

**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. 33/DB/2016

Sachin Kumar, S/o Sri Bhudev Sharma, Constable 1211 Civil Police (Dismissed),
R/o Nandu Farm, Gali No. 1, House No. 1, Geeta Nagar, Rishikesh, District
Dehradun, Uttarakhand.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Haridwar.

.....Respondents.

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

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

JUDGMENT

DATED: FEBRUARY 16, 2017

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

1. The petitioner has filed the present claim petition for seeking the following relief:

“a) To quash the impugned punishment order dated 23.03.2015 (Annexure No. A-1) passed by the respondent No. 3 and

impugned appellate order dated 23.08.2015 (Annexure No. A-2) passed by the respondent no. 2 along with effects and operation.

b) To issue an order or direction to the respondents to reinstate the petitioner in his service with all consequential benefits as the impugned order had not been in existence.

c) To issue any other order or direction to the respondents which this Court may deem fit and proper in the circumstances of the case.

d) To award cost of the case.”

2. In order to appreciate the rival contentions of the parties, necessary facts of the case are given hereunder:

2.1 The Uttarakhand Police made recruitment of constables (civil police) in 2008-09 and the petitioner was selected and appointed on the post of constable on 01.06.2009.

2.2 Departmental proceedings were initiated against the petitioner under the “Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 which are applicable in Uttarakhand State. Hereinafter these rules have been referred as “Rules of 1991.” A charge sheet was issued to the petitioner on 01.04.2014 (Annexure: A7). There was only one charge against the petitioner that his true date of birth is 24.06.1983 but he showed 07.07.1988 as his date of birth for recruitment as constable in Uttarakhand Police and, therefore, he concealed the facts fraudulently with dishonest intention. The charge sheet has been reproduced below:

“पत्रांक: पीएफ-04/2013 कार्यालय पुलिस अधीक्षक, ग्रामीण, जनपद हरिद्वार।

कान्स0 1211 ना0पु0 सचिन कुमार,
पुलिस लाईन रोशनाबाद, हरिद्वार।
द्वारा: प्रतिसार निरीक्षक, पुलिस लाईन रोशनाबाद, हरिद्वार।

आपके विरुद्ध उत्तराखण्ड अधीनस्थ श्रेणी के पुलिस अधिकारियों/कर्मचारियों की (दण्ड एवं अपील) नियमावली 1991 के अनुकूलन एवं उपान्तरण आदेश 2002 के नियम

14 (1) के अन्तर्गत विभागीय कार्यवाही मेरे द्वारा सम्पादित की जा रही है। कार्यवाही के दौरान आपको पूर्व में प्रेषित आरोप पत्र में आपके द्वारा पुनः हाईस्कूल की परीक्षा में अंकित करायी गयी जन्मतिथि 07.07.1988 के स्थान पर सहवन 02.07.1990 अंकित हो गयी है। अतः आपको पुनः संशोधित आरोप पत्र एतद्वारा निम्नलिखित आरोपों के अन्तर्गत प्रेषित किया जाता है:-

1- यह कि अपनी वास्तविक जन्मतिथि 24.06.1983 के स्थान पर 07.07.1988 अंकित करते हुये अपनी आयु कम कराकर इन्दिरा गांधी राष्ट्रीय मुक्त विद्यालय शिक्षा संस्थान से पुनः हाईस्कूल की परीक्षा उत्तीर्ण कर बेईमानीपूर्ण आशय से वास्तविक तथ्यों को छिपाते हुये छलपूर्वक वर्ष 2009 में उत्तराखण्ड पुलिस में आरक्षी के पद पर भर्ती होने के आरोप में:

