

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 02/ DB/2016**

Kavindra Malik S/o Sri Yashpal Singh R/o Gram and Post Lauk, Thana Shamli, District Shamli, (U.P.).

.....Petitioner

**Versus**

1. Government of Uttarakhand through its Secretary, (Home) State of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. D.G.P., Uttarakhand Police Headquarters, Dehradun.
3. Inspector General of Police, Garhwal Zone, Uttarakhand, Dehradun.
4. Deputy Inspector General of Police, Garhwal Zone, Uttarakhand, Dehradun.
5. Sr. Superintendent of Police, District Haridwar (Uttarakhand).

.....Respondents.

Present: Sri R.K.Tyagi, Ld. Counsel  
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.,  
for the respondents.

**JUDGMENT**

**DATED: NOVEMBER 18, 2016**

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

1. The claim petition has been filed by the petitioner for seeking following relief:-

“(A) यह कि श्रीमान वरिष्ठ पुलिस अधीक्षक महोदय हरिद्वार के द्वारा पारित आलोच्य दंडादेश दिनांक 24.05.2006 को निरस्त किया जावे तथा पुलिस उप

महानिरीक्षक, गढ़वाल परिक्षेत्र, उत्तराखण्ड द्वारा पारित आदेश दिनांकित 28.02.2014 व पुलिस महानिरीक्षक, गढ़वाल परिक्षेत्र, उत्तराखण्ड द्वारा पारित आदेश दिनांकित 20.07.2015 को निरस्त किया जावे ।

(B) यह कि पैटीशनर को पुनः सेवा में बहाल किया जावे ।

(C) यह कि पैटीशनर को निलंबन अवधि से बहाली तक का वेतन नियोजक से दिलाया जावे ।

2. The petitioner was a Constable in Uttarakhand Police. Because of unauthorized absence from his duties, he was suspended by the Senior Superintendent of Police (S.S.P.), Haridwar on 26.07.2005.
3. Respondents decided to initiate departmental inquiry against the petitioner for major penalty under the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment And Appeal ) Rules, 1991 (hereinafter these rules have been referred to as Rules of 1991).
4. A charge sheet was issued to the petitioner on 19.9.2005, which was duly served upon him. The charge sheet contained only one charge i.e. unauthorized absence of the petitioner continuously from 23.07.2005.
5. In spite of service to the petitioner, he did not reply to the charge sheet. The petitioner had also not sought any further time for replying the charge sheet. Superintendent of Police (City), Haridwar was appointed the inquiry officer.
6. The inquiry officer started conducting the inquiry and fixed 28.11.2005 as the first date to record the evidences. The petitioner was also informed to be present on this date and the letter regarding this was duly served upon him. The petitioner did not present himself on the date of inquiry and the inquiry officer recorded the evidences of some prosecution witnesses on 28.11.2005. The inquiry officer fixed 19.12.2005 as the second date and the petitioner participated in the inquiry on this date. The inquiry officer recorded evidences of some other prosecution witnesses on this date. The petitioner did not cross-examine any witness. For recording evidences of remaining prosecution witnesses, the inquiry officer fixed 04.01.2006 but petitioner did not attend the inquiry proceedings though he was duly served upon the letter to participate in the inquiry . On 04.01.2006, the inquiry officer completed the evidences of prosecution witnesses.

7. After completing the prosecution evidence, for presenting the case of the petitioner, he was asked to be present on 21.01.2006 but the petitioner failed to present himself on this date. The inquiry officer provided one more opportunity to the petitioner to present his case on 10.02.2006 but instead of participating in the inquiry on this date, the petitioner submitted a letter to the inquiry officer. In this letter, the petitioner stated that due to his illness, he remained absent from duty from 23.07.2005 and requested for a sympathetic consideration to drop the inquiry against him.
8. After conducting the inquiry, the inquiry officer submitted his inquiry report on 25.03.2006. On the charge of unauthorized absence, the inquiry officer after considering evidences and the record, reached the conclusion that the charge of unauthorized absence from 23.07.2005 is proved against the petitioner.
9. The petitioner was given a show cause notice dated 08.05.2006 by the S.S.P., Haridwar (Disciplinary Authority). The copy of the report of the inquiry officer was enclosed with this notice. The petitioner replied to the show cause notice on 19.05.2006. The S.S.P., Haridwar considered the reply of the petitioner and found it unsatisfactory. Vide order dated 24.05.2006, the S.S.P., Haridwar passed an order to dismiss the services of the petitioner. The punishment order of the disciplinary authority dated 24.05.2006 is reproduced below:-

