

(2023) 04 UK CK 0001

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1480 Of 2020

Dilip Singh Bisht

APPELLANT

Vs

Cantonment Board Ranikhet & Others

RESPONDENT

Date of Decision : 01-04-2023

Acts Referred:

Cantonment Fund Servants Rule, 1937 — Rule 14(1)

Citation : (2023) 04 UK CK 0001

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : T.A. Khan, Sadaf, Sanjay Bhatt, Monika Pant

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. Heard learned counsel for the parties.
2. Petitioner was employed as Junior Engineer in Cantonment Board, Ranikhet. He was dismissed from service after enquiry by an order dated 16.05.2009. Petitioner filed appeal against punishment order, which was partly allowed by General Officer Commanding-in-Chief, Central Command, Lucknow, vide order dated 12.09.2009. Operative portion of the said order is reproduced below:-
"3. Consequently, the Appellant will be reinstated in service notionally from the date of his dismissal and will simultaneously be restored to the status of Junior Engineer under suspension based on suspension order dated 28 Feb 2009 issued by Cantonment Board, Ranikhet. He would not be entitled to any backwages.
4. The Cantonment Board, Ranikhet will frame/approve the charges afresh, institute denovo statutory inquiry with an impartial Inquiry Officer having no connections with the case and take appropriate decision against the Appellant in accordance with relevant Laws/Rules expeditiously."
3. Consequent to the said order, departmental enquiry was initiated against

petitioner, and disciplinary authority imposed punishment of compulsory retirement upon petitioner, vide order dated 09.05.2014. Petitioner again challenged the said order by filing an appeal. Petitioner's appeal was allowed by General Officer Commanding-in-Chief, vide order dated 07.03.2018. Operative portion of the said order is reproduced below:-

"22. Now, THEREFORE in exercise of powers conferred under Rule 14(1) of the Cantonment Fund Servants Rule 1937, I the Appellate Authority, find that punishment awarded is not commensurate to the blameworthiness established by the inquiry, thus I set aside CBR No 1 dated 09 May 2014 and commute the punishment of compulsory retirement to withdrawal of two increments. I, accordingly direct the Respondents that Shri Dileep Singh Bisht, Ex. Employee of Cantonment Board, Ranikhet, the Appellant, shall be deemed to be reinstated in service with effect from 09 May 2014 till his superannuation from service in ordinary course as applicable to him and grant him entitled benefits. I further direct the Respondents that the directions be complied with, within six weeks from the date of issue of this order."

4. In terms of the order passed by Appellate Authority, the penalty imposed upon petitioner was reduced to withholding of two increments.

5. It is not in dispute that petitioner attained age of superannuation before 07.03.2018, when his appeal was decided. In this writ petition, petitioner has staked claim for subsistence allowance during the period he remained under suspension. According to petitioner, he was placed under suspension between 28.02.2009 till 09.05.2014, however, no subsistence allowance was paid to him for this period.

6. Learned Senior Counsel appearing for petitioner submits that since punishment imposed upon petitioner was reduced to withholding of two increments, which is a minor penalty, therefore, subsistence allowance of petitioner could not be withheld. In support of this contention, he relied upon an Office Memorandum dated 03.12.1985, issued by Ministry of Personnel & Training, Administrative Reforms, Government of India, New Delhi. In the said Office memorandum, it has been provided that if minor penalty is imposed upon conclusion of disciplinary proceedings, then the period of suspension has to be treated as duty, and the employee concerned should be paid full pay and allowances for the period of suspension.

7. Learned Senior Counsel for petitioner thus submits that the said Office Memorandum was not considered by Appellate Authority while deciding petitioner's appeal.

8. This Court finds some substance in the contention raised on behalf of petitioner. Since only a minor penalty was imposed upon petitioner, namely, withholding of two increments, therefore, Office Memorandum issued by Central Government appears to have some relevance in the matter.

9. Without expressing any opinion on the merits of petitioner's claim, writ petition is disposed of by permitting him to approach the Appellate Authority by making a representation regarding his claim for subsistence allowance. If he makes such representation within three weeks from today, decision thereupon shall be taken, as per law, within three months thereafter.