

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 42/SB/2020

Rajendra Singh Pujara, s/o Shri Bharat Singh aged about 45 years at presently working and posted on the post of Sub Inspector, Civil Police at Police Station Doiwala Chowki, Harrawala, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Secretariat, Subash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, District Dehradun.

.....Respondents

Present: Sri L.K.Maithani, Advocate for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 18, 2022

Present claim petition has been filed by the petitioner for the following reliefs:

“(a) To quash the impugned punishment order dated 13.12.2018 (Annexure No. A-1) of respondent No. 3 and impugned appellate order dated 02.04.2019 (Annexure No. A-2) with its effect and operation declaring the same as null and void in the eyes of law.

(b) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(c) Award the cost of the petition to the petitioner.”

2. The brief facts, as per the claim petition, are as follows:

The petitioner is presently posted as Sub-Inspector, Civil Police at Police Station, Doiwala, Chowki Harrawala, Dehradun. In the year 2018, while the petitioner posted as Chowki-in-Charge, Karanpur, on 01.04.2018,

his duty was at Parade Ground area since morning, to maintain peace and to check or remove illegal marketing in Sunday Market. For that purpose, Constable Pankaj and one and half section PAC was with him. Due to heavy crowd in Sunday Market, petitioner called S.I. Suraj Kandari along with some PAC Constables at Lansdown Chowk. They controlled the traffic and illegal marketing at Convent Chowk.

At about 6:30 P.M., the C.O., Dalanwala came for inspection at Sunday Market and illegal shops were removed from the market. The petitioner was deputed for duty of night officer starting from 8:00 P.M. but the Sunday market was closed at about 9:00 PM, therefore, the petitioner reached in Chowki at about 9:00 P.M. to 9:15 P.M. On that day, at E.C. road, due to quarrel between two groups, some persons were injured. They informed the Chowki, Karanpur, but due to the presence of petitioner in his duty at Sunday Market, he had no knowledge about the incident and it came to the knowledge of him when he reached the Chowki.

A preliminary inquiry was conducted against the petitioner and others, for not taking any action on the said information. The inquiry officer held the petitioner guilty of the act. Thereafter, a show cause notice was issued to the petitioner on 18.10.2018 (Annexure No. A-4). The petitioner submitted explanation to the show cause notice to respondent no. 3 denying from all the charges levelled against him. The respondent no. 3 *vide* his order dated 13.12.2018 (Annexure No. A-1) punished the petitioner by awarding censure entry for the year 2018 and endorsed the same in the Character Roll of the petitioner.

Aggrieved by the punishment order, the petitioner preferred an appeal to the respondent no. 2, but the same has also been rejected by the respondent no. 2 *vide* order dated 02.04.2019 without applying judicious mind.

It has been submitted by the petitioner that the punishment awarded to him is wrong and illegal and without any fault or guilt of the petitioner. The appellate authority did not consider the points of appeal of the petitioner

sincerely and properly and with a mindset condition, rejected the appeal of the petitioner.

It is further submitted that prior to issue of show cause notice, the respondent no. 3 conducted a preliminary inquiry in the matter and on the basis of findings of inquiry officer, the show cause notice was issued to the petitioner. In these findings, the inquiry officer held the petitioner guilty of the charges only on the basis of the statement of S.I. Suraj Kandari. The Inquiry officer did not examine the statement of S.I. Suraj Kandari with other witnesses and presumed that the petitioner was absent from duty. While in the above matter, the Constable Pankaj and PAC personnel were important witnesses, whose statements have not been recorded by the inquiry officer. It is submitted that in the preliminary inquiry, no opportunity was available to the charged person for his defence, but inquiry officer was duty bound to take the statements of all the witnesses of the incident. It is mandatory to the inquiry officer that in an inquiry when a thing or evidence came against a charged person then, it should be supported by other evidence or/and document. This is not done in the instant case and only on the statement of S.I. Suraj Kandari, it was presumed that after 6:30 P.M., the petitioner was not in the Sunday Market. Thus, punishment imposed upon the petitioner is bad in the eyes of law.

