

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

Present: Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 66/SB/2021**

Sadhna Kandwal d/o Shri Ram Chandra Kandwal, Constable (F), working and posted under the respondent department at Tehri Garhwal at present attached with joint Police Control Room, Rishikesh, District Dehradun, Uttarakhand.

.....Petitioner

**vs.**

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

.....Respondents

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

**JUDGMENT**

**DATED: JULY 14, 2022**

This claim petition has been filed seeking the following reliefs:

*“ i) To quash the impugned punishment order dated 17.04.2020 (Annexure No. A-1) passed by the respondent no. 3 and impugned appellate order dated 05.11.2020 (Annexure No. A-2) passed by the respondent no. 2 with its effect and operation and with all consequential benefits.*

*ii) To issue any other order or direction which this court may deem fit and proper in the circumstances of the case in favour of the petitioner.*

*iii) To award the cost of petition.”*

2. Brief facts, according to the claim petition are as follows:

The petitioner is Constable (F) No. 44, Civil Police in District Tehri Garhwal and since September 2014, she was attached with Joint Police Control Room, Rishikesh, District Dehradun. On 11.10.2019, her brother,

who was going from Laxman Jhula to Garudchatti on Scooty, was injured by Tempo Traveller, coming from the wrong side. He called the petitioner on her mobile, who informed Constable Narendra Rathi, Thana Laxman Jhula about the accident. Constable Rathi asked the petitioner that due to the election period, no force is in Thana, so you yourself stop the tempo. The petitioner with her father, mother and brother reached the spot and stopped the tempo near Hari Ram Hotel and at the same time, Mahila Constable Kendri Rawat also reached there. Both the parties arrived at compromise in the matter before the Sub Inspector, Tota Ram Bhatt at Thana and no complaint/FIR was made by any person. Respondent no. 3 got preliminary inquiry conducted against the petitioner by Circle Officer (C.O.), Narendra Nagar, district Tehri Garhwal and on the basis of the preliminary inquiry report, respondent no. 3 issued show cause notice dated 24.03.2020 along with preliminary inquiry report to the petitioner, asking her to show cause why censure entry be not recorded in her Character Roll about misbehaviour with the passengers of the Tempo Traveller and pressurising them to get money for her brother and interfering in official work through local politicians even on earlier occasions. The petitioner submitted her reply to the show cause notice and denied the charges levelled against her. However, the respondent no. 3 *vide* his impugned punishment order dated 17.04.2020 (Annexure No. A-1) punished the petitioner with the punishment of censure entry for the year 2020. Aggrieved by the punishment order dated 17.04.2020, the petitioner preferred an appeal dated 04.07.2020 to the respondent no.2 but same was rejected by the respondent no. 2 *vide* his impugned appellate order dated 05.11.2020 (Annexure No. A-2).

Both the impugned orders are wrong, illegal and have been passed against the petitioner without any fault or wrong done by her in utter disregard to the principles of natural justice. The disciplinary proceedings have been conducted against her on the basis of false and concocted statements of the departmental witnesses. The bias of the respondents is shown by the fact that in the inquiry, they deliberately and intentionally

took the cognizance of the personal dispute of the family of the petitioner, which was not related to the accident. The Station House Station Officer (SHO), Laxman Jhula has stated that the petitioner, through political leaders, got him pressurised for another personal dispute of the family of the petitioner. This statement of the SHO is totally false and forged. If the petitioner had pressurized the SHO through political leaders, why he was silent at that time. His duty was to inform the higher authorities to take action against the petitioner.

About the accident, the first information was given only by the petitioner on mobile to Constable Narendra Rathi at Thana Laxman Jhula who did not record the same in the General Diary (G.D.), nor this fact was examined by the inquiry officer. S.I., Sri Tota Ram Bhatt has given contradictory statements that the petitioner demanded money from the passengers of the Tempo Traveller. Similarly, statements of Constable Narendra Rathi are contradictory. No statements of passengers of the Tempo Traveller were recorded. The preliminary inquiry has been conducted in a very arbitrary and discriminatory manner. The petitioner was deprived of fair opportunity of defence in the inquiry. The findings of the inquiry officer are wrong and perverse and punishment order as well as appellate order passed are wrong, illegal and liable to be set aside.

At the Police Station, both the parties made compromise without any compulsion or force. After the compromise, there were no reasons for the petitioner to disagree with the same. In the punishment order, no reasons are given by the disciplinary authority in support of the punishment. Points of reply against the show cause notice are not examined in the punishment order which is necessary under the law. Thus, the punishment order is non reasoned and non-speaking order and liable to be quashed.

Hence the claim petition.

3. Counter Affidavit has been filed on behalf of the respondents against which Rejoinder Affidavit has been filed on behalf of the petitioner.

4. I have heard learned Counsel for the parties and perused the record.

5. During the hearing, the Tribunal desired to know whether opportunity was provided to the petitioner to cross-examine other witnesses during preliminary inquiry and also whether the petitioner requested for the same and directed for production of the relevant record. The relevant record was perused, which shows that the petitioner was not given opportunity to cross-examine other witnesses and also there was no request from her side for the same.

6. The Tribunal observes the following:

(i) The preliminary inquiry officer has drawn his conclusion against the petitioner on the basis of the statements of other police personnel. The SHO, Laxman Jhula in his complaint against the petitioner and statement before preliminary inquiry officer has referred to the earlier pressure brought upon him by the petitioner through politicians in the matter of dispute between her father and his neighbour in which action under section 107/116(3) CrPC has been taken against both the parties on 03.05.2019. Normally, opportunity of cross-examination is not required in the preliminary enquiry, but it was a case where the other police functionaries were deposing against the petitioner and even giving instance of the past action of the petitioner of bringing pressure on them etc.. The Tribunal feels, in the peculiar facts of this case, that in all fairness, the preliminary inquiry officer should have given an opportunity to the petitioner to cross-examine the police personnel who had made accusations against her in their statements to arrive at the truth of the matter.

(ii) The respondent no. 3 while issuing the punishment order (Annexure No. A-1) has written that the petitioner's written reply to the show cause notice was thoroughly considered by him but the reply was not found satisfactory and, therefore, censure entry has

been ordered to be recorded in her Character Roll. This order cannot be called a speaking order. The respondent no. 3 should have recorded specific reasons for rejecting the various contentions made by the petitioner in her reply to the show cause notice.

7. In view of the above, the impugned punishment order (Annexure No. A-1) is set aside and consequently, appellate order (Annexure No. A-2) is also hereby set aside. The matter is remitted to the respondent no. 3 to get the preliminary inquiry conducted again in the matter, after giving proper opportunity of defence to the petitioner in the same. Then further action be taken on the outcome of the preliminary inquiry, as per law.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

*DATE: JULY 14, 2022.*

*DEHRADUN.*

*KNP*