“आदेश

कान्स0 29 स0पु0 कविन्द्र मलिक (निलम्बित) के विरुद्ध दिनांक 23-07-2005 को जी0डी0 नं0 13 समय 09.30 बजे पुलिस लाईन से सदर हवालात ड्यूटी हेतु रवाना होकर ड्यूटी पर न पहुंच कर अनाधिकृत रूप से अनुपस्थित हो जाने के सम्बन्ध में उत्तरांचल अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली-1991 अनुकूलन एवं उपन्तरण आदेश - 2002 के नियम 14(1) के अन्तर्गत विभागीय कार्यवाही पीठासीन अधिकारी श्री जगताराम जोशी, पुलिस अधीक्षक, नगर द्वारा सम्पादित की जा रही थी, जिन्होंने विभागीय कार्यवाही उपरान्त आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक को

दिनांक 23-07-05 से दिनांक 06-09-05 तक      44 दिन

दिनांक 10-10-05 से दिनांक 14-10-05 तक      03 दिन

दिनांक 21-10-05 से दिनांक 22-10-05 तक	01 दिन
दिनांक 13-11-05 से दिनांक 20-11-05 तक	07 दिन
दिनांक 03-12-05 से दिनांक 05-12-05 तक	02 दिन
दिनांक 12-12-05 से दिनांक 28-12-05 तक	01 दिन
दिनांक 08-01-05 से दिनांक 12-01-06 तक	04 दिन
दिनांक 01-02-06 से दिनांक 03-02-06 तक	02 दिन

कुल 64 दिवस अनाधिकृत रूप से अनुपस्थित रहने का दोषी पाते हुए अपने निष्कर्ष दिनांकित 25-3-06 में दण्ड एवं अपील नियमावली -1991 के प्रस्तर 4(1) क (2) के अन्तर्गत पुलिस विभाग की सेवा से हटाय जाने व अनुपस्थित अवधि का कोई वेतन - भत्ता न दिये जाने की संस्तुति की थी। जिससे सहमत होते हुए मेरे द्वारा कारण बताओ नोटिस पी0एफ0 -11/05 दिनांक 6/8-5-06 मय पीठासीन अधिकारी द्वारा प्रदत्त निष्कर्ष दिनांकित 25-3-06 की प्रति आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक को इस आशय से दी गई थी कि वह इस कारण बताओ नोटिस की प्राप्ति के 07 दिवस की अवधि में अपना लिखित स्पष्टीकरण प्रस्तुत करें कि, " क्यों न उसे पुलिस विभाग की सेवा से पदच्युत (डिसमिस) कर दिया जाये तथा स्पष्ट किया गया था कि यदि निर्धारित अवधि में उसका स्पष्टीकरण प्राप्त नहीं होता है तो समझा जायेगा कि उसे इस सम्बन्ध में कुछ नहीं कहना और एक पक्षीय अग्रिम आदेश पारित कर दिये जायेंगे, प्रश्नगत कारण बताओ नोटिस पी0एफ0-11/05 दिनांकित 6/8-5-06 मय निष्कर्ष की प्रति आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक द्वारा दिनांक 13-5-05 को प्राप्त किया गया और अपना स्पष्टीकरण दिनांकित 19-05-06 प्रस्तुत किया गया ।

