

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. 23/N.B./D.B./2014

Gaurav Mian (Ex-Constable 391) S/o Shri Rajendra Singh Mian, Village Srinagar
Road Pauri, P.O. Pauri, Distt. Pauri Garhwal, Uttarakhand.

.....Petitioner

Versus

1. State of Uttarakhand through its Secretary Home.
2. Director General of Police, Uttarakhand, Subhash Road, Dehradun..
3. Police Deputy Director General P.A.C., Uttarakhand, Dehradun.
4. Commandant 31st P.A.C. (Constabulary) Rudrapur, Udham Singh Nagar,
Uttarakhand.

.....Respondents.

Present: Sri Sandeep Tiwari, 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. The petitioner has challenged the dismissal order dated 31.10.2011 (Annexure-A-1) passed by the Commandant, 31st Battalion, Provincial Armed Constabulary, Rudrapur, Udham Singh Nagar, Uttarakhand resulting into the dismissal of the petitioner from service and non-payment of subsistence allowance of the suspension

period, along with subsequent appeal rejection order dated 7.4.2013 (Annexure-A-2) passed by the D.I.G., Provincial Armed Constabulary, Uttarakhand.

2. As per the record, facts reveal that the petitioner was appointed as Constable in 31st Battalion, P.A.C., Rudrapur, Udham Singh Nagar, Uttarakhand on 10.04.2006 and after found medically fit, he was permitted to enter into the service. As per the petitioner's contention because of the stress and constraints of the service, he became mentally ill. On 14.09.2009 he proceeded for six days' casual leave commencing w.e.f. 14.09.2009 to 19.09.2009, to his native place, District Pauri. The petitioner was expected to join his duties on 20.09.2009, which he could not do because of his mental illness and he remained absent from his duties. The disciplinary authority suspended him on 11.01.2010 and preliminary inquiry was initiated. Petitioner participated in the preliminary inquiry and his statement was recorded but at no point of time in between, he moved any leave application to his appointing authority or the inquiry officer. Preliminary inquiry report dated 9.8.2010 (Annexure-A-3) was submitted by the preliminary inquiry officer. The original record of inquiry, submitted by the department before the Court, also reveals that notices to the petitioner were also issued on 6.10.2009, 15.11.2009 and 19.12.2009 to join his duties. After preliminary inquiry officer's report, further notice dated 18.08.2010 was also personally served upon the petitioner. After preliminary inquiry, charge sheet dated 31.08.2010 (Annexure-A-4) was also served by the final inquiry officer through special messenger on 01.09.2010 by which 16.09.2010 was fixed as date of hearing. Record further reveals that before the appointed date of hearing, petitioner appeared before the inquiry officer on 6.9.2010 and moved an application accepting his guilt of absence from duty and requested

for lighter punishment and his statement was recorded by the inquiry officer. Enquiry officer further recorded his statement on 7.10.2010, wherein he stated that he is going under treatment by Sharma Nursing Home, Dilshad Garden, Delhi but no medical certificate was submitted in this regard, consequently, final inquiry report dated 30.09.2011 (Annexure-A-6) was submitted by the inquiry officer to the appointing authority. The appointing authority served a show cause notice dated 4.10.2011 (Annexure-A-5) upon the petitioner along with final inquiry report, but the petitioner neither appeared before the authority nor submitted any proof of his illness or any other sufficient ground of his absence. Consequently, the order dated 30.10.2011 was passed by the Commandant, 31st Battalion, P.A.C. dismissing the petitioner from service along with the order not to pay any salary and allowance from 20.09.2009 to 10.01.2010 on the principle of "No work no pay", and the petitioner has never reported his attendance at the place of attachment during his suspension period and as such the petitioner was found guilty of unauthorized absence from duty for 352 days. The petitioner has contended that without any sufficient reason, the impugned punishment was passed and departmental appeal was wrongly dismissed, hence this petition.

3. The petitioner has challenged these orders on the ground;
 - i. That the impugned order dated 31.10.2011 has been passed in gross violation of legal provisions. The suspension, only to conduct an inquiry, is not permissible under law and the petitioner was never directed to produce any medical certificate and all the authorities remained convinced with the fact of his mental illness. The petitioner was never informed by

the appointing authority about the appointment of any person to inquire into the matter.

