BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

-------Vice Chairman (J)

CLAIM PETITION NO. 123/SB/2020

Ausaf Khan (Const. 129) aged about 40 years, s/o Munfait Ali Khan, r/o 26/1, Mohini Road, Green View Colony, Dalanwala, Dehradun-248001.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Department of Home Affairs, Secretariat, Dehradun.
2. The Senior Superintendent of Police, Uttarkashi.
3. The Inspector General of Police, Garhwal Region, Uttarakhand.

……..Respondents.

Present: Sri Tarun Matta & Sri Rishabh Rangher, Advocates for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 12, 2022

The petitioner has filed this claim petition for seeking the following reliefs:

> *To set aside/quash the impugned order dated 19.02.2020 (Letter no. JA-04/2019) passed by the respondent no.2, the Senior Superintendent of Police, Uttarkashi (Annexure A).*
>
> *To set aside/quash the impugned order dated 18.05.2020 bearing number COG-CA-Appeal-03 (Uttarkashi)/2020 passed by the respondent no.3, Inspector General of Police (Garhwal Region), Uttarakhand (Annexure B).*
>
> *Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem fit just and proper in the circumstances of this case.*
>
> *Award the cost of the petition to the petitioner against the respondents."*

2. The petitioner while posted as Constable SOG, Uttarkashi, was issued a show cause notice in 2019 vide letter no. Ja.-04/2019 by the

Superintendent of Police, Uttarkashi as to why the censure entry be not given to him as a minor penalty under "The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991". The allegation against the petitioner, based on the inquiry, in the show cause notice reads as under:-

''वर्ष 2017 नूरूलनबी हाल निवासी तिलोथ थाना कोतवाली उत्तरकाशी द्वारा थाना कोतवाली उत्तरकाशी में उसकी पुत्री आयशा के बिना बताये घर से कहीं चले जाने की सूचना पर दिनांक 25–12–2017 गुमशुदगी दर्ज करायी गयी थी, जिसे दिनांक 15–01–2018 को मुअ0स0 05/2018 धारा 365 भा0द0वि0 में तरमीन कर विवेचना उप निरी0 रमन बिष्ट के सुपुर्द की गयी। आवेदक श्री सुलममान पुत्र अल्लादिया निवासी ग्राम शाहपुर थाना फतेहपुर, जिला सहारनपुर (उ0प्र0) द्वारा दिनांक 12–02–2018 को उप निरी0 रमन बिष्ट एवं आपके द्वारा उसके घर से उसके नाबालिक पुत्र उस्मान को आयशा के अपहरण मामले में सहताब पुत्र अब्दुल गफ्फूर निवासी परागपुर थाना चिलकाना, जिला सहारनपुर व बिलाल निवासी ग्राम सीकरी थाना चिलकाना सहारनपुर की मौजूदगी में उठाकर ले जाने शाम को देहरादून के होटल में ल जाकर पूछताछ करने, आवेदक को फोन कर देहरादून आकर लड़के को ले जाने तथा उसेक बेटे के साथ मारपीट व अमानवीय बर्ताव किये जाने सम्बन्धी कतिपय आरोप लगाते हुए राष्ट्रीय मानवाधिकार नई दिल्ली को एक श्किायती प्रार्थनापत्र प्रेषित किया गया, जिसकी जांच मानवाधिकार नई दिल्ली द्वारा सीबीसीआईडी को आवंटित की गयी।

