

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 05/NB/SB/2021

Constable 1203, Balram, s/o Shri Darshan Lal, presently posted as Court Moharir, Prosecution Branch, Jaspur, District Udham Singh Nagar.

.....Petitioner

Vs.

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Region, Nainital.
4. Senior Superintendent of Police, Udham Singh Nagar.

.....Respondents

Present: Sri Alok Mehra, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: JANUARY 05, 2023

By means of the present claim petition, the petitioner seeks the following reliefs:

"i) To call for the records and set-aside the impugned orders dated 16.06.2020, passed by respondent no. 4 and order dated 03.10.2020 passed by the respondent no. 3 (Annexure No.1 and 2 to the Compilation no. I).

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

iii) To award the cost of the petition in favour of the applicant."

2. The facts of the case in brief are that the petitioner is a Constable and while working as Court Moharir in the Court of Judicial Magistrate, Jaspur, District Udham Singh Nagar, a preliminary enquiry was conducted by the Additional Superintendent of Police (Crime/Traffic), Udham Singh Nagar regarding non-production of accused, Haider Ali in Case Crime No. 33 of 2019 under Section 307/504 1.P.C. before the learned Judicial Magistrate, Jaspur. The Enquiry Officer submitted its report to respondent no. 4 on

10.12.2019. The Enquiry Officer has held Constable Neelam Ratnakar, Court Moharir guilty of not handing over warrant under Section 167 CrPC. to S.I. Suresh Chandra Bhatt for production of accused Haider Ali and held him guilty of not obtaining warrant of production of the accused from Court Moharir Constable Neelam Ratnakar. The Enquiry Officer also held the petitioner as well as Constable Kavita Verma guilty of not informing the Investigating Officer, Shri Jagat Singh Bhandari of non-production of accused Haider Ali in remand on 29.04.2019. On the basis of the preliminary enquiry, a show cause notice dated 21.02.2020 was issued to the petitioner by respondent no. 4 giving him 15 days time to submit his reply. The petitioner submitted his reply on 19.03.2020 denying the charges leveled against him and submitted that on 16.04.2019, he was not present in the Court of Judicial Magistrate, Jaspur, as he was present in the Court of Judicial Magistrate, Bazpur for recording the evidence in Case Crime No. 330/2011. In place of the petitioner, Constable Neelam Ratnakar performed the duties of Court Moharir in the Court of Judicial Magistrate, Jaspur on 16.04.2019. After the learned Court accepted the application of the Investigating Officer for seeking 14 days remand of accused Haider Ali and Mohd. Sajid, Constable Neelam Ratnakar has prepared warrant under Section 167 Cr.P.C. and papers relating to subsequent remand for 29-04-2019 and handed over to the person engaged in the duty of accused warrant and send it to be handed over to Jail Authority.

It has been submitted that without considering the reply filed by the petitioner and on the basis of the fact finding/preliminary enquiry report dated 10-12-2019, respondent no. 4 passed an order dated 16.06.2020, whereby, petitioner was awarded censure entry for the year 2020 for gross negligence, indiscipline, laxity and inefficiency in his duties. Feeling aggrieved by the order dated 16.06.2020 passed by respondent no. 4, petitioner filed departmental appeal, which was dismissed by respondent no. 3 vide order dated 03.10.2020 in cursory manner without taking into account the statements recorded by the petitioner and Constable Kavita Verma in the fact finding/preliminary enquiry.

It has further been submitted that Constable Kavita Verma, departmental pairokar, was also given censure entry by respondent no. 4 for the same charges as that of the petitioner. Constable Kavita Verma too preferred a departmental appeal against the punishment order before respondent no. 3. The respondent no. 3 vide his order dated 19.08.2020 allowed her appeal and quashed order dated 16.06.2020 passed by respondent no. 4 on the ground that the cause of action of the present controversy was of 16.04.2019 and on that day she was not present in the Court as pairokar.