- ii. The charge sheet was constituted de hors the rules by the inquiry officer who was not authorized to do so nor the charge sheet has ever been approved by the appointing authority/ disciplinary authority. The charge sheet was never served upon the petitioner in the prescribed manner.
- iii. Period of suspension has wrongly been treated as absence from duty.
- iv. Furthermore, he was never charged with the charge of so called unauthorized absence but he has been punished for the same. The inquiry officer has acted with predetermined mind by considering extraneous matter which was not part of the charge sheet and the past conduct of the petitioner was considered and conclusion was drawn on fresh charges which were not initially part of the charge sheet. The inquiry officer has acted beyond his jurisdiction by electing and proposing the punishment.
- v. Incomplete findings of the inquiry officer along with the show cause notice was supplied to the petitioner, therefore the order of dismissal has been passed in gross violation of principle of natural justice and against the Police Regulation and disciplinary rules.
- vi. The disciplinary authority ignored to know the actual reason of absence and not reporting on duty after six days, whereas the authorities were responsible for the welfare of Constables and he should have been medically examined periodically, but the authorities

never got him admitted in the proper hospital for the treatment.

- vii. The appellate authority also did not consider the fact of illness and other issues raised in the appeal and medical certificate attached with the appeal. In the order of appellate authority there is no discussion of medical certificate and mental illness of the petitioner and the appellate authority has not considered the appeal in its proper perspective and rejected it mechanically. Furthermore, the disciplinary authority/ appellate authority failed to assess the nature of misconduct, if any, committed because of the mental illness of the petitioner. The appellant was charged for not reporting on duties only and for nothing more, therefore, the punishment of dismissal from service is very harsh. With these contentions reversal of said orders have been prayed.

4. Respondents have resisted the claim of the petitioner on the ground that the petitioner being a Police personnel, was required to follow the departmental rules and to submit the medical leave application in his tenure, if he was feeling any illness. At no point of time he was forced to do any such duty which could cause him any mental stress. After joining services in April, 2006, he was removed from service just within five and half years' period on 31.10.2011 and during this period no symptom of mental illness were pointed out either by the petitioner nor it was noticed by the appointing authority. Starting from his service, he was negligent and very casual towards his duties. Almost in every year of his service, he was facing some sort of punishment on account of his indiscipline. The petitioner never informed his departmental officers about any kind of mental stress or illness. Medical examination of every Police

personnel was conducted as per the Police Regulation and those Police personnel were afforded medical help who were in its requirement. The petitioner never reported such illness and he remained absent knowingly. After absence from his duties, he never informed the department about his illness or about his whereabouts and nor any medical certificate was submitted during the period of his service.

5. Ld. A.P.O. has also resisted the petition on the ground that the inquiry officer is enabled to conduct the inquiry as per the provisions of Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. Moreover, so called medical certificates which were filed by the petitioner in appeal after dismissal from service, were not of relevant period neither properly signed by the C.M.O. nor by any Government hospital and those certificates further reveal that the petitioner was suffering only by casual disease of fever. Had he communicated about any mental illness, he could have been taken for medical treatment at Police or Government Hospital during his service period but the petitioner later on got himself examined after termination from service. Every opportunity to participate in the proceedings were given to him. He himself accepted his guilt. He, even participated in the preliminary inquiry but after final inquiry and service of show cause notice, he did not turn up and termination order passed by the disciplinary authority was the only alternative available. In spite of all the opportunity to file medical certificate, none was filed before the conclusion of the disciplinary proceedings. Respondents have stated that the petition deserves to be dismissed.

6. After hearing Ld. Counsel for both the parties and perusal of the entire documents on record, we are not inclined to accept the prayer of the petitioner for the following reasons:-

- i. It is an admitted fact that the petitioner after his appointment on 10.04.2006 was not having a clear service record and almost every year he was being punished for some fault often. After taking leave for 6 days on 14.09.2009, he was required to join his duties on 20.09.2009 and as per the Police Regulation and Government Servant Conduct Rules it was very well in his knowledge that if he was unable to do his duties, he was supposed to inform his appointing authority about his leave or medical leave whatever he was proceeding on and to submit the proper medical certificate issued either from the Government Hospital or from any private doctor duly signed by the C.M.O., but the petitioner neither informed the department about any ground of his absence or illness nor moved an application for any kind of leave. The appointing authority sent letters to him to join his duties on 6.10.2009, 15.11.2009 and 19.11.2009, but he never responded. When preliminary inquiry officer was appointed, petitioner participated in that inquiry on 5.8.2010 and got his statement recorded. Although he narrated about his illness when he came along with his father, but no such medical certificate and or any proof of his illness was submitted. He never contacted his appointing authority to seek any kind of leave. After submission of preliminary inquiry report, further notice dated 18.8.2010 was also sent, which was personally served upon the petitioner. After start of final inquiry, charge sheet was prepared and sent for service on 01.09.2010 through messenger in which 16.9.2010 was fixed