अपराध अनुसंधान विभाग द्वारा की गयी जांच के दौरान पाया गया कि कु0 आयशा पुत्री नरूलनबी उम्र 18 वर्ष की गुम्शुदगी दिनांक 25–12–2017 को श्री नरूलनबी की तहरीर के आधार पर थाना कोतवाली मे पंजीकृत हुयी थी दिनांक 15–01–2018 को उक्त गमशुदगी को मु0अ0स0 05/18 धारा 365 भादवि0 में तरमीम किया गया था जिसकी विवेचना उ0नि0 रोहित कुमार द्वारा सम्पादित की गयी थी, जिसमें उ0नि0 रोहित कुमार के अवकाश पर चले जाने के कारण थानाध्यक्ष उत्तकाशी द्वारा दिनांक 11–02–2018 को उपरोक्त विवचना इनके सुपुर्द की गयी थी। इनके द्वारा विवेचना में गुमशुदा के भाई शमीम एवं उसकी पत्नी नगमा के बयानों से आयशा का उत्तरकाशी आने से पूर्व अपने गांव के ही उस्मान पुत्र सुलमान से प्रेम सम्बन्ध होने की बात प्रकाश में आने पर ही उस्मान के घर पर दबिश देकर उसे पूछताछ हेतु बुलाया गया व उस्मान के जुर्म का इकबाल करने पर उसे रिमाण्ड हेतु न्यायिक मजिस्ट्रेट उत्तरकाशी के समक्ष पेश कर उसका पी0सी0आर0 लिया गया था। लेकिन

पी0सी0आर0 के दौरान उस्मान के बयानों के आधार पर उसके बताये अनुसार शाहपुर व आस–पास आयशा की हत्या किये जाने के स्थान का पता न चल पाने पर दिनांक 20–02–2018 को उस वापस जिला कारागार, टिहरी गढ़वाल में दाखिल कर दिया गया था। दिनांक 23–02–2018 को विवेचना के दौरान ग्राम तिलोथ में आपको पता चला कि कु0 आयशा ने गुम होने से पूर्व एक महिला संजू के फान से किसी से बात की थी, जिसके आधार पर दिनांक 24–02–2018 को कु0 आयशा को ग्राम विकोल से मनोज लाल के घर से बरामद किया गया जिसने बताया कि उसने अपनी मर्जी से मनोज लाल से विवाह कर लिया है। दिनांक 26–02–2018 को कु0 आयशा को न्यायालय में पेश किया गया जिसने अपने 164 सी0आर0पी0सी0 के बयानों में मनोज के साथ मंदिर में शादी करने तथा उसी के साथ रहने व उस्मान का अपने जाने में कोई हाथ न होना बताया गया जिसके आधार पर उसी दिन दिनांक 26–02–2018 को इनके द्वारा माननीय न्यायालय में उस्मान को उपरोक्त अभियोग में न्यायिक अभिरक्षा से मुक्त करने हेतु अन्तर्गत धारा 169 सी0आर0पी0सी में रिर्पोट प्रेषित की गयी जिसके आधार पर उस्मान दिनांक 01–03–2018 को जिला कारागार टिहरी से रिहा हो गया था।

अतः आपको निर्देशित किया जाता है कि इस कारण बताओ नोटिस प्राप्ति के 08 दिवस के अन्दर अपना लिखित स्पष्टीकरण अधोहस्ताक्षरी को उपलब्ध कराना सुनिश्चित करे। आपको स्पष्ट किया जाता है कि आपक स्पष्टीकरण यदि निर्धारित अवधि के अन्दर प्राप्त नही होता है तो यह समझा जायेगा कि आपको उक्त सम्बन्ध में कुछ नही कहना है तथा आपके विरूद्ध एक पक्षीय कार्यवाही कर दी जायेगी। उक्त सम्बन्ध में यदि आप किसी अभिलेख का अवलोकन करना चाहें तो किसी कार्य दिवस का कार्यालय में उपस्थित होकर कर सकते हैं।''

3. The petitioner submitted the reply/explanation to the show cause notice and denied the charge levelled against him.

4. Superintendent of Police, Uttarkashi considered the reply/explanation to show cause notice and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of censure entry on 19.02.2020.

5. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region, Uttarakhand on 18.05.2020.

