

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 11/DB/2016

Ram Avtar Yadav, s/o Late Shri Fasadi Lal Yadav aged about 56 years, presently posted at Police Station, Indra Nagar, Vasant Vihar, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun,
2. State of U.P. through Secretary, Home, Lucknow (Deleted).
3. Secretary Karmik, State of Uttarakhand, Dehradun.
4. Director General of Police, Police Headquarters, 12 Subhash Road, Dehradun.
5. Deputy Inspector General of Police, Dehradun.
6. Senior Superintendent of Police, Dehradun.
7. Deputy Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Counsel for the petitioner.
Sri U.C.Dhaundiyal, A.P.O., for the Respondents

JUDGMENT

DATED: JUNE 27, 2018

Justice U.C.Dhyani (Oral)

Present claim petition has been filed by the petitioner for following reliefs:

“ (i)To issue an order or direction to quash the impugned order dated 28.09.2015 (Annexure: A -1), appellate order dated 10.09.2015 (Annexure: A-2), league with order dated 11.07.2014 (Annexure: A-3) and 16.04.2015 (Annexure: A-4) in league with the suspension order

and entire disciplinary proceedings along with its effect and operation also after calling the entire records from the respondents and further to issue order or direction directing to the respondents to grant all consequential service benefits including arrears of pay and other service benefits to the petitioner had it been the impugned orders were never in existence for all practical purposes.

(ii) To issue an order or direction to declare the Rule 14, 16 of the U.P. Police Act, 1991 as adopted by the State of Uttarakhand which is running contrary to provisions of Article 311 of the Constitution of India as well as Section 86 (2) of the Uttarakhand Police Act which are against the law laid down by the Apex Court as ultra vires and unconstitutional and to be deleted from the statute book.

(iii) To direct the respondents to frame service rules strictly in accordance with the provisions of Constitution of India and Police Act.

(iv) Any other relief which the court deem fit and proper in the circumstances of the case

(v) Cost of the petition be awarded to the petitioner.”

2. Facts, giving rise to present claim petition, are as follows:

On 27.12.2013 when the petitioner was posted at Police Lines, Dehradun, he was deputed on escort duty of the then Ld. Advocate General of Uttarakhand. The petitioner was provided a service revolver. While escorting Ld. Advocate General, petitioner found, at Bhupatwala, that his service revolver was missing. Petitioner tried to find the lost revolver, but to no avail. On 28.12.2013, a report was lodged at Police Station Lal Tappar, P.S. Doiwala, about his service revolver. F.I.R. was lodged under Section 409 IPC. A copy of FIR has been brought on record as Annexure: A 8 to the claim petition.

Services of the petitioner were suspended by Respondent No.6 *vide* order dated 28.12.2013. A preliminary inquiry was conducted against the petitioner by the Circle Officer, Dehradun, who submitted his report on 24.02.2014 and suggested punishment for recovery of the amount of the revolver from the salary of the petitioner. Petitioner was served with charge sheet on 03.03.2014 by Respondent No.5 (Copy-Annexure: A 11). On 29.03.2014, petitioner's services were reinstated.

Circle Officer-II, Dehradun (Inquiry Officer), *vide* order dated 30.05.2014, prescribed specific punishment of stoppage of increment for a period of one year and recovery of the amount of lost revolver, i.e., Rs.6,000/- from the salary of the petitioner. Two show cause notices were issued to the petitioner *vide* letters dated 12.06.2014. Petitioner replied to those letters on 05.07.2014 and denied the charges. Respondent No.6 (Appointing Authority) passed three orders on 11.07.2014 against the petitioner. Punishment orders were- (i) placing the petitioner on the lowest of pay scale of H.C.P. for a period of three years; (ii) recovery of the amount of lost revolver from his salary; and (iii) that petitioner will not be entitled to any pay during suspension period, besides subsistence allowance.

Aggrieved against the punishment order, petitioner preferred departmental appeal to Respondent No.5, who substituted the period of three years by 1 ½ years in (i) above. Besides, adverse remarks were entered in his Annual Confidential Report (ACR). All these orders have been challenged by the petitioner in present claim petition.

3. Counter affidavit. has been filed by Respondent No.6, justifying departmental action and punishment order against the petitioner.
4. Rejoinder affidavit has been filed on behalf of petitioner thereafter.
5. At the very outset, Ld. Counsel for the petitioner pointed out that although FIR was lodged against the petitioner as Case Crime No. 90/13 under Section 409 IPC at P.S. Raiwala, but since there was no intention on the part of the petitioner to commit any offence, therefore, the investigating officer submitted a report in final form against him. In other words, final report was submitted by the inquiry officer on 31.03.2014, which was accepted by Ld. Magistrate, having jurisdiction. In this way, petitioner has been exonerated of the allegations levelled against him, after investigation.

