

THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 168 of 2010

Constable No. 297 Utsav Saini S/O Braham Singh Saini, R/O House
no. 104, Sanjay Gandhi Colony, Roorkee, District Haridwar
... Petitioner.

Vs.

State of Uttarakhand and others.

... Respondents.

Mr. Ajay Veer Pundir, Advocate, learned counsel for the petitioner.
Mr. Subhash Upadhyay, Brief Holder, learned counsel for the respondents.

Date July 30, 2010.

Hon'ble B.S.Verma, J.

Heard learned counsel for the parties and perused the
record.

By means of this writ petition, the petitioner has sought a
writ in the nature of certiorari quashing the impugned orders dated 11-
9-2009, 23-11-2009 and 18-2-2010 passed by respondent nos. 2, 3 and
4 respectively (Annexure Nos. 2, 3 and 4 to the writ petition).

By the order dated 11-9-2009, the Senior Superintendent
of Police Dehradun has passed the order of removal from service
against the petitioner on the ground of misconduct under the
provisions of relevant Disciplinary Rules applicable to the petitioner.
By the order dated 23-11-2009, the departmental appeal of the
petitioner was dismissed and the order under challenge was upheld by
the Inspector General of Police, Garhwal Range, Uttarakhand. By the
order dated 18-2-2010, the revision petition of the petitioner was
dismissed by the Additional Director General of the Police,
Uttarakhand.

According to the petitioner, the petitioner was a constable
being Constable No. 297 Civil Police and was posted in Police Line,
Dehradun at the relevant period. The petitioner was deputed at Bairaj
Guard, Rishikesh on 9-9-2009.

It appears that on the information of one Chandra Mohan Bhatt, Assistant Engineer given to the Police Station Kotwali, Rishikesh on 9-9-2009 alleging misbehaviour by the petitioner during his posting at aforesaid Bairaj along with his fellow constable, the petitioner was by the Inspector Kotwali Rishikesh who lodged F.I.R against the petitioner and his fellow constable. The petitioner was brought to police station and he was medically examined by the doctor. A case was registered at Crime No. 556 of 2009 under Section 504 I.P.C. and Section 85 of the Police Act.

The S.S.P. Dehradun in exercise of powers under Section 8(2)(b) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rule, 1991 and Modification Order 2002 without holding an enquiry against the petitioner and without giving opportunity of hearing to the petitioner, has dismissed him from service.

The departmental appeal, which was preferred by the petitioner too was dismissed by order dated 23-11-2009. The revision preferred by the petitioner against the order dated 23-11-2009 and the dismissal order dated 11-9-2009 was also dismissed, which gave rise to the present writ petition.

During the course of argument, learned counsel for the petitioner has submitted that the writ petition filed by the fellow constable Mr. Vivek Kumar, against whom the same allegations were leveled and who was dismissed from service, has already been allowed by this Court vide order dated 27-7-2010 passed in Writ Petition No. 15 of 2010(S/S) Constable No. 143 Civil Police Vivek Kumar Vs. State of Uttarakhand and others. Learned counsel for the petitioner also pointed out that this Court by order dated 9-7-2009 passed in W.P.S.S. No. 1937 of 2005, Constable 268 A.P. Dharmendra Rathi Vs. State of Uttaranchal and others had allowed the writ petition on similar

grounds as that of the present writ petition. It was held that a civil servant shall not be dismissed or removed from service or reduced in rank unless reasonable opportunity of hearing is given to the civil servant and an enquiry is held. Learned counsel for the petitioner has urged that the present writ petition may be allowed in terms of the order dated 27-7-2010 passed by this Court in Writ Petition No. 15 of 2010(S/S) Constable No. 143 Civil Police Vivek Kumar Vs. State of Uttarakhand and others.

Learned Brief Holder appearing for the respondents has fairly conceded that the controversy involved in the present writ petition is almost identical to the controversy involved in the W.P.S.S. No. 15 of 2010, which has been allowed by order dated 27-7-2010.

In view of the above, this writ petition is allowed in terms of the order dated 27-7-2010 passed in Writ Petition No. 15 of 2010(S/S) Constable No. 143 Civil Police Vivek Kumar Vs. State of Uttarakhand and others. Accordingly, the impugned orders (Annexure Nos. 2, 3 and 4 to the writ petition) are quashed. The petitioner will be taken back in service immediately with all service benefits applicable to him.

(B.S.Verma,J.)

RCP