

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.NAYAL

-----MEMBER (A)

CLAIM PETITION NO. 30/NB/SB/2016

Manohar Singh S/o Late Sri Nar Singh, presently posted as Constable, Civil Police, Police Chowki Reema, P.S. Kapkot, District Bageshwar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Additional Director General of Police, Administration, Police Headquarters, Uttarakhand Police, Dehradun.
4. Inspector General of Police, Kumaon Division, Nainital.
5. Superintendent of Police, Pithoragarh.

.....Respondents

Present: Sri D.S.Mehta, Ld. Counsel
for the petitioner

Sri V.P.Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATE: OCTOBER 09, 2018

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

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

“a) To call the entire record and quash the impugned order dated 19.04.2014 (Annexure-1) by which respondent No. 5 passed the order to deduct the salary of petitioner of 2 days on the ground of no work no pay and recorded adverse entry in the character roll of petitioner and order dated 30.08.2014 passed by respondent no. 4 whereby the appeal against the order dated 19.04.2014 has been dismissed.

b) To issue an order or direction, directing the respondents to pay/grant the salary of the petitioner and other consequential benefits which have been illegally withheld pursuant to impugned order and to expunge the adverse entry from the character roll of petitioner.

c) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

d) Award cost of the petition.”

2. As per averments of the petition, while posted at Thana Askot, District Pithoragarh, the petitioner remained unauthorizedly absent for 31 hours 5 minutes i.e. for 2 days from reserved duty of Thana concerned on 28.09.2013, without any sanctioned leave or prior permission of competent authority and without entry of Rawangi in the police G.D. and, he returned on duty on next day.

3. On account of unauthorized absence from reserved duty, a preliminary inquiry was conducted by C.O., Pithoragarh. During the inquiry, statements of witnesses were recorded; the petitioner was given full opportunity of hearing, but petitioner was unable to explain the reasons of his unauthorized absence from Thana Police. His willful and deliberate absence from duty was treated as misconduct and accordingly, annexing the inquiry report, a show cause notice was issued to the petitioner. Notice was replied by him but his reply was found unsatisfactory and contrary to the real facts. Accordingly, the

Disciplinary Authority passed the impugned punishment order dated 19.04.2014 recording an adverse entry in his Character Roll on the ground of misconduct. For the absence from duty for two days, explanation was also called and on the basis of principle of 'no work no pay', his two days' salary was deducted vide order dated 19.04.2014.

4. Aggrieved by these orders of punishment, the petitioner preferred an appeal which was decided by the Appellate Authority, rejecting the same. The petitioner also filed revision, which was returned to him on the ground of non-maintainability. Hence, this petition was filed with the following grounds:-

- i. That on the concerned day, petitioner went out of police station for some time and he reached at 10:55 for his duty which was to start from 11:00 P.M. but he was not allowed to join his duty and was asked to contact Circle Officer (C.O.), Pithoragarh. According to the petitioner, he was unable to go to Pithoragarh late night and on next day, he appeared before his C.O. and after obtaining the order from the C.O. office, he was allowed to resume his duty next day.
- ii. According to petitioner, while passing the punishment order, the letter dated 13.09.2010, issued by the Director General, Uttarakhand Police was ignored which mentions that before passing any punishment order against any police personnel, every aspect of the matter should be considered and for minor mistakes, no punishment should be awarded to them. The petitioner was having unblemished service record and never faced any punishment. The aim of the authority should not be to impose any punishment but to improve the ability, work and conduct of the personnel.

iii. The act of the respondents is illegal as he passed double punishment for one incident by means of two separate orders. The impugned orders are against the real facts of the case.

iv. There is no sufficient evidence to support the charges. The provisions of the U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 were not followed and impugned orders passed by the respondents are against the service rules, principles of natural justice and are in violation of Article 14,16,19,21 and 311 of the Constitution of India.

5. The petition has been opposed by the respondents through Counter Affidavit, alleging the facts that due opportunity was given to the petitioner as per the rules; inquiry was conducted as per law; petitioner was unable to explain the valid reason for his unauthorized absence from the concerned Thana; there was no other compelling circumstances to leave the headquarters; the misconduct committed by the petitioner was proved when he himself admitted that he went away from Thana concerned for some time; the charges of unauthorized absence from reserved duty of Thana without valid reason and without prior permission, without entering Rawangi in G.D., were found proved against the petitioner in a fair, just and impartial disciplinary inquiry proceedings. The inquiry officer submitted his report and the petitioner was given due opportunity of defence and after considering his reply, the impugned punishment order was passed. According to the respondents, there is no illegality or irregularity in the impugned orders, hence, petition deserves to be dismissed.

6. We have heard both the sides and perused the record.

7. It is an admitted fact to both the parties that petitioner was posted as Constable at Police Station, Askot on the relevant date i.e.