6. The main plank of submission of Ld. Counsel for the petitioner is that, in the instant case, inquiry officer was appointed even before issuance of charge sheet, which is contrary to the principles of natural justice. Ld. Counsel for the petitioner also pointed out that the charge sheet, in the instant case, has been signed by the inquiry officer, which is contrary to the dictum laid down by the Hon'ble High Court in *Writ Petition No. 118(SB) 2008, Lalita Verma vs. State of Uttarakhand*, *Writ petition No. 80 of 2009 (S/B,) Dr. Harendra Singh vs. State Public Services Tribunal & others*, *writ petitions No. 999 (S/S), 1364 (S/S) and 1365 (S/S) of 2011 in Uday Pratap Singh vs. State of Uttarakhand and Others and Special Appeal No.300 of 2015, Ram Lal vs. State of Uttarakhand and others*, decided on 03.07.2015.

7. Amended Rule 4(1) and Rule 7, as substituted by the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010, which govern the field, are excerpted hereunder:

“ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

7. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge-sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet

could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub-rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub-rule (8), he will forward the following to the Inquiry Officer, namely-

- (a) A copy of the charge sheet and details of misconduct or misbehavior;
- (b) A copy of written defence statement, if any submitted by the government servant;
- (c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;
- (d) A copy of statements of evidence referred to in the charge sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to the produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presiding Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presiding Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:"

8. In Para 7,8 & 9 of the decision rendered by Hon'ble High Court of Uttarakhand in *Writ petition No. (S/B)118 of 2008, Smt. Lalita Verma Vs. State of Uttarakhand & others*, following was observed:-

“7. Under Rule 7 of the aforesaid 2003 Rules, a procedure has been prescribed for imposing major penalties. In practical terms, Rule 7 (supra) is in para material to Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules 1965 and most of the other such Rules of various State Governments except that in the aforesaid 2003 Rules, the prescription is that the Inquiry Officer may be appointed by the Disciplinary Authority at the very intimation of the inquiry, even before the charge sheet is served upon the delinquent officer. In the aforesaid Rule 14 (Sub Rule 5) of C.C.A. of 1965 Central Rules, there is a clear indication that the Disciplinary Authority appoints an Inquiry Officer only if the charged officer pleads “not guilty” to the charges, whereas in 2003 Rules the clear indication is that even before framing and service of the charge sheet and before the charged officer pleads “guilty” or “not guilty”, an Inquiry Officer is appointed. This, in our prima facie opinion, is a contradiction in terms because the question of appointment of an Inquiry Officer would arise only if the charged officer pleads “not guilty” to the charges. If the charged officer pleads guilty to the charges there may not be any need for appointment of any Inquiry Officer. This is one aspect of the matter. We are making a passing reference to this aspect because we found that in the present case the Inquiry Officer stood appointed even before the stage of framing the charges, the service of the charge sheet and the offering of any plea of “guilty” or “not guilty” by the petitioner. There is much more vital aspects in this case, which we shall not notice.

8. The charge sheet has been signed by the Inquiry Officer. It is totally unconstitutional and patently illegal for the Inquiry Officer to sign the charge sheet. The Inquiry Officer in the very nature of things is supposed to be an independent, impartial and non-partisan person. How can he assume the role and wear the mantle of the accuser by signing the charge sheet? This apart, Rule (supra) itself clearly stipulates that the charge sheet has to be signed by the disciplinary authority.

9. Rule 7 also stipulates that the charge sheet shall be approved by the Disciplinary Authority. Disciplinary Authority has been defined in Rule 6 as the Appointing Authority of the Government servant concerned. In the counter affidavit, it has not been stated as to who is the Appointing Authority of the

petitioner. Therefore, this Court cannot find out as to whether the charge sheet has been approved by a competent Disciplinary Authority or not.”