It has further been submitted by the petitioner that in the matter of minor punishment, there was no opportunity of examination/cross examination was available to the petitioner, hence it was necessary to the disciplinary authority to consider the points of personal explanation of the charged persons sincerely and properly with reasons. In the case of the petitioner, the disciplinary authority failed to consider the points raised in the reply to the show cause notice properly and sincerely. The petitioner was present in the Parade Ground area in Sunday Market since morning hence, imposing of night duty also to the petitioner was not proper to the health of the petitioner. The punishment awarded to the petitioner is harsh and disproportionate to the act.

It is further submitted that the past record of the petitioner is excellent and prior to this punishment, no any warning, punishment or notice was ever awarded or communicated to the petitioner. The petitioner has performed his duties with due honesty and devotion since he entered into service.

3. The impugned orders have been challenged by the petitioner on the ground that the punishment awarded to the petitioner is wrong and illegal and without any fault or guilt of the petitioner. Prior to issue of show cause notice, a preliminary inquiry was conducted in the matter and on the basis of the findings of inquiry officer, the show cause notice was issued to the petitioner. The inquiry officer made the petitioner guilty of charges only on the basis of the statement of S.I. Suraj Kandari and he did not examine the statement of other witnesses. While, in the above matter, the statements of Constable Pankaj and PAC personnel have not been recorded by the inquiry officer. The inquiry officer was duty bound to take the statements of all the witnesses of the incidents. It was mandatory to the inquiry officer that in an inquiry when things or evidence came against a charged person then, it should be supported by other evidence or and documents. This was not done in this case and only on the basis of statement of S.I. Suraj Kandari, it was presumed that after 6:30 PM, the petitioner was not in the Sunday Market. Thus, punishment awarded to the petitioner is bad in the eyes of law. The act of the respondents towards the petitioner is highly discriminatory, wrong, illegal, arbitrary and malafide and against the principles of natural justice and also violative to Article 14 and 16 of the Constitution of India.

4. The claim petition has been opposed by the respondents by filing Counter Affidavit stating therein that vide order no. 115/2018 dated 04.04.2018, S.I. Suraj Kandari and Constable 365 Civil Police Rajesh were suspended with immediate effect, in connection with the allegations of not taking any action even after informing about the incident with the aggrieved party, whose preliminary inquiry was handed over to Circle Officer, Sadar, Dehradun and vide order No. 115/2018 dated 17.04.2018, they were reinstated with immediate effect, without any adverse effect on the prevalent departmental proceedings/inquiry. The Additional Director

General of Police vide letter No. ADG-LO-*Shi*-12(83)/2018 dated 05.04.2018, the complaint letter of the complainant Vijay Pratap Singh dated 03.04.2018 was sent to the Senior Superintendent of Police, Dehradun directing to enquire into the facts mentioned in the application.

In compliance of the above, the enquiry was entrusted to Circle Officer, Dalanwala, Dehradun but the Circle Office requested to include the investigation being done by the Circle Officer, Sadar, Dehradun, on the basis of which, the inquiry was conducted by the Circle Officer, Sadar, Dehradun. The inquiry officer submitted his inquiry report dated 09.10.2018, who in his report, found the petitioner-Incharge Chowki, Karanpur, Thana Dalanwala guilty of not presenting on duty being appointed night officer on 01.04.2018 from 8:00 PM to 8:00. After finding the petitioner guilty in the inquiry report, the disciplinary authority under provisions of Rule 4(1)(b) of the U.P. Police Officers of the Subordinate in Ranks (Punishment & Appeal) Rules, 1991, adaptation and modification order 2002, *vide* order dated 18.10.2018 proposing punishment of censure entry, given show cause notice along with copy of inquiry report. The petitioner was also directed to give his reply to the show cause notice within 15 days. The show cause notice was received by the petitioner on 19.10.2018.

The petitioner gave reply to the show cause notice on 02.11.2018. After careful examination of the reply to show cause notice and available documentary evidence, the explanation of the petitioner was found misleading and baseless and the petitioner was punished with a punishment of censure entry *vide* order dated 13.12.2018. Similarly, after analysing all the facts and examination of the records, the appeal of the petitioner was also dismissed by the appellate authority being found baseless and against the facts. Hence, the claim petition is liable to be dismissed.