6. The petitioner has contended in the claim petition that on 25.12.2017 one Shri Nurulnabi r/o Tiloth, Uttarkashi registered a missing complaint in Thana Kotwali Uttarkashi of his daughter Km. Aaisha. Thereafter, complaint dated 15.01.2018 was registered as Case No. 05/2018 u/s 365 IPC. The complaint was registered under the then on-duty officer S.I. Rohit Kumar. S.I. Rohit Kumar went on leave, thereafter, the case was handed over to S.I. Raman Bisht on 11.02.2018. During the investigation, it was transpired by Shri Shamim (Kumari Aaisha's Brother) and Smt. Nagma (Kumari Aaisha's Sister-in-Law) that Kumari Aaisha had love affair with their neighbour's son Usman s/o Suleman. To confirm the statement of Shri Shamim and Smt. Nagma the SOG Team, Uttarkashi in a routine manner took out the CDR (Call Detail Report) and through the report, it transpired that Usman and Kumari Aaisha were in regular touch with each other. The S.I. Raman Bisht took permission/order from Shri Dadan Pal (Senior Superintendent of Police, Uttarkashi) and also with the petitioner, Constable Prashant Rana, Constable Bir Singh, Constable/Driver Narender Meh left for Dehradun. Thereafter, the petitioner along with his team on the same date left for Chowki Muzaffarabad, Than Fatehpur where they took assistance from the local police and left for Village Sahapura. The S.I. Raman Bisht and his team inquired Usman and Suleman but could not get satisfactory answers. Because it was late in the evening team asked Usman and his father Suleman to come to Dehradun next day. Next day i.e. 13.02.2018, they reached Dehradun at 15:00 and were again examined and inquired by S.I. Raman Bisht. Usman confessed about the love relationship with Kumari Aaisha and also admitted that Kumari Aaisha was pregnant with his child he was the last person to meet Kumari Aaisha before she went missing. In further inquiry, Usman could not give suitable answers to the question asked, so the petitioner's team on suspicion took Usman and left to Thana Kotwali, Uttarkashi on the same date i.e. 13.02.2018. The petitioner did not live with S.I., Raman Bisht on 13.02.2018 as the petitioner stayed at

Dehradun on other case. He noted his arrival at Thana Kotwali, Uttarkashi on 15.02.2018 at 0036 on Report No. 2.

7. On 23.02.2018, further investigation in Case No. 5/2018 led to Tilosh, Uttarkashi where a woman admitted that Kumari Aaisha has called from her number and went missing since. Further, petitioner and S.I. Raman Bisht took out the CDR (Call Detail Report). As soon as the location of the number traced was found out S.I. Raman Bisht, Constable Chandramohan Negi, Constable Prashant Rana, Constable Bir Singh, Lady Constable Puja, Constable/Driver Arvind Jayada searched Nagrajdhar, Tehri and started searching for Kumari Aaisha. On 24.02.2018, Kumari Aaisha was found with Shri Manoj Lal s/o Late Shri Gurdayal Singh r/o village Nagudpatti, Nagrajdhar, Tehri Garhwal. On 26.02.2018, Kumari Aaisha was presented before the Judicial Magistrate and recorded the statements u/s 164 CrPC. The respondents in a routine and cursory manner issued the impugned orders dated 19.02.2020 and 18.05.2020 without taking into consideration the grounds raised by the petitioner and while passing the impugned orders respondents no. 2 & 3 have committed a material irregularity and illegality. The impugned orders have been passed on the basis of presumptions and surmises.