as date of hearing. The original record of inquiry filed by the department reveals that before the appointed day of hearing, the petitioner appeared on 6.9.2010 before the inquiry officer and moved an application admitting his guilt of absence from duties with the request for a lighter punishment. His statement was also recorded by the inquiry officer on 7.10.2010 and in his statement when the plea of mental illness was verbally raised, inquiry officer specifically asked him about his illness and the way of his treatment; then the petitioner submitted that he is getting treatment in Sharma Nursing Home, Dilshad Garden, Delhi and he can submit the papers of his treatment which were never filed. This is a totally different statement from the story of the petitioner in his petition because the petitioner nowhere in his petition has pleaded or argued that he ever took treatment in Delhi but he has come up with the stand that he was taking treatment in Government Medical College, Sri Nagar, Pauri Garhwal near his village. Before inquiry officer, the petitioner did not file even a single paper of his illness nor any kind of application about his leave. The inquiry officer during the period of inquiry again served a notice dated 15.07.2011 upon the petitioner stating the fact that the statement of departmental witnesses have been recorded on 4.5.2011, 18.5.2011, 24.5.2011 and 13.7.2011 but the petitioner did not appear in spite of notice to cross-examine the witnesses. It was clearly written in the notice that after departmental evidence, the inquiry has been fixed for proceeding the case of defence i.e. the petitioner and he was required to file his defence on 31.7.2011, failing which it will be presumed that he has to say nothing and the inquiry will be finalized. The notice was served upon the

petitioner through S.P., Pauri Garhwal and the original record clearly reveals that copy of this notice was also personally served upon the petitioner on 23.7.2011 and this was sufficient opportunity afforded to the petitioner to file the proof of his mental illness. If he had any such certificate, he could have filed the same, but he did not do so, therefore, the medical certificates which he has filed at the stage of appeal after dismissal, appear to have been prepared later on and is an afterthought. Hence, the contention of the petitioner cannot be accepted at all that he was not given proper opportunity to put his case in the inquiry rather it is proved from the record that petitioner knowingly remained absent without any cause or without any illness. He was afforded full opportunity of hearing which he did not avail.

- ii. The petitioner has also raised a plea in his petition that the appellate authority did not consider his medical certificate and medical leave, to which he was entitled, was not granted to him. After going through the order of appellate authority, it is abundantly clear that he has considered all the medical certificates and recorded the finding that medical certificates filed by the petitioner for the period of his absence for which he was charged, were not of any mental illness but those were of simple disease of fever. We agree with the arguments of respondents because the medical certificate issued by Doctor S.S. Rana, B.H.M.S., a private practitioner (Annexure-A-7), relates to the period 20.09.2009 to 4.8.2010 (319 days), clearly shows that the petitioner was simply suffering from fever, it does not show any sign of mental illness. In another certificate w.e.f. 6.8.2010 to 6.9.2010 also petitioner was suffering from

fever. There is no such medical certificate for the period of his absence in his service period which could show that the petitioner was suffering from any mental disease. These certificates of private doctor are not countersigned by C.M.O.. Had these certificates were issued by such doctor for the date they have been shown, nothing could be there to prevent the petitioner to file it before the inquiry officer or the appointing authority and failing to do so, proves that those certificates were prepared at later point of time just to justify the petitioner's unsuccessful cause. These certificates cannot be accepted as per the Government Servant Service Rules and but even if accepted, it does not prove any kind of mental illness. Petitioner has also argued that he got treatment in H.N.B. Base Teaching Hospital, Srinagar, Pauri Garhwal where he was found suffering from Schizophrenia a mental disease but these certificates pertain to a period from 9.5.2012 to 6.10.2013 whereas the petitioner was already removed from service on 30.10.2011. After 7 months from his dismissal from service, this disease was for the first time detected; therefore, these certificates are of no help to the petitioner. In this case the absence from duty was 20.9.2009 to 06.09.2010 whereas this disease was for the first time detected in the year 2012, seven months after termination of his services. Hence, the stand of the petitioner, that he was prevented from joining his duties because of his mental illness, is totally false. We are not inclined to accept the contention of the petitioner that the charge sheet was not certified by the authorized person. In relation to the Constables or Junior Police personnel, under Punishment & Appeal Rules, 1991, the inquiry officer is authorized to issue the charge sheet and the Uttarakhand