मेरे द्वारा आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक द्वारा प्रस्तुत स्पष्टीकरण व उपलब्ध अभिलेखों को भली भांति अवलोकन किया गया । कान्स 29 स0पु0 कविन्द्र मलिक ने अपने स्पष्टीकरण में अंकित किया है कि, "नोटिस में विदित है कि मैं बार-बार विभागीय कार्यवाही के मध्य अनुपस्थित रहा और पीठासीन अधिकारी द्वारा आरोप पत्र गृह पते पर प्राप्त करने के बाद भी मैंने कोई जवाब नहीं दिया और बार-बार सूचना होने पर भी साक्षियों के कथन अंकित हाने के समय पीठासीन अधिकारी के समक्ष उपस्थित नहीं रहा। उसके बारे में दिनांक 10-02-06 को दिये गये प्रार्थना पत्र में मैंने बयान दर्ज न कराने और विभागीय कार्यवाही के दौरान पीठासीन अधिकारी के समक्ष उपस्थित न होने का कारण अपने मानसिक सन्तुलन सही न होने को बताया तथा स्पष्ट किया था, मैं स्वयं भी इस बात से परेशान हूँ कि जैसे अभियोग मु0अ0सं0 41/06 धारा 393 भा0द0वि0 मेरे खिलाफ पंजीकृत हुआ है। उससे पुलिस की छवि धूमिल हुई है, परन्तु यह अभियोग पूर्ण रूप से सत्य नहीं है, वादी व मेरे बीच केवल झगडा हुआ था मैं अब भी मानसिक रूप से असन्तुलित और अर्द्धविक्षिप्त सा हूँ। अगर पुलिस विभाग को मेरे इस कथन में कोई सन्देह हो तो मेरी जांच किसी सरकारी / पुलिस विभाग के मानसिक रोग विशेषज्ञ

से करायी जा सकती है। मैं अब वर्तमान में देशी वैद्य से मानसिक रोग की दवाईयां ले रहा हूँ।

मेरे पास नौकरी के अलावा रोजी-रोटी का कोई साधन नहीं है, मैं व पत्नी और 02 बच्चे भूखमरी के कगार पर है। परिवार के अन्य व्यक्तियों व रिश्तेदारों के रहमोकरम पर मेरा परिवार जीवन निर्वाह कर रहा है। मैं अपने जवाब में स्पष्ट करता हूँ कि अनाधिकृत रूप से अनुपस्थित रहने तथा बार-बार सूचना मिलने पर भी विभागीय कार्यवाही में पीठासीन अधिकारी के समक्ष पेश न होने का कारण मेरा मानसिक सन्तुलन बिगड़ना है। मेरे तथा मेरे परिवार की दयनीय स्थिति को मध्यनजर रखते हुए मेरा इलाज किसी सरकारी/ पुलिस के मानसिक रोग विशेषज्ञ से कराने तथा मुझे पुलिस की सेवा में बहाल करने की कृपा करें।

आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक का उपरोक्त कथन निराधार है क्योंकि आरोपित पक्ष प्रारम्भिक जांच के मध्य बार-बार सूचना भेजने व दिनांक 26-8-05 को सूचित होने के उपरान्त भी प्रा0जांच के मध्य अपना कथन अंकित कराने हेतु उपस्थित नहीं हुए, न विभागीय कार्यवाही में आरोप पत्र गृह पते पर भेजने पर दिनांक 02-10-05 को प्राप्त करने के उपरान्त अपना कोई जवाब नहीं दिया न ही दिनांक 25-11-05 , 19-12-05 एवं 03-01-06 को सूचित होने के उपरान्त भी अभियोजन स्तर के साक्षियों के कथन अंकित होने के समय भी पीठासीन अधिकारी के समक्ष उपस्थित नहीं रहे तथा बचाव पक्ष के सम्बन्ध में दिनांक 24-01-06 को सूचित होने के उपरान्त अपना कोई बचाव पक्ष प्रस्तुत नहीं किया पीठासीन अधिकारी द्वारा बचाव पक्ष प्रस्तुत करने हेतु दिनांक 10-02-06 नियत करने पर आप द्वारा अपने को मानसिक रूप से परेशान होने के कारण बयान न देना बताया और गलती की माफी चाही, जिससे स्पष्ट है कि आरोपित पक्ष द्वारा विभागीय कार्यवाही में सहयोग नहीं दिया गया, न ही कभी विभागीय कार्यवाही के मध्य अपने को बीमार रहने के सम्बन्ध में सूचना दी गई न ही किसी अस्पताल में भर्ती रह कर अपना उपचार ही कराया और विभागीय कार्यवाही में भी पीठासीन अधिकारी द्वारा उपचार सम्बन्धी जो चिकित्सा प्रमाण-पत्र प्रस्तुत किये गये थे उनमें केवल दिनांक 05-09-05 , 02-01-06 व 02-02-06 को चिकित्सक द्वारा प्रदान की गई दवाईयों के पर्चे हैं, लेकिन आरोपित पक्ष द्वारा अनुपस्थित अवधि में कराये गये उपचार सम्बन्धी कोई अन्य प्रमाण-पत्र अथवा मेडिकल स्टोर से क्रय की गई किसी दवाई के पर्चे प्रस्तुत नहीं किये। जिससे आरोपित पक्ष का स्पष्टीकरण संतोषजनक नहीं है।

