

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 15/NB/SB/2021

Fireman 41 Yogesh Kumar Kuksal, aged about 35 years s/o Sri Ashok Kumar Kuksal, r/o Fire Station, Sitarganj, SIDCUL P.O. Sitarganj, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Home, Govt. of Uttarakhand, Dehradun.
2. Inspector General of Police, Kumaon Region, Nainital, District Nainital.
3. Senior Superintendent of Police, Udham Singh Nagar, District Udham Singh Nagar.

.....Respondents

Present: Sri Amar Murti Shukla, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: OCTOBER 17, 2022

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

- a) To set aside the impugned order dated 12.06.2020 issued by respondent no. 3 and order dated 01.08.2020 issued by respondent no.2 (Annexure-1 to this petition).*
- b) To direct the respondents not to ignore the candidature of petitioner/applicant in the ongoing promotional exercise for the post of Leading Fireman/Fire Service Driver by ignoring the impugned order dated 12.06.2020 issued by the respondent no. 3 and order dated 01.08.2020 issued by the respondent no. 2 and the result of the petitioner of said promotional exercise be declared.*
- c) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- d) Award cost of the petition.*

2. Brief facts giving rise to the petition are as follows:

2.1 The petitioner was recruited as Fireman in the month of December 2007 after facing due selection process and was given posting at Fire

Station Jaspur, Udham Singh Nagar. After completion of 21 weeks' training, the petitioner joined back his duties at Fire Station, Jaspur, Udham Singh Nagar. The petitioner's services were transferred from Jaspur Fire Station Udham Singh Nagar to Fire Station Sitarganj, Udham Singh Nagar in the year 2013 and since then he is working at Sitarganj.

2.1 In the year 2019, while petitioner was serving as Fireman, Fire Station Sitarganj, an allegation was made by the department against him alleging that on 09.11.2019, he made an objectionable post through whatsapp by which law and order situation would have been adversely effected. A preliminary inquiry was conducted by the respondent authorities and the inquiry officer submitted its report on 17.04.2020. In the inquiry report, the inquiry officer came to the conclusion that it has not been proved that alleged message has been posted by the petitioner.

2.3 After receiving the inquiry report, the respondent no. 2 issued a show cause notice dated 20.04.2020 requiring reply of the petitioner within 15 days, failing which the penalty of censure would be imposed against the petitioner. It is submitted that from the perusal of the show cause notice dated 20.04.2020, it would demonstrate that in the show cause notice itself, respondent no. 3 made up his mind to impose punishment of censure upon the petitioner. In fact, the said punishment has been imposed while issuing the show cause dated 20.04.2020. The petitioner replied to the show cause notice on 05.05.2020 denying the allegations. The respondent no. 3 without considering the fact that the charges were not proved in the preliminary inquiry and without considering and discussing the reply of the petitioner vide order dated 12.06.2020 (Annexure-1) awarded the punishment of censure entry in the Character Roll of the petitioner by invoking the provisions contained in Section 14(2) of the Uttar Pradesh Police Officers of the Subordinate in Ranks (Punishment and Appeal) Rules, 1991 and by invoking the provisions contained in Section 23 (2)(B) of the Uttarakhand Police Act, 2007.

2.4 Feeling aggrieved by the order dated 12.06.2020 passed by the respondent no.3, the petitioner preferred a statutory appeal before the respondent no. 2 under Section 20 of Uttarakhand Police Act, 2007. The respondent no. 2 although mentioned the grounds taken by the petitioner in his appeal in the order dated 01.08.2020 but neither the same has been considered nor the same has been discussed and without considering and discussion the same, the respondent no. 2 vide order dated 01.08.2020 rejected the appeal preferred by the petitioner.

2.5 The petitioner preferred Writ Petition No. 223 of 2021 (S/S) Fireman 41 Yogesh Kumar Kuksal vs. State of Uttarakhand & others before the Hon'ble High Court of Uttarakhand. The Hon'ble Court, vide judgment and order dated 25.02.2021 was pleased to dismiss the petition on the ground of alternative remedy to approach before this Tribunal.

3. The petitioner has challenged the impugned orders on the following grounds:

3.1 The respondents have failed to appreciate the plea of the petitioner that he did not forward the alleged post rather the said message initially came up in the phone of the petitioner and was posted accidentally by the children of petitioner as the petitioner after performing his duties had come to home and was taking rest and mobile was kept on charging. While passing the impugned order, the respondent authorities failed to consider that the inquiry officer in its report dated 17.04.2020 clearly opined that during entire enquiry, it revealed although the said message was posted from the phone of petitioner but there is no evidence that the said message was posted by the petitioner himself. Since in the inquiry, it has not been provided that petitioner himself had posted the said message therefore, the punishment awarded to the petitioner is not in consonance with the facts and circumstances of the case and is against the evidence on record. In the inquiry any negligence, indiscipline, dereliction in duties etc. has not been proved and only on the basis of presumptions, the impugned punishments have been passed which are not permissible under the law.

