

**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. 19/NB/DB/2018

Chandra Shekhar Pandey (Male), aged about 57 years, S/o Late Sri Dharmanand Pandey, presently serving as Senior Assistant in the office of Chief Engineer, Rural Works Department, Bhimtal, District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Rural Works Department, Government of Uttarakhand, Dehradun.
2. Chief Engineer (Head of Department), Rural Works Department, Uttarakhand, Dehradun .
3. Chief Engineer Level-2, Rural Works Department, Kumaon Division, Bhimtal, District Nainital.
4. Superintending Engineer, Rural Works Department, Kumaon Circle, Nainital.
5. Executive Engineer, Rural Works Department, Division, Nainital.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel
for the petitioner

Sri Kishore Kumar, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: NOVEMBER 06, 2019

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

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

“A. To set aside the impugned punishment order dated 05.07.2008 passed by the respondent No. 4 (Annexure No. A-1 to

the Compilation No. I) and also the impugned appellate order dated 28.03.2018 (Annexure No. A-2 to Compilation-II) as well as impugned adverse entry for the period 30.10.2007 to 31.03.2008 as communicated vide letter dated 23.07.2008 (Annexure No. A-3 to Compilation-I).

B. To direct the Respondents to grant all consequential benefits including ACP and promotion etc. to the 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 the cost of the Claim petition in favour of the petitioner."

2. Briefly stated, the petitioner while working as Senior Assistant in the office of Rural Engineering Service Department, Divisional Office, Nainital, was served with a letter and notice dated 28.04.2008 by the Executive Engineer, calling for his explanation, regarding some financial irregularities. In response to the same, petitioner submitted his reply on 28.04.2008, but in contemplation of the disciplinary proceedings, he was suspended vide order dated 30.04.2008, passed by respondent No. 4.

3. It is also contended that vide order dated 06.05.2008, Executive Engineer, RES, Division Bageshwar was appointed as an inquiry officer in the matter, who issued a charge sheet levelling single charge against the petitioner on 14.05.2008. After receipt of the charge sheet dated 14.05.2008, petitioner submitted his reply on 26.05.2008 and he refuted the charges levelled against him. As per the contention of the petitioner, without holding any inquiry, as per the provisions contained in the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 and without supplying the copy of inquiry report, as well as second show cause notice, and without giving opportunity against any such inquiry report, respondent No. 4 passed the punishment order dated 05.07.2008, whereby major penalty of stoppage of one annual increment with cumulative effect and reversion from the pay scale to downgrade, was also passed. It is also contended that on the basis of the punishment order dated 05.07.2008, the concerned Executive Engineer, also awarded an adverse entry for the period 30.10.2007 to 31.03.2008 while for the period 01.04.2008 to 28.10.2007, the ACRs were not adverse. The same entry was communicated to petitioner, but the inquiry report dated 24.06.2008 was

never served upon him by the respondents. Thereafter, petitioner submitted an application under RTI Act on 24.07.2008 to respondent No.4, seeking copy of such inquiry report and he was supplied the same only after deposition of the fee whereas, he was having every right to get the copy of inquiry report and to submit his reply, under the rules.

4. It is also contended that for the same allegation, an FIR was also lodged at the police station , Mallital, Nainital on 29.04.2008 u/s 467/468, 420/511 IPC, by the concerned bank i.e. Bank of Baroda, Nainital. The criminal prosecution was pending consideration before the Court of CJM, Nainital in Criminal Case No. 755 of 2009, but the respondent No. 4 passed the impugned order, during pendency of the same. While petitioner submitted an application on 06.10.2008 to the respondent No. 4 with the request that since the criminal case, on the selfsame charge, is pending for consideration hence, it was requested to keep the final order in abeyance, till final decision by the Criminal Court.

5. After conclusion of the criminal case, Magistrate passed the judgment on 07.12.2012 of conviction of petitioner, which was challenged by petitioner before the Court of Sessions Judge, Nainital, by way of criminal appeal No. 124 of 2012. His appeal was allowed and the Lower Court's judgment of conviction dated 07.12.2012 was set aside. The petitioner was exonerated from the charges vide order dated 12.10.2015. It is also contended that even after the acquittal from the criminal case of the same charges, petitioner was not granted ACP as well as promotion to the post of Administrative Officer, while his juniors were promoted.