उपरोक्त के अतिरिक्त मेरे द्वारा आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक के सेवा अभिलेखों का भी भली प्रकार अवलोकन किया गया जिससे स्पष्ट है कि कान्स0 29 स0पु0 कविन्द्र मलिक दिनांक 19-11-1998 में पुलिस विभाग में भर्ती हुआ और अब तक की सेवा काल में इससे पहले भी 02 बार निलम्बित किया गया, वर्ष-2003 में शराब पीकर उत्पात मचाने पर एक परिनिन्दा लेखा दिया गया तथा 06 बार अनाधिकृत रूप से अनुपस्थित रहने पर अर्दलीरूम में दण्डित किया जा चुका, 03 बार कुल 20 दिवस बिना वेतन अवकाश स्वीकार हुआ, जिससे स्पष्ट है कि आरोपित

आरक्षी अनाधिकृत रूप से ड्यूटी से अनुपस्थित रहने का आदि है इसके अतिरिक्त पूर्व में भी आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक को विभागयी कार्यवाही के उपरान्त आदेश संख्या: नं- 18/04 दिनांक 09-06-04 को सेवा से पदच्युत किया जा चुका है जिसको अपर पुलिस महानिदेशक अप0/का0 व्यवस्था, पुलिस मुख्यालय, उत्तरांचल देहरादून के आदेश के अनुपालन में दिनांक 27-5-05 को पुनः सेवा में स्थापित किया गया था लेकिन इस आरोपित पक्ष कान्स0 के अपने कार्य आचरण में कोई सुधार नहीं हुआ। वर्तमान में भी इस कान्स0 के विरुद्ध कचहरी परिसर में खाना खाने के उपरान्त उसके पैसे न देने गालो-गलौच करने तथा गल्ले में रखे पैसे लूटने का प्रयास करने के सम्बन्ध में थाना रानीपुर पर मु0अ0सं0 41/06 धारा 393 भा0द0वि0 पंजीकृत हुआ था जो वर्तमान में न्यायालय में लम्बित है, जिससे स्पष्ट है कि आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक एक लापरवाह, अनुशासनहीन कर्मी है जिसे विभागोय नियमों की कोई परवाह नहीं है न भविष्य में सुधार की सम्भावना है। आरोपित पक्ष के इस प्रकार के कार्य/आचरण से विभाग के अन्य कर्मियों पर भी इस का कुप्रभाव पडता है।

अतः आरोपित पक्ष कान्स0 29 स0पु0 कविन्द्र मलिक का स्पष्टीकरण संतोषजनक न पाते हुए उत्तरांचल अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली-1991 अनुकूलन एवं उपान्तरण आदेश -2002 के नियम 14(1) के अन्तर्गत तत्कालिक प्रभाव (आदेश) से पुलिस विभाग की सेवा से पदच्युत किया जाता है। आदेश के दिनांक से आरोपित पक्ष कान्स 29 स0 पु0 कविन्द्र मलिक को कोई वेतन -भत्ता देय न रहेगा।

पत्रांक: पी0एफ0-11/05  
दिनांक: मई 24, 2006

(अभिनव कुमार)  
वरिष्ठ पुलिस अधीक्षक,  
हरिद्वार

10. The petitioner submitted an appeal against the punishment order to the D.I.G., Garhwal Division on 06.04.2013. It is very surprising to note that the petitioner submitted the appeal nearly after 7 years against the punishment order. Though there was inordinate delay in submitting the appeal, yet the appellate authority entertained the same and decided to consider it on merit. After due consideration, the appeal was rejected. The petitioner also filed revision to the I.G., Garhwal Region on 24.01.2015. The I.G., Garhwal Region disposed of this on 20.07.2015 by observing that there is no provision of revision under the Police Act, 2007 and therefore, the revision was not entertained.

