

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 03/SB/2014**

Virendra Singh Negi, S/o Late D.S.Negi, Station officer (S.O) P.S.  
Pathri, District Hardwar

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Home,  
Civil Secretariat, Dehradun,
2. Director General of Police, Police Headquarters,  
Uttarakhand,
3. Additional Director General of Police (Admin.), Uttarakhand,
4. Deputy Inspector General of Police, Pauri, Uttarakhand,
5. Superintendent of Police, Disst. Hardwar

.....Respondents

Present: Sri Shashank Pandey, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O  
for the respondents

**JUDGMENT****DATE: MARCH 02, 2015****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. A special adverse remark dated 16.08.2012 for the year 2012 recorded in the character roll of the petitioner is under challenge in this claim petition.

2. The facts in brief are that the petitioner, while posted as Sub-Inspector (Police) at P.S. Kotwali, Hardwar was entrusted an investigation in the matter of a theft of Rs. 9,62,570/- committed from the Haridwar workshop of Utrakhand Transport Corporation. Several personnel of Transport Corporation were interrogated. One Rajendra Kumar Arora was also under interrogation. Rajendra Kumar Arora was taken to the office of SOG for further interrogation on 04.09.2010. During the course of interrogation, Rajendra Kumar Arora complained of chest pain. He was immediately taken to hospital where he died because of heart attack. An FIR was lodged by his son, Mithun Arora regarding death of Rajendra Arora. The incident of death of Rajendra Kumar Arora was investigated by CBCID, Dehradun. On investigation, it was found that Rajendra Kumar Arora died of heart attack and there was no harassment or torture on the part of the police. Consequently, the investigation in the matter of death of Rajendra Kumar Arora ended into the final report and the matter was closed.

3. Apart from the criminal case, departmental proceedings were also initiated against the petitioner wherein the petitioner was found guilty of non-compliance of the direction given by the Hon'ble Supreme Court in D.K.Basu's case, therefore, an adverse remark was recorded in the character roll of the petitioner, which reads as under:

“2012 जब यह उपनिरीक्षक थाना कोतवाली जनपद हरिद्वार में नियुक्त थ, तो दिनांक 29/30-08-2010 की रात्रि में वर्कशाप रोडवेज हरिद्वार में कैश चोरी की घटना हुई थी, जिसकी सूचना आपको भी प्राप्त हुई। और इस चोरी में रोडवेज के कर्मचारियों तिलक सिंह, प्रेम सिंह, दिनेश चन्द, सुरेन्द्र डंगवाल, रमेश पाण्डे, राजेन्द्र अरोड़ा आदि को इनके द्वारा पूछताछ हेतु पहले ओद्योगिक चौकी, बाद एस0ओ0जी0 कार्यालय ले जाया गया, दिनांक 04.09.2010 को एस0ओ0जी0 कार्यालय में ही राजेन्द्र अरोड़ा को पूछताछ के दौरान सीने में दर्द हुआ, जिसे जिला अस्पताल ले जाया गया जहाँ उसकी मृत्यू हो गयी। अन्य लोगों को पूछताछ कर बारी-बारी दिनांक 01.10.2010, 02.10.2010, 03.10.2010 को छोड़ा गया, किन्तु आपके द्वारा रोडवेज कर्मी तिलक सिंह, प्रेम सिंह, दिनेश शर्मा, सुरेश डंगवाल व रमेश पाण्डे से पूछताछ व सुपुर्दगी के समय डी0के0 बसु बनाम स्टेट ऑफ वेस्ट बंगाल, 1997 एस0सी0सी0-416 में दिये गये सिद्धान्तों का नियमानुसार पालन नहीं किया गया। इनकी इस लापरवाही एवं अकर्मण्यता, शिथिलता की घोर भर्त्सना की जाती है।”

4. The petitioner had challenged the impugned order of adverse remark by way of departmental appeal, but appeal was also dismissed by the Director General of Police, Pauri vide its order dated 20.10.2012. The petitioner had also

preferred a revision which was also dismissed on 08.08.2013. Hence this petition.

5. The petitioner has challenged the impugned order on the following grounds:

i. That the petitioner was not present, at the office of SOG at the time of interrogation of Rajendra Kumar Arora on 04.09.2010,

ii. That the awarding of adverse remark by the Disciplinary Authority on the ground of non-compliance of directions given in D.K.Basu Vs. State of West Bengal (1997) SCC, 416 is not proper and justified as these directions were not applicable in the present case,

iii. That a similar remark was also awarded to one more police employee namely, Pankaj Bhatt, Deputy Superintendent of Police, Hardwar, but the adverse remark was expunged by the appellate authority in appeal. The case of the petitioner is similar to that of Pankaj Bhatt.

6. The petition has been opposed on behalf of the respondents and it was stated that several employees of the roadways were summoned for interrogation on 01.10.2010, 02.10.2010 and 03.10.2010. One Rajendra Kumar Arora was summoned for interrogation on 04.09.2010 in connection with case of theft case crime no. 699/2010 U/S 457/380 IPC,

PS Kotwali Hardwar. Rejendra Arora was first taken to the Chowki Industries, P.S. Kotwali and thereafter to the office of SOG, Hardwar where he complained of chest pain. He was immediately taken to hospital, where he died. An adverse remark was recorded in the Character roll of the petitioner as he did not comply with the directions contained in D.K. Basu's case. However, on investigation, in a case registered regarding the death of Rajendra Arora, the police was not found guilty of any misconduct, harassment or cruelty. On departmental enquiry, the petitioner was found guilty for non compliance of directions given in D.K.Basu's case at the time of interrogation of another employees namely Tilak Singh, Prem Singh, Dinesh Sharma, Suresh Dangwal and Ramesh Pandey. There is no illegality or irregularity in the impugned order, appellate or revisional order. The petition is devoid of merit and is liable to be dismissed.

