

**(2011) 12 UK CK 0062**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 35 (S/B) of 2007**

Secretary to Government, Home Deptt. and Others

APPELLANT

Vs

Narendra Kumar and Another

RESPONDENT

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**Date of Decision : 05-12-2011**

**Acts Referred:**

Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 14, 14(1), 14(2), 4, 4(1)

**Citation : (2013) 1 UC 415**

**Hon'ble Judges : Umesh Chandra Dhyani, J; Tarun Agarwala, J**

**Bench : Division Bench**

**Final Decision : Allowed**

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## **Judgement**

1. Heard Sri Bindesh Kumar Gupta, the learned Additional Advocate General for the petitioners and Sri Manoj Tiwari, the learned Senior Counsel assisted by Sri Alok Mehra, the learned counsel for the respondent no. 1.

2. Respondent no. 1 Narendra Kumar was appointed as a Constable in Civil Police on 1st January, 1987 and after training, he was posted in the Reserve Armed Police, from where he was eventually dismissed from the services on 7th August, 1992. On account of various lapses, the respondent no. 1 was issued a charge sheet by the Deputy Superintendent of Police, Chamoli, vide letter dated 13th May, 1992. The charges against the respondent no. 1 are extracted hereunder:

(i) During the posting in Police Line Gopeshwar in the year 1990, he was sanctioned 15 days" casual leave and he proceeded on 16.8.1990. Petitioner did not report back after the expiry of sanctioned period of leave, but reported back on 5.10.1990, after 34 days unauthorized absence.

(ii) On 15.11.1990 petitioner was deputed with special training athletics team to Dehradun. After the tournament, all other employees returned back to Police Line on 20.11.1990, but the petitioner reported back after on 5.12.1990, 15 days" unauthorized absence.

(iii) On 12.4.1991 the petitioner was posted Treasury Guard, Tharali. On the pretext of illness of his wife, he proceeded to Police Line Gopeshwar but instead of reporting there, absented from duty without any sanctioned leave. The petitioner reported back on duty after 28 days" unauthorized absence on 9.5.1991.

(iv) The petitioner was sanctioned 15 days" casual leave on 7.2.1991, instead of reporting back after expiry of sanctioned leave, petitioner reported back on 20.3.1991 i.e. after lapse of 25 days unauthorized absence.

(v) Petitioner was sanctioned 3 days" casual leave and he proceeded on 12.10.1991, but he reported back on duty after 10 days" unauthorized absence on 25.10.1991.

(vi) On 3rd July, 1991 petitioner left duty of Special Guard at Gauri Kund without any prior permission or sanctioned leave and reported back after a lapse of 42 days on 13.8.1991.

3. A perusal of the charge sheet indicates that the respondent no. 1 went on unauthorized leave for long periods on several occasions. The respondent no. 1 submitted a reply admitting the charges. In his reply, the respondent no.1 stated that he is the only responsible member of his family and that he has to look after his aged parents, on account of which he is often required to go to his home to look after his parents and therefore, he absented himself from the duty. In his reply, the respondent no. 1 has categorically stated that he does not wish to produce any witness to defend himself against the charges framed against him and only submitted that the authority should take a lenient view in the matter.

4. It transpires that the authority, upon receipt of the reply, again asked the delinquent to reconsider his reply and gave a fresh opportunity to file a fresh reply. Respondent no. 1 again submitted the same reply. The record indicates that based on the said reply, the Enquiry Officer submitted a report, on the basis of which the disciplinary authority issued a show cause and consequently, an order dated 7th August, 1992 was passed dismissing the respondent no. 1 from service with immediate effect. The respondent no. 1, being aggrieved, filed a departmental appeal, which was rejected by an order dated 25th February, 1993. The respondent no. 1, being aggrieved, filed a claim application before the Public Services Tribunal.

5. The Public Services Tribunal, by the impugned order dated 20th November, 2006, allowed the claim application and quashed the order of dismissal and directed reinstatement of service with 50% back wages along with interest @ 7% per annum and further left it open to the disciplinary authority to pass a fresh order in accordance with law in the light of the observation made in the order. The Tribunal, while allowing the claim application, held that the departmental enquiry was initiated by the Deputy Superintendent of Police, whereas the disciplinary authority was the Superintendent of Police. The Tribunal came to the conclusion that the Deputy Superintendent of Police had no power or jurisdiction

to initiate disciplinary proceedings and consequently, the entire exercise stood vitiated. Reliance was made to Rule 7(4) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as "the Rules"). The Tribunal further held that the respondent no. 1 did not admit to his guilt and that the admission to the charges levelled against him was conditional, namely, that the acceptance of the guilt was based on the quantum of punishment to be awarded by the disciplinary authority.

