

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 37/DB/2014**

Veerpal Singh S/o Shri Ram Swarup Singh aged about 45 years R/o Village & Post Sadigpur Sinouli, Tehsil Baraut District Bagpat, U.P..

.....Petitioner

**Versus**

1. State of Uttarakhand through Secretary (Home), Uttarakhand Civil Secretariat, Dehradun.
2. Additional Director General of Police (Adm.), Uttarakhand Dehradun.
3. Inspector General of Police, Garhwal Range, Pauri.
4. Superintendent of Police District Pauri Garhwal, Uttarakhand

.....Respondents.

Present: Sri M.C.Pant & Sri L.K.Maithani, Ld. Counsel  
for the petitioner.

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

**JUDGMENT**

**DATED: DECEMBER 14, 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 set aside the impugned punishment order dated 27.11.2000, appellate order 15.06.2004 and 28.06.2004 and revisional order dated 06.08.2013 (Annexure No. A-1, A-2 & A-3*

*respectively of the petition) declaring the same as illegal and arbitrary and in view of Hon'ble Apex Court decision, any rule/ regulation under the Police Regulation Act & Rules regarding the issuance of charge sheet by inquiry officer in ultra virus.*

*(b) To declare the petitioner reinstated in service along with all consequential benefits and back wages thereof.*

*(c) To allow cost of the claim petition to the petitioner.*

*(d) To grant any other relief to the petitioner, which in the circumstances of the case, the Hon'ble Tribunal may deem just and proper.*

*(e) To award the cost of the petition to the applicant."*

2. The facts in brief are that the petitioner was appointed as a Constable in Civil Police in Uttarakhand in the year 1988. In the year 2000, the petitioner was sent to the Police Line, Pauri for seasonal duty for one month. On 30.03.2000, the petitioner was deputed to go to Meerut for delivering some urgent Dak in the office of S.S.P. Meerut and I.G. Zone, Meerut. After delivering the Dak, the petitioner had to report back at Police Line, Pauri on 02.04.2000. The petitioner did not report back at at Police Line, Pauri and remained continuously absent till 27.11.2000 when he was removed from the service after the departmental inquiry for major punishment under Rule 14(1) of the "Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) rules, 1991. The said Rules hereinafter are referred as "Rules of 1991".

3. The relevant "Rules of 1991 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.”

- 4.1 It would be appropriate to state here the factual process of the inquiry adopted by the respondents in the light of above rules. The original record of inquiry was summoned by the Tribunal and the perusal of the same reveals as under.
- 4.2 The petitioner had to report back at Police Line, Pauri on 02.04.2000. The petitioner, who continuously remained absent without any information, was suspended on 14.06.2000 (Annexure: R-2 to the W.S.).
- 4.3 The S.P., Pauri ordered a preliminary inquiry on 14.06.2000. The Reserve Inspector (RI) was appointed to conduct the preliminary inquiry. R.I. inquired into the matter. The Inquiry Officer also sent a letter to the petitioner on 20.06.2000 to appear before him for presenting his case. The letter was duly served upon the petitioner on 26.06.2000. But the petitioner neither came to attend the inquiry nor he replied to the letter. R.I. submitted the preliminary inquiry report on 02.08.2000 (Annexure: A 8) and held that the petitioner remained willfully absent from 02.04.2000 till the date of the preliminary inquiry report.
- 4.4 After preliminary inquiry report, the S.P., Pauri ( the appointing authority) ordered a regular departmental inquiry for major punishment under Rule 14(1) of the Rules of 1991. The D.S.P., Pauri was appointed the inquiry officer.
- 4.5 The inquiry officer issued a charge sheet to the petitioner on 21.08.2000 (Annexure: A 7) which was duly served upon the petitioner on 24.08.2000. There was only one charge against the petitioner that he remained continuously absent from 02.04.2000 and he had also not given any information about his absence. The copy of the preliminary inquiry report was also provided to the petitioner along with the charge sheet.
- 4.6 The petitioner did not reply to the charge sheet. Nor he asked any further time to reply.