6. The petitioner submitted representation dated 24.02.2016 to respondent No. 4, for granting him ACP and promotion from due date. Its reminders were also made vide applications dated 18.07.2016 and 06.07.2017. The petitioner also met with the higher authorities of the department on 24.10.2017. During meeting, he was told that although, he has been acquitted in the criminal case, but the departmental punishment order dated 05.07.2008 is still standing against petitioner and unless he challenged the said punishment in departmental appeal, the benefits cannot be granted to him.

7. Thereafter, petitioner submitted the departmental appeal before the appellate authority and also submitted an application on 15.11.2017 under Section 5 of Limitation Act for condonation of delay in filing such appeal. It was decided that no solid evidence for the delay has been mentioned and consequently, respondent No. 3 vide impugned order dated 28.03.2018 rejected his departmental appeal on the ground of delay alone and no order on the merits of the appeal was made.

8. Hence, this claim petition has been filed for the above mentioned relief raising the points that the gross violation of the disciplinary rules were made and principles of natural justice were not followed, opportunity of hearing was not given to the petitioner neither he was supplied copy of the inquiry report with any show cause notice. Even the inquiry officer was appointed before submission of his reply to the charge sheet, which was also issued by the inquiry officer, against which the reply submitted by the petitioner was never considered. The petitioner has been punished with major penalty for which, due procedure under rules has not been followed and these points were also raised in the departmental appeal, which has been dismissed on the ground of delay only without considering the merits and the facts of the departmental proceedings. The petitioner had shown sufficient reasons for condonation of delay but the appeal was decided without considering those grounds. Accordingly, in this petition, a prayer has also been made for condonation of delay on the ground mentioned therein and considering the irregularities committed by the respondents in the disciplinary proceedings, a request has been made to allow the petition and to set aside the punishment order passed by the disciplinary authority and the order of the appellate authority.

9. Petition has been opposed by the respondents with the contention that punishment order dated 05.07.2008 as well as order dated 28.03.2018, passed in appeal were validly passed by the competent authority as per the rules and the law and requires no interference by this Court. Legally, the claim petition has no force and same being devoid of any legal merit, is liable to be dismissed on the point of delay as well as on merit. The claim petition is hopelessly time barred. Even if the show cause

notice was not given to the petitioner then mere non-supply of the inquiry report, does not warrant automatic reinstatement of the delinquent employee and it is incumbent upon the delinquent employees to plead and prove that he suffered serious prejudice due to non-supply of the inquiry report and by not giving the show cause notice. The petitioner himself admitted that he carried out the colour photograph of the cheque and deposited that copied draft in the bank and had accepted the liability so there was no need for any further inquiry. The punishing authority passed the order of punishment after due application of mind. It has also contended that acquittal in criminal proceedings has no bearing or relevance to the departmental proceedings as standard of proof in both the situations, is totally different. The order dated 12.10.2015 is a technical acquittal on the basis of his defence that no permission for prosecution was taken while the departmental inquiry was a detailed factual inquiry. Petitioner preferred departmental appeal after a long delay of 9 years and that was also time barred. Petitioner's appeal has rightly been dismissed. It has also been contended that Hon'ble Apex Court has also held that mere non-supply of the inquiry report does not warrant automatic reinstatement of the delinquent employee and the petitioner has not shown any circumstances that he had suffered serious prejudice due to such lapses. The claim petition is not tenable in the eyes of law and deserves to be dismissed.

10. The petitioner through his Rejoinder Affidavit has reiterated the facts of his petition and denied the contention raised by the respondents and has contended that the reliance placed by the respondents on the judgment of the Hon'ble Apex Court is not applicable in the present case. It is settled position of law that any disciplinary proceedings contrary to the provisions contained in Statutory Rules, is a nullity in the eyes of law and admittedly, in the present case, neither copy of the inquiry report was given to the petitioner nor any second show cause notice was ever issued to the petitioner to put forth his version on the alleged conclusions arrived at by the inquiry officer. As such, admittedly, the petitioner's statutory right was seriously prejudiced and his rights were violated. The petitioner is

entitled for all the consequential benefits including ACP and promotion from due date and the petition deserves to be allowed.

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

12. The petitioner has challenged the impugned punishment order dated 05.07.2008 along with the appeal rejection order dated 28.03.2008 and an objection has been raised on behalf of the respondents that the petition is time barred and no sufficient ground for condonation of delay has been shown. The petitioner moved an application for condonation of delay along with an affidavit with the reasons in filing this petition after such a delay and also on merits.

