

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

Claim Petition No. 170/SB/2022

Sarita Bisht, aged about 46 years, d/o late Sri Vikram Singh Bisht,
r/o Q. No. 2/4 A-Block, Police Colony, Tehri.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun.
2. Deputy Inspector General of Police (Security), Uttarakhand, Dehradun.
3. Senior Superintendent of Police (Intelligence), Intelligence and Security, Headquarters, Dehradun.
4. Police Superintendent, Regional (Intelligence Department), Dehradun.

..... Respondents

Present: Sri B.B. Naithani, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

Judgement

Dated: 20th June, 2023

Justice U.C. Dhyani (Oral)

Complainant Smt. Sharmila Sajwan, Day-Care Centre, Police Headquarters, Dehradun, wrote a complaint (*undated*) to Reserve Inspector, Police Lines, Dehradun (copy Annexure: A4). In such complaint, the complainant stated that she was present on her duty in Day-Care Centre situated in PHQ, with her assistant,

Ms. Nirmala, as usual. At around 10:30 (probably AM, date not disclosed), S.I., Smt. Sarita Bisht (petitioner), who was posted in district Dehradun, came to Day-Care Centre with her daughter. She started saying absurd things to her, alleging that she (complainant) discriminates between children. She also stated that the complainant was a smart woman, who has made complaints against her (petitioner) and she has ousted her daughter. The complainant made a request to R.I. to know the reality from the guardians of all the children. The complainant also made a request to R.I. to shift her from Day-Care Centre.

2. Petitioner was given 'censure entry' for the year 2016 for her misbehavior or altercation, amounting to carelessness and indiscipline.

3. Petitioner filed claim petition no. 144/S2019, Sarita Bisht vs. State of Uttarakhand and others. The same was decided by this Tribunal *vide* order dated 17.07.2020.

4. Complete text of the judgement is reproduced herein below to understand the nature of controversy:

"1. The petitioner has filed this petition for the following reliefs:

"a. To issue order or direction quashing the order dated 28.02.2017 *vide* which the petitioner is awarded a censure entry (Annexure A1).

b. To issue order or direction quashing the order dated 23.03.2019 *vide* which the appeal of the petitioner is rejected.

c. To issue order or direction to the respondents no. 2 & 3 to pay to the petitioner the balance amount of salary for the period 03.09.2016 to 26.10.2016 when the petitioner remained suspended.

d. To give any other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.

e. To give cost to the petitioner."

2. Briefly stated, the petitioner is working as Sub-Inspector in the Police Department. She put her two years' old child in a Day Care Centre (Crèche) provided by the department. According to the petitioner, in the absence of proper care of her child and due to some other reasons, she had an altercation with the attendant/matron of the Crèche. The complaints were filed by the attendant and the petitioner. On the basis of the complaint of the attendant, the petitioner was

suspended. Subsequently, she was awarded punishment of censure entry. The departmental appeal, filed by the petitioner, was also rejected. Petitioner was not paid the difference of salary and of subsistence allowance for the suspension period. Hence, this petition was filed by the petitioner on the ground that the inquiry against the petitioner was conducted in a very cursory manner; punishment awarded to her was without any evidence and only on the statement of the complainant; the punishment awarded to the petitioner comes under the definition of double jeopardy, as the petitioner was also suspended on the same complaint. Petitioner was debarred from the payment of salary for the suspension period without any proper reason. Hence, this petition.

3. The petition was opposed by the respondents through Counter Affidavit with the allegation that on 26.08.2016, a woman constable namely Sharmila Sajwan (Attendant of Crèche) made a complaint against the petitioner, alleging misbehavior with her. On such complaint, Sri Laxman Singh Negi was appointed as an inquiry officer. The petitioner was supplied with the show cause notice; her reply to the show cause notice levelling charges, was rightly considered; inquiry officer submitted his report wherein the charge of misbehaving with lady constable Sharmila Sajwan and using un-parliamentary language were found proved against the petitioner and in view of the charges proved against petitioner, the impugned punishment order dated 28.02.2017 was passed with one censure entry in her service record. The departmental appeal was rightly heard and decided with detailed reasons. The petitioner also levelled some allegations against lady constable, discharging the duties at Day Care Centre but in the inquiry such allegations were found to be incorrect, hence, disciplinary proceedings were initiated against the petitioner. She was issued show cause notice and after considering her reply, the punishment order was passed. She was given full opportunity of hearing. The suspension order is not a punishment. The punishment order was passed after considering the entire facts available on record. The issue of pay during suspension period was rightly decided vide order dated 30.01.2020. A fair and impartial inquiry was conducted wherein she was found guilty of misconduct and a minor punishment was awarded to the petitioner. The claim petition has no merit and the same deserves to be dismissed.