9. It will also be appropriate to quote the observations made by Hon’ble High Court of Uttarakhand in Writ Petitions *No. 999 (S/S), 1364 (S/S) and 1365 (S/S) of 2011 in Uday Pratap Singh Vs. State of Uttarakhand and Others*, as below:

“12. Rule 7(ii) indicates that the charge sheet shall be signed by the disciplinary authority. Prior to the amended Rules, it was open to the disciplinary authority to sign the charge sheet himself or direct any subordinate officer or the Enquiry Officer to sign the charge sheet. This Rule has been specifically amended by the Amendment Rules, 2010 pursuant to the interim order of the High Court and the reason is not far to see. An Enquiry Officer should not be allowed to sign the charge sheet. An Enquiry Officer is required to be an independent person, who is required to proceed and analyze the evidence that comes before him and should not be a signatory to the charges that are being levelled against the charged officer. It is on account of this salutary principle that the Rules have been amended specifically for a solitary purpose, namely, that the disciplinary authority alone is required to sign the charge sheet. Consequently, the direction of the disciplinary authority to the Enquiry Officer to sign the charge sheet was patently erroneous and was in gross violation of the amended Rules 7(ii) of the Rules.

13. Rule 7(6) and (8) of the Rules contemplates that after submission of the reply to the charge sheet, it would be open to the disciplinary authority to inquire into the charges himself or may appoint an Enquiry Officer for the purpose of sub-rule (8). Sub-rule (8) provides that the disciplinary authority or the Enquiry Officer would inquire into the charges. The reason for the appointment of an Enquiry Officer after the service of the charge sheet and the reply of the charged officer has a purpose, namely, that in the event the charged officer pleads guilty to the charges, in that event, it would not be necessary for the disciplinary authority to appoint an Enquiry Officer and it would be open to the disciplinary authority to proceed and impose a penalty contemplated under the Rules. Consequently, the earlier Rules, which contemplated that an Enquiry Officer could be appointed even before the submission of the charge sheet, was done away under the amended Rules. The amended Rules clearly indicate that an Enquiry Officer can only be appointed after the charge sheet is served upon the charged officer and after a reply is given by the charged officer. In the present case, the Court finds that the Enquiry Officer was

appointed on 21st April, 2011. The charge sheet under the signature of the Enquiry Officer was served upon the petitioner after he was suspended by an order dated 20th July, 2011.

14. From the aforesaid, it is clear that the entire procedure adopted by the respondents was in gross violation of the amended Rules of 2010 and therefore, the procedure adopted cannot be sustained and are liable to be set aside. For the reasons stated above, the writ petitions succeed and are allowed. The impugned order dated 21st April, 2011 appointing the Enquiry Officer is quashed. Since the direction contained in the suspension order dated 20th July, 2011 directing the Enquiry Officer to sign the charge sheet under his signature, being patently erroneous and against the amended Rules of 2010, the entire suspension order is accordingly quashed. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law.”

10. Smt. Lalita Verma’s decision (*supra*) has been asserted by the Division Bench of Hon’ble High Court of Uttarakhand *in writ petition No. 80 of 2009 (S/B), Dr. Harendra Singh vs. State Public Services Tribunal & others*, as under:

“i.....

ii. By referring to Rule 7 of the aforesaid 2003 Rules in comparison to Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, 1965, the Inquiry Officer should be appointed only after the charge sheet is served upon the delinquent and he pleads “not guilty” to the charges. There is no reason or occasion to appoint an Inquiry Officer before the delinquent officer pleads “guilty” or “not guilty” to the charge sheet.

iii.....”

11. It has further been asserted in *Special Appeal No.300 of 2015 decided on 03.07.2015 [2015(2)U.D., 25], Ram Lal vs. State of Uttarakhand and others*, as below:

“As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that

an Inquiry Officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the delinquent officer to submit his explanation and, if, after considering the explanation of the delinquent officer, it is found necessary to hold an inquiry, only at that stage, an Inquiry Officer can be appointed.....”

12. Ld. A.P.O., on the other hand, justified the action of the respondents in punishing the petitioner in view of Rule 14(1) of The Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, Rules of 1991). He submitted that procedure has been laid down in Appendix 1, in which inquiry officer is empowered to give the charge sheet to the delinquent under his signatures. Ld. A.P.O. also relied upon Sub Rule (4) of Rule 7 of Rules of 1991 to submit that a Deputy Superintendent of Police, who has completed two years of service, may exercise powers of Superintendent of Police except the power to impose punishment under Rule 4. Whereas, the submission of Ld. A.P.O. is that minor punishment has been awarded to the petitioner, it is submitted by the Ld. Counsel for the petitioner that petitioner has been met with major penalty, in view of the following:

“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.

Minor Penalties:

- (i) Withholding of promotion.
- (ii) Fine not exceeding one month’s pay
- (iii) Withholding of increment, including stoppage at an efficiency bar.
- (iv) Censure”.