- 4.7 The inquiry officer fixed the date 15.09.2000 to hold the inquiry. The petitioner was informed and duly served upon the letter to appear before the inquiry officer on 15.09.2000 (Annexure: A 9). The petitioner did not appear for inquiry on 15.09.2000. The inquiry officer fixed 26.09.2000 as the next date to conduct the inquiry. The petitioner was again sent a letter to appear on 26.09.2000 (Annexure: A 10) which was also duly served upon him. The petitioner did not appear on 26.09.2000 also. The inquiry officer recorded the statements of the prosecution witnesses. Another letter dated 07.10.2000 (Annexure: A 11) was sent to the petitioner informing him that the evidence of prosecution has been recorded on 15.09.2000 and 26.09.2000. The petitioner was asked to inform whether he would like to give any evidence or examine/ cross-examine any person as witness in his defence. The petitioner did not reply to the letter dated 07.10.2000 though the same was duly served upon him.
- 4.8 The inquiry officer proceeded ex-parte. After examination of all the statements recorded during the inquiry and on the basis of the record/ documents, the inquiry officer submitted the inquiry report to the S.P., Pauri on 4.11.2000 (Annexure: R-1 to the W.S.) finding the petitioner guilty for unauthorized absence, gross negligence and indiscipline in a willful (स्वेच्छाचारिता) manner.
- 4.9 Agreeing with the inquiry report, the S.P., Pauri issued a show cause notice to the petitioner on 16.11.2000 (Annexure: A 12) as to why the punishment of removal from the service be not awarded to him. The copy of the inquiry report (Annexure: R-1 to the W.S.) was also enclosed with the show cause notice. The show cause notice and the copy of the inquiry report (Annexure: R-1 to the W.S.) was received by the petitioner under his signature on 18.11.2000. The petitioner did not submit any reply to the show cause notice. Nor he sought any extra time to reply.
- 4.10 Thereafter, the S.P., Pauri passed the reasoned punishment order for removal of the petitioner from the service on 27.11.2000 ( Annexure: A

- 1). The punishment order was duly served upon the petitioner on 01.12.2000.
- 4.11 It has been stated by the petitioner in paragraph 4(k) of the claim petition that “feeling aggrieved by the removal order dated 27.11.2000, the petitioner preferred an appeal dated 27.02.2001 to respondent No.2 which was sent by UPC post to respondent No.3. A copy of the appeal dated 27.02.2001 is filed herewith and marked as Annexure No.13 to this petition”. Perusal of Annexure: 13 reveals that it is not an appeal against the removal order dated 27.11.2000. Only a request to withdraw the suspension order dated 14.06.2000 has been made by the petitioner to the S.P., Pauri in his letter dated 27.02.2001 (Annexure: A 13).
- 4.12 The petitioner has also stated in paragraph 4(1) of the claim petition that on getting no decision of his appeal, the petitioner sent a reminder letter to respondent No.2 on 26.04.2004 enclosing the copy of the appeal dated 27.02.2001.
- 4.13 The respondent No.3 rejected the so called appeal on 15.06.2004 (Annexure: A 2) as time barred. The appellate authority has also recorded that the S.P., Pauri has also verified that before 2004, no appeal has been filed by the petitioner.
- 4.14 Thereafter, the petitioner filed a claim petition No. 84/2005 Veerpal Singh Vs. State of Uttarakhand and others before the Tribunal against the punishment order dated 27.11.2000 but the same was withdrawn with the liberty to file “revision” against the punishment order on 01.05.2013 (Annexure: A 16).
- 4.15 The petitioner filed a “revision” under Rule 23 of the Rules of 1991 (Annexure: A 17) which is undated. The “revision” of the petitioner was duly considered by the Additional D.G.P. and the same was rejected by passing a speaking order on 06.08.2013 (Annexure: A 3).
5. The petitioner in his claim petition has challenged the “punishment” order (Annexure: A 1) and rejection of “appeal” and “revision” orders (Annexure: A 2 and A 3) on many grounds which will be taken up

hereinafter. Respondent Nos. 1 to 4 have filed a joint written statement and the claim petition has been opposed. The petitioner has not filed any rejoinder in spite of sufficient opportunity. None has appeared on behalf of the petitioner at the time of hearing also in spite of several adjournments. We have heard learned A.P.O. (who has argued on the basis of the contents of the W.S.) and decided to dispose of the claim petition on merit on the basis of the claim petition, the written statements and the original record of inquiry.