The Enquiry Officer has held the petitioner and Constable Kavita Verma guilty of same offence i.e. negligence towards their duties. Respondent No. 4 has passed censure order against both the petitioner as well as Constable Kavita Verma on the same charge, but, the punishment order of Constable Kavita Verma has been set-aside by the appellate authority (respondent no. 3), while appeal filed by the petitioner has been dismissed. It is submitted that respondent no. 3 has adopted different criteria and yardstick while deciding appeal filed by the petitioner and Constable Kavita Verma. The disciplinary authority as well as the appellate authority, while passing the impugned order has relied on the conclusion drawn by the Enquiry Officer, but, have completely overlooked the fact that preliminary enquiry was conducted for non-production of the accused Haider Ali before the Court of Judicial Magistrate Jaspur on 29.04.2019 for which remand was granted on 16.04.2019. This is a clear case of hostile discrimination and adopting different yardstick for different persons. It is the duty of the departmental pairokar to give information regarding the daily proceeding in the Court to the Investigating Officer, while the duty of Court Moharir is to prepare the warrant and remand order of the accused and handed over to the person incharge to be submitted before the jail authorities concerned. The punishment of censure imposed upon the petitioner cannot be sustained and liable to be quashed.

3. The respondents have filed C.A./W.S. and have stated that in the year 2019, when the petitioner was posted as Court Moharir, Jaspur,

Udham Singh Nagar, a Case Crime No. 33 of 2019 under Section 307/504 I.P.C. vs. Haider Ali s/o Sartaj Ahmed and Mohd. Sajid s/o Saeed was registered. Sub-Inspector Jagat Singh Bhandari submitted a report on 08-04-2019 in learned Court, Jaspur for summoning these accused for remand under Section 307/504 IPC, on which, on 29-04-2019, the accused appeared in sub-jail Haldwani and on the request of the investigating officer, both were accepted for 14-14 days remand. On 29-04-2019, the accused were to be remanded for the second time. After preparing the remand, it was given to him through Lady Constable Kavita Verma. Even after informing him about the non-appearance before Court, he did not inform about it to the Investigating Officer or the Station Officer, Kunda. The petitioner was responsible for his own, for gross negligence towards his duty. In this regard, while issuing the show cause notice for giving the censure entry by notice dated 21.02.2020, the petitioner was directed to submit an explanation within 15 days of the receipt of the notice, copy of which was received by him on 04.03.2020 and he submitted his written explanation on 19-03-2020. Thereafter, a preliminary inquiry was conducted by Additional Superintendent of Police (Crime), District Udham Singh Nagar and its report was sent to the office on 10.12.2020, taking cognizance of which, under Rule 14(2) of the U.P. Police Officers of the Subordinate Rank Punishment and Appeal) Rules, 1991, Adaptation and Modification order 2002, under the provisions contained in Section 23 (2) (b) of the Uttarakhand Police Act 2007, a show cause notice was issued; the petitioner submitted his written explanation on 19-03-2020 and finding the explanation of the petitioner baseless, punishment order of censure entry dated 16.06.2020 has been passed as per rules, which is just, fair and correct. The appeal filed by the petitioner against the said entry, was rejected by the Inspector General of Police, Kumaon Region, Nainital, vide order dated 03.10.2020. The punishment orders are perfectly valid, correct and are as per the rules and the claim petition is liable to be dismissed.

4. Rejoinder Affidavit has also been filed on behalf of the petitioner denying the contents of the Counter Affidavit and the reiterated the same facts as have been mentioned in the claim petition.