साक्ष्य जिन पर आरोप के समर्थन में विचार किये जाने का प्रस्ताव है:-

क्र०स०	नाम एवं पता साक्षीगण	साक्ष्य जिसकी पुष्टि करेंगे
01	प्रधानाचार्य आर०पी०इन्टर कॉलेज कालागढ़ पौडी	कक्षा 06 से कक्षा 12 तक की शिक्षा अपने विद्यालय से ग्रहण किये जाने तथा वर्ष 1999 में हाईस्कूल एवं वर्ष 2001 में इन्टरमीडिएट परीक्षा उत्तीर्ण किये जाने तथा अभिलेखानुसार जन्मतिथि 24.06.1983 होने की पुष्टि करेंगे
02	श्री प्रदीप कुमार, अपर पुलिस अधीक्षक, यातायात, देहरादून	आरोपी कान्स० के विरुद्ध उक्त सम्बन्ध में प्रारम्भिक जांच किये जाने की पुष्टि करेंगे।

एतद्वारा आपसे प्रत्येक आरोप के उत्तर में अपने बचाव पर लिखित विवरण दिनांक 9.04.2014 को या उससे पूर्व प्रस्तुत करने की अपेक्षा की जाती है। आपको सचेत किया जाता है कि यदि अधोहस्ताक्षरी द्वारा अनुमत समय के भीतर आपसे ऐसा कोई विवरण प्राप्त नहीं होता है तो यह अपधारणा की जायेगी कि आपको अपने बचाव में कुछ नहीं प्रस्तुत करना है और आपके मामले में तदनुसार आदेश पारित कर दिये जायेगे।

साथ ही आपसे अधोहस्ताक्षरी को लिखित रूप में यह सूचित करने की अपेक्षा की जाती है कि क्या आप व्यक्तिगत सुनवाई के लिये इच्छुक हैं और यदि आप किसी साक्षी की परीक्षा या प्रतिपरीक्षा करना चाहते हैं तो अपने लिखित विवरण के साथ उनका नाम पता और साक्ष्य का जिसे प्रत्येक ऐसे साक्षी से देने की प्रत्याशा की जायेगी, का संक्षिप्त विवरण प्रस्तुत करने की अपेक्षा की जाती है।

(अजय सिंह)
पुलिस अधीक्षक, ग्रामीण
पीठासीन अधिकारी,
जनपद- हरिद्वार।”

2.3 The petitioner replied to the charge sheet on 09.04.2014 and admitted that his actual date of birth is 24.06.1983. The petitioner explained in the reply to the charge sheet that he passed High School Examination from U.P. Board in 1999 and in the marks sheet/certificate 24.06.1983 has been correctly shown as his date of birth. Thereafter, he passed Intermediate examination from U.P. Board in 2001 and B.A. examination in 2005. It has further been stated in the reply that in order to increase his academic knowledge, he again passed High School Examination from “National Institute of Open Schooling” in 2007 and by mistake he mentioned 07.07.1988 as his date of birth in the Examination Form. The petitioner has further explained that he belongs to OBC category and due to age relaxation of five years, in any case, he was age-wise eligible for recruitment as constable and, therefore, he has not taken any undue advantage. The petitioner also mentioned that by mistake, he enclosed the certificate/marks sheet of the NIOS examination, 2007 showing 07.07.1988 as his date of birth while submitting his Application Form for recruitment. The petitioner in the end in his reply to the charge sheet apologized for this inadvertent mistake.

2.4 Thereafter, the inquiry officer conducted a detailed inquiry and submitted his inquiry report on 10.12.2014 (Annexure: A10). The inquiry officer found the charge proved against the petitioner. The relevant extract of the inquiry report is as given below:

“आरोपित आरक्षी 1211 ना० पु० सचिन कुमार द्वारा उपलब्ध कराये गये स्पष्टीकरण के संबंध में यह तथ्य विशेष रूप से उल्लेखनीय है कि आरोपित कान्स० सचिन कुमार द्वारा स्वयं दोबारा हाईस्कूल की परीक्षा उत्तीर्ण करने तथा दोनों प्रमाण पत्रों पर उसकी जन्मतिथि अलग-अलग होने की स्वीकारोक्ति की गई है । आरोपित कान्स० सचिन कुमार का यह कहना सत्य से परे है कि उत्तराखण्ड पुलिस भर्ती के दौरान आवेदन पत्र के साथ उक्त हाईस्कूल की मार्कशीट भूलवश संलग्न हो गई है, जबकि आरोपित कान्स० सचिन कुमार द्वारा