5. Petitioner has filed Rejoinder Affidavit to the Counter Affidavit filed on behalf of the respondents. In the R.A., the petitioner reiterated the same facts as have been mentioned in the claim petition and denied the averments made in the Counter Affidavit.

6. Heard learned Counsel for the parties and perused the record.
7. Learned Counsel for the petitioner has argued that when the petitioner was posted as Chowki-in-Charge, Karanpur, on 01.04.2018, his duty was at Parade Ground area since morning, to maintain peace and to check or remove illegal marketing in Sunday Market. For that purpose, Constable Pankaj and one and half section PAC was with him. Due to heavy crowd in the Sunday Market, petitioner called S.I. Suraj Kandari send him along with some PAC Constables at Lansdown Chowk, to control traffic. The petitioner was controlling traffic and removing the illegal marketing at Convent Chowk.
8. It is further argued that prior to issue of show cause notice, a preliminary inquiry was conducted in the matter and on the basis of findings of inquiry officer, the show cause notice was issued to the petitioner. In the findings of the inquiry, the inquiry officer held the petitioner guilty of the charges only on the basis of the statement of S.I. Suraj Kandari and presumed that the petitioner was absent from duty. While in the above matter, the Constable Pankaj and PAC personnel were important witnesses, whose statements have not been recorded by the inquiry officer. It is also submitted that in the preliminary inquiry, no opportunity was available to the charged person for his defence, but inquiry officer was duty bound to take the statements of all the relevant witnesses of the incident. It was mandatory to the inquiry officer that in an inquiry when a thing or evidence came against a charge person then, it should be supported by other evidence or/and document. It has not been done in the instant case and only on the statement of S.I. Suraj Kandari, it was presumed that after 6:30 P.M., the petitioner was not in the Sunday Market. Thus, punishment imposed upon the petitioner is bad in the eyes of law.
9. Learned Counsel for the petitioner submitted that on 01.04.2018 at 6:30 P.M., the C.O., Dalanwala came for inspection at the Sunday Market and illegal shops were directed to be removed from the market. The petitioner

was deputed for duty of night officer starting since 8:00 P.M. but the Sunday market was closed at about 9:00 PM, therefore, the petitioner reached in the Chowki at about 9:00 P.M. to 9:15 P.M. On that day, at E.C. road due to quarrel between two groups, some persons were injured. They informed the Chowki, Karanpur, but due to presence of petitioner in his duty at Sunday Market, he had no knowledge about the incident and it came to the knowledge of the petitioner when he reached the chowki.

10. Learned A.P.O. on behalf of the respondents contended that the petitioner was appointed night duty officer on 01.04.2018 from 8:00 PM to 8:00. After finding the petitioner guilty in the inquiry report, the disciplinary authority under provisions of Rule 4(1)(b) of the U.P. Police Officers of the Subordinate in Ranks (Punishment & Appeal) Rules, 1991, adaptation and modification order 2002, *vide* order dated 18.10.2018 proposing punishment of censure entry, given show cause notice along with copy of inquiry report. The petitioner was also directed to give his reply to the show cause notice within 15 days. The show cause notice was received by the petitioner on 19.10.2018. The petitioner gave reply to the show cause notice on 02.11.2018. After careful examination of the reply to show cause notice and available documentary evidence, the explanation of the petitioner was found misleading and baseless and the petitioner was punished with a censure entry *vide* order dated 13.12.2018. Similarly, the appeal of the petitioner was also dismissed by the appellate authority after analysing all the facts and examination of the records, the appeal of the petitioner was dismissed being baseless and against the facts.

