

(2010) 10 UK CK 0051

In the Uttarakhand High Court

Case No : Writ Petition No. 310 (S/B) of 2006

State of Uttaranchal and Others

APPELLANT

Vs

Sri Surendra Singh and Another

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Citation : (2010) 10 UK CK 0051

Hon'ble Judges : Barin Ghosh, C.J;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—In a charge-sheet, three charges were levelled against the Respondent. The third charge was that the Respondent was a habitual unauthorised absentee. First two charges were pertaining to unauthorised absence of the Respondent during two periods. In the second charge, in addition to unauthorised absence, it was indicated that the Respondent after having had absented unauthorisedly for the period in question purported to join back his service in a drunken condition and when he was not permitted to join, the Respondent misbehaved with two constables. In reply to the charge-sheet, Respondent contended that he served the institution for a long period of time, and keeping the same into account, he be exonerated. This reply was treated as denial of the charges by the Respondent requiring appointment of an Inquiry Officer to enquire into the charges. The Inquiry Officer was appointed. He concluded the matter ex-parte. There cannot be any dispute that the first date of inquiry was informed to the Respondent, but the fact remains that the inquiry was not concluded on the same day. The records brought on record do not suggest that the Respondent was informed of the subsequent dates of inquiry. Further when the Respondent had asked for copies of his service records, the same were not furnished to him, but the Inquiry Officer himself looked into those records for the purpose of concluding the third charge. In the background, after the inquiry report was submitted and the order of punishment by way of dismissal was passed, the Appellant did prefer an appeal against the order of dismissal and brought on record the facts and factors to suggest under what

compulsion he had to leave the Police-Lines on two occasions, for which first and second charges were levelled. He brought to the notice of the appellate Authority that he had a long tenure of 22 years and the evidence on record collected in course of inquiry did not suggest that he was a habitual unauthorised absentee. He indicated that no particulars of the alleged misbehaviour had been furnished in the charge-sheet. He indicated that he was not drunk, but was under medication.

2. The appellate Authority did not take into account any of those factors and retained the order of dismissal. The revisional Authority did not interfere with the order of the appellate Authority, and accordingly, when the Respondent approached the Tribunal, the Tribunal had no other option but to interfere with the order of dismissal and all subsequent orders passed by the appellate Authority and the revisional Authority.

3. In the present writ petition, the order of the Tribunal has been assailed. Taking into account the fact that there has been gross violation of principle of natural justice in the matter of concluding the disciplinary proceeding initiated by issuing the said charge-sheet at the inquiry stage held ex-parte, since there is nothing on record to suggest that the dates of the inquiry were communicated to Respondent No. 2, we are not inclined to interfere with the order of the Tribunal. However, a look at the order of the Tribunal would clearly indicate that the Tribunal intervened in the matter, inasmuch as, it felt that conclusion of the disciplinary proceeding in the manner it had been concluded was not appropriate. In such circumstances, we think it was obligatory on the part of the Tribunal to permit the disciplinary authority to conclude the disciplinary proceeding in accordance with law.

4. We, accordingly, modify the order of the Tribunal, and thereby, permit the disciplinary authority to conclude the disciplinary proceeding initiated by issuing the said charge-sheet by holding a fresh inquiry in accordance with law.

5. We are not inclined to interfere with the directions of the Tribunal pertaining to reinstatement of the Respondent, inasmuch as, by the punishment order the Respondent was prevented from serving further and the same is a product of illegality. By reason of removal of the said order of dismissal, the Respondent is entitled in law to the status that he had immediately before the said order was passed, and accordingly, when such an illegal order of termination is removed, reinstatement must be deemed.