वर्ष 2008-09 में उत्तराखण्ड पुलिस भर्ती के आवेदन पत्र के पृष्ठ 3 सहपत्र -1 के कॉलम नम्बर 7 में अपनी जन्मतिथि स्पष्ट रूप से 07.07.1988 अंकित की गई है एवं कॉलम नम्बर 8 में स्पष्ट रूप से वर्ष 2007 में एन.आई.ओ. एस. मोडर्न स्कूल ऋषिकेश से हाईस्कूल किया जाना अंकित किया है । इसके अतिरिक्त उसके द्वारा भर्ती के समय दिये गये बन्ध पत्र संख्या 05एए-758850 में भी अपनी जन्मतिथि 07.07.1988 होना अंकित किया गया है । यह भी उल्लेखनीय है कि शपथ पत्र संख्या 055एए-795656 के कॉलम नम्बर 10 में स्पष्ट रूप से अंकित किया गया है कि आवेदन पत्र में शैक्षिक योग्यता एवं जन्मतिथि संबंधी प्रमाण पत्र एवं आयु में छूट व आरक्षण का लाभ प्राप्त करने संबंधी प्रमाण पत्र जो मेरे द्वारा संलग्न किये गये हैं, पूर्णतया सही है । कॉलम नम्बर 11 में अंकित है कि आवेदन पत्र में उल्लेखित यदि कोई बात असत्य पायी जाये अथवा किसी सत्य को छिपाया गया हो तो बिना शर्त उत्तराखण्ड पुलिस से तुरन्त पृथक कर दिया जाये तथा वैधानिक दण्ड दिया जाये जो मुझे मान्य होगा । कॉलम नम्बर 14 में अंकित है कि यदि शपथ पत्र में अंकित तथ्य गलत पाये जाये तो भर्ती के लिए मेरा कोई दावा नहीं होगा और भर्ती के बाद भी भविष्य में कोई तथ्य गलत पाया जाये तो मुझे बिना शर्त उत्तराखण्ड पुलिस से पृथक कर दिया जाये तथा वैधानिक दण्ड दिया जाये जो मुझे मान्य होगा । इसके अतिरिक्त आरोपित कान्स0 1211 सचिन कुमार का अपने स्पष्टीकरण में यह कहना कि उसके द्वारा वर्ष 2008-09 में उत्तराखण्ड पुलिस आरक्षी भर्ती में भूलवश व गलती से आवेदन पत्र के साथ हाई स्कूल की वह मार्कशीट संलग्न हो गई जिसमें उसकी जन्मतिथि 07.07.1988 अंकित है इसमें प्रार्थी का कोई गलत उद्देश्य व आपराधिक दृष्टि तथा किसी प्रकार का लाभ लेने की कोई भावना नहीं थी एवं न ही इससे कोई लाभ प्रार्थी की पुलिस में आरक्षी पद पर भर्ती होने में हुआ है, तथ्यहीन एवं सत्य से परे है, क्योंकि यदि आरोपित आरक्षी सचिन कुमार अपनी मूल जन्मतिथि 24.06.1983 के आधार पर भर्ती होता तो लगभग 05 वर्ष पहले सेवानिवृत्त हो जाता, जबकि आरोपित कान्स0 सचिन कुमार जन्मतिथि 07.07.1988 के आधार पर भर्ती हुआ है जिससे वह लगभग 05 वर्ष अधिक सेवा का लाभ प्राप्त करता ।

इस प्रकार भर्ती के दौरान दिये गये आवेदन पत्र एवं शपथ-पत्र से भी स्पष्ट होता है कि आरोपी आरक्षी 1211 ना0पु0 सचिन कुमार द्वारा बेईमानीपूर्ण आशय से वास्तविक तथ्यों को जानबूझ कर छिपाया गया है। आरोपी आरक्षी 1211 ना0पु0 सचिन कुमार द्वारा उपलब्ध कराया गया स्पष्टीकरण तथ्यहीन, बलहीन, आधारहीन एवं सत्य से परे है।”

