

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Stay Application No. 61 of 2010
Urgency Application No. 3177 of 2010

In

Writ Petition No.15 of 2010 (S/S)

Constable No. 143 Civil Police Vivek Kumar
S/o Sri Krishna Bhog,
R/o 83 Peer Baba Colony, Roorkee,
District Haridwar

.....Petitioner

Versus

1. State of Uttarakhand through Secretary, Home Civil Secretariat, Dehradun.
2. Director General of Police, Police Headquarter, Dehradun
3. Inspector General of Police, Garhwal, Region, Uttarakhand, Dehradun.
4. Senior Superintendent of Police, DehradunRespondents.

Mr. Gopal Narain, Advocate for the petitioner.

Mr. Subhash Upadhyay, Brief Holder for the State/respondents No. 1 to 4

Hon'ble B.S.Verma, J.

Heard learned counsel of the parties and perused the record.

By means of this writ petition, the petitioner has sought the following reliefs:-

1. To issue writ order or direction in the nature of Certiorari quashing the impugned order dated 11.09.2009 (Annexure-3) passed by respondent no.4 and order dated 14.12.2009 (Annexure-5) passed by respondent No.3.
2. To issue writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner in service with all service benefits applicable to him.
3. Any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
4. Award cost of the petition.

The petitioner who was constable bearing No. 43, Civil Police in Uttarakhand and was appointed in the police service in the year 2001. The petitioner has challenged the termination order dated

11.09.2009 passed by Senior Superintendent of Police and appellate order dated 14.12.2010 passed by Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.

According to the petitioner, on 09.09.2009 the petitioner was posted at Police Line Dehradun, he was assigned the duty at Rishikesh Bairaj from 3.00 a.m. to 9.00 a.m.

On 09.09.2009, the petitioner after completing his period of duty went to Guard Room for rest and the constable No. 297 Sri Utsav Saini was discharging his duties at Rishikesh Bairaj at 10.30 a.m. S.I. J.P. Juyal who was in the stage of intoxication along with other constables forcibly entered in petitioner's room and threatened him and started to use filthy language and also threatened the petitioner for dire consequences.

The said Sub Inspector lodged F.I.R. against the petitioner Under Section 353/186 I.P.C., the petitioner was also medically examined on 10.09.2009. The perusal of the said medical report reveals that the concerned Doctor has given his opinion that the petitioner was not under the effect of alcohol.

Because of the incident narrated above, the petitioner was terminated by respondent No.4 i.e. Senior Superintendent of Police, Dehradun, by order impugned dated 11.09.2009 on the basis of said F.I.R. in exercising the powers under Regulation 8 (2) (b) of U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules 1991 and Modification Order 2002 without affording him any opportunity of being heard.

The Departmental Appeal which was preferred by the petitioner too was dismissed on 14.12.2009.

The averments made in the writ petition have been denied by the state and the stand has been taken that the Rule 8 (2) (b) of U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules 1991 and Modification Order 2002 was rightly exercised.

Learned counsel for the petitioner drew attention of this court on the judgment passed in writ petition No. 1937 of 2005(S/S), Constable 268 A.P. Dharmendra Rathi Vs. State of Uttaranchal and others decided on 09.07.2009 wherein the learned judge of this court has held that in view of constitutional bench judgment referred by Apex Court Union of India and another Vs. Tulsiram Patel, (1985) 3 SCC 398 has held that the majority judges had observed that clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and more particularly the principle of “audi Alteram Partem” by providing that a civil servant shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given reasonable opportunity of hearing in respect of those charges.

This Court has finally allowed the writ petition. In the case at hand the controversy involved is also similar to the said writ petition.

The procedure adopted by the authorities in the present case, does not meet the requirement of Article 311 of the Constitution of India or Rule 8 of the Rules. It is in violation or the paradigm set in the Tulsiram Patel’s case as well.

The appellate authority has also repeated what the appointing authority had to say. There is absolutely no application of mind of the appellate authority. Therefore, the order dated 11.09.2009 and 14.02.2009 are totally in violation of principle of natural justice and fair play as well as in violation of second proviso to Article 311 of the Constitution of India as well as in violation of Rule 8 of the Rules are liable to be set aside and are hereby set aside. It is directed that the petitioner will be immediately taken back in service with all service benefits applicable to him.

With the said observation, the writ petition is allowed.

All pending applications stands disposed of, accordingly.

(B.S.Verma, J.)
27-07-2010