

**(2010) 12 UK CK 0180**  
**In the Uttarakhand High Court**  
**Case No : Special Appeal No. 82 of 2010**

Mahendra Dutt Sharma

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

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**Date of Decision :** 13-12-2010

**Acts Referred:**

Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003 — Rule 3, 9(4)

**Citation :** (2010) 12 UK CK 0180

**Hon'ble Judges :** Barin Ghosh, C.J;Nirmal Yadav, J

**Bench :** Division Bench

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## Judgement

Barin Ghosh, C.J.—Appellant was put under suspension in contemplation of a disciplinary proceeding. The disciplinary proceeding was concluded by revoking the suspension order, but by directing that during the suspension period, the Appellant shall be entitled to only subsistence allowance and nothing more than that.

2. At the stage of inquiry, Inquiry Officer found that the charge stands proved, but opined that benefit-of-doubt should be given to the Appellant. After a copy of the inquiry report was served upon the Appellant alongwith a second show cause notice, the disciplinary proceeding was concluded by imposing a penalty of not paying anything more than the subsistence allowance to the Appellant during the period of suspension. According to the Appellant, the same being not a penalty envisaged under Rule 3 of the Uttaranchal Government Servant (Disciplinary and Appeals) Rules, 2003, the Appellant could not be punished in that manner in a disciplinary proceeding. He submitted that by reason thereof, the pension payable to the Appellant is also likely to be affected. Although the learned Judge, who dealt with the writ petition, noticed Rule 9 (4) of the said Rules, which authorized the disciplinary authority to impose one or more penalties mentioned in Rule 3 of the said Rules, but did not make any endeavour to ascertain whether the punishment, as was awarded to the Appellant, is one of the punishments mentioned in Rule 3 of the said Rules. The fact, however, remains, to which there

appears to be no dispute, that Rule 3 of the said Rules does not contemplate a punishment, as was handed out to the Appellant. In the circumstances, such a punishment could be interfered with. However, having regard to the mandate contained in Rule 54 (b) of the U.P. Fundamental Rules, applicable to the State, it was obligatory on the part of the disciplinary authority to pass an order as to what the Appellant would be entitled to for the period he remained suspended.

3. We, accordingly, close the matter by holding that a minor punishment of censure was awarded to the Appellant, while the disciplinary proceeding was concluded and the disciplinary authority, in exercise of its power under Rule 54 (b) of the U.P. Fundamental Rules, directed that the Appellant shall not be entitled to anything more than the subsistence allowance paid to him during the period he remained suspended.

4. There is an apprehension that by reason of the direction to pay subsistence allowance during the period of suspension, the terminal/retiral benefit of the Appellant is likely to be reduced. The same is not sustainable, in as much as, in law, pension is calculated on the basis of entitlement to salary and not what, in fact, paid during the period of suspension. With the clarification as above, we close the matter.

5. The appeal is, accordingly, disposed of by modifying the order under appeal to the extent as above.