- 2.5 The disciplinary authority considered the inquiry report and agreeing with it gave a show cause notice to the petitioner on 21.01.2015 (Annexure: A11) and the copy of the inquiry report was enclosed with the show cause notice. The petitioner replied to the show cause notice on 30.01.2015 (Annexure: A12). The disciplinary authority considered the reply to the show cause notice and found it unsatisfactory and awarded the punishment of dismissal from the service to the petitioner on 23.03.2015 (Annexure: A1).
- 2.6 The petitioner preferred an appeal against the punishment to the Appellate Authority (Annexure: A13) which was considered and rejected by the Appellate Authority on 23.08.2015 (Annexure: A2).
3. The petitioner has challenged the punishment mainly on the grounds that no evidence came out in inquiry against the petitioner that he deliberately and knowingly passed the High School again from National Open School with the intention to become eligible for recruitment in police service; the submission of the certificate of High School of Open School was only a mistake on the part of the petitioner; during the preliminary inquiry the petitioner had also submitted his reply but it was not considered; the petitioner was also eligible for recruitment as per date of birth 24.06.1983 recorded in the High School Certificate issued by U.P. Board; the punishment order is non-reasoned and non speaking order; before submitting the reply to the charge sheet, the appointment of inquiry officer is wrong and illegal; in the departmental inquiry, legal procedure as well as principles of natural justice have not been followed; and the punishment imposed on the petitioner is disproportionate to the act.
4. Respondents Nos. 1 to 3 have opposed the claim petition and it has been stated in their joint written statement that the

petitioner has himself admitted that his true date of birth is 24.06.1983 which is recorded in the Certificate of High School Examination passed by him from U.P. Board in 1999. He has further admitted that when he did High School Examination from Open School again in 2007, the date of birth 07.07.1988 was mentioned by him by mistake in the Examination Form of Open School. The petitioner has also admitted that in the Application Form for the recruitment of constables, he mentioned wrong date of birth 07.07.1988 (instead of correct date of birth 24.06.1983) and enclosed High School Certificate of Open School (in which wrong date of birth 07.07.1988 was recorded) by mistake. It has been further stated in the written statement that the plea taken by the petitioner that he was eligible for recruitment taking into account both the dates of birth and therefore, he has not taken any undue benefit and he had no dishonest intention cannot be accepted. The petitioner entered into the service by mentioning the wrong date of birth which was more than 5 years lower than his actual age and therefore, he had intention to remain in the service for more than 5 years even after due date of his retirement. The detailed inquiry has revealed that by showing wrong age in the Application Form for recruitment, by enclosing the certificate of High School of Open School with the Application form which contains wrong date of birth, by concealing the certificate of High School of U.P. Board in which correct date of birth is recorded and by giving the false affidavit (Annexure: R-4 to the written statement) at the time of recruitment, the petitioner has committed a serious misconduct and he has been rightly found guilty and keeping in view the nature of misconduct committed by the petitioner, he has rightly been awarded the punishment of dismissal from service. It has further been stated that the whole process of inquiry has been conducted in fair and just manner in accordance with the Rules

of 1991 and the petitioner has been provided reasonable opportunity to defend himself adhering to the principles of natural justice. The petitioner has been punished by a reasoned order of the disciplinary authority and his appeal has also been rejected by the Appellate Authority by passing a speaking order.

- 5. The petitioner has also filed a rejoinder affidavit in which various issues have been mentioned to show that the contentions of the written statement are not tenable. The counsel for the petitioner has also filed the written submissions.
- 6. We have heard both the parties and also perused the record including the original file of inquiry.
- 7. Before the arguments of the parties are discussed, it would be appropriate to look at the rule position related to disciplinary proceedings/punishment in the "Rules of 1991". The relevant rules are extracted hereunder:-

"4. Punishment-(1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-

(a) Major Penalties--

- (i) Dismissal from service.
- (ii) Removal from service.
- (iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

(b) Minor Penalties—

.....

