

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 46/NB/DB/2015**

Shiv Lal Arya, S/o Shri Ranjeet Ram, R/o Village Chharel Prempur,  
Loshgyani, P.O. Anandpur Pachhimi, Haldwani.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Kumaon Region, Nainital.
4. Superintendent of Police, Champawat..

.....Respondents

Present: Sri J.S.Bisht, & S.S.Chaudhary, Ld. Counsels  
for the petitioner  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: MAY 17, 2017**

**(HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J))**

1. The petitioner has filed this petition for the following relief:

*"1) to quash and set aside the order dated 09.08.2014 and 12.12.2014 (Annexure No. 1 & 2 to the compilation no. 1) passed by the respondents no. 5 & 4 respectively.*

2) *to direct the respondent authorities to reinstate the applicant as Constable in the department with all consequential benefits.*

3) *to pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*

4) *to award the cost of the application in favour of the applicant."*

2. Briefly stated facts are that the petitioner was posted as Constable in Champawat Police Line in the year 2013. It is alleged that on 04<sup>th</sup> December, 2013, he entered into the mess of Police Line, Champawat in drunken state without the permission of the Mess Manager and started warming his food on the gas stove of the mess. He did not switch off the gas stove and due to his negligence, the gas cylinder of the gas stove caught fire through its regulator and the said fire was extinguished with the help of other officials of the police line.

3. The petitioner was placed under suspension on 4.12.2013 and the Superintendent of Police, Champawat vide order dated 25.3.2014 revoked the suspension order of the petitioner and mentioned that the order regarding salary during the suspension period shall be passed separately. After recording the statements of witnesses, the enquiry report was submitted on 13.06.2014 by the Enquiry Officer to the S.P., Champawat on the basis of which the disciplinary authority issued a show cause notice to the petitioner on 03.07.014 to submit his reply within 15 days. The petitioner submitted his explanation to the show cause notice on 28.7.2014 and alleged that he is innocent. It was also alleged that

without considering the explanation of the petitioner, the disciplinary authority passed the impugned order dated 09.08.2014, whereby petitioner was dismissed from service. The impugned order was also challenged in appeal, but appeal was decided by the D.I.G. Police, Kumoun Region in a cursory manner on 12.12.2014 without going into merit of the case. The revision filed by the petitioner was returned on the ground that there is no provision for filing revision and Superintendent of Police, Champawat vide letter dated 29.07.2015 informed the petitioner accordingly. The petition was filed by the petitioner for the relief sought as above and has taken the following grounds.

4. Grounds taken are that the disciplinary authority has failed to consider this aspect that the petitioner himself participated to remove cylinders out of the mess and thus, helped to extinguish the fire. The impugned orders dated 9.8.2014 and 12.12.2014 were passed in a mechanical manner and without application of judicious mind; that the petitioner was wrongly held responsible for the alleged incident; the enquiry officer also suggested the nature and quantum of punishment which is beyond his authority and is against the rules, whereas, on the basis of such enquiry report, the disciplinary authority decided the punishment of dismissal and conclusion drawn by the enquiry officer is not sustainable in the eyes of law. The petitioner was charge-sheeted about the incident dated 4.12.2013 only for minor punishment whereas, adverse entries earlier recorded in his record were wrongly taken into consideration, for which petitioner was already punished and the same were not included in the charge sheet. The statement of witness, Sri Keshar Singh was sufficient to show that the petitioner was not in a drunken

state and the alleged incident did not occur due to the negligence of the petitioner, but on account of negligence of other staff; the statement of S.I. Joga Singh was not properly appreciated as he has stated that the incident took place because of the loose connection of the gas regulator, which should have been checked by Mr. Keshar Singh and the statement of Keshar Singh and Joga Singh were misinterpreted by the authorities. The petitioner himself consciously participated in the process of extinguishing of fire. The disciplinary authority and appellate authority did not call upon other concerned witnesses, Mr. Dharmanand Bhatt, who has earlier admitted that it was merely an accident and not an incident caused by mistake of the petitioner. The punishment awarded to the petitioner is not in proportion to the charges levelled against him and it is very harsh. The earlier charge and punishment given to the petitioner were wrongly considered while passing the impugned order dated 09.08.2014 and appellate order dated 12.12.2014, which is not permissible in law. No pecuniary loss has been caused to the department. The finding of the enquiry officer is against the evidence on record. Hence this petition.