13. On the merits of the punishment, serious objection has been raised by the petitioner whereas, learned A.P.O. at the first stage, primarily, confined his defense on limitation. He has also raised objection that even after the decision of the criminal trial at the appellate stage, the departmental appeal was not filed in time. Although this petition has been filed within permissible time, after the decision of the departmental appeal on 14.02.2018, but the original punishment order has been challenged after a long delay. We have considered the grounds for delay condonation application and the objections raised by the respondents.

14. It is an admitted fact that on the same set of facts, on the basis of which, the disciplinary proceedings were started, a criminal case was also filed before the court of Chief Judicial Magistrate, Nainital which was pending and was decided by that court on 07.12.2012. The petitioner has submitted that when the criminal case was pending, he moved an application on 06.10.2008, to the respondent No. 4 with the request that the effect of the impugned punishment order dated 05.07.2008 should be kept pending till the final decision of the court is made on the same facts. His application was forwarded by the Executive Engineer to the concerned authority. There is no adverse order on this application of the petitioner. The criminal case was decided at the Magistrate level in 2012 against which appeal was filed and his appeal was decided vide judgment dated 12.10.2015 and he was acquitted.

15. The court finds that when the petitioner already moved an application before the disciplinary authority to suspend the sentence passed in the departmental appeal, till the final decision of the court, he was fairly under the impression that such decision shall be kept in abeyance during that period as he was also reinstated after his suspension. We find that this was a reasonable ground for condonation of delay. This ground was also raised in the departmental appeal but the Appellate Authority without considering all these facts, dismissed the appeal without considering its merit.

16. It is also evident from the contention of the petitioner that he has raised objection about serious irregularities and violation of the principles of natural justice and the statutory rules while conducting the disciplinary proceedings. In such circumstances, when the petitioner was continuously agitating the matter in the court then, his departmental appeal must have been decided on its merits too.

17. Hence, after considering all the circumstances, we find that although delay is of a long period but, in view of the facts that criminal proceedings were kept pending for about seven years for final decision, the delay in filing the petition is condoned. Furthermore, it is in the interest of justice that the doors of the court of justice should not be closed on very technical ground and the justice should be done after hearing the parties on merits as per the rules. Hence, the objections raised by the respondents about delay are overruled and condoning the delay, we take up the petition to decide it on its merit.

18. On merits, the petitioner has contended that while conducting the departmental proceedings, the statutory provisions of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 and the provisions of Article 311 of the Constitution of India have been violated, and the principles of natural justice were not followed and no sufficient opportunity of hearing was given.

19. In this case, obviously, the punishment passed is a major punishment as the increment was stopped permanently and petitioner was

downgraded to the lower scale. As per the Discipline and Appeal Rules, 2003, the disciplinary authority was required to follow the procedure of rule 7 of the said Rules, which reads as under:

“7. Procedure for imposing major penalties- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) 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 approved by the Principle Secretary, or the Secretary, as the case may be, of the concerned department.

(iii) The charges levelled shall be so precise and clear as to give sufficient indication to the charges Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same alongwith oral evidences, if any, shall be mentioned in the charge sheet.

(iv) The charged Government Servant shall be required to put in a written statement of 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 state whether he desires to cross examine any witness mentioned in the charge sheet and whether desire to give or produce 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 inquiry officer shall proceed to complete the inquiry exparte.

(v) The charge sheet, alongwith the copy of 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 before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in the presence of the charged Government Servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence.

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

(viii) *The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him 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 Uttarakhand under provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.*

(ix) *The Inquiry Officer may ask any question, he pleases, at any time from any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.*

(x) *Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the Service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge sheet in absence of the charged Government Servant.*

(xi) *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 "Presenting Officer," to present on its behalf the case in support of the charge.*

(xii) *The 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 Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or Disciplinary Authority having regard to circumstances of the case so permits:*

Provided that this rule shall not apply in following case:-

(i) *Where any major penalty imposed on a person on the ground of conduct which has led to his conviction on criminal charge; or*

(ii) *Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules: or*

(iii) *Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."*

20. As per the rules, the petitioner was entitled for the opportunity of hearing at two stages. Firstly, after issuance of the charge sheet, his reply should have been considered by the disciplinary authority and if petitioner denied the charges then after, disagreeing with the same, the order for detailed inquiry was to be made as per the procedure by the Disciplinary Authority himself or by appointing an inquiry officer. But in the present case, the inquiry officer was appointed on 06.05.2008, before service of the charge sheet dated 14.05.2008 was completed on 17.05.2008. Even the charge sheet was signed by the inquiry officer hence, in such circumstances, as per the established procedure under the

Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, the opportunity of hearing lost its importance. The disciplinary authority never considered the reply submitted by the petitioner before proceeding for the final inquiry.

