

(2023) 04 UK CK 0032

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 145 Of 2023

Deepak Senwal

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 18-04-2023

Acts Referred:

Citation : (2023) 04 UK CK 0032

Hon'ble Judges : Vipin Sanghi, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Priyanka Agrawal, K.N. Joshi

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1) The petitioner has preferred the present petition to assail the order and judgment rendered by the Uttarakhand Public Services Tribunal, Dehradun, in Claim Petition No. 66/SB/20, preferred by him. The impugned order has been rendered by the Tribunal on 21.07.2022, in three different claim petitions. The other two had been preferred by two other police personnel, namely, Yogendra Singh and Vivek Kumar.

2) The petitioner had preferred the said claim petition to challenge the order dated 30.04.2020, passed by the Deputy Inspector General of Police / Senior Superintendent of Police, Dehradun, as well as the appellate order dated 21.07.2020, passed by the Inspector General of Police, Garhwal Zone, whereby the petitioner was subjected to a minor penalty of censure, and his appeal was also rejected. The disciplinary proceedings were initiated against the petitioner in the background, that the petitioner was found to be consuming alcohol (beer), on 04.02.2018, along with H.C.P. 64 Yogendra Singh, C.P. 603 Dharmendra, C.P. 226 Vivek, and C.P. 1626 Sanjeev at Moharir office, Police Lines. It appears that a video of the said incident was circulated on social media, and it went viral. After conduct of a fact finding enquiry, wherein the petitioner admitted that, he

along with others did, indeed, consumed alcohol on the night of 04.02.2018 from 08:30 to 09:00 P.M., the petitioner was issued a show cause notice on 30.10.2019, on the charge of his consuming alcohol, along with others, on 04.02.2018, in Moharir Officer, Police Lines. The petitioner was granted 15 days time to respond to the show cause notice. After his response was considered, he was given the minor punishment of censure. We may also observe that after the said incident came to light, the petitioner was suspended on 18.02.2018, and his suspension continued till 26.02.2018.

3) Before the Tribunal, the primary submission of the petitioner, as is evident from the impugned order, was that his medical examination was not got conducted to establish that he had indeed consumed alcohol. In this regard, the Tribunal has noticed the report prepared by the Investigating Officer Niharika Bhatt, Assistant Superintendent of Police / Circle Officer Lines, Dehradun. During the said enquiry, the petitioner had admitted that his younger brother was selected for the post of Computer Operator in U.P. Police, for which his fellow employees asked for a party. On 04.02.2018, after the numeration was over at night, at 08:30 to 09:00 P.M. beer and other eatables were ordered by him, and he along with others consumed the same in the Moharir office. The Tribunal has also taken note of the fact that another witness Yogendra Singh had also admitted the said incident. Aforesaid being the position, in our view there was no occasion to subject the petitioner to any medical examination, and the lack of medical examination did not vitiate the enquiry. It cannot be said that the disciplinary authority did not have any material to initiate the proceedings for imposition of minor penalty, or to impose the minor penalty.

4) Learned counsel for the petitioner has submitted that the petitioner was subjected to double jeopardy, inasmuch as, he was suspended between 18.02.2018 and 26.02.2018; not paid his entire salary for the said period, and; given a punishment of censure.

5) Suspension in contemplation of, or during the disciplinary proceedings, does not tantamount to punishment. During the period of suspension, an employee is entitled to receive subsistence allowance, and not the full salary. Therefore, non-payment of full salary cannot be considered as a punishment, since the employee is not required to discharge his duties during the period of his suspension. We find that the Tribunal has, in fact, directed payment of the balance salary to the petitioner for the suspension period. Since that relief has been granted by the Tribunal, we are not interfering with the same, even though we have strong reservation to the grant of said relief.

6) The further submission of the petitioner is that the enquiry was not conducted at the place of the petitioner's posting. Even this submission, in our view, is merit-less. The petitioner was issued the show cause notice at the place where he was stationed, and he responded to the show cause notice from the same place. A minor penalty enquiry is conducted only by issuance of a show cause notice, with an opportunity to the delinquent employee to respond to the show

cause notice. That was done at the place of posting of the petitioner.

7) For the aforesaid reason, we find absolutely no merit in this petition. The writ petition is, accordingly, dismissed.