3.2 The impugned order dated 12.06.2020 passed by the respondent no. 3 and order dated 01.08.2020 passed by the respondent no. 2 (appellate authority) are not sustainable inasmuch as from the look at the show cause notice dated 20.04.2020, it is abundantly clear that the disciplinary authority had already made up his mind to impose the penalty of censure upon the petitioner therefore, the issuance of show cause notice was a mere formality, hence the impugned orders are liable to be quashed/set aside. Hence this petition

4. The respondents by filing Counter Affidavit have opposed the claim petition. It has been stated that while petitioner posted as Fireman at Fire Station, SIDCUL, District Udham Singh Nagar, on 09.11.2019, an objectionable video was posted in the whatsapp group. This could have created a situation of breach of peace, despite having been directed from time to time not to forward objectionable message/post on social media, but the petitioner has forwarded such objectionable video on whatsapp group. The petitioner being a member of disciplined force was duty bound to comply with the directions given from time to time, but he shared the objectionable post on the group, which shows gross negligence, indiscipline, laxity and carelessness on the part of the petitioner. A preliminary enquiry was conducted and the inquiry officer submitted its report on 17.04.2020. On the basis of the enquiry, under the provisions of Rule 14(2) of the Rules of 1991, the petitioner was given a show cause notice. The petitioner replied to the show cause notice and his reply was duly considered by the disciplinary authority. His reply/explanation was found unsatisfactory by the disciplinary authority. The disciplinary authority passed an order under Rule 14(2) of the said Rules and the petitioner was awarded minor penalty of 'censure'. The petitioner has been provided due opportunity to defend himself adhering to Rules and the principles of natural justice. The contention of the respondents is that the Rule 14(2) of the Rules of 1991 has been fully complied with. The appeal of the petitioner was also duly considered and rejected as per Rules. The petition is, therefore, devoid of merit and liable to be dismissed.

4. The petitioner has filed Rejoinder Affidavit denying the averments of the Counter Affidavit and has stated that the petitioner did not forward the alleged post rather the said message initially came in his phone and was accidentally posted by the children of petitioner, as the petitioner after performing his duties had come home and was taking rest and mobile was kept on charging. It is further stated that while passing the impugned order, the respondent authorities failed to consider that the inquiry officer in its report dated 17.04.2020 clearly opined that during entire enquiry, it revealed although the said message was posted from the phone of petitioner but there is no evidence that the said message was posted by the petitioner himself. Since in the inquiry, it has not been proved that the petitioner himself had posted the said message, therefore, the punishment awarded to the petitioner is not in consonance with the facts and circumstances of the case and is against the evidence on record. Only on the basis of presumptions, the impugned punishment has been passed which is not permissible under the law.

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

6. Learned Counsel for the petitioner has argued that the petitioner did not forward the alleged whatsapp post rather it was posted/forwarded accidentally by the children (daughter & niece) of petitioner as the petitioner after performing his duties had come home and was taking rest and the mobile phone was kept on charging. While passing the impugned order, the respondent authorities failed to consider that the inquiry officer in its report dated 17.04.2020 clearly opined that during entire enquiry, it revealed although the said message was posted from the phone of petitioner but there is no evidence that the said message was posted by the petitioner himself. Since, in the inquiry, it has not been provided that petitioner himself had written or posted the said message therefore, the punishment awarded to the petitioner is not in consonance with the facts and circumstances of the case and is against the evidence on record. In the

inquiry any negligence, indiscipline, dereliction in duties etc. has not been proved and only on the basis of presumptions, the impugned punishments have been passed which are not permissible under the law.

7. It has been argued on behalf of the respondents that while petitioner posted as Fireman at Fire Station, SIDCUL, District Udham Singh Nagar, on 09.11.2019, an objectionable video '*Door Hatao Allah Walo Kyon Janm Bhumi Ko Ghera Hai*' was posted/forwarded in the whatsapp group. Such act could have created a situation of breach of peace, despite having been directed from time to time not to forward objectionable message/post on social media, but the petitioner has forwarded such objectionable video on whatsapp group. The petitioner being a member of disciplined force was duty bound to comply with the directions given from time to time, but he shared the objectionable post on the group, which shows gross negligence, indiscipline, laxity and carelessness on the part of the petitioner. A preliminary enquiry was conducted and the inquiry officer submitted its report on 17.04.2020. On the basis of the enquiry, under the provisions of Rule 14(2) of the Rules of 1991, the petitioner was given a show cause notice. The petitioner replied to the show cause notice and his reply was duly considered by the disciplinary authority. His reply/explanation was found unsatisfactory by the disciplinary authority. The disciplinary authority passed an order under Rule 14(2) of the said Rules and the petitioner was awarded minor penalty of 'censure'. The petitioner has been provided due opportunity to defend himself adhering to Rules and the principles of natural justice. The contention of the respondents is that the Rule 14(2) of the Rules of 1991 has been fully complied with.

8. It is clear from the above that alleged message was posted/forwarded accidentally, by the children (daughter & niece) of petitioner, as petitioner after performing his duties had come home and was taking rest and the mobile phone was put on charging. The alleged message posted on the whatsapp group could have created a situation of

breach of peace. A preliminary inquiry was conducted. The inquiry officer in its report dated 17.04.2020 clearly opined that during entire enquiry, it revealed although the said message was posted/forwarded from the phone of petitioner, but there is no evidence that the said message was posted by the petitioner himself.

9. The Tribunal finds that during the preliminary inquiry, the inquiry officer did not find the petitioner guilty. Inquiry officer has also not collected any evidence, by which it could be proved that the alleged message was posted/forwarded by the petitioner himself. In this regard, the inquiry officer did not get scientifically examined the location of the mobile phone that at the time of incident, the mobile phone was at home or not. The location of the phone should have also been traced at the time of incident, to come to the right conclusion, which has also not been done in the present case. Neither any evidence has been given by anybody nor any scientific evidence is available. Since in the inquiry, it has not been provided that petitioner himself had posted/forwarded the said message therefore, the punishment awarded to the petitioner is not in consonance with the facts and circumstances of the case and is without evidence on record. Hence, the impugned orders are liable to be set aside. The claim petition is liable to be allowed.

ORDER

The claim petition is allowed. The impugned punishment order dated 12.06.2020 issued by respondent no. 3 and appellate order dated 01.08.2020 issued by respondent no. 2 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: OCTOBER 17, 2022.
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KNP