

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 318 of 2007 (S/B)

Vinod Chandra Tiwary.Petitioner
Versus
State of Uttarakhand and others.Respondents

Mr. Shashi Kant Shandilya, Advocate for the petitioner.
Mr. K.P. Uppadhyay, Addl. Chief Standing Counsel for the State/respondent nos. 1 to 5.

Dated: October 29, 2010

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

(Delivered by Hon'ble V.K. Bist, J.)

This case is outcome of the pronouncement of a judgment of Public Service Tribunal, Uttarakhand (for short the Tribunal) delivered on 18.09.2007 in claim petition no. 27/N.B./2006 moved by the petitioner whereby the learned Tribunal upheld the adverse entry given to the petitioner in departmental proceedings. The petitioner has further sought a writ in the nature of mandamus commanding the respondents to give him all service and monetary benefits. Facts first:

2. Petitioner is Constable (Civil Police) in Police Department and on 20.05.2005, while he was posted at Police Station Rudrapur, he was on picket duty at Bindukhera turning, alongwith Mr. Bachcha Rai, a Home Guard. On that day, at about 9:00 p.m., a girl was seen by him proceeding to Rudrapur-Gaderpur Road. It is alleged that, suddenly a Maruti Car No. UP-04-B 3515 stopped by her side and the person sitting in the car forcefully dragged the girl into that car. The said car, thereafter, proceeded back to Rudrapur. The petitioner and his companion allegedly tried to stop the said car but the person, driving the car, threatened them and said that he

was man of a Minister and took away the car towards Rudrapur. The petitioner reported the incident to Police Station, Rudrapur by a R.T. set, upon which the A.S.P. came at the site of incident. The Police Officer suspected that the petitioner had consumed liquor, therefore, the petitioner was sent to hospital and his medical examination was conducted.

3. Thereafter, vide order dated 23.02.2005, passed by S.S.P. Udham Singh Nagar, the petitioner was placed under suspension on the ground that while he was on duty at Gaderpur barrier, he was found under the influence of liquor. Preliminary enquiry was entrusted to the Circle Officer (City), Udham Singh Nagar, who submitted his report on 10.03.2005. After receipt of the report from Enquiry Officer, a show cause notice was issued to the petitioner on 02.04.2005 to which the petitioner responded denying the charges mentioned in the show cause notice stating therein that he had not taken alcohol but since he was having pain in his stomach, therefore, he had taken '*Podeen Hara*'. When the charges said to have been proved, the Departmental Proceeding was initiated against the petitioner under Rule 14(2) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal), Rules, 1991 and the S.S.P., Udham Singh Nagar vide order dated 18.05.2005 passed punishment order awarding adverse entry to the petitioner in his character roll. The petitioner preferred a departmental appeal on 12.07.2005, before the Inspector General (I.G.) of Police, but the Appellate Authority also upheld the order of Disciplinary Authority vide order dated 22.11.2005. The revision filed against the order dated 22.11.2005, passed by Appellate Authority, before the

Addl. Director General of Police (Personnel), Dehradun, was also dismissed on 01.07.2006. Aggrieved by the orders dated 18.05.2005, 22.11.2005 and 01.07.2006, the petitioner filed claim petition before the Tribunal, who vide its order dated 18.09.2007 upheld the adverse entry against the petitioner. However, the Tribunal set-aside the portion of adverse entry regarding transmission of wrong information by R.T. set.

4. Learned counsel for the petitioner contended that the orders impugned are wholly arbitrary and illegal and liable to be set-aside because orders under challenge have been passed without affording opportunity of hearing to the petitioner, thus the entire proceeding is against the principle of natural justice. He submitted that in the medical report of the doctor, who conducted medical examination on petitioner, the doctor has opined that petitioner has consumed alcohol-like substance but he was not under the influence of alcohol. He contended that medical report was carried out without following medical norms, inasmuch as, without testing urine or blood samples and mere smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech is not enough. In support of his submission, he placed reliance upon the judgments of Hon'ble Supreme Court, rendered in Civil Appeal No. 6510 of 2009 'Munna Lal vs. Union of India and others', decided on 29.09.2009 and 'Bachubhai Hassanalli Karyani vs. State of Maharashtra', reported in 1971 SCC (Cri)-178. He further contended that the Enquiry Officer did not rely on statement of the Home Guard, who was present with the petitioner at the time of incident. In reply to the show cause notice issued to petitioner on 11.04.2005, the petitioner explained that he

was not in intoxicated position, rather he took medicine, namely, '*Podeen Hara*' as he was suffering from stomach pain, which was mistaken as having been consumed alcohol. Learned counsel for the petitioner further contended that order, directing to incorporate adverse entry against the petitioner, has been passed without conducting final enquiry. He vehemently argued that both the authorities, Appellate or Revisional, did not apply their mind while upholding the order of Disciplinary Authority. He also argued that the learned Tribunal did not find any iota of evidence against the petitioner and directed to delete adverse entry regarding transmission of wrong information by R.T. set, but wrongly upheld rest part of adverse entry. Learned counsel invited our attention towards the modified adverse entry recorded on 07/12.11.2007 with the contention that the very entry goes to show that the same has been incorporated in contravention to the orders of the learned Tribunal.

5. On the other side, the learned Additional Chief Standing Counsel for the State/respondents has submitted that in the full-fledged Departmental Inquiry, adequate opportunity of hearing was provided to the delinquent. The charge was found proved by the Enquiry Officer and, based on the inquiry report and the reply, the Disciplinary Authority awarded punishment. The Appellate and Revisional Authorities, after going through the records, did not find any illegality in the order passed in disciplinary proceedings. Learned counsel for the respondents further submitted that the petitioner belongs to a disciplinary force but he was found in dereliction of duty, inasmuch as, he was found under the influence of alcohol, as such, conduct of the delinquent official itself

entails misconduct. Further, the petitioner's conduct in performing his duties in drunken condition and sending wrong information by R.T. set, was unbecoming of a member of a disciplined force. He also contended that partial modification in the adverse entry of the petitioner has been carried out, therefore, there is no illegality in the order dated 18.09.2007 passed by the learned Tribunal.

6. We have heard the learned counsel for the parties and have gone through the papers annexed with the petition as well as the judgment of learned Tribunal. The Tribunal, while considering the arguments of the petitioner that he had taken '*Pudeen Hara*' instead of liquor, found that this stand was taken by the petitioner when notice was served on him by the Disciplinary Authority. Before that, at no point of time, particularly at the time of medical examination, he had not stated that the substance smelling like alcohol was '*Pudeen Hara*'. We have seen the report of Medical Officer, according to which the petitioner was found to have consumed alcohol like substance but he was not in intoxication. However, the doctor found him breathing alcoholic and his speech slurred. Most of the witnesses examined by the Inquiry Officer also stated that petitioner was under the influence of liquor, his speech was slurred and smell of alcohol was exerting from his mouth. The petitioner nowhere denied his unsteady gait and slurred speech. In both the cases, which have been cited by the learned counsel for the petitioner, the Hon'ble Supreme Court has not set-aside the entire punishment. In the case, reported in SCC 3(1971)-930, the Hon'ble Supreme Court reduced the rigorous imprisonment to imprisonment already undergone but sentence of fine was not set-aside.

Similarly, in the case of Munna Lal vs. U.O.I., cited by the petitioner, only 50% back wages was paid. In the present case also, only minor penalty was imposed on the petitioner, which was rightly imposed.

7. We do not find any infirmity in the judgment of the Tribunal. The writ petition is dismissed. No order as to costs.

(V.K. Bist, J.) **(Barin Ghosh, C.J.)**
29.10.2010

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