

(2010) 04 UK CK 0095
In the Uttarakhand High Court

Shyam Sundar Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 UK CK 0095

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—The petitioner was inducted into the service of the respondents as a Constable. In 1997, he was posted at Rai Bareilly. By an order dated 05.05.1999, he was transferred to Tehri Garhwal. As per the transfer order, he had to join at Police Station Narendra Nagar, in district Tehri Garhwal, by 24.05.1999. Despite repeated communications having been sent to the petitioner, he did not assume charge at Police Station Narendra Nagar.

2. The pleadings of the instant writ petition reveal, that the petitioner was relieved from his posting at Rai Bareilly on 15.05.1999. He however did not assume his charge in district Tehri Garhwal. The explanation tendered by him, for not assuming charge at Police Station Narendra Nagar, was that he was suffering from Tuberculosis, and as such, being in an extremely weak physical state of body, he could not travel to district Tehri Garhwal, so as to assume charge at Police Station Narendra Nagar. The pleadings in the present writ petition also disclose, that the petitioner addressed a communication dated 30.05.1999, informing the Superintendent of Police, Tehri Garhwal, about his illness. In the aforesaid communication, he depicted his address of Rai Bareilly.

3. On account of the fact, that the petitioner did not assume his duties at Police Station Narendra Nagar, a preliminary inquiry was held against him, charging him of unauthorised absence from duty. The aforesaid preliminary inquiry was conducted by Sri K.C. Balodi, Deputy Superintendent of Police. The preliminary

inquiry officer submitted his report on 04.12.1999. Learned Counsel for the petitioner, during the course of hearing, invited this Court's attention to paragraph 3 of the report, wherein it stands recorded, that the petitioner had applied for leave to the Superintendent of Police (as already noticed above), wherein he had given his address of Rai Bareilly.

4. Since the petitioner did not assume his duties at Police Station Narendra Nagar, even after the receipt of the preliminary inquiry report, a chargesheet dated 19.01.2000 was issued to him. The aforesaid chargesheet was allegedly sent to his home address in district Unnao. In this behalf, the case of the respondents is, that the aforesaid chargesheet dated 19.01.2000 was pasted at the house of the petitioner on 28.01.2000, in the presence of two witnesses, namely, Sri Ram Vilas Singh and Sri Sukhwant Singh, as the petitioner was not available at his house address (depicted in his character roll).

5. Insofar as filing his reply to the chargesheet is concerned, it is not a matter of dispute, that the petitioner did not file any reply / written statement to the chargesheet dated 19.01.2000. During the course of hearing of the instant writ petition, the case set up by the petitioner was, that he could not respond to the chargesheet, so as to file a reply thereto, on account of the fact that he was not served the aforesaid chargesheet. It is submitted, that he should have been served the chargesheet at the address depicted in his communication dated 30.05.1999, wherein he had given his address of Rai Bareilly. In fact, during the course of hearing of the present writ petition, the sole plank of attack at the hands of the learned Counsel for the petitioner was, that the entire proceedings initiated against the petitioner, at the hands of the respondents commencing with the chargesheet dated 19.01.2000, must be deemed to have been vitiated, on account of the fact, that the aforesaid chargesheet was never served upon the petitioner.

6. Insofar as the aforesaid solitary contention advanced by the learned Counsel for the petitioner is concerned, a clear and categorical response thereto, emerges from paragraph 3(h) of the counter affidavit filed on behalf of the respondents, wherein it is inter alia averred as under: (h) That it may be submitted that the petitioner through special messenger was asked to submit his reply / written statement by 01.02.2000 and was also instructed to lead evidence on 28.02.2000. Again on 16.03.2000. Again information was sent to the petitioner to be present to lead evidence in his defence but despite information the petitioner did not present himself on 10.04.2000 even.? It is, therefore apparent, that having served the chargesheet on the petitioner by affixing the same at his residential address (depicted in his character roll), a special messenger was deputed to inform him, that he had to file his reply / written statement by 01.02.2000. Needless to mention, that the petitioner did not file any reply / written statement to the aforesaid chargesheet dated 19.01.2000. Even thereafter, he was required through special messenger to lead evidence in defence before the inquiry officer on 28.02.2000, 16.03.2000 and 10.04.2000.

On neither of these three dates, the petitioner appeared before the inquiry officer to lead his evidence in defence.

7. Having conducted the departmental inquiry ex parte, the inquiry officer submitted his report dated 06.06.2000. The aforesaid report was furnished to the petitioner, along with a show-cause notice (also dated 06.06.2000). The aforesaid inquiry report, as also the show-cause notice, were also served on the petitioner through special messenger. This factual position is depicted in paragraph 7 of the order passed by the Public Services Tribunal, Uttarakhand, dated 06.02.2009. The petitioner did not even respond to the aforesaid show-cause notice, whereupon, the punishment order dated 23.06.2000 was passed against the petitioner.

8. The petitioner, thereafter, assailed the punishment order dated 23.06.2000 by preferring an appeal. The aforesaid appeal was however dismissed on 29.03.2001, whereupon, the petitioner assailed the punishment order, as also the appellate order, before the Public Services Tribunal, Uttar Pradesh, Lucknow by filing a claim petition. The same was subsequently transferred to the Public Services Tribunal, Uttarakhand, Dehradun, wherein it was numbered as Claim Petition No. 155/T/2001. The aforesaid claim petition was dismissed by the Tribunal by an order dated 06.02.2009.

