

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 22/NB/DB/2024

Constable 23 N.P. Ganesh Prasad, aged about 37 years, s/o Late Hardaya, r/o Village Nadehi, P.S. Jaspur, District Udhampur Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Kumaun Region, Nainital.
3. Superintendent of Police, Pithoragarh.

.....Respondents

Present: Sri Ankush Tyagi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: JANUARY 23, 2026

Per: Hon'ble Sri A.S.Rawat, Vice Chairman(A)

The background of the case is that earlier, this claim petition was dismissed by this Tribunal vide order dated 16.10.2024 being barred by limitation, at the admission stage. Thereafter, the petitioner had challenged the dismissal order of the Tribunal before Hon'ble High Court by filing Writ Petition (S/B) No. 163 of 2025. The Hon'ble High Court vide its order dated 23.05.2025, condoning the delay of 195 days in filing the claim petition, remitted back the matter to this Tribunal for consideration and disposal on merits.

2. By means of present claim petition, the petitioner seeks the following reliefs:

- (a) *To quash the impugned final order no. P.F.-02/2022 dated 27.08.2022 passed by respondent no. 3 (Annexure No.2 to this claim petition).*
- (b) *To quash the impugned final order dated 31.12.2022 by respondent no. 2 in appeal no. 31/2022(Annexure No.3 to this claim petition).*
- (c) *To direct the respondents to reinstate the services of petitioner with the respondent department as constable.*
- (d) *To issue any other suitable order or direction in favour of petitioner, which this Hon'ble Tribunal may deem fit and proper in the present facts and circumstances of the case.*
- (e) *To award cost of claim petition in favour of petitioner.*

3. Facts, necessary for adjudication of present claim petition, are as follows:

3.1 The petitioner was appointed on the post of Constable in the year 2007 in the respondent department and he joined his services on 14.12.2007. After rendering a long service in the respondent department, immediately on 11-5-2022, the Deputy Superintendent of Police, Pithoragarh issued a notice against the petitioner with regard to absence of 209 days without any permission or sanction by the competent authority. A departmental inquiry was initiated against him by Deputy Superintendent of Police, Pithoragarh under the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaptation & Modification Order), 2002 and further, directed the petitioner to be present on 23-5-2022 at 11:00 a.m. in the office of Presiding Officer/Deputy Superintendent of Police, Pithoragarh for argument and cross-examination of the witness, namely Shri Naresh Kumar Arya.

3.2 A show cause notice dated 27-07-2022 was issued to the petitioner giving 15 days time to submit reply of the same as to whether the services of the petitioner be not terminated from the police force under the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaptation & Modification Order), 2002 and under section

23((1)(d) of Uttarakhand Police Act, 2007. The show cause notice was served upon the petitioner on 16-8-2022, who submitted the explanation before the Deputy Superintendent of Police, Pithoragarh on 24.08.2022.

3.3 Thereafter, vide impugned final order no. P.F.- 02/2022 dated 27-8-2022 under the provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaptation & Modification Order), 2002 and under section 23(d) of Uttarakhand Police Act, 2007, the petitioner was dismissed from the service by the respondent no. 3.

3.4. The petitioner on 20-9-2022 preferred an appeal before the respondent no. 2 against the impugned order dated 27-8-2022 passed by respondent no. 3. Vide impugned order dated 31-12-2022, the respondent no. 2 illegally dismissed the appeal preferred by petitioner.

3.5 Feeling aggrieved by the illegal action at the hands of respondents authorities, the petitioner approached the Hon'ble High Court of Uttarakhand at Nainital by filing a Writ Petition No. 1301 of 2024. The Hon'ble High Court vide its order dated 23.07.2024 dismissed the writ petition on the ground that petitioner has alternative remedy to challenge both the orders before the Public services Tribunal,

4. After condoning the delay by the Hon'ble High Court, the claim petition was admitted vide order dated 13.06.2025. Thereafter, the respondents filed C.A./W.S. and the petitioner has also filed R.A. to C.A/W.S.

5. Heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner has argued that vide order dated 21.03.2022, the enquiry officer, Mr. Mahesh Chandra Joshi issued the chargesheet to the petitioner and after issuance of the

charge sheet, the enquiry officer conducted the enquiry and found the petitioner guilty and suggested punishment in the enquiry report dated 23.07.2022. After receiving the show cause notice, the petitioner submitted his reply and denied the charges and also prayed to cancel the departmental proceedings. The Disciplinary Authority (Superintendent of Police, Pithoragarh) vide order dated 27.08.2022 without considering the reply of the petitioner and without taking in to consideration the enquiry report passed the harsh punishment of removal from service against the petitioner. The appeal of the petitioner has been dismissed by the Appellate Authority, vide order dated 31.12.2022. The punishment order and the appellate orders are arbitrary, unjust and disproportionate because these orders are in contravention of the judgments of the Hon'ble Apex Courts and various Hon'ble High Courts as well as judgments of this Hon'ble Tribunal. The action of the enquiry officer is illegal, arbitrary. In support of his case, learned Counsel for the petitioner has relied upon the following judgments:

- (i) The judgment of Hon'ble Apex Court rendered in **State of Uttarakhand and others V/s Kharak Singh reported in (2008) 2 SCC (L&S) 698**
- (ii) The Judgment of Hon'ble Supreme Court rendered in the case of **State of Uttar Pradesh and others V/s Saroj Kumar Sinha reported in (2010) 2 SCC 772.**
- (iii) The Judgment of Hon'ble Apex Court rendered in the case of **Deokinandan Sharma Vs. Union of India & others Reported in 2001 (5) SCC 340.,**
- (iv) The Judgments of Hon'ble Apex Court rendered in **Ram Chander Vs Union of India and Union of India Vs Tulsiram Patel.**
- (v) **The Judgment passed by this Tribunal in Claim Petition No. 66/DB/2023 Yogesh Kumar Vs State of Uttarakhand and others.**

7. Learned A.P.O. has argued that in the year 2021, the petitioner was transferred from Pangla Police Station to Nachni Police Station, Pithoragarh vide order dated 06.07.2021, he did not

report for duty at Nachni Police Station and remained absent without any leave/permission. He was immediately suspended for this unauthorized absence, and a preliminary inquiry was assigned to the Circle Officer, Dharchula. The preliminary inquiry officer, in his inquiry report, found the petitioner guilty of being absent without leave/permission for 209 days from 19.06.2021 to 13.01.2022. The then Superintendent of Police, Pithoragarh, decided to initiate departmental proceedings against the petitioner under Rule 14(1) of the Uttar Pradesh/Uttarakhand Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (Adaptation and Modification Order-2002). Shri Mahesh Chandra Joshi, Deputy Superintendent of Police, Pithoragarh conducted the departmental proceedings, who during the departmental proceedings under Rule 14(1) found the petitioner guilty of unauthorized absence without leave/permission for 209 days from June 19, 2021 to January 13, 2022. A show cause notice was issued to the petitioner on July 27, 2022, under Rule 14(1) of the aforesaid Rules of 1991 and Section 23(1)(d) of the Uttarakhand Police Act, 2007. The petitioner submitted his explanation on August 24, 2022 which was found unsatisfactory, and the petitioner was dismissed vide Order dated 27.08.2022, and orders were passed granting him leave without pay for the period of his unauthorized absence, totaling 209 days, based on the principle of "no work, no pay." The petitioner filed an appeal, which was rejected by the Deputy Inspector General of Police, Kumaon Range, Nainital vide Order dated 31.12.2022, on the grounds that the appeal lacked merit. The order of dismissal from service was passed against the petitioner after giving him an opportunity to be heard. Therefore, the petitioner's petition is liable to be dismissed with costs.

8. Having heard the parties and perusal of the record, the Tribunal finds that in the instant case, the departmental proceeding suffers from the following defects- (i) The charge sheet was given by the enquiry officer and not the disciplinary authority and (ii) The

