

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 44/NB/SB/2022

Khushwant Singh, aged about 36 years, s/o Shri Jaswant Singh, presently posted as Sub Inspector at Police Station, Kotwali Bageshwar, District Bageshwar.

.....Petitioner

vs.

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

.....Respondents

Present: Sri B.S.Adhikari, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: AUGUST 03, 2023

This claim petition has been filed for seeking the following reliefs:

"a) To set aside the impugned order dated 09.06.2020 passed by respondent no. 4 (contained as Annexure no. 1 to this petition) and impugned order dated 11.01.2021 passed by respondent no.3 (contained as Annexure no. 2 to this petition).

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

c) Award cost of the petition."

2. Briefly stated facts of the petitioner's case are that in the year 2015-16, when petitioner was posted as Sub Inspector (Civil Police) at police station Kichha, District Udham Singh Nagar, a show cause notice dated 30.12.2019 was issued by the respondent no. 4 levelling the following allegations:

“वर्ष 2015-16 में जब आप थाना किच्छा जनपद ऊधमसिंहनगर में नियुक्त थे तो दिनांक 31-10-2015 को थाना किच्छा पर यादी श्री अविनाश प्रसाद गुप्ता पुत्र स्व0 श्री लक्ष्मण प्रसाद गुप्ता निवासी ग्राम गंगापुर पाटिया, प्रतापपुर थाना किच्छा जनपद

ऊधमसिंहनगर द्वारा प्र०सू०रि०सं० 252/15 धारा 323/325/307/452/504/506 भादवि उमेश चन्द्र उर्फ प्रकाश चन्द्र व आशीष कुमार उर्फ पवन कुमार पंजीकृत कराया गया था जिसकी प्रारंभिक विवेचना उ०नि०वि०श्रे० शेखरानन्द के सुपुर्द की गयी थी जिनके द्वारा दिनांक 2-11-15 को सीडी प्रथम किता कर नकल चिक, नकल रपट व मेडिकल रिपोर्ट की नकल कर एफआईआर लेखक के बयान दर्ज किये गये तत्पश्चात दिनांक 6-11-2015 को विवेचना आपके सुपुर्द की गयी। आप द्वारा दिनांक 6-11-15 को सीडी द्वितीय, दिनांक 12-11-15 को सीडी तृतीय दिनांक 11-12-15 को सीडी चतुर्थ, दिनांक 5-1-16 को सीडी पंचम, दि० 12-1-16 को सीडी षष्ठम, दि० 6-3-16 को सीडी सप्तम, दि० 10-3-16 को सीडी अष्टम किता की गयी प्रश्नगत प्रकरण में सम्पादित की गयी जांच से विवेचना आपके पास दिनांक 6-11-15 से 1-4-16 तक विवेचनाधीन रही परन्तु इस अवधि में आप द्वारा अभियुक्तों की गिरफ्तारी के कोई प्रयास करना नहीं पाया गया और न ही मजरुब के मेडिकल परीक्षण करने वाले डॉक्टर एव वादी से सम्पर्क करने के कोई भी प्रयास न करने का दोषी पाया गया है। इस प्रकार आप द्वारा अभियुक्तों की गिरफ्तारी के कोई सार्थक प्रयास न करना एवं विवेचनात्मक कार्यवाही न कर विवेचना को अनावश्यक रूप से लम्बित रखना आपका अपने कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीता शिथिलता, अकर्मण्यता एवं स्वेच्छाचारिता का द्योतक है।”

3. For the alleged charges, a preliminary enquiry was conducted by the enquiry officer, who submitted his report dated 19.12.2019 holding the petitioner guilty. Petitioner replied to the show cause notice vide his reply dated 01.12.2020, denying the allegations levelled against him. The petitioner has also stated that while posted at Kotwali Kichcha from January 2015 to March 2016, he received investigation of FIR No. 252/15 under Section 323/325/307/452/504/506 IPC registered in Kotwali Kichcha. Sub Inspector, Shekhranand Tiwari submitted Parcha No. 1. Thereafter, after accepting investigation, Parcha No. 2 was submitted on 06.11.2015 by the petitioner. The petitioner recorded the statement of accused, inspected the place of occurrence and submitted Parcha no. 4. On 11.12.2016, the report was sent to get the supplementary report whose Parcha no. 5 was submitted. Supplementary report was received on 12.01.2016 and Parcha no. 6 was filed. After getting medical and supplementary report, the petitioner recorded the statement of accused and submitted Parcha no. 7 on 06.03.2016. on 10.03.2016, the statement of doctor was recorded and submitted Parcha No. 8. The petitioner has also stated that during this period he executed other investigation applications and law and order duty. During this period, the petitioner was transferred on 10.03.2016 to Thana Nanakmatta. The delay in the investigations was not done intentionally. The investigation was pending,

as such, there was no question for making negligence on the part of the petitioner.

