
(2019) 07 UK CK 0128

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 4292 Of 2018

Lalit Dewari

APPELLANT

Vs

State Of Uttarakhand & Ors

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Uttarakhand Police Act, 2007 — Section Section 87, 87(1)

Uttarakhand Subordinate Police Officer Punishment And Appeal Rules, 1991 — Rule 14(2), 23

Citation : (2019) 07 UK CK 0128

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Sanjay Bhatt, Tej Singh Bisht

Final Decision : Disposed Of

Judgement

Lok Pal Singh, J

1. Petitioner has approached this Court seeking the following reliefs:-

i) A writ, order or direction in the nature of certiorari to quash the impugned orders dated 14.09.2018 passed by respondent no.2, order dated 20.03.2018 passed by respondent no.3 and orders dated 16.11.2017 and 18.12.2017 passed by respondent no.4.

ii) A writ, order or direction in the nature of mandamus commanding the respondents to omit the adverse entry of censure from the service record of petitioner for the assessment year 2016-17.

iii) A writ, order or direction in the nature of mandamus commanding the respondents to pay arrears of salary for the period 19.09.2015 to 18.4.2016 during which petitioner was placed under suspension.

2. Brief facts of the case are that the petitioner was posted as Platoon Commander in PAC. By an order dated 19.09.2015, petitioner was placed under

suspension. Subsequently, the said suspension order was revoked by order dated 18.04.2016. On 21.11.2016, a show cause notice was issued to the petitioner calling his explanation as to why only subsistence allowance may not be paid to him for the period 19.09.2015 to 18.4.2016. Petitioner submitted his reply to the show cause notice. Meanwhile, respondent issued another show cause notice to the petitioner calling upon him to explain as to why censure entry may not be given to him for the assessment year 2017. Thereafter, on 16.11.2017, final order was passed whereby censure entry was given to the character roll of the petitioner for the assessment year 2017 under Rule 14(2) of the Uttarakhand Subordinate Police Officer Punishment and Appeal Rules, 1991 (for short, 1991 Rules). Being aggrieved, petitioner preferred an appeal before the Inspector General of Police, PAC, which was rejected vide order 20.03.2018. Thereafter, the petitioner preferred a revision before the Director General of Police under Rule 23 of the 1991 Rules. By the impugned order/letter dated 14.09.2018, revision was returned to the petitioner on the ground that under the Uttarakhand Police Act, 2007, only one appellate forum is available and no revision lies.

3. Counter affidavit has been filed on behalf of respondent nos.2, 3 and 4 wherein it is stated that earlier in Rule 23 of Uttarakhand Subordinate Police Officer Punishment and Appeal Rules, 1991 and amended Rules, 2002 for the Uttarakhand Subordinate Cadre Police Officers, there was a provision to prefer a revision against the appellate order but in the year 2007 the Uttarakhand Police Act, 2007 has been promulgated and in the Uttarakhand Police Act, 2007 there is no provision to challenge the appellate order in revision. As such, the rule 23 of Uttarakhand Subordinate Police Officer Punishment and Appeal Rules, 1991 is not applicable now. Therefore, the revision preferred by the petitioner against the appellate order has been returned to the petitioner.

4. Rejoinder affidavit has also been filed by the petitioner wherein the averments made in the counter affidavit have been denied.

5. I have heard learned counsel for the parties and perused the entire material available on file.

6. Learned counsel for the petitioner would submit that the order of punishment has been passed under 1991 Rules where there is a provision of revision after the provision of appeal. But, the revision of the petitioner has been returned on the ground that under the Uttarakhand Police Act, 2007, there is no remedy of revision to the higher authority. It is contended that as per provisions contained in sub-section (1) of Section of the Uttarakhand Police Act 2007, The Indian Police Act 1861 (Act 5 of 1861) has been repealed to the State of Uttarakhand. He would invite attention of the Court to Section 87 of the Act, which reads as under:-

"87. (1) The State Government may make Rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be, before the

House of the State Legislature.

(3) The Director General of Police may frame Regulations, with the approval of the State Government, in respect of matters, specified in this Act.

(4) State Government may direct the Director General of Police to amend any Regulation made by him in such manner, as it may direct and thereupon, the Director General of Police shall amend the Regulation in the manner as directed.

(5) Every Rule and Regulation made this Act shall be notified by the State Government in the Official Gazette."

7. On a query by the Court, learned counsel for the parties would submit that in view of provisions contained in Section 87 of the Act no new Rules have been framed so far. Learned counsel for the petitioner would then submit that as new Rules under the Act have not been enacted thus the practice is prevailing in the Department to initiate disciplinary proceedings under the 1991 Rules, which provides remedy of revision, therefore the impugned order has been passed in violation of Rule 23 of 1991 Rules.

8. Considering the facts and circumstances that have been brought on record, coupled with the fact that new Rules have not been framed in view of provisions contained in Section 87 of the Act, and that there is practice prevailing in the Department to initiate departmental proceedings as per old Rules of 1991, impugned order dated 14.09.2018 is liable to be quashed, on the ground that under the 1991 Rules there is a provision of revision after exhausting the remedy of appeal. Consequently, impugned order dated 14.09.2018 is hereby quashed and set-aside. Respondent no.4 is directed to recommend and forward the revision of the petitioner to the Director General of Police or Additional Director General of Police, Uttarakhand within two weeks from the date of production of certified copy of the order, who, on receipt of the revision, shall decide the same within a period of eight weeks thereafter.

9. Writ petition is disposed of as above. No order as to costs.