recommendation was made by the enquiry officer for the punishment in the enquiry report. Learned Counsel for the petitioner cited various decisions in support of his case. The Hon'ble Apex Court in State of Uttarakhand and others V/s Kharak Singh (*supra*) has held that enquiry officer can offer his views but cannot make strong recommendation for imposition of a particular punishment. In Case of State of Uttar Pradesh and others V/s Saroj Kumar Sinha reported (*supra*), the Hon'ble Apex Court has held that the enquiry officer should be wholly unbiased. The enquiry officer should not act as prosecutor as well as judge. The appellate authority is duty bound to pass reasoned orders dealing with contentions of the employees. The Hon'ble Apex Court in the case of "Deokinandan Sharma Vs. Union of India & others (*supra*) has also held the appellate authority is duty bound to pass reasoned order dealing with the petitioner's contentions. In the case of Ram Chander Vs Union of India and Union of India Vs Tulsiram Patel the Hon'ble Apex Court has held that while deciding statutory appeal the appellate authority is required to give hearing to the government servant concerned and also pass reasoned order dealing with the contentions raised in the appeal. But in the instant case the charge sheet has been issued by the enquiry officer and also suggested punishment in the enquiry report. The act of the enquiry officer by signing the Charge sheet is in contravention of the settled principle of law as propounded by the Hon'ble High Court of Uttarakhand in the matter of **M.S. Dasauni Vs. State of Uttarakhand & Ors., reported in 2016 (1) U.D. 321**, which has also been relied upon on behalf of the petitioner, in support of his contention. In **M.S. Dasauni vs. State of Uttarakhand & others (*supra*)**, a decision which pertains to a Police official, the Hon'ble High Court of Uttarakhand held as under:-

"13..... they have not proposed the punishment. The Committee has simply given a finding that the action on the part of the petitioner is an act of serious misconduct, and therefore, proceedings should be drawn against him under Rules 4(1)(a) and 14(1) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991.

Under the provision of sub rule (1) (a) of Rule 4 and Rule 14(1) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 proceedings have drawn against Police Officer, which entails major penalty and this has to be read with appendix I of the said Rules. Rule 4(1)(a) of Uttar Pradesh Police Officers of The Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:-

"4. Punishment (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-

(a) Major Penalties –

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

14. Rule 14(1) of Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:- "14. Procedure for conducting departmental proceedings (1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I."

15. Appendix-I of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:-

"Procedure relating to the conduct of departmental proceedings against Police officer: Upon Institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form 1 appended to these Rules which shall be communicated to the charged Police Officer and which shall be so clear and precise as to give sufficient indication to the charged Police Officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged Police Officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish: provided that

the Inquiry Officer may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.”

“17. The second order dated 04.01.2010 on which action actually has been taken by the appointing authority is an order which has not been referred by the petitioner in the writ petition. This order has been placed before this Court by the State in its counter affidavit.

18.From the perusal of annexure No. 2 which is impugned order dated 04.01.2010, it seems to be passed by the enquiry officer. This is the charge sheet and an enquiry officer is not supposed to prepare a charge-sheet, as this is the job of the appointing authority. Enquiry officer has to conduct an enquiry in an impartial manner and therefore, framing of the charge-sheet is not one of the duties of the enquiry officer. Therefore, as far as the order dated 04.01.2010 is concerned that seem to be without jurisdiction.

19. The subsequent order which is the second order dated 04.01.2010 which is annexed as annexure No. 2 to the writ petition, given by the investigating officer is hereby quashed. Let the appointing authority give a charge sheet to the petitioner in accordance with law as the charge against the petitioner is of a very serious nature and a departmental proceeding is in order.

20. With the aforesaid observations, the writ petition stands disposed finally.

21. The Registrar General of this Court is hereby directed to apprise the Director General of Police, Uttarakhand of this order for onwards compliance, as expeditiously as possible, in accordance with law.”

9. The petitioner pointed defects in the enquiry report and pleaded that the enquiry officer has issued the charge sheet and recommendation for the punishment has also been made in the enquiry report itself. The element of biasness as manifested in the report is against the decision of the Apex Court. In this regard, the petitioner referred to the judgment and order dated 20.04.2017, passed by the Hon'ble High Court of Uttarakhand in WPSS no. 620 of 2017, Vijay Raj Singh vs. State of Uttarakhand & others, in which, the Hon'ble High Court also referred the decision of Hon'ble Apex

Court, in **State of U.P. & others vs. Saroj Kumar Sinha (2010)2 SCC (772)**, the following paragraphs of which are quoted as below:

“27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

10. In the above judgments, the Hon’ble Apex Court held that the enquiry officer cannot make the strong recommendations for imposition of a particular punishment. He should not act as prosecutor and the judge. It is further held that the the enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

11. This Tribunal has also followed the above decisions of the Hon'ble Courts while delivering the judgments. The petitioner has also given references of many decisions of this Tribunal in support of his case. One of the decisions, as also referred to by learned Counsel for the petitioner, of this Tribunal dated 02.05.2023 passed in Claim Petition No. 66/DB/2023, Yogesh Kumar Vs State of Uttarakhand and others. The relevant paras of the said judgment are being reproduced as under:

“4. Learned Counsel for the petitioner submitted that the departmental enquiry suffers from two vices viz. (i) the charge sheet was given by the enquiry officer and not the disciplinary authority and (ii) the recommendation was made by the enquiry officer for punishment.

