

**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. 52/DB/2017

Smt. Shyam Lata Verma, W/o Sh. Raj Kumar Verma aged about 54 years, R/o Village Satiwala (Madhowala) P.O. Doiwala, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary (Home) Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Dy. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Pauri Garhwal.

.....Respondents

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner
Sri V.P.Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: JUNE 01, 2018

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

1. The petitioner filed the present claim petition for the following reliefs:

“a) To quash the impugned punishment order dated 23.09.2015 (contained at Annexure No. A-1) passed by the respondent No. 3 and appellate order dated 20.07.2017 (contained at Annexure No. A-2) passed by the respondent No. 2 along with the so called suspension order and reinstate the petitioner in her service with all consequential benefits.

b) Any other relief which the court may deem fit and proper in the circumstances of the case.

c) *Cost of the petition be awarded to the petitioner.* ”

2. Briefly stated facts, are that the petitioner while posted as Constable (Women) at Thana Kalagarh, district Pauri Garhwal, went for three days Casual Leave on 24.05.2013, on account of her illness. When doctor advised her for 7 days further rest, the petitioner sent another application for 7 days earned leave through speed post to respondent No. 3 on 27.05.2013.

3. As per the contention of petitioner, she further applied for leave on account of illness, whereas, as per contention of the respondents, the petitioner absconded from duty, without any prior sanction of leave. On 17.09.2013, the Deputy Superintend of Police, Kotdwar sent a letter to the petitioner to appear before him and to explain about her absence. According to petitioner, she submitted her reply in October 2013 stating that she is unable to report on duty, on account of her health.

4. According to the respondents, petitioner never appeared on duty even after the notice, issued by her superior. According to respondents, again a letter was sent to the petitioner on 21.10.2013 with the direction to resume her duty, otherwise strict action will be taken against her. Such letter was sent on her notified address in district Dehradun as well as at her parental place in district Buland Sahar, U.P. but no any application along with any medical certificate was submitted by her in the department.

5. In August 2015, a show cause notice was served and the inquiry was conducted; charge sheet dated 23.08.2015 was also sent by registered A/D on her notified address at Doiwala, district Dehradun and district Buland Shahar, U.P. but finding the petitioner absent at all her notified places, a public notice through newspaper, at both places, were issued and special messenger of the department also informed her brother in district Buland Shahar about such proceeding.

6. After following the due procedure, inquiry officer submitted his report and thereafter, a show cause notice was also issued in August 2015 after long absence of petitioner for more than two years. The show cause notice was replied by the petitioner and considering her reply unsatisfactory, petitioner was dismissed from service, vide order dated 23.09.2015, against which appeal was filed in December 2015. After a long hearing, her departmental appeal was also dismissed in July 2017, hence, this petition has been filed for the reliefs as mentioned above.

7. The petition was opposed by the respondents on the ground that petitioner remained absent from her duty, without prior sanction of leave. Notices were sent to her stating to resume her duty, otherwise, strict action will be taken against her. Notices were sent through S.S.P., Dehradun, S.S.P., Buland Shahar and also by special messenger at the notified address of the petitioner. Special messenger reported that the petitioner is not available at all the notified addresses, and the notice was served on her brother. The petitioner was repeatedly issued notice to resume her duty, but she never appeared before the department and submitted her application with proper certificate. Following the principles of natural justice, the impugned punishment order was passed by respondent No. 3. Sufficient opportunity was given to the petitioner by sending repeated notices, which was not availed by her. Notices were also published in the newspapers in Dainik Hindustan, Dehradun and Meerut division, having circulation in the area of her notified address with the department. Being an employee of disciplinary force, she was aware of the consequences of her conduct but she remained absent from duty for about 2 years and 4 months, which is not permissible in law as laid down by the Hon'ble Apex Court and Hon'ble High Court. Her dismissal from service is justified in law and facts and the petition deserves to be dismissed.