13. Had the petitioner been a Government servant, not being a Police Official, it appears, from the language used in the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 (for short, Rules of 2003), that the punishment imposed upon him, would have been

categorized as 'minor penalty'. The penalties prescribed under the Rules of 2003 are as follows:

“Penalties- The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servant-

(a) Minor Penalties-

- (i) Censure
- (ii)** Withholding of increments for a specified period;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
- (iv) Fine in case of persons holding Group “D” posts
Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

(b) Major Penalties-

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to lower stage in a time scale;
- (iii) Removal from the Service which does not disqualify from future employment;
- (iv) Dismissal from the Service, which disqualifies from future employment.

Explanation: The following shall not amount to penalty within the meaning of this Rule, namely:-

- (i)
- (ii)
- (iii)"

14. In *MS Dasauni vs. State of Uttarakhand & others, 2016 (1) UD, 321, a decision which pertains to a Police official, Hon’ble High Court of Uttarakhand*, in an identical matter, has observed and held as under:-

“13.....they have not proposed the punishment. The Committee has simply given a finding that the action on the part of the petitioner is an act of serious misconduct, and therefore, proceedings should be drawn against him under Rules 4(1)(a) and 14(1) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. **Under the provision of sub rule (1) (a) of Rule 4 and Rule 14(1) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 proceedings have drawn against Police Officer, which entails major penalty and this has to be read with appendix I of the said Rules. Rule 4(1)(a) of Uttar**

Pradesh Police Officers of The Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:-

“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.”

14. Rule 14(1) of Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:- “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.”

15. Appendix-I of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:- “Procedure relating to the conduct of departmental proceedings against Police officer: 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.”

17. The second order dated 04.01.2010 on which action actually has been taken by the appointing authority is an order which has not been

referred by the petitioner in the writ petition. This order has been placed before this Court by the State in its counter affidavit.

18..... **From the perusal of annexure No. 2 which is impugned order dated 04.01.2010, it seems to be passed by the enquiry officer. This is the charge sheet and an enquiry officer is not supposed to prepare a charge-sheet, as this is the job of the appointing authority. Enquiry officer has to conduct an enquiry in an impartial manner and therefore, framing of the charge-sheet is not one of the duties of the enquiry 10 officer. Therefore, as far as the order dated 04.01.2010 is concerned that seem to be without jurisdiction.**

19. The subsequent order which is the then second order dated 04.01.2010 which is annexed as annexure No. 2 to the writ petition, given by the investigating officer is hereby quashed. Let the appointing authority give a charge sheet to the petitioner in accordance with law as the charge against the petitioner is of a very serious nature and a departmental proceeding is in order.

20. With the aforesaid observations, the writ petition stands disposed finally.

21. The Registrar General of this Court is hereby directed to apprise the Director General of Police, Uttarakhand of this order for onwards compliance, as expeditiously as possible, in accordance with law.”

15. It is the submission of Ld. Counsel for the petitioner that judgment rendered by Hon’ble High Court in MS Dasauni’s case (*supra*), on 23.11.2015, has neither been stayed, nor challenged before the Division Bench of Hon’ble Court. In other words, it is the submission of Ld. Counsel for the petitioner that the aforesaid judgment is the law governing the field and has not been overruled by any superior court. As on date, it is the law of the land.
16. Considering the backdrop of present claim petition, we think that since facts of the instant case are entirely covered by the decision of MS Dasauni’s case (*supra*), therefore, present claim petition should be decided in terms of the aforesaid judgment rendered by Hon’ble High Court of Uttarakhand. MS Dasauni’s decision (*supra*) has clinched the issue in favour of the petitioner, *albeit* temporarily. Said decision also repels the contention raised by Ld. A.P.O., in present claim petition, a

reference of which has been given by the Tribunal in Para 12 of this judgment.

17. Order accordingly.
18. The claim petition is allowed. Punishment order dated 28.09.2015 (Annexure: A -1), and appellate order dated 10.09.2015 (Annexure: A-2) are hereby set aside. Let the appointing authority give a charge sheet to the delinquent, as per law, as the charges against the petitioner are of very serious nature and a departmental proceeding is in order. Fate of Annexure: A 3 and Annexure: A 4 will depend upon the outcome of departmental proceedings, which will be instituted against the petitioner.
19. Let a copy of this judgment be sent to S.S.P., Dehradun for compliance of this order, as expeditiously as possible, in accordance with law.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 27, 2018
DEHRADUN

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