

**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. 67/ DB/2013

Shyam Singh, aged about 46 years, S/o Late Sri Sadhu Singh, R/o R.A. Aggarwal,
C/o Shyam Singh, J-336, Shivalik Nagar, Haridwar.

.....Petitioner

Versus

1. State of Uttarakhand through Principal Secretary (Home), Civil Secretariat Dehradun.
2. Deputy Inspector General of Police, Dehradun, Uttarakhand.
3. Senior Superintendent of Police, Haridwar.

.....Respondents.

Present: Sri Shashank Pandey, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: OCTOBER 31, 2017

(Hon'ble Mr. Ram Singh, Vice Chairman (J))

1. The petitioner has filed this petition seeing relief to set aside the dismissal order dated 19.12.2012 passed by Respondent No.3 (Annexure-A-1), the appellate order dated 01.10.2013 passed by Respondent No.1(Annexure- 8) along with the prayer to reinstate him in service with full back wages and interest.
2. The facts stated in the claim petition are, that on 09.03.2012, the petitioner was deputed as Driver on Patrol Car No.2 and was on duty since 5 p.m. in Sector No.1, Peeth Bazar, BHEL, Haridwar. At about 8.30

p.m., while returning from duty, his car met with an accident with a two wheeler, but none was injured. After offering help to the scooter rider to send him to hospital, the petitioner returned to his home from his duty at about 9 p.m. As per the contention of the petitioner at about 10.30 p.m., he was called from his house to Ranipur Kotwali and was taken for medical examination where the Doctor, simply by looking his face, has prepared a medical report and concluded that he has consumed alcoholic substance but is not under the influence of intoxication.

3. On the basis of such allegation, a preliminary inquiry was conducted in which apart from petitioner, four witnesses namely Constable 195 Rai Singh, Constable 1475 Uday Singh, Sub Inspector Shyam Singh and Senior Sub Inspector Chandrakar Naithani were examined. At the time of accident, Constable Uday Singh and S.I. Shyam Singh were with the petitioner in the patrol car and they deposed that the petitioner had not consumed any liquor and also did not seem like under the influence of intoxication at the time of accident.
4. In spite of these depositions, in the preliminary enquiry and without any evidence to support the finding, the inquiry officer concluded that the petitioner had consumed liquor when he was on duty.
5. On the basis of preliminary inquiry report, a charge sheet was issued to the petitioner on 09.07.2012 charging him to be in a drinking state at the time of his duty. The charge sheet was replied by the petitioner. After inquiry, a show cause notice was issued to the petitioner to show cause as to why he should not be terminated from service. Bare perusal of the inquiry report reveals that out of five witnesses, none supported the contention of the charge sheet. The Doctor was also not examined, neither the petitioner was given opportunity to cross-examine the Doctor. No urine or blood test was conducted. The inquiry officer also recorded the contradictory findings. The petitioner also replied to the show cause notice categorically denying the charge of consumption of liquor and stated that after completing his duty he had gone to his home and after food he had taken some medicine. He

further stated that on the basis of unproven facts, the disciplinary authority passed an order of dismissal of the petitioner from service without applying his judicious mind. The appeal of the petitioner was also dismissed in a very routine manner. Hence, this petition was filed by the petitioner seeking the relief accordingly.

6. The petition was opposed by the respondents with the contention that being a member of Police Force, the petitioner consumed liquor on duty and met with an accident. The petitioner had been in the habit of such conduct on previous occasions too. The inquiry officer found him guilty for the same. The inquiry was conducted as per rules and the petitioner was given due opportunity of hearing. Reply to the show cause notice in this case was not found satisfactory. On the basis of medical report, consumption of liquor by the petitioner was confirmed. The impugned order was passed after following due process of law. The petition has no merit and deserves to be dismissed.
7. We have heard both the sides and perused the record.
8. The petitioner has based his petition on the basis that due process of law was not followed and no medical examination as per rules was done as the urine and blood test was not conducted. The report of the Doctor does not speak that the petitioner had consumed alcohol and was intoxicated. The petitioner was not given any opportunity to cross-examine the Doctor. The eye witnesses, who were with the petitioner, never supported the charge. The disciplinary authority had totally overlooked the evidence on record and did not apply his judicious mind. The statement of the witnesses were very much clear to the fact that the petitioner had not taken any liquor and he was not under the influence of intoxication at the time of such accident. The medical examination of the petitioner was conducted at about 10.30 p.m. while his duty hours were over by 9 p.m.. In the show cause notice, the petitioner has submitted that after coming to his home and after having food, he had taken some medicine which smells like alcohol. Hence, on the basis of smell of the medicine, in the test

conducted by the Doctor, it cannot be presumed that at the time of duty hours the petitioner was under any intoxication.

9. Ld. Counsel for the petitioner has referred to the law laid down by the Hon'ble High Court of Uttarakhand in **Hem Chandra Chaunal Vs. State of Uttarakhand 2007 Lab I.C. 2434**, wherein it was held that only physical observation cannot be sufficient to ascertain that a person had consumed liquor. To ascertain consumption of alcohol, blood test and urine test are necessary, and if the Doctor, who conducted the medical examination, has not been examined during the inquiry and the delinquent was not given opportunity to cross-examine the Doctor, that amounts to substantial non-compliance of rules of procedure and it is violation of rules of natural justice. Accordingly, the order of dismissal of the Police Personnel was set aside. The facts of this case are almost similar to that case. In this case the Doctor was not examined as a witness and even the medical report prepared by him does not give a definite opinion about the consumption of liquor by the petitioner at the relevant time and recorded conclusion was that it was smelling like an alcoholic substance but the petitioner was not under the influence of intoxication. The medical examination was conducted at about 10.30 p.m. while his duty was over at 9 p.m.. Petitioner has submitted an explanation for the smell of alcohol that he had taken some medicine of stomach ache which contained some alcoholic substance. The statements of witnesses recorded by the inquiry officer clearly state that the petitioner had not taken any liquor while he was on duty. Hence, on the basis of such evidence on record, the order of disciplinary authority is very perverse. He has not considered the evidence and reply of the petitioner to the show cause notice and in the absence of urine and blood test, it was not proved that the petitioner was intoxicated. Documents on record were totally insufficient to prove the charge of intoxication. Reading medical report without corroboration is not permissible in the law and infirmity was committed in the departmental proceedings and petitioner was denied due protection of natural justice. Therefore, the medical report cannot

be read against the petitioner in the absence of any evidence of direct witness. The charge against the petitioner cannot be said to be proved to support the conclusion drawn by the disciplinary authority. The findings are perverse and conclusion drawn by the authority is against the record. Accordingly, the petition deserves to be allowed. The order of dismissal from service is very harsh. The appellate authority also failed to appreciate the record and to apply judicious mind to the matter, hence the dismissal and the appellate order deserve to be quashed. Looking into the facts that petitioner might be working elsewhere privately in the meantime, it would be proper to allow his reinstatement along with 50% of the back wages.

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 19.12.2012 passed by Respondent No.3 (Annexure-A-1) and the appellate order dated 01.10.2013 passed by Respondent No.1 (Annexure-8) are hereby set aside. Petitioner shall be reinstated into service within 30 days from the date of this order along with 50% of the back wages. No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: OCTOBER 31, 2017
DEHRADUN

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