Government Servant (Discipline & Appeal) Rule, 2003 applies to the Civil Servants. This contention of the petitioner finds no force that he was not issued any notice of inquiry because, on the facts the notice of preliminary inquiry was not only served but he also participated in the preliminary inquiry. After the charge sheet was served, petitioner himself appeared before the inquiry officer prior to appointed day and stated his stand and after final inquiry, show cause notice along with final inquiry report was also served upon the petitioner personally. Hence, all the principles of natural justice were followed with proper procedure.

- iii. The petitioner has also challenged the dismissal order on the ground that he was punished for the charges which were not the part of the charge sheet and his previous conduct was not mentioned in the charge sheet but those were taken into consideration while awarding the punishment. He also raised the plea that the final inquiry officer has exceeded his authority in suggesting the punishment and taken into consideration the past conduct of the petitioner. The submission of Ld. A.P.O. is that for this purpose the disciplinary authority, who has passed the punishment after show cause notice, has not considered nor even touched the past conduct of the petitioner while passing the final order. Be that as it may, the final inquiry officer has taken into consideration the previous conduct of the petitioner and finding the petitioner incorrigible and looking into the indisciplined and casual behavior of the petitioner regarding his duties, he suggested for the punishment of removal from service but while passing the order of punishment dated 31.10.2011, the Commandant,

31st Battalion P.A.S., who is the appointing authority, has never taken into consideration the past conduct of the petitioner. The order of dismissal is very much clear. It prescribes that the petitioner was charged for his absence from duty for 352 days and being negligent towards his duties and he was given full opportunity during inquiry and after inquiry, the show cause notice was also served upon him but the petitioner did not appear and took any defence and finally reaching to the conclusion that he has to say nothing in this respect, the disciplinary authority recorded his finding that Constable, Gaurav Mian remained illegally absent for 352 days from his duties and such conduct of a Police personnel can also adversely affect other Police personnel and as such the employee deserves to be separated from the service and following this principle, the dismissal order was passed.

- iv. Looking into the fact that during the period of suspension he never recorded his presence at the place of his attachment, no subsistence allowance was paid to the petitioner on the principle of "No work no pay". Although the inquiry officer had taken his previous conduct into consideration but the disciplinary authority has not taken any such circumstance into consideration while passing the final order of punishment, hence, the plea raised by the petitioner cannot be accepted.
- v. The petitioner himself did not follow the Police Regulation 380,382 and 383 by which he was required to move a leave application along with medical certificate, which he did not do, the petitioner cannot claim that he should have been granted the leave on the basis of application and certificate

submitted in appeal seven months after his dismissal from service.

- vi. The petitioner has also argued that the departmental authorities were duty bound to look after welfare of the Constables and he was required to get medically examined periodically, but the authorities never got him admitted in the proper hospital for the treatment. Respondents have denied this fact that they have failed in their duty and have alleged that medical examination of every Police personnel was conducted as per the Police Regulation and those Police personnel were afforded medical help who were in its requirement. But the petitioner never complained about his mental illness to his Disciplinary/Appointing Authority. Hence, in view of the above, we are of the opinion that petitioner cannot say that the department should be held to be negligent to its duties and his so called fictitious disease must have been noticed by the departmental authorities at their own.
- vii. Petitioner has also argued that punishment of dismissal is very harsh, we are of the view that petitioner was admitted in Police service in the year 2006. He has never qualified and completed his minimum satisfactory service for retiral benefits and even within first 5 to 6 years of his services he could not prove himself to be a disciplined Police personnel. Hence, a long absence of 352 days without any information or any leave from a Police force cannot be taken easily. Discipline is the ornament of the Police personnel and as such indiscipline and long absence like this is not excusable. The disciplinary authority, appellate authority and inquiry officer have given every opportunity to the petitioner to present his case and at the level of the disciplinary

authority, the petitioner had an opportunity to move his leave application but he did not do so till his termination from service.

7. Finding no procedural and legal fault in the proceedings, the petition, being devoid of merit, calls for no intervention and deserves 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

VM