4. The respondent no. 4 without considering the material evidence available on record and without going through the detailed reply submitted by the petitioner vide impugned order dated 09.06.2020 found the petitioner guilty for dereliction of duties. Feeling aggrieved from the order dated 09.06.2020, the petitioner preferred departmental appeal before respondent no. 3, in which, he has taken various grounds and also prayed for that the entire service career of the petitioner is unblemished and there is no complaint whatsoever about his work and conduct and he is an innocent person and also prayed for set aside the order dated 09.06.2020. The respondent no. 3 without going into the merit of the case and without considering the grounds taken by the petitioner in his appeal rejected the appeal of the petitioner vide its order dated 11.01.2021. The impugned orders are not sustainable in the eyes of law and are liable to be set aside.

5. C.A./W.S. has been filed on behalf the respondents, stating therein that for the alleged charge, a preliminary enquiry was conducted and the enquiry officer has submitted his preliminary enquiry report holding the petitioner guilty. Thereafter, a show cause notice dated 30.12.2019 was issued to the petitioner, to which, he submitted his reply/explanation. Punishing Authority after considering the reply of the petitioner has passed a detailed and reasoned order assigning findings for not accepting the reply of the petitioner. During Preliminary enquiry, petitioner was afforded full reasonable opportunity of defence. Against impugned punishment order dated 09.06.2020 petitioner has filed a departmental appeal which was also decided and rejected vide order dated 11.01.2021 by the competent authority i.e. respondent no. 3 after due consideration of the facts and grounds raised by the petitioner. There is no any legal or procedural defect in the impugned orders. Petitioner is not entitled to get any relief and claim petition is liable to be dismissed.

6. The petitioner has also filed R.A. reiterating the same facts as have been mentioned in the claim petition.

7. I have heard the arguments of learned counsel for the petitioner and learned A.P.O. and perused the record.

8. Learned Counsel for the petitioner has argued that in the year 2015-16 when the petitioner was posted at police station Kichha, District Udham Singh Nagar, there were as many as 36 investigations going on, due to which, the petitioner could not complete the investigation. After the show cause notice, the petitioner preferred detail reply and also denied the allegations levelled in the show cause notice and also stated that petitioner is the appointee of 2008 in the Department on the post of Sub Inspector and his entire career has been found unblemished and there is no complaint whatsoever about his work and conduct. It has also been argued that while posted at Kotwali Kichcha from January 2015 to March 2016, he received investigation of FIR No. 252/15 under Section 323/325/307/452/504/506 IPC registered in Kotwali Kichcha. Sub Inspector, Shekhranand Tiwari submitted Parcha No. 1. Thereafter, after accepting investigation, Parcha No. 2 was submitted on 06.11.2015 by the petitioner. The petitioner recorded the statement of accused, inspected the place of occurrence and submitted Parcha no. 4. On 11.12.2016, the report was sent to get the supplementary report, whose Parcha no. 5 was submitted. Supplementary report was received on 12.01.2016 and Parcha no. 6 was filed. After getting medical and supplementary report, the petitioner recorded the statement of accused and submitted Parcha no. 7 on 06.03.2016. on 10.03.2016, the statement of doctor who conducted the medical examination of the injured, was recorded and submitted Parcha No. 8. The petitioner has also executed other investigation applications and law & order duty stated that during this period. The petitioner was transferred on 10.03.2016 to Thana Nanakmatta. The delay in the investigations was not done intentionally. It has been argued on behalf of the respondents that in the year 2015-16, when the petitioner was appointed in police station Kichha, district Udham Singh Nagar, on 31.10.2015