9. Through the instant writ petition, the petitioner has assailed the initiation of the departmental inquiry, on the basis of the chargesheet dated 19.01.2000 which, according to the petitioner, was never served upon him. As such, it is the contention of the learned Counsel for the petitioner, that the entire proceedings conducted by the respondents, subsequent to the issuance of the chargesheet dated 19.01.2000, should be set aside, as the same are vitiated, on account of the fact, that the entire proceedings were conducted at the back of the petitioner, without his having any knowledge or notice of the same.

10. Insofar as the solitary contention advanced by the learned Counsel for the petitioner is concerned, besides the factual position noticed herein above, he also invited our attention to Rule 16 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the '1991 Rules'). Rule 16, relied upon by the learned Counsel for the petitioner, is being extracted hereunder: '16. Proceedings in absentia ? (1) Departmental proceedings against delinquent police officers may be taken in absentia by the authorities competent to take departmental proceedings if, the police officer, against whom departmental proceedings are pending or against whom it is proposed to start such proceedings or to whom it is impossible for the inquiry officer to contact, deliberately absents himself from the place of his posting or from the proceedings when in progress. (2) Before taking departmental proceedings in absentia, the concerned authority shall record in writing that inspite of all reasonable steps having been taken to contact the police officer it has not been possible to serve the charge on him and obtain his explanation or to secure his personal presence. Explanation. ? Where the police officer is

contacted personally or the charge or the notice is sent to him by registered post at the address given by him as recorded in his character roll and at the place of his present stay, or sent to him by Special Messenger at the place of his present stay, and at the address given by him as recorded in his character roll it shall be presumed that reasonable steps have been taken to contact the police officer concerned.? It is the vehement contention of the learned Counsel for the petitioner, that in view of Sub-rule (2) of Rule 16 of the 1991 Rules, before proceeding against the petitioner ex parte, reasons had to be recorded in writing. It is the case of the petitioner, that no such reasons were recorded against the petitioner by the inquiry officer, and as such, the entire inquiry proceedings must be deemed to have been held illegally and in violation of the mandatory provisions contained in Rule 16(2) of the 1991 Rules.

11. We have considered the solitary submission advanced by the learned Counsel for the petitioner, on the basis of the factual position asserted at the hands of the learned Counsel for the petitioner, as also on the basis of Rule 16(2) of the 1991 Rules. Insofar as the factual aspect of the matter is concerned, we have no doubt in our minds, that the petitioner was duly served the chargesheet dated 19.01.2000. The manner in which the chargesheet had to be served on the petitioner, is clearly expressed in the explanation under Rule 16 of the 1991 Rules. The aforesaid explanation mandates, that a chargesheet can be served at the address given by a police officer (holding a subordinate rank) as is recorded in his character roll. The address of the petitioner, in district Unnao, had been recorded by the petitioner on his own in his character roll. The aforesaid chargesheet dated 19.01.2000 was affixed at his residence in district Unnao on 28.01.2000. The aforesaid affixation was carried out in the presence of two witnesses, namely, Sri Ram Vilas Singh and Sri Sukhwant Singh. Having served the chargesheet on the petitioner in consonance with law, the petitioner was personally informed through special messenger to file his reply / written statement by 01.02.2000. He, however, failed to do so. He was then instructed to lead evidence before the inquiry officer. He was expressly informed to appear before the inquiry officer for the aforesaid purpose on 28.02.2000, 16.03.2000 and 10.04.2000. The petitioner, however, did not appear before the inquiry officer to lead his evidence in defence on any of the aforesaid dates. These dates had also been communicated to the petitioner through a special messenger. The petitioner was then served with an inquiry report dated 06.06.2000, as also the show-cause notice of the same date. Despite having been served with the said show-cause notice, the petitioner failed to respond to the same, inasmuch as, he did not file any reply thereto. Thereupon, by an order dated 23.06.2000, the services of the petitioner were dispensed with, by passing the impugned order.

12. In the facts and circumstances noticed in the foregoing paragraph, we find no dereliction at the hands of the respondents in their effort to conduct a fair inquiry against the petitioner. He was duly served with a chargesheet; he was required to submit his reply and to appear before the inquiry officer to lead his evidence in defence; he was then served with an inquiry report, as also a show-cause

notice. The petitioner failed to respond to the proceedings initiated against him. In the facts and circumstances of this case, the petitioner has himself to blame. He cannot be permitted to assail the action of the respondents, on account of his unilateral assertion, that he was not served with a chargesheet dated 19.01.2000. We have already concluded herein above that the petitioner was duly served the chargesheet dated 19.01.2000.

13. Insofar as the non-compliance of Rule 16 of the 1991 Rules is concerned, we are satisfied, that Sub-rule (2) of the aforesaid Rule is clearly inapplicable to the facts and circumstances of the case. The aforesaid Rule can be invoked only when the delinquent is not served with a chargesheet. Insofar as the present case is concerned, we have already recorded our conclusion herein above, to the effect that the petitioner was duly served with the chargesheet dated 19.01.2000, in terms of the explanation under Rule 16 of the 1991 Rules. Sub-rule (2) of Rule 16 of the 1991 Rules, would even otherwise be inapplicable to the facts and circumstances of this case, on account of the fact, that the petitioner was personally contacted on each relevant occasion, whereupon, he was informed, firstly, to file a reply / written statement to the chargesheet, secondly, to lead his evidence in defence, and thirdly, to respond to the show-cause notice issued to him along with the copy of the inquiry report. The petitioner having failed on each of those occasions to comply with the directions issued to him, cannot be permitted to raise a defence under Rule 16(2) of the 1991 Rules, so as to vitiate the entire inquiry proceedings conducted against him.

14. For the reasons recorded herein above, we find no merit in this writ petition and the same is accordingly dismissed.