

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

Present: Hon'ble Mr. Ram Singh
----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube
-----Member (A)

Claim Petition No. 16/N.B./D.B./2015

Const.-10, C.P. Ganesh Singh (Dismissed) S/o Shri Jaswant Singh R/o Village Baghouri, P.O. Sitarganj, District Udham Singh Nagar.

.....Petitioner

Versus.

1. State of Uttarakhand through Secretary Home, Civil Secretariat, Dehradun.
2. Director General of Police, P.H.Q. Police Head Quarter, Dehradun..
3. Deputy Inspector General of Police, Kumaoun Region, Nainital.
4. Senior Superintendent of Police, Pithoragarh.

.....Respondents.

Present: Sri Bhupendra Koranga, Ld. Counsel
for the petitioner

Sri V.P.Devrani, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: AUGUST 10, 2016

(Hon'ble Mr. Ram Singh, Vice Chairman (J))

1. Feeling aggrieved by the dismissal order dated 04.01.2013 (Annexure-A-1) passed by the S.P., Pithoragarh, its affirmative order dated 27.06.2014 passed by the appellate authority (Annexure-A-2) and order dated 17.12.2014 passed by the Revisional authority (Annexure-A-3), the petitioner has filed this petition before the Tribunal.

2. The gist of the matter as born out from the pleadings is that the petitioner joined the services as Constable in the Police Department on 23.01.1996 and since then he worked at several places. While posted at Police Line, Pithoragarh, he absented from duty from 26.10.2011 to 01.02.2012 (for 99 days) without any information to the department. Notice dated 14.12.2011 (Annexure R-6 to the C.A.) was also served upon the petitioner on 19.12.2011 through S.S.P. Udham Singh Nagar asking him to join his duty otherwise to face disciplinary proceedings, but he did not turn up till 1.2.2012.

3. After reporting for a day, he again absented from duty w.e.f. 3.2.2012 to 6.10.2012 (for 247 days) without moving any application for leave or leaving any information for the department and remain absent from 9.10.2012 till his termination on 4.1.2013. The appointing authority entrusted the preliminary enquiry to Dy.S.P., Didihat, whose office issued a registered notice dated 24.05.2012 (Annexure R-1 to C.A.), informing the petitioner to put his case before the enquiry officer. In spite of the service of notice, the petitioner never participated in the inquiry, consequently, preliminary inquiry report dated (18.08.2012, Annexure- R/I) was submitted. Thereafter, final inquiry was entrusted to Dy. S.P., Pithoragarh. Copy of the charge sheet dated 01.09.2012 was personally served upon the petitioner on 7.9.2012 through special messenger. The inquiry officer also served personal notices on 25.9.2012 & 31.10.2012 (Annexure Nos. R- 3/II, R-3/III) upon the petitioner. The petitioner was given full opportunity to participate in the inquiry but neither he informed to the department or to the inquiry officer about his illness nor participated in the inquiry and final inquiry report (Annexure- R-4) was submitted on 6.11.2012. Thereafter the disciplinary authority personally served the show cause notice dated 26.11.2012 upon the petitioner along with the inquiry report on 10.12.2012, but the petitioner abstained without making any representation or any prayer before the disciplinary authority. Consequently, final order dated 4.1.2013 was passed terminating the petitioner from services.

4. Facts reveals that after dismissal from the services, petitioner submitted an application on 15.01.2014 (Annexure-A-5) before D.I.G., Kumaun Range, Nainital to restore him into service which was decided by the Deputy Superintendent of Police, Pithoragarh vide letter dated 20.02.2014 (Annexure-A-6), informing the petitioner that he has already been removed from the services, hence he cannot be permitted to join the Police Force now.

5. The petitioner filed a departmental appeal before the D.I.G., Kumaun Range, Nainital on 16.4.2014 (Annexure-A-7), which was decided vide order dated 27.6.2014 (Annexure-A-2) resulting in its dismissal. A revision contained in (Annexure- A-8 dated 9.9.2014 was also moved to the D.G.P., which was decided by the Additional Director, General Administration vide order dated 17.12.2014 and the revision was dismissed, maintaining the order of dismissal. Hence this petition.

6. Petitioner has challenged all these orders on the ground that he was not given opportunity to participate in the disciplinary proceedings; ex-parte inquiry was conducted against him behind his back; copy of show cause notice was not served on the petitioner and the dismissal order was passed without following the principle of natural justice; the petitioner could not join his duties because of his illness and the facts of illness were within the knowledge of departmental authorities. Annexing the medical certificate at the stage of appeal (Annexure-A-4, Pg Nos. 25 to 45, starting from 28.10.2012 to 12.01.2014), the petitioner requested to the appellate authority to grant him medical leave, but of no avail.