21. The question whether the inquiry officer can be appointed before reply to the charge sheet is received or not, had come up for consideration before the Division Bench of Hon'ble High Court of Uttarakhand in W.P. No. 118 (S/B) of 2008, Lalita Verma vs. State of Uttarakhand, in which the interim order was passed on 30.06.2008 interpreting the Rule 7 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, giving a detailed reasoning as to why the enquiry officer cannot be appointed before the reply to the charge sheet. Hon'ble High Court in para 7 of the judgment held as under:

*"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 materia 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 initiation 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 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.**"*

The Interpretation, which was made in the interim relief order by the Division Bench of the Hon'ble High Court, was made absolute by subsequent judgment of the Division Bench in writ petition No. 118(SB) of 2008, Lalita Verma Vs. State of Uttarakhand on

17.05.2013. Now the government has also issued the guidelines to this effect.

22. Secondly, when the inquiry officer submitted his report on 24.06.2008, the disciplinary authority did not follow the procedure established as per the rules. According to rules, he was required to consider the inquiry report and after recording his own opinion and agreeing with the inquiry report, it was the requirement of the law, that a show cause notice along with inquiry report must have been served upon the petitioner for submission of his reply. This procedure was never completed and the Disciplinary Authority after receipt of the inquiry report, directly passed the punishment order imposing a major penalty. This was in gross violation of the statutory rules as well as against the provisions of Article 311 of the Constitution of India and without giving an opportunity of hearing, the petitioner was punished. Hence, on this basis, the whole proceedings are vitiated and the punishment order deserves to be set aside. Gross violation of the procedure mentioned in the disciplinary rules has been made and the principles of natural justice were not followed.

23. The petitioner has also raised an objection that the inquiry officer in his report also suggested the punishment. The inquiry report (Annexure-11) makes it clear that the inquiry officer suggested the major penalty and special punishment of demotion and for stoppage of increment as well as for non-assignment of any work, relating to the financial matter. This inquiry report was never served upon the petitioner before passing the punishment order dated 05.07.2008 (Annexure-A1). The impugned punishment order dated 05.07.2008 reads as under:

“कार्यालय अधीक्षण अभियन्ता, ग्रामीय अभियंत्रण सेवा विभाग, कुमायूँ
परिमण्डल-नैनीताल।
पत्रांक' 399/एक-स्था/ग्रा0अ0से0/08-09 दिनांक 5/7/2008
कार्यालय आदेश

अधिशाली अभियंता, ग्रामीण अभियंत्रण सेवा विभाग प्रखंड नैनीताल से श्री चन्द्र शेखर पाण्डेय, प्रवर सहायक, ग्रा0अ0से0 नैनीताल के विरुद्ध 1.50 लाख रु0 के फर्जी ड्राफ्ट के पुर्नभुगतान हेतु विभाग एवं भारतीय स्टेट बैंक, बैंक आफ बडौदा के साथ योजनाबद्ध तरीके से की गयी धोखाधडी के प्रयास एवं वित्तीय अनियमितता के प्रकरण में पत्र संख्या 282 दिनांक 29-04-08 से प्राप्त सूचना के आधार पर श्री पाण्डेय, प्रवर सहायक ग्रा0अ0से0 को इस कार्यालय के पत्रांक 84 दिनांक 30-4-08 द्वारर निलंबित किये जाने के पश्चात इस कार्यालय के पत्रांक 105 दिनांक 6-5-08 द्वारा अधिशाली अभियंता, ग्रा0अ0से0 विभाग प्रखंड बागेश्वर को मामले की जांच सौपी गयी। जांच अधिकारी/अधिशाली अभियंता, ग्रा0अ0से0 बागेश्वर द्वारा अपने पत्रांक 21- सी0 दिनांक 24-6-08 द्वारा उक्त मामले की जांचकर अपनी आख्या इस कार्यालय का प्रस्तुत की गयी।

जांच अधिकारी, अधिशाली अभियंता, ग्रा0अ0से0 बागेश्वर ने श्री ने श्री पाण्डेय प्रवर सहायक (नि0) को संबंधित फर्जी ड्राफ्ट के पुर्नभुगतान हेतु प्रयास को योजनाबद्ध तरीके से विभाग एवं बैंक के विरुद्ध धोकाधडी की कार्यवाही हेतु पूर्ण रूप से दोषी पाया। उक्त कृत्य हेतु जांच अधिकारी की संस्तुति के आधार पर श्री चन्द्रशेखर पाण्डेय, प्रवर सहायक को निम्न प्रकार दण्डित किया जाता है।