11. In view of the above discussion, it is made clear that proceedings have correctly drawn under section 14(2) of The U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991. As far as the procedural aspect is concerned, the procedure was initiated with the preliminary enquiry after which a show cause notice was issued. The preliminary inquiry was conducted by the Circle Officer, Sadar, Dehradun. He submitted his inquiry report dated 09.10.2018 to the Senior Superintendent of Police. On the basis of the findings of the inquiry report, the punishment

of censure was awarded to the petitioner. The findings of the inquiry officer are that petitioner being night duty officer from 08:00 P.M. to 08:00 did not report on duty on time at 08:00 P.M. on 01.04.2018 therefore, he was found negligent towards his duty. During the preliminary inquiry, statements of several police personnel were recorded including the petitioner. The petitioner in his statement stated that on the day of Sunday dated 01.04.2018, the Sunday market is held near Parade Ground under the area in which there is situation of excessive crowd and jam and illegal vendors install their shops in front of Convent School, and the directions have been given by the superior officers to remove illegal vendors. In this context, we had received one and half section PAC. I (petitioner) and Hamrah Constable Pankaj alongwith one and half section PAC were at the Sunday market since morning in maintaining the peace/controlling the traffic in the area. Due to excessive jam, I called S.I. Suraj Kandari and giving him some PAC personnel, sent at Lansdown Chowk for maintaining traffic. I (petitioner) and Hamrah Constable Pankaj along with other PAC personnel were doing the work of removing illegal vendors at Convent Chowk. In the evening at about 6:30 P.M., Circle Officer, Dalanwala came for the inspection of the market. Under the supervision of the C.O., the work of removing illegal vendors was being done. In the Sunday Market, there is lot of rush, for this purpose, I was present there and around 09:00 to 09:15 went back to the Chowki.

12. It would be appropriate to quote the statement of the Circle Officer, Smt. Jaya Baloni, Circle Officer, Dalanwala, as follows:

“दिनांक 01.04.2018 को रविवार की सांय लगभग 06:30 बजे सण्डे मार्केट लैन्स डाउन चौक के पास मौजूद थी। चौकी प्रभारी करनपुर उ0नि0 राजेन्द्र पुजारा को व अन्य पुलिस बल को चैकिंग व यातायात व्यवस्था हेतु निर्देशित किया, कुछ देर रहने के बाद मे वहां से चली गयी थी उसक पश्चात उ0नि0 राजेन्द्र पुजारा वहां मौजूद थे अथवा नहीं इस संबंध में मुझे जानकारी नहीं है मैं सण्डे मार्केट में लगभग 10-15 मिनट मौजूद थी व अवैध फडों को हटवाया था व वहां मौजूद बल को इस संबंध मे निर्देशित किया।”

Perusal of the statement of the C.O. shows that at 06:30 P.M. she was at Sunday Market, Lansdown chowk and she stayed there around 10-15 minutes. Thereafter, on the directions of C.O., the illegal vendors were being removed by the petitioner along with other police personnel. The statement

of C.O., also says that the petitioner was present in Sunday Market after 06:30 and was following the directions of the superior authority. The petitioner in his statement stated that he and Hamrah Constable Pankaj alongwith one and half section PAC were at the Sunday market since morning in maintaining the peace/controlling the traffic in the area and due to excessive jam, he called S.I. Suraj Kandari and giving him some PAC personnel, sent at Lansdown Chowk for maintaining traffic and the petitioner and Hamrah Constable Pankaj along with other PAC personnel were doing the duty of removing illegal vendors at Convent Chowk. The inquiry officer recorded the statement of S.I. Suraj Kandari and it was presumed that after 6:30 P.M., the petitioner was not in the Sunday Market. It is also clear from the above that the petitioner was on duty since morning in the Sunday market in maintaining the peace/controlling the traffic in the area. The petitioner and Hamrah Constable Pankaj along with other PAC personnel were doing the duty of removing illegal vendors at Convent Chowk on the direction of superior authority and therefore, he reported on duty at 20:51, which is clear from the G.D. of P.S. Dalanwala filed by petitioner along with rejoinder affidavit and after that, he reached Police Chowki Karanpur at 09:00 to 09:15 P.M. In the instant case, Constable Pankaj was with the petitioner, whose statement has not been recorded by the inquiry officer. Such statement should have been taken by the inquiry officer. Without taking the statement of important witness, the inquiry officer reached to the conclusion and held the petitioner guilty and the disciplinary authority passed the punishment order, on the basis of such inquiry report, which is not sustainable in the eyes of law.

13. The claim petition therefore, deserves to succeed and is hereby allowed. The impugned orders are hereby set aside. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 18, 2022.
DEHRADUN
KNP