
(2011) 06 UK CK 0094

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 64 of 2010

Surendra Singh Kushwaha

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Citation : (2011) 06 UK CK 0094

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—Heard Sri Vipul Sharma, Advocate for the Petitioner as well as Sri N.P. Sah, Standing Counsel for the State of Uttarakhand.

2, The Petitioner is a Sub Inspector in Uttarakhand Civil Police. While he was posted at Bageshwar in the year 2002 a show-cause notice dated 12.6.2002 was given to him in which it was alleged that though he had information that certain person was carrying unauthorized or unaccounted money in cash with him and therefore instead of questioning him and taking action against him he was simply allowed to go. The Petitioner submitted his reply stating that one Sri V.K. Mishra, Land Conservation Officer was apprehended by him as he was carrying an amount of ` 2,84,900/-. However, Sri V.K. Mishra stated that he was a Government Officer and was carrying the money for making payment, in connection with government work. All the same, for abundant precaution the Petitioner informed the District Magistrate the next day, about this incident. This information could not be given on the same day as wireless was out of order.

3. Be that as it may, what is relevant for our purpose that on 5.8.2002 the Superintendent of Police, Bageshwar after considering the reply to the show cause notice found that the Petitioner has not committed any offence and therefore the matter was closed. The Petitioner subsequently was transferred to District Champawat and thereafter to District Dehradun. In the year 2008 the

Senior Superintendent of Police, Dehradun gave another show cause notice to the Petitioner for the same charges for which the Petitioner had earlier been exonerated. The Petitioner again replied to the said charges stating same facts as given by him earlier, that he had earlier been given a show cause notice and his reply to the said show cause notice was found satisfactory and he was exonerated by the Superintendent of police, Bageshwar. The Senior Superintendent of Police, Dehradun, after going through the reply of the Petitioner found that nothing can be made out against the Petitioner and that no offence was committed by the Petitioner. Subsequently an order was passed by the Senior Superintendent of Police, Dehradun on 29.7.2008 to this effect.

4. Now, for the third time, another show cause notice was given to the Petitioner dated 9.9.2009 (Annexure No. 11 to the writ petition) by the Inspector General of Police, Garhwal Range by exercising suo moto powers provided in proviso to Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (punishment and Appeal) Rules, 1991 (from hereinafter referred to as the Rules). The original Rule 20 of the Rules reads as follows.

20. Appeals - (1) Every Police Officer against whom an order of punishment in Sub-clauses (i) to (iii) or Clause (a) and sub Clauses (i) to (iv) or Clause (b) entitled to prefer an appeal against the order of such punishment to the authority mentioned below:

(a) to the Deputy Inspector-General, if the original order is of the Superintendent of Police or officers empowered under Sub-rule (4) of Rule 7 of these rules.

(b) to the Inspector-General, if the original order is of the Deputy Inspector General;

(c) to the Director-General, if the original order is of Inspector General;

(d) to the State Government, if the original order is of Director General;

(2) No appeal shall lie against an order inflicting any of the petty punishments enumerated in sub-rules (2) and (3) of Rule 4.

(3) Every officer desiring to prefer an appeal shall do so separately.

(4) Every appeal, preferred under these rules shall contain all materials, statements, agreements relied on by the police officers preferring the appeal, and shall be complete in itself, but shall not contain disrespectful or improper language. Every appeal shall be accompanied by a copy of final order which is the subject of appeal.

(5) Every appeal, whether the Appellant is still in service of Government or nor, shall be submitted through the Superintendent of Police of the district or in the case of police officers not employed in district work through the head of the office to which the Appellant belongs or belonged.

(6) An appeal will not be entertained unless it is preferred within three months

from the date on which the police officer concerned was informed of the order of punishment.

Provided that appellate authority may, at his discretion, for good cause shown extend the said period up to six months.

(7) If the appeal preferred does not comply with the provisions of Sub-rule (4) the appellate authority may require the Appellant to comply with the provisions of the said sub rule within one month of the notice of such order to him and if the Appellant fails to make the above compliance the appellate authority may dispose of the appeal in the manner as it deems fit.

(8) The Director-General or an Inspector-General may, for reasons to be recorded in writing either on his own notion or on request from an appellate authority before whom the appeal is pending transfer the same to any other officer of corresponding rank.

5. By way of amendment the proviso has been added in Rule 20 of the Rules which reads as follows:

Addition to Proviso in Rule 20.- In Rule 20 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991, after Sub-rule (1) (a) to (d) and before Sub-rule (2) the following proviso shall be added-

Provided that the appellate authority may on its own motion, call for and examine the records of any order passed in a departmental proceeding, against which no appeal has been preferred under this Rule, for the purpose of satisfying itself as to, the legality or propriety of such order or as to the regularity of such procedure and pass such order, as it may think fit;

Provided further that no order under the first proviso shall be made except after giving the person effected, a reasonable opportunity of being heard in the matter

6. The Petitioner once again replied to the show cause notice but this time he has now been awarded a punishment by the Inspector General of Police vide order dated 27.11.2009 by which integrity of the Petitioner has been withheld and it was directed that this be entered in the service records of the Petitioner.

7. The main objection of the counsel for the Petitioner on the impugned order is that the said order is wholly without jurisdiction inasmuch as the Inspector General of Police has no power to pass such an order. This power though suo moto can only be exercised where a punishment has already been imposed on an officer. The language of the amended proviso makes it very clear that this power can only be exercised by the Inspector General of Police in a departmental proceeding in case no appeal has been preferred under this Rule. In the present case there was no occasion for preferring an appeal as no punishment order was passed against the Petitioner. The resort to amended provision of Rule 20 of the Rules is therefore wholly illegal. As such, the impugned orders dated 24.11.2009 (Annexure No. 13 to the writ petition) and 27.11.2009 (Annexure No. 14 to the

writ petition) are hereby quashed.

Writ petition is allowed.

No order as to costs.