

**State of Uttarakhand and Others. Vs. Pushkar Singh Negi (Head Constable, 36 A.P.) and anr**

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**Court : Uttaranchal**

**Decided On : Sep-06-2010**

**Judge : Barin Ghosh; V.K. Bist, JJ.**

**Appeal No. : Writ Petition No. 40 of 2010 (S/B)**

**Appellant : State of Uttarakhand and Others.**

**Respondent : Pushkar Singh Negi (Head Constable, 36 A.P.) and anr**

**Judgement :**

1. By an order dated 12 th July, 1999 a disciplinary proceeding, initiated against respondent No. 1, was concluded by awarding him punishment of reversion at the minimum of the pay-scale, in which he was, for a period of three years. Respondent No. 1, unsuccessfully, preferred an appeal and, thereupon, failed in his revision application.

2. In short the charge, for which the disciplinary proceeding was initiated, was that because of dereliction of duty on the part of respondent No. 1, two dreaded criminals escaped from the prison, which was being guarded by respondent No. 1. It has come on record that the prison had two gates on the entrance, one had double locks and the other a single lock. Two constables were guarding the said two gates during the relevant time and date. At the request of this Court made

earlier, the learned counsel for the State has produced before us necessary documents suggesting that those two constables have also been dealt with in similar fashion.

3. It appears that in 2008, i.e. after 8 years from the date of rejection of the revision application of respondent No. 1, he approached the Tribunal challenging the order of the disciplinary authority dated 12 th July, 1999; the appellate order dated 28 th January, 2000; and the revisional order dated 17 th June, 2000. Before approaching the Tribunal, respondent No. 1 approached the High Court and, according to the direction of the High Court, respondent No. 1 approached the Tribunal.

4. The Tribunal found, as a fact which is not in dispute, that at the relevant time and date, respondent No. 1 was posted as Guard Commander of the prison in question, which happened to be police lockup, Kashipur, district Udham Singh Nagar. At 05:30 a.m. on 17 th March, 1993, respondent No. 1 himself found that all the 48 prisoners, supposed to be detained in the prison, were present in the prison. Subsequently, two of those prisoners were taken away from the prison for being produced before the court. Thereafter, it transpired that two dreaded prisoners, who were supposed to be in the prison, were missing. Respondent No. 1, himself, lodged a first information report against those two dreaded prisoners stating that they had absconded.

5. The Tribunal held that since respondent No. 1 was Guard Commander, his duties were of supervisory nature and that those two dreaded prisoners fled the prison by jumping the walls and not through the gate. In the circumstances, on those two basic assumptions, the Tribunal concluded that respondent No. 1 could not be held responsible for the escape of those two dreaded prisoners.

6. The fact, which is not in dispute, is that respondent No. 1 was Head Constable at the relevant time and was assigned the duty of Guard Commander. It has not been brought on record, either of this Court or of the Tribunal, that being Head Constable and posted as Guard Commander, respondent No. 1 ceased to have the obligation to guard the prison. It has also not been brought on record that the duties and responsibilities of respondent No. 1 came to an end by asking

constables to be attached to the two gates, on the other hand, by reason of user of the expression "Guard Commander" and permitting a Head Constable to discharge such duties, it appears that the person assigned such duties became the core responsible person for guarding the prison. No evidence was brought on the record of the disciplinary proceeding that in fact those two dreaded prisoners escaped the prison by climbing up the walls of the prison. That being the situation and there being no other independent evidence supporting such contention, the conclusion that the said two prisoners absconded by jumping the walls and not through the gates as was recorded by the Tribunal in its impugned order, is based on assumption and nothing else. In fact, from the papers it is not clear even at this stage, how those two prisoners escaped from the prison.

7. We, accordingly, see no reason for the Tribunal to interfere with the decision of the disciplinary authority for it was not contended that the punishment is disproportionate to the charge established. We, accordingly, allow the writ petition and set aside the judgment of the Tribunal impugned in the writ petition.

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