6. The petitioner has stated in the claim petition that he has been punished as a result of ex-parte inquiry proceedings and, therefore, he could not get opportunity to defend himself. Respondents have denied and they have stated that the inquiry has been conducted strictly as per rules. We have stated rule position in paragraph 3 of this order and described the factual process of inquiry conducted in detail in paragraphs 4.1 to 4.15. Perusal of original record of inquiry (as described in paragraphs 4.1 to 4.15) reveals that the inquiry (though ex-parte) has been conducted in accordance with rules providing reasonable opportunity to the petitioner to defend himself at every stage and, therefore, there is no force in the submission in the claim petition that the petitioner was not provided opportunity to defend himself. The decision making process leading to the decision to punish the petitioner is without any flaw and there is no violation of any rule, law or the principles of natural justice.
7. The petitioner has also pleaded that the charge sheet has been signed by the inquiry officer and the inquiry officer was appointed before the reply to the charge sheet submitted by the petitioner. The charge sheet should be issued and signed by the appointing authority. The whole proceedings of inquiry are bad in the eye of law as it is settled law that inquiry officer cannot sign the charge sheet. Learned A.P.O. contended that the inquiry has been conducted as per rules and it was legal to initiate and conduct the inquiry by the DSP and the punishment order has been passed by the Superintendent of Police which is in accordance with the "Rules of 1991". Perusal of Rule 7(4) of the Rules of 1991 (reproduced in



paragraph 3 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 DSP (subordinate to the SP) which is in accordance with Rule 7(4) of the “Rules of 1991” and the punishment of removal from service was awarded by the Superintendent of Police who is the appointing authority. Therefore, there is no force in the contention of 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.

8. 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. has submitted that the petitioner unauthorizedly and willfully remained absent for a long period (more than 7 months) without any information to the departmental authorities and the petitioner committed grave misconduct and after due inquiry, he has been rightly awarded the punishment of removal 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 in hand, the petitioner remained absent for a long period unauthorizedly. He did not even inform about the absence to the departmental authorities for more than seven months. The petitioner belonged to a disciplined Police Force. The conduct of the petitioner was found highly irresponsible. This kind of conduct of the petitioner cannot be countenanced as it adversely affects the work culture and ushers in indiscipline in Police Organization. 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.

9. The petitioner has also contended that he could not attend the duty due to serious illness of his brother who ultimately died on 14.06.2000. After that he himself fell ill and, therefore, he could not join his duty and he

was also not in a position to inform about his absence to the higher authorities. The plea of the petitioner is that his absence is not a willful absence and there were compelling circumstances under which he could not join or inform about these circumstances. The contention of the petitioner is that in the punishment order, no reason is given as to how the absence of the petitioner is willful. The perusal of inquiry report and the punishment order reveals that it has been duly emphasized that the petitioner did not join his duty from 02.04.2000 till his removal from the service and did not inform about his illness also, and, therefore, he remained absent unauthorizedly and willfully. The petitioner has filed some medical certificates (Annexure: A 19) about his illness. The petitioner was given an opportunity by the Tribunal to file "Revision" before the competent authority. In his "Revision", the petitioner did not mention about his illness and he did also not submit any medical certificate with the "Revision". The respondents have not relied on the medical certificates submitted by the petitioner in Annexure: A 19 of the claim petition. Under these circumstances, the contention of the petitioner that his absence was not a willful absence and he could not join his duty or he could not inform about his absence due to illness cannot be accepted.

10. Petitioner has also contended that he was not paid subsistence allowance during the period of his suspension and the Apex Court has laid down a proposition that denial of subsistence allowance during the inquiry is held to be amounting to violation of principles of natural justice and vitiates the whole inquiry proceedings 1986 (52) FLR-688 AIR 1986 page 1168. Respondents have contended that the petitioner was attached to the Police Line, Pauri where he never reported during his suspension period. Moreover, the petitioner had to provide a certificate that during his suspension period he was not engaged in any employment/ business in order to get the subsistence allowance which the petitioner never submitted. These conditions were provided in the suspension order itself (Annexure: R-2 to the W.S.). Under these circumstances, we do not find any merit in the contention of the

petitioner in this regard as the petitioner was himself responsible for not getting the subsistence allowance. The case law referred by the petitioner is not applicable in the present case and, therefore, it is of no help to the petitioner.

11. The petitioner has also contended that the inquiry officer recommended the punishment in his inquiry report which is not permissible under the Rules of 1991. While the inquiry officer should not have recommended the punishment and he could, under the rules, recommend the punishment separately (and not in the inquiry report), the perusal of the punishment order reveals that the appointing authority has decided the punishment independently without basing it on the recommendation of the inquiry officer and, therefore, the proceedings against the petitioner cannot be held to be vitiated.
12. For the reasons stated above, we do not find any merit in the claim petition and same is 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: DECEMBER 14, 2017*  
*DEHRADUN*

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