5. The petition has been opposed on behalf of the respondents on the ground that it is totally misconceived that the petitioner was not responsible for the incident in question. During the enquiry proceedings, full opportunity of defence was given to the petitioner. The appellate authority found no substance in the appeal. There is no provision of revision and only the appeal can be filed under Rule 26 of the Uttarakhand Police Act, 2007. The explanation of the petitioner was fully examined and final speaking order dated 9.8.2014 was passed. The enquiry officer

submitted his report on 12.02.2014 and the petitioner was found guilty and the Superintendent of Police, Champawat decided to conduct departmental proceedings under Rule 14(1) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991, Adoption and Modification Order 2002 and in the departmental proceedings, dismissal was proposed and according to the Government Order No. 17/6/1968-Appoint (3) dated 26.7.1973, previous bad record was taken into account. The principle of double jeopardy does not arise. The medical report of the petitioner shows that the petitioner consumed alcohol when he entered into the mess. The conduct of the petitioner was indiscipline, negligent and the punishment awarded to the petitioner is justified and he is not entitled to get any relief and the petition deserves to be dismissed.

6. Rejoinder affidavit has also been filed by the petitioner reiterating the similar facts as have been stated in the petition.

7. We have heard learned counsel for the petitioner and learned A.P.O. for the respondents and perused the record.

8. Learned counsel for the petitioner has raised mainly three points. Firstly, that enquiry officer also suggested the nature and quantum of punishment and on the basis of such enquiry report, disciplinary authority passed the punishment of dismissal. Learned A.P.O. in the defence has argued that the punishment order was passed by the disciplinary authority without considering this aspect. This court is of the view that enquiry was conducted as per Rules and proper opportunity of hearing was given but the nature and quantum of punishment suggested by the enquiry officer was not warranted in law and

the disciplinary authority awarded the punishment accordingly. The court is of the view that the suggestion of punishment of dismissal by the enquiry officer is against the rules and was beyond his authority and the order of disciplinary authority which passed the punishment of dismissal accepting the recommendation of enquiry officer and without considering the explanation of the petitioner, is not sustainable in law and it was passed without application of judicious mind.

9. Second point raised is that the Disciplinary Authority also considered the earlier adverse entries recorded in the record of the petitioner for which he was already punished whereas the previous charges of bad entries were not included in the charge sheet, hence, in our view that the disciplinary authority has wrongly considered his previous conduct while awarding the sentence of dismissal.

10. Thirdly, learned counsel for the petitioner has also argued that the punishment of dismissal awarded by the disciplinary authority for the simple charge of negligence, is very harsh and disproportionate to the charges. Referring to the judgment of Hon'ble Allahabad High Court in the case of **Amar Jeet Singh vs. State of U.P. and others, (2004)1 UPLBEC, 57**. It has been argued that quantum of punishment is disproportionate to the act of the petitioner. We have gone through the facts of this case and the referred case. In the present case, only charge against the petitioner was that he entered into the police mess in drunken state and started warming his food without permission of the Mess Manager and left the gas stove open in consequence of which gas cylinder caught fire which was extinguished with the

help of other police personnel. It was also argued that gas stove was defective and caught fire through its regulator and not because of the fault of the petitioner, but because of technical fault. The petitioner also helped to remove the cylinder with the help of other police personnel. Only on such ground of negligence, the punishment of dismissal from service, is very harsh and disproportionate. The facts of the referred judgment were more or less of the similar nature and the Hon'ble High Court has held that when Policeman neither misbehaved with his superior nor destroyed the property inspite of the fact that he had consumed liquor and only tried to do so, such conduct cannot be a ground for dismissal. In the present case before us, the possibility of technical fault in the gas stove cannot be ruled out. The petitioner neither misbehaved with any superior officer eventhough he was said to be in drunken position, nor he had knowingly destroyed any government property. His act of entering into the mess without permission can be called unauthorized or unwarranted but only on the basis of such charges, dismissal from service cannot be justified. The past conduct of the petitioner cannot be taken into account by the disciplinary authority while passing the judgment unless such conduct was made a part of the charges and this court is of the view that on the point of quantum of punishment, the argument of the petitioner is sustainable.

11. The procedure followed by the enquiry officer was just, proper and proper opportunity of hearing was given to the petitioner and the petition deserves to be allowed only to the extent of quantum of punishment which is disproportionate to the act of the petitioner and the order of dismissal deserves to be

set aside. The disciplinary authority after hearing the petitioner and considering the circumstances of the matter, may be allowed to pass any other punishment as per law.

**ORDER**

The claim petition is allowed. The impugned orders dated 09.08.2014, 12.12.2014 (Annexure Nos. 1 & 2) passed by the respondents no. 5 & 4 are hereby set aside. The respondents are directed to reinstate the petitioner in service and may pass any other punishment after hearing the petitioner. The petitioner will not be entitled for any back wages for the period during which he was out of service but his continuity in service will be maintained for all other purposes except his emolument. No order as to costs.

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

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

*DATE: MAY 17, 2017*  
*NAINITAL*

*KNP*