at police station Kichha, an FIR No. 252/15 under Section 323/325/307/452/504/506 IPC was registered, whose preliminary investigation was handed over to Sub-Inspector (Special Category), Shekhra Nand, by whom, on 02.11.2015, inscribed CD-1 and copy of the report and the copy of the medical report, recorded of the statements of FIR writer. Thereafter, the investigations were handed over to the petitioner. The petitioner inscribed the CD-2 on 06.11.2015, CD-3 on 12.11.2015, CD-4 on 11.12.2015, CD-5 on 05.01.2016, CD-6 on 12.01.2016, C.D.7 on 06.03.2016 and CD-8 on 10.03.2016. The investigation was kept pending by the petitioner from 06.11.2015 to 01.04.2016 and during this period, he did not make any efforts to arrest the accused, neither the doctor who conducted the medical examination of injured and also found guilty of not making any efforts to contact the accused. Thus, the petitioner was found guilty of not making any meaningful efforts to arrest the accused and unnecessarily kept pending the investigation by not taking any serious efforts, which is gross negligence towards his duty. A show cause notice dated 30.12.2019 was issued to the petitioner, to which, the petitioner submitted his reply/explanation. Punishing Authority after considering the reply of the petitioner has passed a detailed and reasoned order assigning findings for not accepting the reply of the petitioner. During Preliminary enquiry, petitioner was afforded full reasonable opportunity of defence. Against impugned punishment order dated 09.06.2020, petitioner filed a departmental appeal, which was also decided and rejected vide order dated 11.01.2021 by the competent authority *i.e.* respondent no. 3 after due consideration of the facts and grounds raised by the petitioner. There is no any legal or procedural defect in the impugned orders. Petitioner is not entitled to get any relief and claim petition is liable to be dismissed.

9. The main allegations against the petitioner are that while posted at Kotwali Kichcha from January 2015 to March 2016, he received investigation of FIR No. 252/15 under Section 323/325/307/452/504/506 IPC registered in Kotwali Kichcha. The petitioner kept the investigation pending from 06.11.2015 to 01.04.2016. It is also alleged that during this period, the petitioner did not make any efforts to arrest the accused and neither the

petitioner made any efforts to contact the injured nor the doctor who conducted the medical examination of the injured. The petitioner was also found guilty of not making any efforts to contact the accused and not making any meaningful effort to arrest the accused and unnecessarily kept the investigation pending and was found guilty of gross negligence towards his duties. The preliminary enquiry was conducted by the Additional Superintendent of Police (Crime), Udham Singh Nagar on 19.12.2019, in which, the statements of many police officials, including the petitioner were recorded. The petitioner's statements as recorded by the inquiry officer, are as under:

“उ०नि० श्री खुशवन्त सिंह थाना कपकोट जनपद बागेश्वर मो०नं०-6057127942 ने पूछने पर बताया कि मैं माह जनवरी 2015 से मार्च 2016 तक थाना किच्छा की चौकी दरूऊ में बतौर प्रभारी नियुक्त था। थाना किच्छा पर पंजीकृत प्र०सू०रि०सं० 252/2015 धारा 323/325/307/452/504/506 भादवि की विवेचना मुझ उप निरीक्षक को प्राप्त हुई। मुझसे पूर्व विवेचक उ०नि० श्री शेखरानन्द तिवारी द्वारा पर्चा प्रथम किता किया गया। इसके उपरान्त मेरे द्वारा दिनांक 06.11.2015 को विधा कर पर्चा द्वितीय किया गया। मेरे द्वारा दिनांक 12.11.2015 को बयान वादी, निरीक्षण घटना स्थल किया गया, जिसमें पर्चा चतुर्थ किता किया गया। दिनांक 11.12.2015 को सप्लिमेन्ट्री रिपोर्ट प्राप्त करने हेतु रिपोर्ट प्रेषित की गयी, जिसका पर्चा पंचम किया गया। दिनांक 12.01.2016 को सप्लिमेन्ट्री रिपोर्ट प्राप्त कर पर्चा षष्ठम तक किता किया गया। मेडिकल व सप्लिमेन्ट्री रिपोर्ट प्राप्त होने के उपरान्त मेरे द्वारा दिनांक 06.03.2016 को वादी के बयान लिये गये, जिसमें पर्चा सप्तम किता किया गया तथा दिनांक 10.03.2016 मेडिकलकर्ता चिकित्सक के बयान लिये गये, जिसमें पर्चा अष्टम किता किया गया। इस दौरान मुझ उपनिरीक्षक/विवेचक द्वारा अन्य विवेचना, जाँच प्रार्थना पत्र, लॉ एण्ड ऑर्डर की ड्यूटी भी सम्पादित की गयी।

प्रश्न— पर्चा षष्ठम आपने दिनांक 12.01.2016 को किता किया तथा पर्चा सप्तम आपने दिनांक 06.03.2016 को किया किया गया। लगभग ढाई माह के बाद आपने उक्त अभियोग की विवेचना में क्या किया?