(c)"

.....

"5. Procedure for award of punishment—(1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.

(2)

“7. Powers of punishment.—(1) The Government or any officer of police department not below the rank of the Deputy Inspector General may award any of the punishments mentioned in Rule 4 on any Police Officer.

(2)

(3) The Superintendent of Police may award any of the punishments mentioned in Rule 4 on such Police Officers as are below the rank of Sub-Inspectors.

(4) Subject to the provisions contained in these rules all Assistant Superintendents of Police and Deputy Superintendents of Police who have completed two years of service as Assistant Superintendents of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the powers to impose major punishments under Rule 4.”

“8. Dismissal and removal.—(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

.....

(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector General concerned for orders.”

“14. Procedure for conducting departmental proceedings.- (1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I.

(2)

**“APPENDIX-I
PROCEDURE RELATING TO THE CONDUCT OF
DEPARTMENTAL PROCEEDINGS AGAINST THE POLICE
OFFICER**

[See Rule 14(1)]

Upon institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form 1 appended to these Rules which shall be communicated to the charged Police Officer and which shall be so clear and precise as to give sufficient indication to the charged Police Officer, of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state, whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged Police Officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish:

Provided that the Inquiry Officer may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.”

8. The counsel for the petitioner has argued that the charge sheet was not issued to the petitioner by the appointing authority

and the inquiry officer was appointed before the reply to the charge sheet was submitted by the petitioner and, therefore, proceedings against the petitioner are bad in the eye of law. Learned A.P.O. refuted the argument and contended that the inquiry has been conducted as per rules and it was legal to initiate and conduct the inquiry by the Additional SP/DSP and the punishment order has been passed by the Senior Superintendent of Police (SSP) which is in accordance with the "Rules of 1991". Perusal of Rule 7(4) of the Rules of 1991 (reproduced in paragraph 7 of this order) clearly reveals that the Assistant Superintendent of Police and Deputy Superintendent of Police with two years of service may exercise powers of Superintendent of Police (the appointing authority) except the power to impose major punishment. Thus, it is not obligatory on the part of the appointing authority to initiate the inquiry against the delinquent. The subordinate to the appointing authority may initiate the inquiry, issue the charge sheet and conduct the inquiry as rules permit and if major punishment is to be imposed upon the delinquent, the same can be awarded by the appointing authority only. The same question arose before the **Division Bench of Hon'ble Uttarakhand High Court in the matter of Secretary, Home Department and others Versus Narendra Kumar and Another, 2012(1) U.D, 178**. The Hon'ble High Court after analyzing the provisions of "Rules of 1991" held in paragraph 11, 12 and 13 as under:

"11. In the present case, the disciplinary proceedings was initiated by the issuance of the charge sheet under the signatures of the Deputy Superintendent of Police and admittedly the order of dismissal was passed by the Superintendent of Police. Therefore, the order of dismissal was

passed by the competent authority as provided under Rule 7(3), namely, by the Superintendent of Police.”

“12. The short question which has been raised and which arises for consideration is, whether the Deputy Superintendent of Police could initiate the proceedings for imposition of a major penalty. In our opinion, the answer lies in Rule 7(4), which clearly states that a Deputy Superintendent of Police, who has completed two years of service, can exercise the powers of the Superintendent of Police. Admittedly, the Superintendent of Police is competent to impose punishment as provided under Rule 7(3). A Deputy Superintendent of Police having more than two years of service becomes competent to exercise such powers and is, therefore, competent to issue a notice or initiate disciplinary proceedings or issue a charge sheet. However, such power is circumscribed. Where a minor penalty is to be made, the same can be imposed by the Deputy Superintendent of Police and, where a major penalty is to be made, the same has to be imposed by the competent authority, namely, the Superintendent of Police.”