8. We have heard both the parties and perused the record.

9. It is an admitted fact that after proceeding on leave on 24.05.2013 for three days, petitioner never appeared in the department nor filed any application for further leave. According to the petitioner, she had sent an application for extension of 7 days leave on account of her illness, but no such illness certificate was attached with such request dated 27.05.2013. After this date, neither the petitioner appeared before the department nor submitted any application with medical certificate, whereas, she was duty bound to submit such application for medical leave along with proper medical certificate, issued by a competent doctor, under whom supervision she was undergoing the treatment.

10. Record reveals that DSP, Kotdwar sent several letters to the petitioner to resume her duty and to show cause about her absence. This was either to appear personally or to send her request with proper medical certificate in the department, but this procedure was not adopted. Being a member of disciplined force for a long period, petitioner might be aware that she cannot remain absent in such a manner. If she was unable to do her duty on account of illness, she was duty bound to send her request for leave along with the medical certificates. Respondents repeatedly sent notices on her notified address which were not complied by the petitioner. The petitioner was also duty bound to inform the department about her changed address or the place, from where she was getting the treatment. There is no record to show that the petitioner was suffering from any serious disease. All the certificates, which were filed by the petitioner, at later stage, were not found trustworthy by the department. Long absence of the petitioner for a period of 2 years and 4 months, without getting any leave as per rules, was not found justified. Long absence of the petitioner from the department, was taken seriously by the department and the inquiry was also conducted. The petitioner herself

was duty bound to report on duty or to ask for leave as per rules to the department even if, there was no notice from the department because she was having knowledge of rules that a government servant cannot remain absent, without leave for such a long period and such absence may result into the heavy disciplinary proceeding against her.

11. Learned A.P.O. has referred to the judgment of Hon'ble High Court passed in writ petition No. 384 of 2011, Dayanand Sharma vs. State of Uttarakhand, wherein petitioner was found absent for a long time from duty and disciplinary authority passed the order of dismissal. It was held that a person serving in a disciplined force and banishing himself for two years, without even bothering to let his superiors know other reasons for his disappearance, does not deserve any sympathy.

12. The respondents have also referred to the judgment of Hon'ble High Court passed in writ petition No. 1423 of 2010, U.T.C. & others vs. Sameem Ahmad & others and has submitted that the petitioner, who did not care to inform the department and remained absent from duty continuously and never sent any application for leave or medical certificates to the department, against such employee, if lenient view would be taken in such type of cases, it would encourage indiscipline in the department and no establishment could function properly, if employees would be allowed to behave in such manner.

13. Long absence of the petitioner from her duty, without prior sanction of leave and without informing the department with proper medical certificates, especially in the disciplined police force, is a serious misconduct on the part of the petitioner. The petitioner was granted every opportunity to report back on duty and to appear and defend herself in the inquiry, but she did not report back on duty nor availed this opportunity.

14. Hence, in our view, the disciplinary authority was within their right to take disciplinary action against the petitioner, which was taken as per the rules.

15. Learned counsel for the respondents has referred to judgment of Hon'ble Apex Court passed in R.R.Tewari vs. Union of India & another, SCC, 2013 (6) 602 and has argued that this court in judicial review, cannot adjudicate on merit by re-appreciating the evidence as an appellate authority.

16. We are of the view that the scope of judicial review is very limited. This court cannot re-appreciate the evidence and come to its conclusion on the proof of a particular charge, as the scope of judicial review is limited. This court cannot arrive on its own independent findings and only principles of natural justice and the rules of procedure have to be seen.

17. We are of the view that the disciplinary authority was within their right to take disciplinary proceedings which was conducted as per rules. The petitioner was given every opportunity to defend herself. The principles of natural justice were followed and this court cannot interfere in the decision taken by the department. Long absence of the petitioner was sufficient cause to take disciplinary action and passing the punishment by the disciplinary authority. As the disciplinary authority found the petitioner unwilling to serve the department, hence, by way of affording proper opportunity of hearing, the impugned punishment order was passed which needs no interference by this Court and the petition 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: JUNE 01, 2018

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