11. The main grounds on the basis of which the petitioner has challenged the punishment order are that the inquiry was not conducted in proper manner and he was not given reasonable opportunity of hearing; the petitioner was acquitted in the criminal case by the competent Court on 29.05.2010 and therefore, it was not justified to punish him on the basis of this case; while punishing the petitioner, his past conduct has been considered without any notice to him; and the punishment awarded to the petitioner is disproportionate and quite harsh.
12. Respondent Nos. 1 to 5 have opposed the claim petition and stated in their joint written statement that the charge of unauthorised absence is proved against the petitioner and he has been rightly punished by a reasoned order by the disciplinary authority agreeing with the report of the inquiry officer. The petitioner was absent continuously from 23.07.2005 and his total absence from duty is 64 days which clearly shows that he was highly indisciplined Police Officer and his neglect of duty for such a long period is unbecoming of a Police officer and therefore, he has rightly been dismissed from service. It has further been contended by the respondents that the inquiry has been conducted as per Rules of 1991 and the petitioner was provided full opportunity to defend himself. There is no violation of any rule, law or principles of natural justice and the inquiry has been conducted in a fair and just manner. The appeal of the petitioner was also duly considered and rejected as per rules.
13. The petitioner has also filed a rejoinder affidavit and the same averments have been made in it which were stated in the claim petition.
14. We have heard learned counsel for the petitioner as well as learned A.P.O. and also perused the record and we have also perused the original record of inquiry.
15. Ld. Counsel for the petitioner has argued that he was not provided reasonable opportunity of hearing and his explanation was also ignored by the inquiry officer and therefore, the inquiry has not been conducted in a proper manner. Ld. A.P.O. has refuted the arguments

and contended that the inquiry against the petitioner has been conducted in accordance of Rules of 1991 and at every stage the petitioner has been provided due opportunity to defend himself. We have perused the original record of inquiry and find that the inquiry has been conducted as per law, rules and adhering to the principles of natural justice. The petitioner has stated that the inquiry was conducted without providing opportunity of hearing to him and ignoring his explanation. The perusal of inquiry file reveals that the petitioner has been provided opportunity of presenting his case at every stage of the inquiry and therefore, he was given due opportunity of hearing in the whole process of inquiry. The petitioner received the charge sheet and he did not submit his reply against the charge sheet. The petitioner was also given opportunities to participate on various dates of inquiry, but in spite of servicing of all the notices in this regard, the petitioner did not appear before the inquiry officer. The petitioner had himself chosen not to cross-examine any prosecution witness. On one of the dates, he participated in the inquiry when the evidence of some prosecution witnesses was recorded and in spite of the opportunity he decided not to cross-examine the witnesses. The petitioner had sufficient information regarding various dates of inquiry to participate in the same. The petitioner was also given show cause notice by the disciplinary authority after the inquiry report and the copy of the inquiry report was also enclosed with the show cause notice. The petitioner also replied to the show cause notice and the same was also duly considered by the disciplinary authority. The disciplinary authority after considering the reply of the petitioner has passed a detailed and reasoned order of punishment. We therefore, do not find any force in the arguments of the Ld. Counsel for the petitioner that the inquiry was not conducted properly and he was not provided reasonable opportunity to defend himself. There is no violation of any law, rules and principles of natural justice in the whole process of conducting the inquiry.

16. Ld. Counsel for the petitioner has also argued that the criminal case, which was made basis to punish the petitioner, was decided by the A.C.J./J.M., Haridwar on 29.05.2010 and the petitioner was acquitted and therefore, it is not justified to punish the petitioner on this basis. By perusing the record, we find that a criminal case was registered against the petitioner under Section 393 I.P.C. at Police Station Ranipur, Haridwar and the allegation against the petitioner was that after having food in a shop in Court premises, he did not pay for his food, abused the shopkeeper and also tried to snatch money from the shopkeeper. The charge sheet which was issued to the petitioner did not have this incident as a charge against him. In the charge sheet, the only charge against the petitioner was unauthorized absence from duty. However, the inquiry officer in his report has mentioned this incident as a passing reference observing that such type of incident adversely affects the reputation of the Police Department. Though there is no charge framed in respect of this incident yet this was mentioned in the inquiry report. The disciplinary authority while issuing show cause notice after receiving the inquiry report, mentioned this incident in the show cause notice and the petitioner in his reply to the show cause notice has not explained anything regarding this incident. The perusal of the punishment order also reveals that the disciplinary authority has punished the petitioner on the basis of the charge of unauthorized absence and not on the basis of the aforesaid incident. At the time of punishment order in 2006, only a case was registered regarding this incident. This criminal case was decided by the competent Court in 2010 and the petitioner was acquitted in this case because the charge against him could not be proved beyond doubt. Though this incident was not a charge against the petitioner and the punishment is also not awarded to him on the basis of this incident yet the subsequent acquittal of the petitioner in 2010 due to non availability of evidence beyond doubt to prove the same, cannot affect the validity of order of dismissal passed by the disciplinary authority in 2006 as the petitioner was found guilty of misconduct of unauthorized absence.