4. Petitioner in her R.A. reiterated the facts of the petition. She has also stated that the order about suspension allowance passed, is an afterthought. The petitioner was suspended as well as awarded censure entry for the same incident, which amounts to double jeopardy. Her complaint against the Matron was not rightly considered. The petition deserves to be allowed.

5. We have heard both the sides and perused the record.

6. The petitioner, who put her child in a Day Care Centre, provided by the department, made a complaint that the lady constable of the centre, Sharmila Sajwan was not taking due care of the child and she had some altercation with her. On the complaint of lady constable, the disciplinary proceedings were started. The record reveals that the inquiry was conducted. During inquiry, it was also pointed out by the petitioner that lady constable demanded and received some money for taking care of her child and also received some goods without making any payment. Hence, there was also a complaint of bribery by the petitioner, against lady constable, looking after the Child Care Centre. That lady constable filed a complaint against the petitioner to the senior officer, and to inquire into the

matter, an inquiry officer was appointed. The record reveals that the inquiry officer only inquired about the allegation of lady constable, Sharmila Sajwan, but the allegations of the petitioner against the Matron (attendant of Crèche) were not inquired into. The inquiry report and punishment itself clarify that the complaint of the petitioner was put to be separately inquired.

7. On the basis of the altercation between petitioner and the lady constable, taking care of the Day Care Centre, and on the basis of same incident, there were cross-allegations of the petitioner as well as of the complainant. But, the department did not consider the complaint of petitioner and there was no finding of the inquiry officer about the complaint of the petitioner against lady constable. The admitted incident of altercation and complaint of petitioner about bribery was of the same time and were cross-matters and it was in the interest of justice that both the complaints must have been inquired into simultaneously. Petitioner has contended that her complaint has not been decided till date. Learned A.P.O. on behalf of the respondents was unable to clarify whether the complaint of the petitioner was inquired into or decided by the respondents as yet.

8. We find that both the complaints were out of same and one incident. It was necessary to inquire into the complaints of both the sides simultaneously, by the inquiry officer and a decision about both should have been made simultaneously and thereafter, the punishment should have been awarded to the delinquent. Hence, we are of the view that the principles of equality and natural justice have not been followed and it will be in the fitness of the things, that setting aside the order, respondents should be directed to inquire into and decide the complaint of both the parties simultaneously, in accordance with the law and thereafter, respondents are free to award appropriate punishment to the delinquent. Following order is hereby passed.

Order

The claim petition is allowed. The impugned punishment orders dated 28.02.2017 (Annexure A1) and 23.03.2019 (Annexure: A2) are hereby set aside.

The matter is remanded back to the respondent department, to inquire into the allegations of the petitioner as well as of the complaint of Sharmila Sajwan simultaneously through a proper inquiry and respondent department is free to award appropriate punishment to the erring officials. The issue of payment of salary for the suspension period, may also be decided again, as per the rules.

No order as to costs.”

5. After the aforesaid judgement was given, the incident was further enquired into by the authority concerned. The same is reflected from the direction dated 31.12.2021 for awarding censure entry (copy Annexure: A1). It has also been mentioned in the said document that the allegations leveled against lady constable, Smt. Sharmila Sajwan and the then R.I., Sri Surendra Prasad Baluni were not substantiated/ not found proved.

6. A show cause notice dated 06.08.2021 under Rule 14(2) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable to the State of Uttarakhand), was issued to the petitioner. The petitioner gave her explanation on 07.10.2021. S.S.P., Intelligence, in her order, has mentioned that the explanation was not found satisfactory and therefore, 'censure entry' was awarded to the petitioner under Section 23(2) of Uttarakhand Police Act, 2007.