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

6. It has been argued on behalf of the petitioner that the impugned order dated 16.06.2020 passed by respondent no. 4 is a cryptic order as the reply to the show cause notice submitted by the petitioner was not taken into account. The petitioner has categorically submitted that the accused Haider Ali was not produced before the learned Court on 29.04.2019 due to the fact that warrant under Section-167 Cr. P.C. was not submitted in sub jail Haldwani. The petitioner asked the departmental pairokar Constable Kavita Verma to inform the Investigating Officer about this fact. Constable Kavita Verma in her statement given to the Enquiry Officer has corroborated this fact that she has informed the Investigating Officer about non-production of accused Haider Ali, in the evening of 29.04.2019 itself. This most vital fact was completely ignored and overlooked by respondent no. 4 while passing the order dated 16.06.2020. In the appeal filed before the appellate authority, the petitioner has also submitted the fact that on 16.04.2019 he was not present in the Court of Judicial Magistrate, Jaspur and Constable Neelam Ratnakar was on duty as Court Moharrir and the remand papers and warrant under Section 167 of Cr.P.C. of accused were prepared by her. On 29.04.2019 when accused Haider Ali was not produced before the learned Court then on direction of the learned Court, petitioner enquired from the authorities of sub jail Haldwani and it was revealed that warrant under Section 167 Cr. P.C. of accused Haider Ali was not deposited in sub jail Haldwani and the fact about non-production about Haider Ali was brought to the notice of Investigating Officer in the evening of 29.04.2019 itself by Constable Kavita Verma (departmental pairokar) and by the petitioner on 30.04.2019. The authorities did not consider this vital aspect

and imposed punishment of censure against the petitioner for no fault of him.

It has further been argued that the petitioner recorded his statement and submitted that on 16.04.2019, he was not present in the Court of Judicial Magistrate, Jaspur, as he was present in the Court of Judicial Magistrate, Bazpur for recording his evidence in Case Crime No. 330/2011 and in his place, Constable Neelam Ratnakar performed the duties of Court Moharir in the Court of Judicial Magistrate, Jaspur on 16-04-2019. Since Neelam Ratnakar discharged duties of Court Moharrir on 16-04-2019 in the Court of Judicial Magistrate, Jaspur, therefore, she prepared a remand order as well as warrants and petitioner has no role in preparing the warrant or remand order on 16-04-2019. He has also submitted copy of the certificate given by learned Court certifying his presence in Case Crime No. 330 of 2011 before the Court of Judicial Magistrate, Bazpur on 16.04.2019. In the enquiry/preliminary enquiry, statements of petitioner, Sub Inspector (Special Category) Suresh Chandra, Sub Inspector, Jagat Singh Bhandari, Constable Neelam Ratnakar and Constable Kavita Verma were recorded. The Enquiry Officer has recorded a contrary finding that information regarding non-production of Haider Ali was not given by the petitioner or Constable Kavita Verma to the Investigating Officer and on this basis, he has held both the petitioner as well as Constable Kavita Verma guilty. The order dated 03.10.2020 passed by respondent no. 3, is without appreciating the ground raised by the petitioner in his appeal and on the basis of presumption and surmises has negated this ground of the petitioner that he should have recorded this fact also in his statement before the Enquiry Officer.

7. It has been argued on behalf of the respondents that a preliminary enquiry was conducted and the petitioner participated in the preliminary enquiry. The enquiry officer has taken statements of all the relevant witnesses including the petitioner. The preliminary enquiry is based on statements and documents related to the allegations. On the basis of sufficient evidence, the enquiry officer has reached the conclusion that the petitioner was guilty. The petitioner was also provided reasonable

opportunity to defend himself. The proceedings against the petitioner have been conducted under Rule 14(2) of Rules of 1991 and the procedure laid down under the said rule has been followed. After the preliminary inquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The reply of the petitioner to the show cause notice was also duly examined and considered and after that the disciplinary authority has passed a reasoned order awarding minor punishment to the petitioner. The conduct of the petitioner and Constable Kavita Verma is different and the benefit of which cannot be given to the petitioner. The contentions of the petitioner are false and the claim petition is liable to be dismissed.