उत्तर— मुझ उपनिरीक्षक / विवेचक के पास अन्य विवेचना, जाँच प्रार्थना पत्र लॉ एण्ड ऑर्डर की ड्यूटियों के अतिरिक्त उपरोक्त मेडिकल के चिकित्सक तथा वादी उपलब्ध नहीं हो पा रहे थे, जिनके कथन अंकित किये जाने अति आवश्यक थे। इस कारण विवेचना के दौरान पर्चा किता करने में विलम्ब हो गया। मेरे द्वारा जानबूझकर विवेचना को लम्बित नहीं रखा गया, जो भी विलम्ब हुआ यह राजकार्य व लॉ एण्ड ऑर्डर के कारण हुआ।

The inquiry officer, after recording the statements of the witnesses and after examining the documentary evidence, analysed that.....दिनांक 05.01.2016 को सी०डी० पंचम किता कर मेडिकल सप्लीमेन्ट्री रिपोर्ट की नकल की गयी। दिनांक 12.01.2016 को सी०डी० षष्ठम किता कर मजरूब की मेडिकल व सप्लीमेन्ट्री रिपोर्ट तैयार

करने वाले डॉक्टर के बयान दर्ज कर अभियोग में से धारा 307 भादवि का लोप कर धारा 323/325 भादवि की बढ़ोत्तरी की गयी। दिनांक 06.03.2016 को सी०डी० सप्तम किता कर वादी के मजीद बयान दर्ज किये गये। दिनांक 10.03.2016 सी०डी० अष्टम किता कर मजरूब का मेडिकल करने वाले डॉक्टर रमेश चन्द्र गर्ग के पुनः बयान दर्ज किये गये तत्पश्चात दिनांक 01.04.2016 को विवेचना उ०नि० श्री जयपाल सिंह के सुपुर्द हुई।.....”

Thereafter, the enquiry officer came to the conclusion, as under:

“सम्पूर्ण जाँच में अंकित किये कथनों व उपलब्ध अभिलेखों के परिशीलन से यह निष्कर्ष निकलता है कि थाना किच्छा पर पंजीकृत प्र०स०रि०सं० 252/2015 धारा 323/325/307/452/504/506 भादवि के अभियोग की विवेचना में उ०नि० श्री खुशवन्त सिंह अभियुक्तों की गिरफ्तारी के कोई सार्थक प्रयास न करने व दिनांक 05.01.2016 से दिनांक 06.03.2016 तक कोई भी विवेचनात्मक कार्यवाही न कर विवेचना को अनावश्यक रूप से लम्बित रखने.....के दोषी पाये जाते हैं।”

10. The impugned orders have been passed on the basis of the inquiry report. The inquiry officer in his inquiry analysed that दिनांक 05.01.2016 को सी०डी० पंचम किता कर मेडिकल सप्लीमेन्ट्री रिपोर्ट की नकल की गयी। दिनांक 12.01.2016 को सी०डी० षष्ठम किता कर मजरूब की मेडिकल व सप्लीमेन्ट्री रिपोर्ट तैयार करने वाले डॉक्टर के बयान दर्ज कर अभियोग में से धारा 307 भादवि का लोप कर धारा 323/325 भादवि की बढ़ोत्तरी की गयी। दिनांक 06.03.2016 को सी०डी० सप्तम किता कर वादी के मजीद बयान दर्ज किये गये। दिनांक 10.03.2016 सी०डी० अष्टम किता कर मजरूब का मेडिकल करने वाले डॉक्टर रमेश चन्द्र गर्ग के पुनः बयान दर्ज किये गये तत्पश्चात दिनांक 01.04.2016 को विवेचना उ०नि० श्री जयपाल सिंह के सुपुर्द हुई। Thereafter, in the conclusion, the inquiry officer concluded that सम्पूर्ण जाँच में अंकित किये कथनों व उपलब्ध अभिलेखों के परिशीलन से यह निष्कर्ष निकलता है कि थाना किच्छा पर पंजीकृत प्र०स०रि०सं० 252/2015 धारा 323/325/307/452/504/506 भादवि के अभियोग की विवेचना में उ०नि० श्री खुशवन्त सिंह अभियुक्तों की गिरफ्तारी के कोई सार्थक प्रयास न करने व दिनांक 05.01.2016 से दिनांक 06.03.2016 तक कोई भी विवेचनात्मक कार्यवाही न कर विवेचना को अनावश्यक रूप से लम्बित रखने.....के दोषी पाये जाते हैं।

