

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. A.S. Rawat

----- Vice Chairman (A)

CLAIM PETITION NO. 194/DB/2024

Constable (Dismissed), 62 Armed Policar, Rajan Pawar, aged about 39 years, s/o Sri Satya Pal Singh, r/o Shiv Vihar Colony, Jjhabrera, District Haridwar.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Chamoli, District Chamoli.

..... Respondents

Present: Sri Amar Murti Shukla, Advocate, for the petitioner (*online*)
Sri V.P. Devrani, A.P.O. for the respondents

JUDGEMENT

Dated: 23rd December, 2024

Justice U.C. Dhyani (Oral)

By means of present claim petition, petitioner seeks following reliefs:

“(i) To set aside the impugned order dated 23.05.2017 (Annexure No. A-4 to the claim petition) issued by Superintendent of Police, Chamoli District Chamoli i.e.

respondent no. 3 and order dated 19.08.2022 (Annexure No. A-6 to the claim petition) issued by Deputy Inspector General of Police, Garhwal Region, Uttarakhand Dehradun i.e. respondent no. 2 which was received by the claim petitioner under Right to Information Act, 2005 vide letter dated 20.10.2022.

(ii) To direct the respondents to reinstate the services of the claim petitioners alongwith all consequential benefits.

(iii) To give any other relief that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award the cost of the petition.”

2. The petitioner has approached this Tribunal on liberty granted to him by the Hon'ble High Court, who was pleased to pass an order on 01.08.2024 in WPSS No. 733/2023, as follows:

“1. Mr. Amar Murti Shukla, learned counsel for petitioner.

2. Mr. B.S. Koranga, learned Brief Holder for the State.

3. It is submitted by learned counsel for the petitioner that petitioner was dismissed from service vide order dated 23.05.2017 passed by respondent no. 3 on misconduct of unauthorized absent from his duties. Petitioner has challenged the order passed by disciplinary authority by preferring a disciplinary appeal before respondent no.2 and that appeal met with same fate of dismissal on the ground of latches. The appeal was not filed by the petitioner within time.

4. It is submitted by learned counsel for the petitioner that remedy against the order passed by respondents appellate authority as well as disciplinary authority is available to him by filing a claim petitioner before learned Public Service Tribunal constituted under The U.P. Public Service Tribunal Act, 1976.

5. The said submission has not been opposed by learned State Counsel.

6. In view of the statement made by learned counsel for petitioner, petitioner is permitted to withdraw the aforesaid writ petition to avail the remedy available to him before the Public Service Tribunal, as stated above.

7. Accordingly, the writ petition is dismissed as withdrawn.”

3. Petitioner has filed affidavit in support of the claim petition. Various documents have been filed along with the same.

4. The petitioner was dismissed from service. Aggrieved against the order of disciplinary authority, he filed departmental appeal, which (appeal) was dismissed. Feeling aggrieved, he has filed present claim petition on liberty granted to him by the Hon'ble High Court.

5. Sri Amar Murti Shukla, learned Counsel for the petitioner submitted that the impugned order is liable to be set aside on various grounds, which have been taken by the petitioner in the claim petition. The Tribunal need not reproduce those grounds, for they are already part of record.

6. Learned Counsel for the petitioner further submitted that the petitioner is entitled to the relief claimed in view of the decision dated 02.05.2023 rendered by the Tribunal in claim petition no. 66/DB/2023, Constable Yogesh Kumar vs. State of Uttarakhand and others.

7. It is the submission of learned Counsel for the petitioner that the enquiry officer is not empowered to recommend the punishment to the disciplinary authority. Learned Counsel for the petitioner drew the attention of the Bench towards relevant paragraphs of the decision dated 02.05.2023, which are reproduced herein below for convenience:

“

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.”

8. Learned Counsel for the petitioner further submitted that the petitioner wants to file revision before the Revisional Authority to highlight important legal aspects for redressal of his grievances, therefore, petitioner may be permitted to file the revision and delay, if any, in filing the same be condoned.

9. Learned A.P.O. has no objection to such innocuous prayer of learned Counsel for the petitioner, submitting that filing of revision is petitioner’s entitlement.

10. Rule 23 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (for short, 1991 Rules), as applicable to State of Uttarakhand, reads as below:

“**23. Revision-**(1) An officer whose appeal has rejected by any authority subordinate to the Government is entitled to submit an application for revision to the authority next in rank above by which his appeal has been rejected within the period of three months from the date rejection of appeal. On such an application the power of revision may be exercised only when in consequent of flagrant irregularity, there appears to have been material injustice or miscarriage of justice.

.....

.....

(2)

[Emphasis supplied]

11. In this context, it will be apt to reproduce order dated 24.12.2021 passed by Hon'ble High Court in WPSS No. 1451 of 2021, hereinbelow for convenience:

“As would be apparent from the scrutinization of the impugned orders, which are challenged by the petitioner in the present writ petition.

The order of punishment has been imposed upon the petitioner by the respondents authority, while exercising their powers under Uttar Pradesh Police Officers and Subordinate Rank, Rules, 1991, which has been made applicable, even after the enforcement of the Uttarakhand Police Act, 2007.

As a consequence of the set of allegations of misconduct levelled against the petitioner, by virtue of the impugned order, which has been passed while exercising the powers under Section 23 (1) (d) of the Uttarakhand Police Act, 2007, the petitioner was placed under the lowest in the cadre for a period of one year. As against the principal order of punishment passed by the Deputy Inspector General of Police, on 20.02.2021, the petitioner preferred an appeal under the Rules of 1991, which too has been dismissed.

Under the Rules of 1991, if any person is aggrieved by an appellate order, imposing the punishment for the misconduct, provided under the Rules, a provision of revision has been contemplated under Rule 23 of the Rules.

Hence, this writ petition is dismissed with the liberty left open for the petitioner to approach before the next superior authority, to the appellate authority to file a revision under Rule 23 of the Rules of 1991.”

[Emphasis Supplied]

12. The petitioner has statutory remedy to file revision under Rule 23 of the Rules of 1991, which opportunity cannot be denied to him by the Tribunal, inasmuch as, to file revision is his entitlement.

13. The claim petition thus stands disposed of, at the admission stage, with the consent of learned Counsel for the parties, leaving it open to the petitioner to file statutory revision under Rule 23 of the Rules of 1991, as prayed for by him. Delay in filing the same is condoned in the interest of justice. If statutory revision is filed by the petitioner within reasonable time, the same may be entertained and decided by the competent authority, without

unreasonable delay, as per law, preferably within 16 weeks of presentation of certified copy of this order along with memo of revision. No order as to costs.

14. Rival contentions are left open.

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

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 23rd December, 2024
DEHRADUN
RS