

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Special Appeal No. 110 of 2004

Ram Darash Yadav ...Appellant
Versus
State of Uttaranchal and others ...Respondents
With

(2) Special Appeal No. 86 of 2004

Satya Prasad ...Appellant
Versus
Inspector General of Police Garhwal and others ...Respondents
With

(3) Special Appeal No. 87 of 2004

Narendra Kumar ...Appellant
Versus
Inspector General of Police and others ...Respondents
And

(4) Special Appeal No. 89 of 2004

Pawan Kumar ...Appellant
Versus
Inspector General of Police and others ...Respondents

Sri Anil Kumar Joshi and Sri Bhaskar Chandra Joshi, Advocate holding brief of Sri Vipul Sharma, learned counsel for the appellants in the connected matters.
Sri Bindesh Kumar Gupta, learned Addl. Advocate General for the State.

Dated: 30.10.2009

**Coram: Hon'ble Tarun Agarwala, ACJ.
Hon'ble V.K. Bist, J.**

Hon'ble Tarun Agarwala, ACJ. (Oral)

Heard Sri Anil Kumar Joshi, Advocate and Sri Bhaskar Chandra Joshi, Advocate holding brief of Sri Vipul Sharma, the learned counsel for the appellants and Sri Bindesh Kumar Gupta, the learned Addl. Advocate General appearing for the opposite parties.

2. The present appeals arise out of the judgment-dated 06.04.2004 passed by the learned Single Judge dismissing the

writ petitions. The brief facts, leading to the filing of the writ petitions, are that the petitioners were working in the police force and were charged with serious misconduct. They submitted their reply which was found to be unsatisfactory and a full fledged inquiry was initiated for which they were given full opportunity to defend themselves. The Inquiry Officer, after giving them full opportunity of hearing, found that the charges stood proved against them. The disciplinary authority, after considering all aspects of the matter, passed the order of dismissal. The petitioners, being aggrieved, filed the writ petitions challenging the order of dismissal on a variety of grounds. The learned Single Judge, after considering the matter, found that full opportunity of hearing was granted to the petitioners and that there was no violation of the principles of natural justice. The learned Single Judge found that the charges were serious and the order of dismissal was justified and consequently dismissed the writ petitions. The petitioners, being aggrieved with the order, have filed the present special appeals.

3. Learned counsel for the appellants submitted that the necessary copies of the documents were not supplied by the Inquiry Officer and that non supply of the essential documents was violative of the principles of natural justice. In this regard, the learned counsel has placed reliance upon a decision of the Supreme Court in ***State of U.P. Versus Shatrughan Lal and another [1998(6) SCC 651]*** wherein the Supreme Court held that the supply of copies was necessary and essential and that the inquiry stood vitiated if the necessary documents was not supplied or the charged employee was not given an opportunity to inspect the said documents. The learned counsel, in support of his contention, has placed reliance upon an application which the petitioners had filed wherein they prayed that all the documents should be supplied. The learned Single Judge, after considering the matter, found that a copy of the preliminary report and all the documents mentioned in the charge sheet was duly supplied to the charged employee within two days from the date of the issuance of the charge sheet. The learned Single Judge also went through the

reply of the petitioners and the various material evidence on record and found that there was no demand for any specific document from the Inquiry Officer. The learned Single Judge further found that the Inquiry Officer had duly supplied copy of the preliminary report as well as statement of the witnesses to the appellants. Before this Court nothing has been brought on record to indicate as to what specific document was required and how the non-deliverance of that specific document had prejudiced the appellants and how the non-supply of that document would vitiate the inquiry. In the absence of any assertion, this Court is not inclined to consider the contention of the appellants on vague and general allegation about non-supply of a document. The submission of the learned counsel for the appellants, consequently appears to be bereft on merit and is rejected.

4. The learned counsel for the appellants further placed reliance upon the provision of paragraph-486 of the Police Regulations and submitted that the departmental proceedings could not be initiated till the disposal of the criminal investigation. We have considered the provisions of paragraph-486 of the Police Regulations and we find that this has no application whatsoever with the present controversy. Further, no such averment was raised before the learned Single Judge, and consequently, it is not open to the appellants to raise this plea for the first time in the special appeal.

5. The learned counsel for the appellants further submitted that the main accused in the criminal case has been acquitted and, therefore, the appellants are absolved of all the charges and should be reinstated. In our opinion, the submission of the learned counsel for the appellants is patently misconceived. A criminal charge against the accused is entirely different from the initiation of domestic disciplinary proceedings against the employee concerned. Criminal proceedings proceed on a different level and domestic disciplinary proceedings proceeds on a different level. The object of the departmental proceedings is to ascertain whether the delinquent is required to be retained in

service or not. On the other hand the object of criminal prosecution is to find out whether the offence in the penal statute has been made out or not. Therefore, the area covered by the two proceedings are not identical. The object in both the proceedings are different. Whereas the departmental proceedings are taken to maintain the discipline and the efficiency in the service, the criminal proceedings are initiated to punish a person for committing an offence violating any public duty. Further the preponderance of probability is entirely different in these proceedings. In a criminal proceeding, the charge has to be proved to the hilt before the accused could be punished, whereas in a domestic disciplinary proceedings, it is not necessary that the charge has to be proved to the hilt. It is sufficient for the disciplinary authority to punish the employee on a preponderance of probability where he fails to maintain the discipline. Further, the main accused who was charged in the criminal case has nothing to do in so far as the dereliction of duty and the charges which have been levelled against the appellants. Those charges are entirely different to the charge that was levelled against the main accused.

6. In view of the aforesaid the mere fact that the main accused has been acquitted has nothing to do in so far as the charge, which was levelled against the appellants. In view of the aforesaid, this Court does not find any merit in these appeals. The special appeals fail and are dismissed. In the circumstances of the case, there shall be no order as to costs.

(V.K. Bist, J.) (Tarun Agarwala, ACJ.)
30.10.2009

NCM/VKG