5. Learned Counsel for the petitioner drew attention of the Bench towards Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010), which is reproduced herein below:

“ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

3. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1)

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3)

(17)

In reply, learned A.P.O. submitted that there are specific rules for the police officers of subordinate ranks known as the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable to the State of Uttarakhand) and therefore specific rules for police officers will apply.

4. Learned A.P.O. submitted that when, on the basis of preliminary enquiry, S.S.P. (disciplinary authority) was satisfied that departmental enquiry should be conducted, he nominated S.P. (crime) as enquiry officer. Enquiry officer [S.P. (crime)] supplied copy of charge sheet to the delinquent constable. Learned A.P.O. drew the attention of the Bench towards Appendix-I to U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, which deals with 'procedure relating to the conduct of departmental proceedings

against police officer' to submit that according to the form of charge sheet to be used in proceedings under Section 7 of the Police Act, 1961 (Form-1), enquiry officer is entitled to issue the charge sheet for and on behalf of disciplinary authority.

7. According to Cambridge Dictionary, 'on behalf of' means "done for another person's benefit or support, or representing the interests of a person." The meaning assigned to the words 'on behalf of' by Oxford English Dictionary are "in the interests of (a person, group or principle)"; 'as a representative of' and 'on the part of.'
5. On a perusal of the original record, the Bench finds that before issuing the charge sheet, approval of the disciplinary authority has not been obtained by the enquiry officer.
9. Even though under the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, enquiry officer may issue the charge sheet, but the same is 'for and on behalf of the disciplinary authority', which has not been done in the instant case.
10. Learned Counsel for the petitioner submitted that the enquiry officer is not entitled to recommend the punishment to the disciplinary authority.
11. In reply, learned A.P.O. submitted that the language of Appendix-I 'procedure relating to the conduct of departmental proceedings against police officer' is clear that the enquiry officer may make his recommendation regarding the punishment to be imposed on the charged police officer.
12. The Tribunal finds that the language used in Appendix-I, which is related to Rule 14(1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, has used the words 'the enquiry officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.' In the instant case, the enquiry officer has made the recommendation, not separately, but in the enquiry report itself. Disciplinary proceedings are vitiated on these two grounds alone.
13. The impugned punishment order, therefore, cannot sustain. The same is liable to be set aside and is, accordingly, set aside leaving it open to the respondent authority to initiate fresh departmental proceedings against the delinquent, in accordance with law.
14. Petition is disposed of by setting aside the impugned orders dated 24.02.2018, passed by the disciplinary authority and impugned order dated 10.07.2018, passed by the appellate authority leaving it open to the respondent department to initiate fresh departmental proceedings against the petitioner, in accordance with law. No order as to costs."
12. In the above noted case, the Tribunal found that the language used in Appendix-I, which is related to Rule 14(1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, has used the words 'the enquiry officer may also

separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.' In that case, the enquiry officer has made the recommendation, not separately, but in the enquiry report itself. Disciplinary proceedings are vitiated on this ground alone.

13. In view of the above, it is clear in the instant case that the charge sheet has been issued by the enquiry officer and not the disciplinary authority and the recommendation has also been made by the enquiry officer for the punishment, not separately, but in the enquiry report itself, which is not permissible in the law. Hence, the impugned punishment orders cannot be sustained in the eyes of law and the same are liable to be set aside and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned order dated 27.08.2022* passed by the Disciplinary Authority and the Appellate Order dated 31.12.2022 passed by the Appellate authority are hereby quashed and the Respondents are directed to reinstate the petitioner in service along with all consequential benefits. However, liberty is reserved to the respondent authority to initiate fresh departmental proceedings against the petitioner, in accordance with law. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(A.S.RAWAT)
VICE CHAIRMAN (A)

*DATE: JANUARY 23, 2026
DEHRADUN.
KNP*