is submitted that the respondent authorities have levelled new charges upon the deponent without conducting any departmental inquiry and passed major penalty while the enquiry was conducted for two charges that (i) he was found absent from his duty from 07.01.2020 to 11.01.2020 for 05 days, from 11.01.2020 to 14.01.2020 for 03 days and from 10.02.2020 to 10.03.2020 for 32 days, total 40 days he remained absent without permission of leave, (ii) on 08.01.2020, the petitioner made a nuisance in Police Lines in drunken state, but the Disciplinary Authority/respondent No. 4 after inquiry report, issued a show-cause on various charges without making any inquiry on the additional allegations levelled upon the deponent and given his own finding thereon, which is illegal and, therefore, the entire proceedings is illegal. It is submitted that without conducting any disciplinary proceeding which are mandatory under the relevant rules, to dismiss the petitioner from service is totally illegal and arbitrariness. The Appellate Authority in complete disregard of provisions of Uttarakhand Police Act, 2007 and Rules thereon, rejected the appeal

of the petitioner and upheld the termination order out-rightly, which is not sustainable in the eyes of law.

5. We have heard learned Counsel for the parties and perused the record carefully.

6. Learned Counsel on behalf of the petitioner has pleaded that the disciplinary authority has awarded the punishment on charges which were not mentioned in the charge sheet in addition to those mentioned in the charge sheet. The enquiry has been conducted in respect of the charges which were mentioned in the charge sheet. The quantum of punishment of termination from the service is more than the gravity of the charges levelled against the petitioner. He pleaded further to quash the order dated 31.12.2022 passed by the Deputy Inspector General of Police Kumaon Range and order of dismissal dated 28.10.2021 passed by the Superintendent of Police, Pithoragarh. He has relied on the judgement of the Hon'ble Supreme court dated 19/8/1999 in the matter of Punjab National Bank and others Vs Sh. Kunj Behari Mishra which reads as under:-

“Whenever the disciplinary authority disagrees with the enquiry authority and any article of charges, then before it records its own findings on such charges, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to defend before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer.....”

7. Learned A.P.O. pleaded that the petitioner was awarded the punishment on the previous occasions also. The disciplinary authority has cited the punishment awarded to the petitioner on the previous occasions while deciding the quantum of punishment and mentioned those in the show cause notice to the petitioner along with the report of the enquiry officer. The petitioner has been given opportunity to submit his defense against the proposed punishment. He further pleaded that the Police force requires a highest level of discipline. The

petitioner was given opportunity to improve his conduct but he did not improve. Keeping in view the conduct of the petitioner during his service career, a suitable punishment has been given by the Disciplinary Authority. So, the claim petition is liable to be dismissed.

8. Based on the documents submitted and the pleadings of the learned counsels from both the sides, we are of the opinion that the charge sheet was issued to the petitioner under the *provisions of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, Modification and Adaption Rule, 2002* and the enquiry has been conducted as per the procedure. The punishment has been given under Rule 14(1) of the *Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991* and Section 23(1)(d) of the Uttarakhand Police Act-2007. The disciplinary authority has mentioned the punishment awarded to the petitioner before the current enquiry on different occasions during his service and also the remarks in his few Annual Confidential Reports in the show cause notice. The Disciplinary Authority has given opportunity to the petitioner to defend himself against the proposed penalty. The petitioner accepted his mistakes and requested not to terminate him from the service. The Disciplinary Authority has given him the opportunity as per the procedure, which is in the line of the aforesaid judgement of the *Hon'ble Supreme Court in the matter of Punjab National Bank and Others vs. Sh. Kunj Behari Misra*. The final order dated 28.10.2021 of the Disciplinary Authority is in detail, mentioning the past incidences of misconduct and punishment given thereon. It also mentions the remarks in the few Annual Confidential Reports of the petitioner.

9. The deputy Inspector General of Police Kumaun Range, the Appellate Authority in this case has also considered the appeal of the petitioner and covered issues raised in the appeal against the order of Disciplinary authority and dismissed the appeal vide order dated 31.12.2022.

10. The police force is a disciplined organization and expects highest degree of discipline from its officers and the constables. The petitioner in the short span of his service career has shown a behavior unbecoming of a public servant and did not show the sign of improvement in his conduct. The punishment given is befitting the misconduct of the petitioner, so the claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(A.S .RAWAT)
VICE CHAIRMAN (A)

DATE: 19TH DECEMBER, 2024
DEHRADUN
KNP