

**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. 17/NB/DB/2016

Sanjay Singh Negi, S/o Sri Prasann Singh Negi, R/o Village Shyampur, P.O.
Ambiwala, Arkedia Grant, District Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary/Secretary, Home Department, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Division, Uttarakhand, Nainital.
4. Commandant Indian Reserve Company, Beilpadav, Ramnagar, Nainital.

.....Respondents

Present: Sri M.C.Pant & Sri Kishore Kumar, 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 challenged his dismissal order dated 13.03.2010, appellate order dated 09.05.2014 passed by the respondents along with its effect and operation with a further request to reinstate the petitioner into service with all

consequential benefits and any other such relief which the court deem fit to redress the grievance of the petitioner.

2. Briefly stated facts are that the petitioner who was initially appointed on the post of Constable in Indian Reserve Force in the year 2005, was suspended by the respondent no. 4 vide order dated 03.10.2009. The petitioner proceeded on 15 days leave and was expected to report back on duty on 25.10.2009, but he remained absent continuously till his dismissal on 19.02.2010. Notice was issued to him to report on duty and to show cause but he did not report on duty nor made any submission about his absence and consequently, respondent no. 4 passed the dismissal order dated 13.03.2010.

3. Challenging the order, petitioner preferred a claim petition before the court, which was withdrawn with the liberty for filing statutory appeal before the appellate authority and to come up before the court or a fresh cause of action, if he so desires.

4. The appellate authority decided the appeal of the petitioner on 22.4.2014 with no relief to him. Petitioner also preferred a revision on 06.08.2014, but till date, the same has not been disposed off. Petitioner has challenged his dismissal order dated 13.03.2010 as well as appellate order dated 09.05.2014 on the following grounds.

5. That the impugned order passed by the respondents is arbitrary; without application of judicious mind; major penalty was imposed on the petitioner for which regular enquiry was to be conducted, but without conducting any regular enquiry, order of dismissal was passed, which is bad in the eyes of law;

opportunity of hearing was not given to the petitioner; principles of natural justice were not followed; no charge sheet was given to him nor any opportunity of cross examination of witnesses were afforded and the procedure adopted was in violation of the Rule. The petitioner has stated that due to ill-health and mental condition, he was not in a position to join his duty and he could not inform the department and was unable to reply to show cause notice and his absence was not willful. The impugned order was passed taking the shelter of the Rule 8(2)(b) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (hereinafter referred to as "Rules of 1991"), without holding any proper enquiry, but no material or reason was disclosed by the punishing authority as to why the proper departmental enquiry was dispensed with, hence the impugned order is in violation of Rule 8(2) (b) aforesaid Rules of 1991 and is also against Article 311 of the Constitution of India.

6. It has also been stated that the appellate authority was having right to extend the period of limitation for filing appeal on the basis of good reasons for delay, but the same were not considered. Under the Rules of 1991, as adopted by the Uttarakhand, remedy of revision to next higher authority was available, to which the petitioner resorted to, but revision was not entertained on account of its maintainability, which is not correct. As per Rule 25 of the Rules of 1991, the government itself adopted the same procedure under Rules of 1991, but the request of petitioner was not entertained. The appeal of the petitioner was dismissed on the ground of delay and was not decided on merit. Hence, under these circumstances, the petitioner has filed this petition and has also referred to Fundamental Rule 18 and

submitted that without holding a regular enquiry, no automatic termination can be made. Wrong interpretation of the rules was made by the respondents and impugned orders of the respondents are liable to be quashed with its effect and operation.

7. The petition has been opposed on behalf of the respondents with the submission that the punishment order of dismissal was rightly passed and the order in appeal is also correct. The appeal was highly belated and the same was filed beyond the prescribed period of limitation just to cover the gap of limitation. The petitioner was found in drunken state on duty hours and was suspended accordingly, medical checkup of the petitioner was conducted and conduct of the petitioner, who is a member of the disciplined force, was not proper and negligence towards his duty was proved. Petitioner remained absent from duty without any information and permission and he remained absent without sanctioned leave. According to the respondents, after resuming on duty on 10.10.2009, the petitioner moved 15 days leave application, which was duly sanctioned to him and he was to report on 25.10.2009, but he never turned up, neither any application was sent by him. The notices were served through registered post and also by special messenger upon him to join his duty immediately, but he remained absent.