“13. In the light of the aforesaid, we have no hesitation in holding that the Deputy Superintendent of Police was competent to initiate departmental proceedings and issue a charge sheet to the delinquent. In the present case, we find that since a major penalty was imposed, the same was rightly issued by the Superintendent of Police. ”

The case above squarely covers the issue before us. In the case in hand, the charge sheet was issued by the inquiry officer who is the Additional SP/DSP (subordinate to the SP) which is in accordance with Rule 7(4) of the “Rules of 1991” and the punishment of dismissal was awarded by the Senior Superintendent of Police who is the appointing authority.

Therefore, there is no force in the contention of learned counsel for the petitioner that the issue of the charge sheet by the inquiry officer and the appointment of inquiry officer before the reply to the charge sheet vitiate the inquiry proceedings against the petitioner.

9. Learned counsel for the petitioner has also contended that by ignoring his reply, inquiry officer has given his finding ex-parte behind the back of the petitioner as he was not informed for cross examination of the witnesses. Hence, in the departmental inquiry, legal procedure as well as principles of natural justice have not been followed. We have carefully gone through the original file of inquiry. Perusal of inquiry file reveals that on receiving an anonymous complaint against the petitioner for concealing his correct date of birth, a preliminary inquiry was ordered by the Inspector General of Police, Police Headquarters, Uttarakhand, Dehradun. The preliminary inquiry was conducted by Shri Pradip Kumar Rai, Additional Superintendent of Police, Police Headquarters, Dehradun who found the petitioner prima facie guilty. After due consideration of preliminary inquiry report, a decision was taken to initiate departmental inquiry for major punishment under Rule 14(1) of the "Rules of 1991". The SSP, Haridwar (the appointing authority) appointed Additional SP/DSP as inquiry officer. The inquiry officer issued the charge sheet and later on the amended charge sheet was issued to the petitioner. The charge sheet was duly served upon the petitioner. The documentary evidences mentioned in the charge sheet were provided to the petitioner alongwith the charge sheet. The petitioner requested for additional time to submit reply to the charge sheet which was granted. The petitioner replied to the charge sheet. Thereafter, dates were fixed first to examine/cross examine the prosecution witnesses. Notices for all dates of inquiry were duly served upon the petitioner. The petitioner also

participated in the inquiry and he was also provided opportunity to cross examine Shri Pradip Kumar, P.W.-2 after his examination-in-chief. The petitioner gave a statement that he does not want to cross-examine P.W.-2. The petitioner did not attend the inquiry (in spite of information to him) when the oral evidence of the Principal, R.P. Inter College, P.W.-1 was recorded. It is also pertinent to note that the petitioner in his reply to the charge sheet had not requested to examine/cross examine any other witnesses from his side. The statement of the petitioner was also recorded and in his statement, he admitted the mistake and also stated that he has explained the circumstances in this regard in his reply to the charge sheet and he does not want to produce any other evidence and he also does not want to examine/cross examine any witness. After examining all the material and evidence, the inquiry officer found that the charge against the petitioner is proved. Thereafter, the inquiry officer submitted his inquiry report to the appointing authority. Learned counsel for the petitioner has also contended that Regulations 490 to 494 under the Police Regulations have not been followed while conducting the departmental inquiry. Perusal of original file of inquiry clearly reveals that Regulations 490 and 491 which deal with the procedure of departmental inquiry have been followed while conducting the inquiry as has been mentioned in this paragraph and in paragraph 8 of this order. Regulations 492, 493 and 494 are not at all applicable in the present case. Learned counsel for the petitioner has also stated that the petitioner should have been suspended first under Regulation 496 which was not done. By going through the provisions in Regulation 496, it is clear that it was not at all mandatory to suspend the petitioner for conducting the departmental inquiry. After careful examination of the whole process of inquiry, we find that the inquiry has been conducted in a just and fair manner and there is

no violation of any law, rule, regulation or principles of natural justice. Counsel for the petitioner has failed to demonstrate any flaw in the conduct of inquiry with regard to violation of any law, rule, regulation or principles of natural justice.