1- श्री पाण्डेय, प्रवर सहायक की एक वेतन वृद्धि स्थायी रूप से रोक दी जाती है।

2- श्री चन्द्रशेखर पाण्डेय, प्रवर सहायक को वर्तमान में प्राप्त हो रहे वेतनमान (प्रथम प्रोन्नत वेतनमान रु0 4500-125-7000 जो इस कार्यालय के पत्र संख्या 441/एक -स्था0-2/दिनांक 31-7-2006 द्वारा स्वीकृत किया गया था) से एक निम्न वेतनमान (रु0 4000-100-6000) में आदेश निर्गत होने की तिथि से प्रत्यावर्तित किया जाता है।

श्री चन्द्र शेखर पाण्डेय, प्रवर सहायक (नि0) को उक्त निम्न वेतनमान में आदेश निर्गत होने की तिथि से बहाल करते हुवे उनकी तैनाती कार्यालय अधिशाली अभियन्ता, ग्रा0अ0से0 प्रखंड चम्पावत में की जाती है।

श्री पाण्डे, प्रवर सहायक को उनके पूर्ण सेवा काल में कैश एवं वित्त संबंधी अन्य कोई संवेदनशील पटल का कार्य ना सौपा जाये।

(पी0के सक्सेना)
अधीक्षण अभियंता
ग्रामीण अभियंत्रण सेवा विभाग
कुमायूँ परिमण्डल- नैनीताल।”

24. The punishment order (Annexure:A1) itself makes it clear that the disciplinary authority passed the punishment order, only on the basis of the fact that inquiry officer found the petitioner guilty and has also recommended the punishment, and on the basis of his recommendation of punishment, the impugned punishment order was passed. The Disciplinary Authority never applied his independent judicial mind to the fact recorded in the inquiry report or to the punishment, neither he recorded any finding of his agreement or

disagreement with the finding of the inquiry officer nor he has applied his independent mind for awarding the punishment to the petitioner. This is the case where the Disciplinary Authority totally failed to discharge the duties assigned to him and completing the disciplinary proceedings against the petitioner without following the rules and on that basis, the impugned punishment order dated 05.07.2008, which is against the rules and principles of natural justice and Article 311 of the Constitution of India, needs to be set aside. Consequently, the order of the appellate court also deserves to be set aside as the appellate court did not consider the merit of the case and there is no finding about the propriety or impropriety of the disciplinary proceedings conducted by the punishing authority.

25. The petitioner has also contended that on the basis of the said conduct, an adverse entry was also awarded to him on 23.07.2008 for the year 2007-08 and a request has been made to set aside the same. The recording an annual entry for a particular year is not a part of the sentence hence, it cannot be considered now, connecting with any disciplinary proceedings. Furthermore, in the annual entry, the controlling officer recorded his finding about the general conduct of the petitioner, hence, it cannot be said that such adverse entry was totally based on the fact of the disciplinary proceedings, although this fact has also been mentioned therein. This has been referred to record the carelessness in his general conduct of his official duties. So this was not recorded as punishment neither said entry was totally dependent on the facts, which were made basis of the disciplinary proceedings. Furthermore, the criminal appeal in which the petitioner was exonerated from the criminal charges, was decided on technical ground, while on the factual basis, the Magistrate recorded the punishment of conviction against the petitioner which was set aside only on the basis of the fact that prior permission of the competent authority was not taken before initiating the criminal proceedings. Hence, the petitioner was not exonerated from the

criminal charges on merits rather he was acquitted on technical ground.

26. Considering all the circumstances, we are of the view that the claim petition deserves to be partly allowed to the extent that the main punishment order dated 05.07.2008 (Annexure: A-1) passed by the respondent No. 4 and appellate order dated 28.03.2018 (Annexure: A-2) deserve to be set aside and the petitioner is entitled to be considered for other benefits including ACP and his promotion as per the rules and the Government orders. It is, however, made clear that the adverse entry recorded for the period 30.10.2007 to 31.03.2008 needs not to be interfered, and the following order is hereby passed.

ORDER

The Claim petition is partly allowed. The impugned order dated 05.07.2008 (Annexure: A1) and appellate order dated 28.03.2018 (Annexure: A-2) are hereby set aside. The respondents are directed to consider the claim of the petitioner afresh, for other service benefits including ACP and promotion, as per the rules and on the basis of his service record.

No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 06, 2019
NAINITAL
KNP