

(2021) 02 UK CK 0001

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 53 Of 2021

Kanwar Amninder Singh

APPELLANT

Vs

Hon'ble High Court Of Uttarakhand

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Citation : (2021) 02 UK CK 0001

Hon'ble Judges : Narayan Singh Dhanik, J;Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : Dev Datt Kamat, Lubna, Bhagwat Mehra

Final Decision : Disposed Of

Judgement

Ramesh Chandra Khulbe, J

1. We have heard Shri Dev Datt Kamat, learned Senior Counsel appearing for the petitioner, and Shri Bhatwat Mehra, learned Counsel appearing for

the respondent, and with the consent of both sides, this writ petition is being disposed of at the admission stage itself.

2. This writ petition has been filed by an officer in the Higher Judicial Service of the State of Uttarakhand seeking a writ of certiorari to quash the orders dated 24.11.2020 and 9.1.2021.

3. The facts, to the limited extent necessary for deciding the present writ petition, are that the petitioner was appointed as the Civil Judge (Junior

Division)/Judicial Magistrate, Ist Class in the State of Uttarakhand in September, 2003 and he joined his duties on 23.9.2003. He was promoted in the

High Judicial Cadre in the year 2011. When he was posted as Ist Additional District Judge, Haridwar, a complaint was lodged against him on

19.3.2018 for the incidents allegedly happened on 31.1.2018 and 2.2.2018. The

petitioner was placed under suspension by the High Court vide its order dated 22.4.2018. A chargesheet was thereafter issued to him and a sitting Judge of this Court was appointed as Enquiry Officer to enquire into the charges levelled against the petitioner.

4. From the perusal of the record, it is clear that the Presenting Officer has produced all the witnesses as per the chargesheet. During the course of defence evidence, the delinquent officer submitted many applications as mentioned in the impugned orders, but the Enquiry Officer allowed the prayer partly. From the perusal of the impugned orders, it is clear that the Enquiry Officer has rejected the applications, while by the same orders it was directed that if the delinquent officer wishes to adduce his evidence, he may adduce same.

5. We notice that the Presenting Officer did not admit the official documents which were issued on the administrative side by the District Judge, Haridwar. Same is the position regarding the e-mail which was sent by the delinquent officer to the official e-mail account of the Honâ??ble High Court. The Enquiry Officer rejected the said application on the ground that none of the documents, in question, has been filed by the delinquent officer.

From the perusal of the record, it is clear that the delinquent officer had already submitted these documents by filing an application dated 24.11.2020.

In the list of documents, these documents are listed at serial numbers 5, 8, 9, 10 and 44. All these documents were produced before the Enquiry Officer. However, these documents were not admitted by the Presenting Officer.

6. The Honâ??ble Supreme Court in *M.V. Bijlani v. Union of India*, 2 006 (5) SCC 88, has held that a departmental enquiry is a quasi-criminal in nature.

7. The distinction between the departmental enquiry and a criminal trial has been considered elaborately by the Honâ??ble Apex Court in *Karnataka*

Power Transmission Corporation v. Sri C. Nagarju & Others, (order of the Supreme Court passed in Civil Appeal No. 7279 of 2019 on 16.9.2019

reported in 2019 (10) SCC 367) and held that this Court would, ordinarily, not interdict a departmental enquiry during its progress, as it is always

open to the delinquent officer to question the mode and manner, in which the disciplinary enquiry is conducted, even after the enquiry is concluded and

before the final order is passed.

8. Although the disciplinary proceedings are quasi-criminal in nature, the charges are not required to be proved like a criminal trial i.e. beyond all

reasonable doubt. The Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there

had been a preponderance of probability to prove the charges on the basis of materials on record, but he cannot debar the delinquent officer to

produce the defence evidence which are material.

9. Audi alteram partem is the soul of principle of natural justice. It is not an empty formality. The person against whom an action is proposed to be

taken has to be given an opportunity of hearing. This opportunity has to be the effective opportunity and not a mere pretence.

10. We notice that the Enquiry Officer, on the one hand, rejected the application filed by the delinquent officer and, on the other hand, it was directed

to the delinquent officer that he may adduce the defence evidence if he so desires. The documents which were mentioned in the order dated 9.1.2021

at Serial Nos. 1 and 2 (the fourth application) were passed by the District Judge, Haridwar in its administrative side on 31.1.2018 and 19.3.2018.

These documents were not admitted by the Presenting Officer before the Enquiry Officer. The documents as mentioned at Serial No. 3 (the fourth

application) is an e-mail sent by the delinquent officer on 25.4.2018 to the official e-mail account of the Honâ??ble High Court. This document has

also not been admitted by the Presenting Officer.

11. The learned Counsel appearing on behalf of the respondent fairly submitted that as per the record, these documents were already produced by the

delinquent officer which were not admitted by the Presenting Officer and the Enquiry Officer rejected the application for summoning the original

record to prove the genuineness thereof in defence.

12. Since the above documents had already been filed by the delinquent officer before the Enquiry Officer, hence we are of the view that one more

opportunity should be given to the delinquent officer to prove the said documents submitted in defence. Consequently, we dispose of this writ petition

with the following directions/observations:

(i) The Registrar General will provide the video recording/CCTV footage of the enquiry proceedings to the delinquent officer within a period of ten

days from the date of completion of the enquiry proceedings. The cost thereof

shall be borne by the delinquent officer.

(ii) The Presenting Officer will verify the genuineness of the documents dated 13.11.2017, 31.1.2018 and 19.3.2018 as mentioned in the impugned

orders within a period of three days and the Presenting Officer will submit its report regarding genuineness of these documents before the Enquiry

Officer on or before 5th February, 2021.

(iii) The Presenting Officer will produce the concerned official of the Computer Section of the High Court before the Enquiry Officer on 5.2.2021 as

the defence witness. In case the Enquiry Officer is not available on 5.2.2021, the Enquiry Officer would be at liberty to fix another date for recording

the statement of the said witness.