28.09.2013. It is also admitted to petitioner that he went out of the police station for some time and without obtaining prior permission of the concerned officer and without entering his Rawangi in the G.D., he left the Headquarter. According to petitioner, he was to attend his duty from 11:00 P.M. in the night and he reported on duty at 10:55 P.M., whereas, respondents have submitted that in the night at 7:30 P.M. a counting of staff was also made at Police Thana and the petitioner was found absent.

8. Petitioner admits that he was not present at 7:30 P.M. at Thana Headquarter when this counting was made. Respondents in para 12 of their Counter Affidavit specifically mentioned that the petitioner went out of police station without permission of SHO concerned and on the same day, he was found sitting in a Alto Car by the SHO in Narayannagar during his night visit on patrolling duty. The respondents specifically mentioned that the SHO concerned asked the petitioner about his absence from Thana to which petitioner replied that he is coming from Didihat Patwari, Halka where he went for his personal work. It is also mentioned by respondents that without any official work and without entering the Rawangi in Thana G.D., he left the station to proceed for Didihat. This version in the Counter Affidavit was replied by the petitioner in para 12 of his Rejoinder Affidavit, only with the version that he reached Thana premises before 11:00 P.M. on 28.09.2013. He had never denied from the fact of leaving the station (i.e. Thana) neither he denied his meeting with SHO at Narayan Nagar (a place away from Police Station). Hence, the averment made by the respondents in para 12 of their C.A. is totally admitted to petitioner.

9. The petitioner has never denied from this fact of recording his absence at 7:30 P.M. from the police station. Hence, there was sufficient evidence on record to support the conclusion drawn by the Inquiry Officer and the Disciplinary Authority that the petitioner left

police station without prior permission of SHO. His presence was noticed by SHO in the night at some different place. Hence, contention of petitioner, that the inquiry officer submitted his report without any evidence, cannot be accepted.

10. This Tribunal cannot go into the subjective satisfaction of the Disciplinary Authority about the facts. The Tribunal has to consider whether the findings are perverse or there was any procedural lacuna or any violation of the Rules, law or principles of natural justice.

11. It is admitted on record that specific charges were made against the petitioner for which preliminary inquiry was conducted; petitioner participated in the inquiry; he was given sufficient opportunity to cross-examine the witnesses and he submitted his own version before inquiry officer and the inquiry officer after ascertaining all the facts, recorded independent finding with reasons about the fact of absence from duty without valid permission.

12. This is not the case of petitioner that he obtained any permission from SHO concerned to leave the station. It is his own version that he reported at police Thana at 10:55 P.M. and he was found absent from the Thana premises in the evening at 7:30 P.M. When his presence was noticed by his SHO at night at a different place, it supports the finding and version of the respondents that petitioner left the station, without following due procedure.

13. The inquiry officer submitted his report to the Disciplinary Authority and the Disciplinary Authority agreeing with the same, issued a show cause notice to the petitioner and petitioner was given due opportunity for his defence. His reply to show cause was also duly considered and the impugned order was passed, which is not harsh. There is no procedural lacuna in the proceedings.

14. The argument of learned counsel for the petitioner cannot be accepted that his mistake was very minor and he should have not been punished. Absenting himself from reserved duty and leaving the headquarter without prior permission of his superior by a police personnel, is not such a minor thing, which can be ignored.

15. Learned counsel for the petitioner has raised an objection that for one incident, he was awarded double punishment by recording of an adverse entry and by deducting his salary for two days on account of his absence from duty. Learned A.P.O. on behalf of the respondents has argued that specific minor punishment of adverse entry was passed whereas, deduction of pay is not a punishment.

16. We have gone through the record and observe that a separate proceeding was drawn and notice was also issued about deduction of salary on account of his absence and on the basis of 'no work no pay' after considering his reply, by way a of separate order, two days' salary was deducted. This was not made a part of the punishment order and was passed by a separate order which is as per law and it cannot be said that he was awarded double punishment, because deduction of salary on the principle of 'no work no pay', is not a punishment.

17. The court finds that the impugned punishment order (Annexure: 1) recording adverse entry, which does not mention about any deduction of salary, does not suffer from any technical defect.

18. Considering all the circumstances of the matter, the court is of the view that there is no procedural lacuna, neither there is any violation of Rules or principles of natural justice while passing the impugned punishment orders. Furthermore, the Appellate Authority thoroughly considered the points raised by the petitioner in his appeal

and recorded a reasoned finding and the appellate order also needs no interference.

19. The revision was also rightly returned to the petitioner as per Rules.

20. Petition has no merit and deserves to be dismissed.

ORDER

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

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: OCTOBER 09, 2018
NAINITAL

KNP