

(2010) 09 UK CK 0110
In the Uttarakhand High Court
Case No : Writ Petition (S/B) No. 50 of 2008

State of Uttarakhand and Others

APPELLANT

Vs

Kapil Tyagi (since deceased) and Another

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Police Act, 1861 — Section 34
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 12

Citation : (2010) 09 UK CK 0110

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—The original respondent, who is since deceased, was a Constable Driver. He was found missing from duty. Upon search, it was found that he was under the influence of liquor and was using abusive language. He was taken to the hospital, when the doctor found, as reported, that smell of liquor was coming out from his mouth. While a criminal case, u/s 60 of the Excise Act and u/s 34 of the Police Act, was initiated for the said behaviour of the original respondent, Deputy Superintendent of Police, who was in-charge Superintendent of Police, Chamoli, initiated an inquiry in relation to the same. After the inquiry was concluded, he reported to the Deputy Inspector General of Police that the inquiry report be placed before the appropriate authority under Rule 12 of the U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 and for transferring the disciplinary proceedings to the competent authority. Accordingly, the inquiry report thus prepared was presented before the Superintendent of Police, Pauri, who thereupon issued a second show-cause, and thereafter punished the original respondent by an order of removal. The private respondent lost before the appellate authority and his approach to the revisional authority was not responded to. In the meantime, the criminal court exonerated the private respondent in the criminal case initiated u/s 60 of the Excise Act and u/s 34 of the Police Act. The private respondent, accordingly,

approached the Tribunal challenging the punishment order, as well as the appellate order. During the pendency of the matter before the Tribunal, the revisional authority rejected the revision filed by the private respondent. The Tribunal held, upon applying the principles of law laid down in Capt. M. Anthony Paul v. Bharat Gold Mine Ltd. 1999 (2) SLR (SC) 338 that the private respondent, having been exonerated by the criminal court after disbelieving the evidence given by the selfsame witnesses, the disciplinary authority could not hold contrary thereto.

2. In the present writ petition, it is the contention of the State that the ratio of the decision in Capt. M. Anthony Paul v. Bharat Gold Mine Ltd. 1999 (2) SLR (SC) 338 has no application to the facts of this case, in as much as the criminal court did not exonerate the private respondent of the charges levelled against him on the ground that the charges were untenable, but the criminal court exonerated the private respondent after giving him benefit of doubt. The learned Counsel for the State submitted that the standard of proof in disciplinary proceedings is probability, which is not the same as in the case of criminal cases. Submission thus advanced, we think is acceptable. However, that would not alter the conclusion arrived at by the Tribunal, in as much as, admittedly, the Deputy Superintendent of Police, who was functioning as the in-charge Superintendent of Police, Chamoli, was not the competent authority to initiate disciplinary proceedings and, accordingly, he made a request to transfer the disciplinary proceedings to the competent authority. From the records produced by the State before us in the form of this writ petition, it does not appear that Deputy Superintendent of Police, Chamoli, in his capacity as disciplinary authority, issued a charge sheet to the original respondent, indicating that by the actions complained of the private respondent has committed misconduct and, accordingly, the private respondent is required to be disciplined. That being the situation, the inquiry made by the said Deputy Superintendent of Police, though may have had been made in the presence of the original respondent, can in law be treated only as a preliminary enquiry. Admittedly, when the disciplinary proceedings were transferred to Superintendent of Police, Pauri or he was authorized to deal with the matter, Superintendent of Police, Pauri did not issue any charge sheet to the private respondent, instead he purported to issue a second show-cause calling upon the private respondent, why he should not be dismissed from service for having had behaved in the manner found by the Deputy Superintendent of Police in course of inquiry made by him. In the circumstances, the conclusion would be that the punishment was not authorized by the law in terms whereof the same could be awarded.

3. In the circumstances, we refrain from interfering with the order of the Tribunal, but for the reasons as above.

4. Since an interim order was operating staying the operation of the judgment and order of the Tribunal, the original respondent could not join his services in terms of the judgment and order of the Tribunal. The interim order stood

vacated, as a result of the judgment and order pronounced above. However, in as much as the private respondent has died during the pendency of the writ petition, let terminal dues of the original respondent be settled and paid to the person (or persons) entitled to the same after taking into account that the original respondent had worked until the date he was purported to be terminated.

5. The writ petition is, accordingly, disposed of.