7. On 1.2.2012 the petitioner appeared to join his duties and according to him, again he fell ill and could not join his duties; thereafter, he appeared to resume his duties on 06.10.2012 after 247 days, but he was not permitted to join his duties; the departmental appeal was dismissed on technical ground without application of mind; no

statements of witnesses were recorded in his presence and appeal was dismissed on technical ground of delay; entire proceeding is violative of provisions of Article 311 (2) of the Constitution of India. Hence prayer to set aside the dismissal order dated 4.1.2013, its affirmative order dated 27.6.2013 and revisional order dated 17.12.2014 has been made with the request to reinstate him into service with all consequential benefits.

8. Resisting the claim of the petitioner, department filed their Counter Affidavit along with all the relevant papers and submitted that due opportunity was given to the petitioner and he was personally served on all the occasions; the petitioner being an officer/official of disciplined force, cannot remain absent from Police duty for such a long period without information to the department; no leave application or medical certificate was submitted by the petitioner during his service period; the petitioner did not participate in the inquiry, whereas notices were personally served upon him on every stage; proper procedure was followed and after final inquiry, a show cause notice along with the inquiry report was also personally served upon the petitioner but he remained absent. Thereafter, the disciplinary authority passed the dismissal order which is correct on facts and law and the petition deserves to be dismissed.

9. On the careful scrutiny of the entire material on record and after hearing both the parties, we are not inclined to interfere in the impugned orders passed by the disciplinary authority, appellate authority and revisional authority because of the reasons mentioned below:-

(i) The petitioner has taken the ground that he had informed the department and requested for leave along with the medical certificates, but he was not granted leave and was also not permitted to join the duty. This contention is against the facts because after absents from duties, starting from 26.10.2011 to 01.02.2012(99 days) in first instance, he neither informed the department nor moved

any leave application. The disciplinary authority issued him notice dated 14.12.2011 (Annexure-R-6) to join the duties or face consequences. This notice was personally served upon the petitioner on 19.12.2011 through S.S.P. Udham Singh Nagar. Petitioner appeared for duties just for a day on 01.02.2012 and then again became absent from 03.02.2012 continuously for 247 days till 06.10.2012 without any information or leave application moved to the department. The record shows that again without any leave application, he remained continuously absent from duties, his order for dismissal from service dated 04.01.2013 was passed. He remained absent till 15.01.2014 when he first moved an application (Annexure-A-5), to the D.I.G., Nainital to reinstate him into service. This application was decided by the Deputy Superintendent of Police, Pithoragarh vide letter dated 20.02.2014 (Annexure-A-6), informing the petitioner that it is not possible to permit the petitioner to join the duties in view of the dismissal order dated 04.01.2013. Thereafter, the petitioner filed an appeal on 16.4.2014 (Annexure- A-7) before the D.I.G, Kumaun, Nainital which was dismissed on 27.06.2014 (Annexure-A-2). The petitioner first time filed some medical certificates on 16.04.2014 along with his appeal and asked for medical leave. Hence, record reveals that petitioner neither informed the department regarding his illness and absence nor moved any application for leave with medical certificate before the appointing authority till the date, dismissal order was passed and submitted such leave on the date of filing the appeal. Therefore, the contention of the petitioner cannot be accepted.

(ii) The petitioner has also raised the issue that the leave was not granted to him even if he has submitted the leave application alongwith the medical certificates. This argument is not accepted because medical certificates were never submitted by the petitioner along with the leave application during his service period. 21 medical certificates with effect from 28.10.2012 to 12.11.2014

(Annexure-A-4, Pg. 25 to 45) were filed by the petitioner which are not duly countersigned by the C.M.O., which cannot be accepted and these certificates appear to have been prepared at one stretch by Medical Officer, S.A.D. Toli-Jingoli, District Almora. Furthermore, these medical certificates were submitted only in appeal after more than one year of his dismissal from service. Furthermore they do not relate to the relevant period of absence which was w.e.f. 26.10.2011 to 01.02.2012 and 3.2.2012 to 6.10.2012 and till his removal respectively. This plea of the petitioner cannot be accepted that he was illegally denied medical leave facility. Had the leave application along with medical certificate been submitted before the appointing authority or the disciplinary authority during his tenure in service, the order could have been passed accordingly. The record reveals that the petitioner was informed by the disciplinary authority not only once but periodically; by S.P., Pithoragarh, by Dy. S.P., Didihat, (the preliminary inquiry officer), by Dy.S.P., Pithoragarh, (the inquiry officer) also served the copy of charge sheet and finally S.P., Pithoragarh served him personally with a show cause notice along with the final inquiry report. Hence, he was having every opportunity to file leave application along with medical certificates during his service tenure which he did not do. All the medical certificates filed in appeal, are an afterthought, hence this contention cannot be accepted.