7. No rejoinder affidavit has been filed on behalf of the petitioner.

8. We have heard both the parties and perused the record carefully.

9. First of all, it has been contended on behalf of the petitioner that the petitioner was not present at the time of investigation of Rajendra Kumar Arora in the office of SOG on 04.09.2010. In fact, the petitioner had gone to the court at Roshnabad in connection with some other matter and even in the absence, finding the petitioner guilty of any misconduct

or deficiency, is not justified. It has been denied on behalf of the respondents. Though the petitioner has pleaded his absence at the time of interrogation, but it was obligatory on the petitioner to prove his absence at the time of interrogation by adducing some reliable and cogent evidence but the petitioner had miserably failed in discharging this onus. A mere assertion cannot be relied upon in the absence of any material on record for establishing the factum of his absence. So, we are not inclined to agree with the petitioner that he was not present at the time of interrogation.

10. It has further been contended that there was no occasion for complying with the directions given by the Hon'ble Apex Court in D.K.Basu's case as the personnel of Transport Corporation named in the impugned order were never arrested. Had these personnel been arrested only then it was incumbent upon the petitioner to comply with the directions given in the above mentioned case. We agree with the contention of the petitioner. There was requirement for compliance of directions in D.K. Basu's case only in case of arrest of any of the personnel, but as there was no arrest of any of the persons named in the impugned order, there was no question for following the directions given in the above noted case. In fact, these directions are applicable only in case of arrest. Therefore, awarding the censure entry to the petitioner on this ground cannot be held justified.

11. It is further contended on behalf of the petitioner that there was no torture or harassment of Rajendra Arora by the police or by the petitioner. On making complaint of chest

pain, Rajendra Arora was taken to hospital and required medical facility was made available. This fact is admitted to the respondents also. Apart from it, it is also important that a criminal case was registered regarding the death of Rajendra Arora and on investigation, no torture, harassment or cruelty on the part of the petitioner was established, therefore, a final report was submitted by the Investigating Officer. This fact also reveals that there was no abuse of authority on the part of the petitioner. In this context, it is also contended that though the other employees of the roadways namely Tilak Singh, Prem Singh, Dinesh Chandra Sharma, Suresh Dangwal and Ramesh Pandey were also summoned and interrogated by the Police. The police is authorized to interrogate any person during interrogation, if he is presumed to have knowledge of any relevant fact. It is further contended that there is no complaint of any harassment to any of those employees. Under the above circumstances, the petitioner cannot be held liable for any misconduct or misuse of authority. We are in agreement with the contention of petitioner as there is no complaint or evidence of any harassment or misuse of authority on the part of the petitioner. So, awarding censure entry to the petitioner is not justified.

12. It has further been contended on behalf of the petitioner that the similar adverse remark was awarded to one another employee namely Punkaj Bhatt regarding the similar incident, but that remark was expunged by the departmental authority holding as follows:

“उक्त कारण बताओ नोटिस पर श्री पंकज भट्ट पुलिस उपाधीक्षक द्वारा दिनांक 28.07.2012 को अपना स्पष्टीकरण प्रस्तुत किया गया। मुख्यालय स्तर पर आरोपी द्वारा प्रेषित किये गये स्पष्टीकरण पर सम्यक विचारपरान्त पाया गया कि डी०के० बसु बनाम् स्टेट आफ वेस्ट बंगाल-1997 एस०सी०सी०-416 में मा० उच्चतम न्यायालय द्वारा प्रतिपादित सिद्धान्त गिरफ्तार किये गये व्यक्ति से पूछताछ करते समय अनुपालन हेतु पारित किये गये हैं। प्रश्नगत प्रकरण राजेन्द्र अरोड़ा को गिरफ्तार नहीं किया गया था। अतः प्रतिपादित सिद्धान्त इस मामले में लागू नहीं होते हैं। अभिलेखों से यह भी परिलक्षित हुआ है कि श्री भट्ट द्वारा राजेन्द्र अरोड़ा को अभिरक्षा में लेकर कोई पूछताछ नहीं की गयी। अतः आरोपी श्री भट्ट पुलिस उपाधीक्षक को प्रकरण में दोषी ठहराया जाना नैसर्गिक न्याय के विरुद्ध होगा।

अतः निदेशानुसार श्री पंकज भट्ट पुलिस उपाधीक्षक द्वारा प्रस्तुत स्पष्टीकरण, सम्यक विचारपरान्त संतोषजनक पाये जाने पर, उनके विरुद्ध निर्गत कारण बताओ नोटिस निरस्त किये जाने के आदेश पारित किये जाते हैं। ”

The above order reveals that the adverse remark awarded to Pankaj Bhatt has been expunged by the appellate authority on the ground that as there was no arrest so there was no occasion to follow the directions given in D.K.Basu's case. The case of the petitioner is similar to that of Pankaj Bhatt and on the basis of parity also, we are of the view that censure remark awarded to the petitioner is also not sustainable.

13. On the basis of the above discussion, we reach to the definite conclusion that the impugned order of awarding censure entry, appellate order and revisional order are not justified and are liable to be set aside. Consequently, the



censure remark awarded to the petitioner is liable to be expunged and the petition is liable to be allowed.

**ORDER**

The claim petition is allowed. The impugned order of awarding censure entry, appellate order and revisional order are hereby set aside. The respondents are directed to expunge the censure remark awarded to the petitioner within a period of three months from today. No order as to costs.

Sd/-

D.K.KOTIA  
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI  
VICE CHAIRMAN (J)

DATED: MARCH 02, 2015  
DEHRADUN

KNP