6. The State of Uttarakhand, being aggrieved by the order of the Tribunal, has filed the present writ petition.

7. Rule 4 of the Rules provides major penalties and minor penalties. Rule 5 provides the procedure for award of punishment. Where a major punishment enumerated in clause (a) of sub-rule (1) of Rule 4 is to be awarded, the same has to be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14 and, where a minor punishment enumerated in clause (b) of sub-rule (1) of Rule 4 is to be awarded, the same has to be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14. Rule 14 provides the procedure for conducting departmental proceedings. For facility, Rule 14 is extracted hereunder:

14. Procedure for conducting departmental proceedings.-(1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the police officers may be conducted in accordance with the procedure laid down in Appendix-I.

(2) Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the police officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

(3) The charged police officer shall not be represented by Counsel in any proceedings instituted under these Rules.

8. A perusal of the aforesaid Rule would indicate that the departmental proceedings for major penalties would be conducted in accordance with the procedure laid down in Appendix-I. Appendix-I, which provides the procedure relating to the conduct of departmental proceedings against police officer, is extracted hereunder:

## APPENDIX

Procedure relating to the conduct of departmental proceedings against police officer.

Upon institution of a formal enquiry such police officer against whom the enquiry has been instituted shall be informed in writing of the grounds on which it is

proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form I appended to these Rules which shall be communicated to the charged police officer and which shall be so clear and precise as to give sufficient indication to the charged police officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged police officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish: provided that the Inquiry Officer may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged police officer.

9. On the basis of the procedure, the power of punishment is provided under Rule 7. For facility, Rule 7 is extracted hereunder:

7. Powers of punishment.-(1) The Government or any officer of police department not below the rank of the Deputy Inspector-General may award any of the punishments mentioned in Rule 4 on any police officer.

(2) The Superintendent of Police may award any of the punishments mentioned in sub-clause (iii) of clause (b) of sub-rule (1), of Rule 4 on Inspectors and Sub-Inspectors.

(3) The Superintendent of Police may award any of the punishments mentioned in Rule 4 on such police officers as are below the rank of Sub-Inspectors.

(4) Subject to the provisions contained in these rules all Assistant Superintendents of Police and Deputy Superintendents of Police who have completed two years of service as Assistant Superintendents of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the power to impose major punishments under Rule 4.

(5) Notwithstanding anything contained in these rules Reserve Inspector, Inspector of Station Officer may award the punishments of drill and fatigue-duty to any constable under his charge for a period not exceeding three days, but he shall inform the Superintendent of Police concerned of his order immediately and in any case within 24 hours of passing the order.

10. A perusal of the charge sheet would indicate that the proposal for awarding major punishment was contemplated and consequently, the procedure provided

by Rule 5(1) read with Rule 14(1) along with Appendix-I was to be followed. Rule 7(4) is relevant to the issue, which provides that a Deputy Superintendent of Police, who has completed two years of service, may exercise powers of the Superintendent of Police except the powers to impose major punishment under Rule 4.

11. In the present case, the disciplinary proceedings was initiated by the issuance of the charge sheet under the signatures of the Deputy Superintendent of Police and admittedly, the order of dismissal was passed by the Superintendent of Police. Therefore, the order of dismissal was passed by the competent authority as provided under Rule 7(3), namely, by the Superintendent of Police.

12. The short question which has been raised and which arises for consideration is, whether the Deputy Superintendent of Police could initiate the proceedings for imposition of a major penalty. In our opinion, the answer lies in Rule 7(4), which clearly states that a Deputy Superintendent of Police, who has completed two years of service, can exercise the powers of the Superintendent of Police. Admittedly, the Superintendent of Police is competent to impose punishment as provided under Rule 7(3). A Deputy Superintendent of Police having more than two years of service becomes competent to exercise such powers and is, therefore, competent to issue a notice or initiate disciplinary proceedings or issue a charge sheet. However, such power is circumscribed. Where a minor penalty is to be made, the same can be imposed by the Deputy Superintendent of Police and, where a major penalty is to be made, the same has to be imposed by the competent authority, namely, the Superintendent of Police.

13. In the light of the aforesaid, we have no hesitation in holding that the Deputy Superintendent of Police was competent to initiate departmental proceedings and issue a charge sheet to the delinquent. In the present case, we find that since a major penalty was imposed, the same was rightly issued by the Superintendent of Police.

14. The Court further finds that clear admission of guilt without any condition attached to it was given by the respondent no. 1. He only explained his difficulty in absenting himself. Such leniency requested by the respondent no. 1 was not hedged with any condition for acceptance of his guilt. The reason disclosed was not accepted by the disciplinary authority and accordingly, the disciplinary authority passed the order of dismissal. The finding of the Tribunal that the reply of the respondent no. 1 accepting the charges was hedged with certain conditions, is patently erroneous and against the material evidence on record.

15. In the light of the aforesaid, the order of the Tribunal cannot be sustained and is quashed. The writ petition is allowed.