10. Counsel for the petitioner has also argued that the complaint against the petitioner regarding age was sent by a un-named and un-known person. The complaint was not supported by any affidavit by the complainant and, therefore, the complaint is not sustainable in law as per Government Order dated 23.06.2010 (Annexure: A8). Learned A.P.O. has refuted the argument and contended that the petitioner cannot take the shelter of this G.O. when he has himself accepted that he provided wrong date of birth at the time of recruitment. Learned A.P.O. also pointed out that the said G.O. deals with "Benami" complaints. The complaint in case of the petitioner was an anonymous complaint and the same was sent by some unknown person as an information. There is no bar under any rule or G.O. for an internal examination of such confidential information by the Police Department to decide further course of action in the matter. We tend to agree with the contention of learned A.P.O. and do not find any force in the contention of learned counsel for the petitioner.
11. Learned counsel for the petitioner has also contended that the punishment awarded by the punishing authority is too harsh and disproportionate to the act committed by the petitioner. Learned A.P.O. refuted the contention and stated that the petitioner has committed grave misconduct by mentioning wrong date of birth in the Application Form, enclosing the certificate of wrong date of birth and filing a false Affidavit at the time of joining the Police Force. The petitioner had ulterior motive to get 5 more years of service by giving date of birth five years less than that of his actual age and after due inquiry, he has been rightly dismissed

from the service. In the case of **B.C.Chatuvedi 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 High Court/Tribunal can direct the departmental authorities to reconsider the punishment or it may itself impose the appropriate punishment. The Hon'ble Apex Court in para 18 held 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 case, impose appropriate punishment with cogent reasons in support thereof.”

In the case at hand, the petitioner gave false statement in respect of his age at the time of recruitment. He concealed his actual age of 24.06.1983 and mentioned 07.07.1988 as his age which has been admitted by the petitioner himself. His explanation, that it was by mistake, was not found satisfactory by the departmental authorities. The findings of the inquiry reveal

that this misconduct was committed by the petitioner with a wrong motive to get benefit of additional service of 5 years for the purpose of retirement and the petitioner also gave a false affidavit and he concealed his correct date of birth by misrepresentation in a fraudulent manner. The petitioner belongs to a uniformed service. The petitioner while giving affidavit at the time of recruitment knew that he would be liable to be dismissed from service if the statement made in the affidavit on oath was found to be false. The petitioner now cannot say that he omitted to mention the correct date of birth under a bonafide belief or otherwise. The petitioner was a member of a disciplined force and he held a position of trust. Honesty and integrity are primary requirements of the police organization and, therefore, it would not be proper to deal with the misconduct of the petitioner leniently. The petitioner by his conduct of misrepresentation in respect of a material information lost the confidence of the employer in him. This kind of conduct cannot be countenanced as it would adversely affect the work culture and ushers in indiscipline in police organization as has been pointed out by the appointing authority in his punishment order. The conduct/character of the petitioner shows that he is not fit for Government service. We are, therefore, of opinion that the “doctrine of proportionality” does not get attracted in the present case and the punishment is not shockingly disproportionate.

12. Learned counsel for the petitioner has referred to the following case laws:
 1. Union of India Vs. Harnam Singh 1993 AIR SCW 1241
 2. Oriental Bank of Commerce & others Versus S.C.Sheokand & Another 2014 (2) Supreme 38.

3. Mahabir Pandey and others versus Sashi Bhushan Dubey and others AIR 1981 Calcutta 74.

We have gone through each of above cases and find that these cases are not related to the controversy involved in the present case. The facts and circumstances in the case at hand are entirely different and, therefore, above cases are not relevant and of no help to the petitioner.

13. For the reasons stated in the preceding paragraphs we do not find any force in the claim petition, the same is devoid of merit and liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 16, 2017
DEHRADUN
KNP