8. The petitioner in his reply to show cause notice submitted that on 16.04.2019, he was not present in the Court of Judicial Magistrate, Jaspur, as he was present in the Court of Judicial Magistrate, Bazpur for recording the evidence in Case Crime No. 330/2011 and in his place, Constable Neelam Ratnakar performed the duties of Court Moharir in the Court of Judicial Magistrate, Jaspur on 16.04.2019. The petitioner has also submitted in his appeal that the fact finding/preliminary enquiry, in which his statements were recorded, was in relation to non-production of accused Haider Ali before the learned Court on 29.04.2019. The petitioner recorded his statement that he was not present on 16-04-2019 before the learned Court of Judicial Magistrate, Jaspur as he was to appear for recording his statement before Judicial Magistrate, Bazpur. The papers of remand and warrant under Section 167 Cr.P.C. of the accused Haider Ali were prepared by Constable Neelam Ratnakar who was holding charge of Court Moharir on 16-04-2019 before the Court of Judicial Magistrate, Jaspur. The petitioner has submitted that the Enquiry Officer has not asked any question about his not informing the Investigating Officer of non production of the accused Haider Ali on 29-04-2019. Respondent no. 3 on the basis of presumption and surmises has negated this ground of the petitioner that he should have recorded this fact also in his statement before the Enquiry Officer. A bare perusal of the order dated 03.10.2020 passed by respondent no. 3 reveals

that it has been passed without appreciating the ground raised by the petitioner in his appeal. The punishment order should have been passed after taking into account the evidences and perusal of record, but, in the present case petitioner has been punished without appreciating the statement recorded by the petitioner as well as Constable Kavita Verma.

9. The departmental pairakar Constable Kavita Verma in her statement has also submitted the fact that when accused Haider Ali was not produced before the learned Court, the learned Court have asked the applicant to enquire this fact from the jail authorities. The petitioner telephonically asked from the jail authorities about non production of accused Haider Ali before learned Court on 29.04.2019 than it came to the knowledge that warrant regarding accused Haider Ali was not filed in the jail and she has informed this fact to the Investigating Officer in the evening itself. Constable Kavita Verma, who is departmental pairakar, was also given censure entry by respondent no. 3 vide his order dated 19.08.2020 for the same charges as that of the petitioner. Constable Kavita Verma too preferred a departmental appeal against her punishment order before respondent no. 3. The respondent no. 3 vide his order dated 19.08.2020 allowed her appeal and quashed order dated 16.06.2020 passed by respondent no. 4. The ground for quashing the order of punishment of Constable Kavita Verma is that the cause of action of the present controversy was of 16.04.2019 and on that day she was not present in the Court as pairakar.

10. Learned Counsel for the petitioner has relied upon the decision rendered by Hon'ble Apex Court in CIVIL APPEAL NO. 1334 OF 2013, decided on 13.02.2013, the relevant paragraphs of which, are as follows:

"11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time,

appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit."

11. Hon'ble Supreme Court in the case of Rajendra Yadav vs. State of M.P. (*supra*) has held that the Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

12. On the basis of the above, the Tribunal is of the view that the petitioner and Constable Kavita Verma, departmental pairokar were found guilty of the same charges and both were awarded punishment of censure entry by the respondent no. 4. The petitioner as well as Constable Kavita

Verma both preferred departmental appeal against punishment orders before respondent no. 3. The respondent no. 3 *vide* his order dated 19.08.2020 allowed appeal filed by Constable Kavita Verma and set aside the order passed by the disciplinary authority (respondent no.4) on the ground that she was not present in the Court as pairokar on 16.04.2019. The petitioner also filed appeal against impugned punishment order before the respondent no. 3 mentioning the fact that he was not present before the learned Court of Judicial Magistrate, Jaspur on 16.04.2019, as he was to appear for recording his statement (evidence) before Judicial Magistrate, Bazpur. The petitioner has filed certificate issued by the Judicial Magistrate, Bazpur on 16.04.2019, which has not been taken into consideration in the instant case. The appellate authority did not apply its mind while deciding the appeal of the petitioner and rejected the same. While for the same incident, the appeal filed by Constable Kavita Verma has been allowed. In the instant case, for the collective act, selective punishment has been given, which is not permissible in the eyes of law. The impugned punishment orders have been passed by the respondents arbitrarily and against the law. Hence, the impugned orders are liable to be set aside and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 16.06.2020 passed by respondent no. 4 as well as appellate order dated 03.10.2020 passed by respondent no. 3 is hereby set aside. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner within 30 days from the date of passing of this order. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: JANUARY 05, 2023.
DEHRADUN
KNP