17.1 Ld. Counsel for the petitioner has also argued that while punishing the petitioner, his past conduct has been considered without making any charge against him in the charge sheet and also without any notice at the time of giving show notice. Contention of the Ld. Counsel for the petitioner is that without any opportunity to the petitioner to explain his position, the punishment based on past conduct, is bad in the eye of law. Perusal of the punishment order reveals that the disciplinary authority has considered the past conduct of the petitioner and has mentioned in the punishment order that the petitioner had been found guilty for unauthorized absence earlier also and even after punishment given to him earlier, his conduct had not improved. The inquiry record reveals that the past conduct has not been made a charge and it does not find mention in the show cause notice also.

17.2 In **Govt. of Andhra Pradesh Vs. Mohd Taher Ali, AIR 2008 SC 375** the Hon'ble Supreme Court has made the following observation which are quite relevant to the present case:-

“Learned Counsel appearing on behalf of the respondents submitted that in fact the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not part of the charges levelled against him. In support of his submission, learned counsel for the respondent has invited our attention to the judgment of this Court titled **State of Mysore Vs. V.K. Manche Gowda(1964) 4 SCR 540**, but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. **It is not the respondent's first absence. He also absented himself from duty on earlier occasion also. In our opinion there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the charge sheet, it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to**

**reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty.** Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement.”

- 17.3 In **Md. Yunus Khan Vs. State of U.P. (2010) 10 SCC 539**, the Hon’ble Supreme Court held that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the employee is entitled to notice thereof and generally the charge sheet should contain such an article or at least he should be informed of the same at the stage of show cause notice before imposing the punishment. **Their Lordships qualified this by adding: “However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/ service record of the delinquent for aiding the weight to the decision of imposing the punishment if the fact of the case so required.”**
- 17.4 In the light of above judgments, in the present case, on a reading of the punishment order as a whole, we find that the penalty of dismissal from service was based on the charge of unauthorized absence and not on his previous record and that the reference to the previous record of the petitioner was for the purpose of pointing out that the petitioner did not improve his conduct even after earlier punishments. Keeping in view the unauthorized absence of 64 days without satisfactory reason and also noting that it was not the first absence of the petitioner, we find that the punishment order passed by the disciplinary authority need not be interfered.
18. Ld. Counsel for the petitioner has also argued that the punishment awarded to the petitioner is quite harsh and disproportionate and it does not commensurate with the misconduct. Ld. A.P.O. refuted the

contention and stated that the petitioner remained absent for a long period in an unauthorized manner violating rules which showed a very high degree of indiscipline and irresponsibility on his part and, therefore, the punishing authority has rightly dismissed the services of the petitioner. In the case of **B.C.Chaturvedi Vs. Union of India AIR 1996 SC 8484**, the moot question for consideration before the Hon'ble Supreme Court came for consideration as to whether the Tribunal can direct the authorities to reconsider the punishment or the Court/ Tribunal can themselves impose punishment. The Hon'ble Apex Court held in Para 18 as under:-

**“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof”**

It is settled proposition of law that the Tribunal/ Court do not interfere in the punishment unless the punishing authority has passed such punishment which shocks the conscience of the Tribunal/Court. In the case in hand the petitioner is a member of uniformed Police Force and he remained absent in an unauthorized manner for a long period. Such indiscipline is a serious matter and cannot be taken lightly or in a sympathetic manner. In our view, the punishment is not shockingly disproportionate and, therefore, punishment of dismissal from service awarded by the disciplinary authority cannot be interfered.

19. For the reasons stated above, we do not find any force in the petition and the same is devoid of merit, and therefore, liable to be dismissed.

**ORDER**

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

**(RAM SINGH)**  
VICE CHAIRMAN (J)

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

*DATE: NOVEMBER 18, 2016*  
*DEHRADUN*

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