

(2010) 06 UK CK 0021
In the Uttarakhand High Court

State of Uttarakhand and Another	Vs	APPELLANT
Sri Mahendra Kumar Tayal and Another		RESPONDENT

Date of Decision : 03-06-2010

Acts Referred:

Citation : (2010) 06 UK CK 0021

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—The respondent No. 1 was inducted into the service of the Public Works Department as a Junior Engineer in the composite State of Uttar Pradesh on 23.09.1970. In due course of time, he came to be promoted as an Assistant Engineer, and thereafter as an Executive Engineer vide orders dated 02.06.1989 and 06.09.1997.

2. After the re-organization of the composite State of Uttar Pradesh, respondent No. 1 was allocated to the successor State of Uttarakhand. In 2002 respondent No. 1 was posted at Ghansali. He fell ill on 08.08.2002. In order to avail of medical facilities at Dehradun, he applied for casual leave and submitted the same to the Superintending Engineer. Since the Superintending Engineer was himself on leave (having proceeded to Kanpur), the application for casual leave remained unattended. On being examined at Dehradun, he was advised bed rest. Accordingly, he submitted an application for medical leave on 10.08.2002 alongwith the medical certificate issued to him.

3. In the night intervening 10/11.08.2002, there was a cloud burst, leading to a disaster. Being the head of the division, respondent No. 1 was expected to be at the site, however, since he had availed casual leave and thereafter medical leave, he was not present. On account of his absence after the disaster, he was placed under suspension by an order dated 11.09.2002. Respondent No. 1 assailed the aforesaid suspension order by approaching this Court through Writ Petition (S/B)

No. 1382 of 2002. During the course of the proceedings of the aforesaid writ petition, the aforesaid suspension order came to be revoked. As such, respondent No. 1 was reinstated into the service by an order dated 09.12.2002. In spite of his reinstatement, he was issued a charge sheet dated 21.11.2002. He responded to the aforesaid charge sheet by submitting his reply on 20.12.2002. In the inquiry report submitted after the culmination of the departmental proceedings conducted against respondent No. 1, it was concluded that the charges leveled against respondent No. 1 had not been proved. The Enquiry Officer, however, made an observation in the inquiry report to the effect, that being the head of the division, respondent No. 1 ought to have informed his superiors before leaving the headquarters. Even though the charges leveled against respondent No. 1 were not proved, he was inflicted the punishment of stoppage of increments for a period of two years with cumulative effect by an order dated 19.05.2005.

4. Respondent No. 1 assailed the order of his punishment dated 19.05.2005 by preferring Claim Petition No. 49 of 2006 before the State Public Services Tribunal, Uttarakhand, Dehradun. The Tribunal by its order dated 30.05.2006 required respondent No. 1 to file a review application before the Governor of the State of Uttarakhand. In compliance with the directions issued by the Tribunal vide its order dated 30.05.2006, respondent No. 1 filed a review application. The aforesaid review application was, however, not adjudicated upon by the Governor of the State of Uttarakhand. In the aforesaid circumstances, respondent No. 1 again preferred Claim Petition No. 14 of 2009 before the Public Services Tribunal, Uttarakhand, Dehradun. The aforesaid claim application was allowed by an order dated 03.03.2010, wherein the impugned order of punishment dated 19.05.2005 was quashed.

5. Through the instant writ petition, the petitioners have assailed the order passed by the Public Services Tribunal, Uttarakhand, Dehradun dated 03.03.2010, vide which the punishment order dated 19.05.2005 had been set aside.

6. Learned Counsel for the petitioners vehemently contended, that the petitioners in holding the departmental inquiry against respondent No. 1 followed the procedure envisaged under the Uttaranchal Government Servant (Discipline & Appeal) Rules, 2003. It is also the contention of the learned Counsel for the petitioners, that in conducting the departmental inquiry against respondent No. 1, all rules of natural justice were faithfully complied with, and as such, it was wholly unfair and unreasonable at the hands of the Public Services Tribunal, Uttarakhand, Dehradun to have set aside the punishment order dated 19.05.2005.

7. We have considered the first submission advanced by the learned Counsel for the petitioners. We, however, find no merit therein. A perusal of the impugned order rendered by the Tribunal, while disposing of Claim Petition No. 14 of 2009, reveals that the impugned order of punishment dated 19.05.2005 had not been

set aside, either on account of the violation of the procedure depicted in the Uttaranchal Government Servant (Discipline & Appeal) Rules, 2003 or for non-compliance of the rules of natural justice. As such, we find no merit in the first contention advanced by the learned Counsel for the petitioners.

8. The second contention advanced by the learned Counsel for the petitioners is to the effect, that the prerogative to inflict a punishment on an employee rests on the shoulders of the competent authority, and if the competent authority is satisfied, that a punishment is to be inflicted on a particular employee, then the subjective satisfaction of the competent authority cannot be subject matter of challenge at the hands of such an employee.

9. We have considered the second contention advanced by the learned Counsel for the petitioners (as has been notice in the foregoing paragraph). A departmental inquiry is conducted against an employee, so as to determine whether or not allegations framed in the form of charges were justifiably leveled against the concerned employee. In case a finding is recorded during the course of inquiry proceedings, that the delinquent employee is guilty of any of the charges, then and only then it is open to the competent authority, i.e. the punishing authority, to inflict one of the punishments specified under the Uttaranchal Government Servant (Discipline & Appeal) Rules, 2003, keeping in mind the seriousness of the charges proved against such an employee. However, if none of the charges are proved or established during the course of the departmental inquiry, unless the competent authority differs with the findings recorded in the inquiry report, it is not open to the punishing authority to impose a penalty on the concerned employee. Such an action at the hands of the Government would amount to arbitrary exercise of authority, namely to punish an employee who is not even guilty of any charges. In the aforesaid view of the matter, it is not possible for us to accept even the second contention advanced by the learned Counsel for the petitioners. No other submission was advanced at the hands of the learned Counsel for the petitioners.

10. For the reasons recorded hereinabove, we find no merit in the instant writ petition and the same is accordingly dismissed.