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**(2012) 07 UK CK 0053**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/B) No. 165 of 2007**

State of Uttaranchal and Others

APPELLANT

Vs

Yogendra Sharma and Another

RESPONDENT

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**Date of Decision : 31-07-2012**

**Acts Referred:**

Police Act, 1861 — Section 34

**Citation : (2013) 1 SCT 562 : (2013) 2 SLJ 168**

**Hon'ble Judges : Barin Ghosh, C.J.; Umesh Chandra Dhyani, J**

**Bench : Division Bench**

**Advocate : B.D. Kandpal, Deputy A.G, for the Appellant; Anil Dabral, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Barin Ghosh, C.J.—In a disciplinary proceeding, the charge against respondent no. 1 was that in a drunken condition, he created a ruckus

inside a private P.C.O. and, later, outside the private P.C.O. This allegation also led to filing of a case u/s 34 of the Police Act before the

appropriate Magistrate. The Magistrate was ultimately compelled to close the criminal case u/s 34 of the Police Act in view of inability on the part

of the Police to produce the accused, respondent no. 1 herein, before the Magistrate. In the disciplinary proceeding, the private respondent denied

the charge and held out that the charge has been concocted by respondent no. 2, namely, Sri Raj Kishore Singh, S.I. for respondent no. 1 refused

to act as a domestic servant at his home on being asked to do so. The charge was inquired into by the Inquiry Officer. Inquiry Officer submitted his

report. That report was accepted, whereupon a notice was given to respondent no. 1. Respondent no. 1 gave a reply thereto. Subsequent thereto,

respondent no. 1 was dismissed from service. In the claim petition challenging the order of dismissal, appellate order, by which the appeal was dismissed as well as the revisional order by which the revision was dismissed, respondent no. 1 contended that Sri Raj Kishore Singh was not listed as witness in the charge sheet, but without notice to respondent no. 1, Sri Raj Kishore Singh was called by the Inquiry Officer to give evidence in the absence of respondent no. 1. It was also stated that Sri Keshar Singh alias Kedar Singh was not listed as a witness in the Challan pertaining to the case u/s 34 of the Police Act, but he was listed as one of the witnesses in the departmental charge sheet and the said Keshar Singh alias Kedar Singh was examined without giving an opportunity to respondent no. 1 to cross examine him. These assertions were not, at all, dealt with in the counter filed to the claim petition. From the Inquiry Report, it is apparent that Keshar Singh alias Kedar Singh was only examined in chief. It must be kept in mind that this Keshar Singh alias Kedar Singh was the employee of the P.C.O., on whose alleged complaint, steps were taken against respondent no. 1. In the background of what has been stated above, the Tribunal felt that respondent no. 1 was not given proper opportunity to cross examine vital witnesses. The Tribunal also noticed that the Inquiry Officer stated that opportunity was afforded to respondent no. 1 to cross-examine some of the witnesses but no cross examination was carried out by respondent no. 1. The Tribunal also noticed that no signature of respondent no. 1 was obtained by the Inquiry Officer regarding his disinclination to cross-examine those witnesses. The Tribunal, accordingly, held that the inquiry was unfair. In addition to that, the Tribunal, after having had placed reliance upon the judgment of the Hon''ble Supreme Court rendered in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , held that since respondent no. 1 has been exonerated by the Criminal Court, he cannot be punished in the disciplinary proceeding for the selfsame facts. The said finding appears to be contrary to what has been pronounced by the Hon''ble Supreme Court in the said case. However, in the present writ petition, no attempt has been made to show that, in fact, Sri Raj Kishore Singh was shown as one of the witnesses in the charge sheet issued in the disciplinary proceeding or that Raj Kishore Singh was called to give evidence upon notice to respondent no. 1 or that respondent no. 1 was aware that on the date Raj

Kishore Singh deposed, he would be deposing. It has also not been attempted to be shown that Raj Kishore Singh was permitted to be cross

examined or despite getting such opportunity, Raj Kishore Singh was not examined. At the same time, in the instant writ petition, no attempt has

been made to show that respondent no. 1 was given an opportunity to cross examine Keshar Singh alias Kedar Singh and that despite getting an

opportunity to cross examine Keshar Singh alias Kedar Singh, he reused to cross examine him.

2. In that circumstances, there is no room to hold that the Tribunal erred in holding that the disciplinary proceeding at the inquiry stage was not

conducted in a fair, reasonable and unbiased manner. We, accordingly, find no reason to interfere with the judgment and order impugned in the

writ petition. The writ petition is dismissed with permission to recover the remuneration to be paid to respondent no. 1 from the persons

responsible for holding and conducting inquiry in those matters in the manner as depicted above.