8. On account of unauthorized absence and negligence/dereliction towards his duty, an enquiry was conducted by the enquiry officer under Rule 8(2) of the Rules of 1991, read with adoption and modification order 2002 and statement of the prosecution witnesses and the petitioner were also recorded during the course of enquiry before the Enquiry Officer. The

Enquiry Officer submitted his enquiry report on 25.12.2009 and ample opportunity was given to the petitioner to defend himself, but he remained fail to declare himself innocent. In January and February, 2010, notices were again sent at his own address to report back on his duty, but he remained absent without any reason. As the petitioner was guilty of willful absence from his duty and charges were proved, therefore, the punishing authority came to the conclusion that such conduct of petitioner, a member of the disciplined police force, is also adversely affecting the other members of the disciplined police force. The speaking and reasoned order dated 10.3.2010 was passed, explaining all the reasons to cover all the legal requirements.

9. The appeal was not filed within the mandatory period of 90 days and there is no sufficient justification or reason to explain the delay. The petitioner himself pleaded and admitted before the authorities stating that he could not join duty nor he informed the department for his absence, hence there was no need of final enquiry and the punishing authority, after receiving the enquiry report dated 25.12.2009 and before imposition of punishment of dismissal, issued a show cause notice dated 19.02.2010 under Rule 8(2) (Kha) of the Rules of 2002, in which sufficient reasons were disclosed for it. If the petitioner was really ill then being a member of the disciplined force, he must have followed the provisions 380, 381 and 382 of Police Regulations to avail medical leave which was not done. Revision was filed just to cover the limitation period, which is not permissible. The petition has no merit and deserves to be dismissed.

10. Through Rejoinder affidavit filed by the petitioner, he reiterated the same facts as have been mentioned in the claim petition.

11. We have heard learned counsel for the petitioner as well as learned A.P.O. for the respondents and gone through the record.

12. Learned counsel for the petitioner has mainly raised two points. Firstly, he has raised that the major punishment of dismissal from service has been passed by the respondents, without holding a regular enquiry and the proceedings were proposed to be taken under Rule 8(2) (b) of the Rules of 1991 without disclosing any specific reasons, which were required to be explained, whereas, learned A.P.O. has submitted that the reasons for not holding a complete enquiry, were clearly mentioned in the show cause notice.

13. In view of the court, the order of dismissal is a major penalty and for this, after charge sheet, a regular enquiry is needed. Being a member of disciplined police force, the proceedings were completed under Rule 8(2)(b) of the Rules of 1991, according to which, after recording reasons, the detailed enquiry may be dispensed with. Rule 8(2)(b) of the aforesaid Rules of 1991 reads as under:

“8(2) (b)- Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or”

14. Learned A.P.O. has also referred that Uttar Pradesh Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991 were adopted in Uttarakhand vide adaption and modification Order 2002 and these proceedings were specifically taken by the disciplinary authority and the reasons have been disclosed in the impugned order dated 10.03.2010. We have gone through the order passed by the disciplinary authority and found that the impugned order dated 10.03.2010 is very explanatory and it clearly states that after consuming the leave of 15 days, the petitioner did not report back on duty, he neither informed about reasons of absence nor requested for further leave. He was served with a notice and a preliminary enquiry was also made. When he did not report to his duty, a notice was sent on 28.10.2009 on his address through SSP, which was personally served upon him, another notice was also served vide order dated 16.11.2009, and thereafter, preliminary enquiry was ordered on 7.12.2009. The enquiry officer after giving him full opportunity of hearing, submitted his report on 25.12.2009. Further notices were again sent on 16.1.2010 and 3.2.2010, but the petitioner did not report to his duty, neither submitted any explanation. The disciplinary authority has clearly mentioned in his order that being a member of disciplined force, criminal case can be registered against him under Section 7 of the PAC Act and he deserves to be arrested, but such harsh action was not taken. He was repeatedly informed to report on his duty and when he did not turn up, the disciplinary authority came to the conclusion that he is absent willfully. His conduct proved that he is not interested to continue in service and looking into the discipline of the force, mentioning all these reasons, the disciplinary authority has resorted to the provisions