7. The imputation, which was found proved against the petitioner, is that she had altercation with L.C., Sharmila Sajwan, which act of the petitioner is indicative of gross negligence and indiscipline. She was, therefore, awarded 'censure entry' for her misconduct.

8. There are many lacunae in the departmental version, although learned A.P.O. has made all his sincere efforts to defend the departmental action.

9. The first and foremost is that there is no date in the complaint of the complainant. One does not know when was the complaint given. Secondly, date of incident has also not been disclosed. The request made by the complainant was for shifting her from Day-Care Centre and not for initiating any action against the petitioner. All that the complainant wanted from the R.I. was to find out the real facts from the guardians of the children and shift her from Day-Care Centre (obviously after the petitioner had altercation with the complainant).

10. The imputation against the petitioner is not definite. When did it happen? What is the date of complaint? Altercation, in common parlance, means heated exchange of words between two persons or between group of persons. According to the Oxford Languages (*online*), 'altercation' means "a noisy argument or disagreement, especially in public". Allegation, in the complaint, is one sided. According to the complaint, whatever happened was at the instance of the petitioner and none else. The language used in

the complaint suggests as if the complainant was trying to defend herself.

11. Complainant and the then R.I. were exonerated of the charges leveled against them. In fact, there was no allegation against the then R.I., Sri Surendra Prasad Baluni. Allegations, in the instant case, were against the petitioner and probably, cross-allegation was by the petitioner against the complainant. The cross-version is not before us. The enquiry has not been conducted in the spirit of order dated 17.07.2020, passed by this Tribunal in claim petition no. 144/S2019, Sarita Bisht vs. State of Uttarakhand and others.

12. There is yet another aspect of the matter. Whereas show cause notice was issued to the petitioner under Rule 14(2) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as 'Rules of 1991'), the 'censure entry' was awarded under Section 23(2) of the Uttarakhand Police Act, 2007. If the show cause notice was given under the Rules of 1991, the punishment, if any, also ought to have been given under the self same Rules. If the minor punishment was to be given under the Uttarakhand Police Act, 2007, the notice also ought to have been issued under the self same Act.

13. Learned A.P.O. has made an endeavor to defend such anomaly by arguing that the provisions of Rules of 1991 and Uttarakhand Police Act, 2007, are *pari materia* to each other, which (anomaly) does not vitiate proceedings. Certain provisions of the Rules of 1991 and Uttarakhand Police Act, 2007, may be *pari materia* to each other, but the fact remains that, normally, when a show cause notice is given under a particular service rule, punishment, if any, is also awarded under the same rule. If the show cause notice is given under the Act, normally, the punishment, if any, is also awarded under the same Act.

14. Further, the show cause notice dated 06.08.2021 (copy Annexure: A8) indicates that the preliminary enquiry was conducted against the allegations made by the parties against each other. If the preliminary enquiry has been done, it is only for the satisfaction of the disciplinary authority and for nothing else. Punishment, even if it is a minor punishment, cannot be awarded on the basis of preliminary enquiry.

15. The rulings of the Commissioner, Karnataka Housing Board vs. C. Muddaiah, 2007(4) RSJ 639; Nirmala J. Jhala vs. State of Gujarat and another, (2013) 4 SCC 301; Gorkha Security Services vs. Govt. of NCT of Delhi and others, [(2014) (143) FLR 591 SC]; Dharampal Arora vs. Punjab State Electricity Board and another, (2008) 2 SCC (L&S) 145; and H.N. Srivastava vs. G.M. (ADMN.), Uttarakhand and others, 2023 (176) FLR 765, have been cited by the learned Counsel for the petitioner in support of petitioner's case. This Tribunal has already given reasons (above), why the impugned orders cannot sustain. The Tribunal does not feel it necessary to discuss these decisions in detail.

16. The impugned orders, therefore, call for interference.

17. The claim petition is disposed of by setting aside order dated 31.12.2021 (copy Annexure: A1); appellate order dated 20.09.2022 (copy Annexure: A2); and order dated 31.12.2021 (copy Annexure: A3) with direction to the respondents to delete the entries made in the service record of the petitioner with respect to the aforementioned punishment orders. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
[virtually from Nainital]

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 20th June, 2023
DEHRADUN
RS