8. Respondents have opposed the claim petition by filing written statement, it has been stated that in the year 2017, when the petitioner was posted as Constable SOG, Uttarkashi, on the basis of complaint dated 25.12.2017 of Mr. Nurulanabi regarding missing of his daughter Aaisha, a case crime No. 05/2018 under section 365 IPC was registered on 15.01.2018 and the investigation was being done by S.I. Raman Bisht. During the investigation, the missing Aaisha's brother Samim and his wife Nagma gave statements that Aaisha had a love affair with Usman s/o Suleman of her village, it is suspected that Usman had taken Aaisha, accordingly the then investigator registered the case crime no. 05/2018 under section 365 IPC. For the recovery of kidnaper in the said case, without any confirming electronic evidence collection such as CDR

report/location, without taking the recovery of the kidnaper, without taking the statements of his brother, Shamim and Sister-in-law Nagma about love affairs with Usman s/o Suleman of Aaisha's village, the SOG Team's Hamrahi Constable 129 Civil Police, Ausaf Khan (Petitioner), Constable 340 Civil Police Veer Singh and Constable 389 Civil Police Prashant Rana arrested him on 14.02.2018 after admitting the crime.

9. It has further been contended that after the arrest of Usman, his father Suleman r/o Shahpura sent complaint letter to the National Human Right Commission, New Delhi stating that his son has arrested forcibly under the police pressure and has been sent to jail. The Human Right Commission registered the case no. 1669/24/64/2018 dated 28.06.2018 and sent the same to the Inspector General of Police, Uttarakhand for investigation, on which taking action by the Director General of Police Uttarakhand, the impartial inquiry of the matter was handed over to the Crime Research Department. While conducting the fair and impartial inquiry in the matter, the inquiry officer/Inspector General of Police, Crime Research Department, headquarters, Dehradun in his inquiry report dated 23.05.2019 found the petitioner and his Team guilty of negligence and carelessness and recommended departmental proceedings under the U.P./Uttaranchal Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, Adaptation and Modification 2002, which was accepted by the Inspector General of Police. Thereafter, the disciplinary authority issued the show cause notice dated 03.06.2019 under Rule 14(2) of the Rules of 1991 and given time to give reply to the show cause notice. The petitioner replied to the show cause notice, which was rejected being found unsatisfactory and baseless. Thereafter, petitioner was awarded minor punishment, which is as per law. The aggrieved by the impugned order, the petitioner also appealed, which was also rejected by the appellate authority vide order dated 18.05.2020. The petitioner being responsible officer of the police force, was negligent towards his duties. The impugned orders as perfectly as per rules.

10. Rejoinder Affidavit has also been filed by the petitioner reiterating the same facts as have been mentioned in the claim petition.

11. I have heard both the parties and perused the record.

12. Learned Counsel for the petitioner has argued that the petitioner was appointed on a verbal order of EAO (Emergency Area Officer or C.O.) on 09.02.2019 in the case No. 05 of 2018 filed in Thana Kotwali u/s 365 Bhadwi vs. Unknown was ordered/directed to go to Dehradun for collecting evidence in the case. A written complaint dated 25.12.2017 by Shri Narulnabi was submitted and taking cognizance to the complaint Case No. 05/2018 under section 365 dated 15.01.2018. The petitioner on 12.02.2018 along with the team left and team after enquiring Suleman could not complete their enquiry and asked Suleman and his father, Usman to come to Dehradun the next day. On next day they reached Dehradun and were again examined and inquired by the Inspector. In the further inquiry, the Usman could not give suitable answers to the questions asked by S.I. Raman Bisht, therefore, on suspicion took Usman and left to Thana Kotwali, Uttarkashi on the same day i.e. 13.02.2018. On 18.02.2018, the petitioner met S.I. Raman Bisht, Constable Chandramohan, Constable Utsav Saini with Usman at Dindayal Hospital, Dehradun at 10.30 and left for Fatehpur district Saharanpur. It is further argued that the petitioner and team tendered Usman to District Jail, Tehri at 17:00 after his medical. On 21.02.2018, the petitioner, S.I. Raman Bisht, Constable Chandramohan, Constable Utsav Saini noted their presence in Thana Kotwali, Uttarkashi at Report No. 51 at 21:15. Thereafter, on 23.02.2018, further investigation in Case No. 05/18 led to Tiloth, Uttarkashi where a woman admitted that Kumari Aaisha has called from her number and went missing. Further, the petitioner and S.I. Raman Bisht took out the CDR (Call Detail Report) of the number and traced out the location of the number called was Nagarajdhar, Tehri. On 24.02.2018, Kumari Aaisha was found with Shri Manoj Lal s/o Late Shri Gurdayal Singh r/o village Nagudpatti, Nagrajdhar Tehri Garhwal. It is further argued that