11. The disciplinary authority has passed the impugned order awarding censure entry to the petitioner finding him guilty on the ground that investigation in question was pending with him from 06.11.15 to 01.04.16, but during this period, no effort was found to arrest the accused and also found guilty of not contacting the injured or the doctor who conducted the medical examination of the injured. Disciplinary authority has also alleged that the petitioner did not make any meaningful effort to arrest the accused and unnecessarily delayed the investigation and by not taking serious action is

indicative of gross negligence, indiscipline, laxity, indolence and arbitrariness towards his duty and recorded the censure entry vide order dated 09.06.2020. The petitioner challenged the order passed by the disciplinary authority before the appellate authority by way of appeal. The appellate authority also rejected the same on 11.01.2021, confirming the order passed by the disciplinary authority.

12. On the basis of the above, the Tribunal finds that after accepting the investigation of the FIR No. 252/15 under Section 323/325/307/452/ 504/ 506 IPC, the petitioner inscribed the CD2 on 06.11.2015. Thereafter, inscribed CD3 on 12.11.2015, CD-4 on 11.12.2015, CD-5 on 05.01.2016, CD-6 on 12.01.2016, CD-7 on 06.03.2016 and CD-8 on 10.03.2016 by the petitioner, which also reflects from the analysis of the inquiry officer and the same fact is also admitted to the respondents, as per the record. The petitioner in his explanation has also mentioned the same facts as have been mentioned in his statement before the inquiry officer. He has explained the action taken in the investigation of the FIR No. 252/15 under Section 323/325/307/452/504/ 506 IPC, that he inscribed the CD2 on 06.11.2015. Thereafter, inscribed CD3 on 12.11.2015, CD-4 on 11.12.2015, CD-5 on 05.01.2016, CD-6 on 12.01.2016, CD-7 on 06.03.2016 and CD-8 on 10.03.2016 and again recorded the statements of the doctor who conducted the medical examination of the injured. Thereafter, the investigation was handed over to another Sub-Inspector on 01.04.2016. It cannot be said that after accepting the investigation on 06.11.2015 till 01.04.2016, no meaningful action was taken by the petitioner in the investigation. The disciplinary authority did not take into consideration all the facts and passed the impugned order of censure entry. Similarly, the appeal filed by the petitioner was also rejected by the appellate authority confirming the order passed by the disciplinary authority. Hence the impugned orders have been passed against the facts and evidence on record.

13. It has also been alleged in the impugned order that the petitioner did not take any meaningful action in arresting the accused. As is clear from the record that the petitioner, on 12.01.2016 filed CD-6 and after recording

the statements of the doctor who conducted the medical and prepared the supplementary report of the injured, no offence u/s 307 IPC was made out. In this regard, it would be appropriate to quote the relevant para of the judgment of Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar and another (2014) SCC 273, as under:

"7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Cr.PC which is relevant for the purpose reads as follows:

"41. When police may arrest without warrant.-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

*(a) * * **

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

*(i) * * **

(ii) the police officer is satisfied that such arrest is necessary–

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from

making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2 Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest.

7.3 In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.”

14. In view of the above, the Tribunal observes that the impugned orders have been passed against the facts and evidence on record and are not sustainable in the eyes of law. Hence, the claim petition is liable to be allowed and the impugned orders passed by the respondents are liable to be set aside.

ORDER

The claim petition is allowed. The impugned punishment order dated 09.06.2020 passed by the respondent no. 4 and the appellate order dated 11.01.2021 passed by respondent no. 3 are hereby set aside. The respondents are directed to expunge the adverse remark recorded in the character roll of the petitioner within two months from the date of this order. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: AUGUST 03, 2023
DEHRADUN
KNP