(iii) The petitioner has also challenged his dismissal order on the ground that he was not afforded the opportunity of hearing and all the inquiry proceedings were held behind his back and provisions of Article 311 of the Constitution of India and principles of natural justice were not followed. We are not inclined to accept this contention of the petitioner because of the reasons;

- (a.) that the petitioner was afforded opportunity to join his duties vide notice dated 14.12.2011, (Annexure-R-6);

- (b.) he was informed by the preliminary inquiry officer about the preliminary inquiry vide notice dated 24.5.2012, (Annexure-R-1);
- (c.) after preliminary inquiry report dated 18.08.2012, (Annexure-R-1/I), the final inquiry officer, Dy.S.P., Pithoragarh served the charge sheet, (Annexure-R-2) upon the petitioner through S.S.P., Udham Singh Nagar which was personally received by the petitioner on 07.09.2012;
- (d.) the inquiry officer also informed the petitioner through notices dated 25.09.2012, (Annexure-R-3/II), received by the petitioner on 28.09.2012 and again vide another notice dated 31.10.2012, (Annexure-R-3/III) received by the petitioner on 02.11.2012; and
- (e.) final inquiry report dated 06.11.2012, (Annexure-R-4) was again served by the disciplinary authority along with show cause notice dated 26.11.2012, (Annexure-R-5) upon the petitioner, service of which was personally completed on 10.12.2012.

10. In spite of repeated notices and opportunities afforded to the petitioner, the petitioner neither contacted his department nor any inquiry officer and he remained absent throughout knowingly and finally his dismissal order dated 4.1.2013 was passed. Hence, his plea that inquiry proceedings were conducted behind his back and without any notice to him, is totally wrong and against the record.

11. Respondents have opposed the claim petition on the ground that the petitioner being a member of disciplined force has not followed the departmental Police Regulations and remained absent from his duties for a long period without any information and indiscipline of any sort, cannot at all be tolerated in a disciplined force. He has also argued that petitioner has proved himself to be incorrigible and thereby unfit to continue in service. In our view, Police service is a disciplined force and it requires strict discipline. Laxity in this behalf erodes discipline in

the service causing serious affects in maintaining the law and order, hence he was correctly punished after following the principle of natural justice.

12. Ld. Counsel for the petitioner has pleaded that even if the petitioner can be held guilty of absence from duty but punishment of dismissal is very harsh because it deprives him from all the retiral benefits and in support of his contention he has cited the judgment of Hon'ble Apex Court in Rajindra Kumar Vs. State of Haryana and another 2015(7)Supreme 193 and has prayed that the appellate authority should consider whether the dismissal was the only option and following the principle of natural justice the punishment of dismissal should be modified to compulsory retirement. Ld. A.P.O. has submitted that the fact of the case cited by the petitioner are totally different from the case in hand. The aforesaid case was decided in view of the peculiar circumstances of the case before the Hon'ble Court.

13. After going through the facts of the referred case and facts of the present case, we are of the view that facts of the case in hand are totally different from the case referred above because in the case before the Hon'ble Apex Court, the absence was for a short period for about 30 days and furthermore the petitioner of that case submitted medical certificate during his service period and he was found an acute patient of tuberculosis and the department itself found him unfit for service due to illness. Whereas in the case in hand, the petitioner has never submitted any such medical documents. Neither he moved any application regarding his suffering of any disease and his entitlement of leave. Further his absence in this case is not of days, even not of months but of about a year. He continuously absented himself for 99 days and 247 days and later till his removal and in spite of notices served personally upon him on different dates, he did not inform the department about his illness. His medical certificates are also not countersigned by the C.M.O. and are not trustworthy and those appear to have been prepared afterthought. Therefore, we are of the view that the facts of the referred

case are totally different from the present case and citation is of no help to him.

14. Ld. A.P.O. has tried to justify the stand of disciplinary authority by referring the judgment of Hon'ble Apex Court passed in State of U.P. & others Vs. Madhav Prasad Sharma decided on 11.01.2011 wherein the order of dismissal of the Police Personnel for absence from duty was found justified.

15. The contention of the petitioner regarding decision in appeal and revision also cannot be accepted. We are of the view that appeal was rightly decided and the revisional authority has considered all the facts and circumstances and rightly recorded this fact that the Police personnel like petitioner, who appears to be incorrigible, need dismissal from service, hence impugned dismissal order is correct. Finding no ground for interference, the petition fails and is, accordingly liable to be dismissed.

ORDER

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

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: AUGUST 10, 2016
NAINITAL

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