of Rule 8 (2)(b) of the Rules of 1991. Controlling authority also mentioned that he was of the view that the petitioner will not participate in any further enquiry, hence, he felt that there is no need for further final enquiry. Under these circumstances, the order was passed under Rule 8(2)(b) of the Rules of 1991

15. This court is of the view that sufficient reason has been recorded. Had the petitioner been ill, he should have come up before the concerned authority and must have filed medical certificate and application for medical leave, which was never done. Argument of learned A.P.O. is tenable that there was nothing to find out further by enquiry and it was a clear case, when an employee of disciplined force became absent and he did not report back to his duty inspite of repeated notices, specially when the notice (Annexure-3) clearly mentioned that he should come up before the department to submit his justification which will be considered properly and if he will not come then it will be presumed that petitioner is not willing to continue in service and has nothing to say in his defense and accordingly, action will be taken. We are of the view that this notice dated 19.2.2010 was very much explanatory and there were sufficient circumstances to assume that the absence, is willful and he does not want to continue his service and sufficient reasons were recorded not to conduct further final enquiry. Hence, under these circumstances, the authority has rightly resorted to the provisions of Rule 8(2)(b) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991, adoption and modification order, 2002, for which the reasons have been given in its order. Hence, contention of the petitioner cannot be accepted in this respect.

16. Learned counsel for the petitioner has also raised another point that in the show cause notice dated 19.2.2010, the disciplinary authority has written his conclusion that the act of the petitioner is negligence towards his duty, indiscipline and willfulness and it debars him from the service. According to the petitioner, the disciplinary authority was prejudiced and acted with a predetermined mind. We have gone through the notice and all the previous letters issued to the petitioner. This court is not ready to accept the argument of the petitioner because the notices specifically mention that the petitioner should come up before him and to submit his explanation and the final order will be passed after proper consideration of his explanation. The notice was just to warn the petitioner about the consequence of his willful absence and the disciplinary authority was ready to have sympathetic attitude on his appearance. The language of notice does not disclose any predetermined mind of the disciplinary authority. The final order was passed after such detailed notice when the petitioner neither reported to his duty nor submitted any explanation nor any proof of his illness and ill-health was submitted and it is an afterthought. The argument of petitioner in this respect, is not tenable.

17. Learned counsel for the petitioner has also raised the ground that appellate authority did not dispose of his appeal on merit and it was rejected simply on the ground of delay. The court is of the view that on merit too, the appeal of the appellant was disposed of, considering all the circumstances. In the appeal, no illegality or deviation from the rules were pointed out. The disciplinary authority was having right to dispense with the final enquiry with the reasons which he mentioned in his order, which

finds support from his notice, to which petitioner never responded to. Hence, before passing impugned orders, the rules were followed, proper opportunity of hearing was afforded to the petitioner and no violation of principles of natural justice was made.

18. Learned counsel for the respondents has submitted that the petitioner being a member of disciplined police force, cannot be allowed to adopt an attitude to remain absent without any leave application or without sanction of leave and if he fell ill and was in receipt of notice to appear on duty, he was bound to come and submit his application alongwith medical certificate asking for leave, which he never did. In our view, the conduct of the petitioner remaining absence without any reason and without sanction of leave, also affects the other members of disciplined police force, for which a proper action was taken as per the rules and the punishment and appellate orders passed, do not suffer from any defect. The petition is devoid of merit and deserves to be dismissed.

ORDER

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

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

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: MAY 17, 2017
NAINITAL

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