after this investigation was taken up by S.I. Raman Bisht, and petitioner had no involvement further. It has further been argued that the respondents have failed to understand that final report dated 26.02.2018 in Case No. 05/2018 has been submitted by the Investigating Officer (I.S. Raman Bisht) and also admitted by the Judicial Magistrate, Uttarkashi.

13. Learned A.P.O. has argued that in the year 2017, when the petitioner was posted as Constable SOG, Uttarkashi, on the basis of complaint dated 25.12.2017 of Mr. Nurulanabi regarding missing of his daughter Aaisha, a case crime No. 05/2018 under section 365 IPC was registered on 15.01.2018. The investigation was being done by S.I. Raman Bisht and his Team . During the investigation, the missing Aaisha's brother Samim and his wife Nagma gave statements that Aaisha had a love affair with Usman s/o Suleman of her village, it is suspected that Usman had taken Aaisha, accordingly the then investigator registered the case crime no. 05/2018 under section 365 IPC. For the recovery of kidnaper in the said case, without any confirming electronic evidence collection such as CDR report/location, without taking the recovery of the kidnaper, without taking the statements of his brother, Shamim and Sister-in-law Nagma about love affairs with Usman s/o Suleman of Aaisha's village, the SOG Team's Hamrahi Constable 129 Civil Police, Ausaf Khan (Petitioner), Constable 340 Civil Police Veer Singh and Constable 389 Civil Police Prashant Rana arrested him on 14.02.2018 after admitting the crime. after the arrest of Usman, his father Suleman r/o Shahpura sent complaint letter to the National Human Right Commission, New Delhi stating that his son has arrested forcibly under the police pressure and has been sent to jail. The Human Right Commission registered the case no. 1669/24/64/2018 dated 28.06.2018 and sent the same to the Inspector General of Police, Uttarakhand for investigation, on which taking action by the Director General of Police Uttarakhand, the impartial inquiry of the matter was handed over to the Crime Research Department. While conducting the fair and impartial inquiry in the matter, the inquiry officer/Inspector General of Police, Crime Research Department, headquarters, Dehradun

in his inquiry report dated 23.05.2019 found the petitioner and his Team guilty of negligence and carelessness and recommended departmental proceedings under the U.P./Uttaranchal Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, Adaptation and Modification 2002, which was approved by the Director General of Police. Thereafter, the disciplinary authority issued the show cause notice dated 03.06.2019 under Rule 14(2) of the Rules of 1991 and given time to give reply to the show cause notice. The petitioner replied to the show cause notice, which was rejected being found unsatisfactory and baseless. Thereafter, petitioner was awarded minor punishment, which is as per law.

14. On the basis of the above, the court is of the view that the petitioner was posted as SOG Uttarkashi and was appointed in the Case No. 05/2018 under Section 365 with S.I. Raman Bisht, who was investigating the matter. The petitioner was assigned the duties with S.I. Raman Bisht for assistance in the matter and he had to perform the duties as per directions of the S.I. and the petitioner had no role in investigating the matter. The final report in the Case No. 05/2018 has also been submitted by the Investigating Officer (S.I. Raman Bisht). Accordingly, the impugned orders passed by the respondents are liable to be set aside.

ORDER

The claim petition is allowed. The impugned punishment order dated 19.02.2020 passed by the respondent no.2 and appellate order dated 18.05.2020 passed by the respondent no.3 are hereby set aside. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 12, 2022.
DEHRADUN
KNP