

(Virtually)

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

CLAIM PETITION NO. 13/NB/SB/2023

Rajendra Prasad, S.I. Civil Police, s/o Late Sri Devram, r/o Isai Nagar no. 1, near Church, Lamachaur, Thana and Tehsil Haldwani, district Nainital (Uttarakhand).

.....**Petitioner**

vs.

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

.....**Respondents**

Present: Ms. Devika Tiwari, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: 30TH NOVEMBER, 2023

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner has, *inter-alia*, prayed for quashing the order dated 17.11.2021 (Annexure: 1), which has been passed by the Disciplinary Authority and order dated 26.09.2022 (Annexure: 2), which has been passed by the Appellate Authority. The Appellate Authority has affirmed the decision of the Disciplinary Authority.

2. The imputation against the petitioner, in short, is that he did not make efforts to send notice u/s 41A CrPC even after 3 months, 23 days of lodging FIR, which was registered as Case Crime No.

233/2020 u/ss 147/323/325/504/506 IPC, at P.S. Kichha, district Udham Singh Nagar. The FIR was registered on 18.08.2020.

3. The genesis of departmental proceedings against the petitioner is the order dated 11.12.2020 passed by the Additional Chief Judicial Magistrate/First Additional Civil Judge (S.D.), Rudrapur, district Udham Singh Nagar. The matter was enquired into by the Circle Officer (C.O.), Sitarganj, Udham Singh Nagar, who submitted his report on 25.09.2021. The explanation was called for from the petitioner, whose reply was not found satisfactory by the Disciplinary Authority, therefore, he was given 'censure entry' to be kept in the Character Roll of the petitioner for the year 2021. It was held that there was carelessness on the part of the delinquent-petitioner in conducting the investigation. Such order was passed in exercise of powers given under the Uttarakhand Police Act, 2007, read with the Uttar Pradesh Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 (as applicable to Uttarakhand). S.S.P., Udham Singh Nagar (Disciplinary Authority) passed such an order on 17.11.2021. The petitioner filed departmental appeal, which appeal was dismissed *vide* detailed and reasoned order dated 26.09.2022 by the Deputy Inspector General of Police, Kumaon Region.

4. The petitioner has challenged both these orders in the present claim petition. Relevant documents have been filed with the claim petition along with affidavit.

5. Claim petition has been contested by the respondents. Sri Kishore Kumar, learned A.P.O. has filed W.S. on behalf of the respondents no. 1 to 3. C.A. has been filed by Sri Rewadhar Mathpal, C.O. working in the office of S.S.P., Udham Singh Nagar. Material facts of the claim petition have been denied in such C.A. R.A. thereto has been filed by the petitioner reiterating the facts contained in the claim petition.

6. As has been mentioned above, the genesis of departmental proceedings against the petitioner is the order dated 11.12.2020

passed by the Additional Chief Judicial Magistrate/First Additional Civil Judge (S.D.), Rudrapur, district Udham Singh Nagar. Accused persons, namely Savitri w/o Himanshu Banga and Himanshu Banga were denied judicial custody remand and the application of the Investigating Officer (I.O.) (petitioner herein), to this effect, was rejected by learned ACJM, who in her order dated 11.12.2020 found that the petitioner-I.O. did not make efforts to obtain order of the Competent Court u/s 41A(4) CrPC [para 11 of the order dated 11.12.2020]. Learned ACJM, in para 9 of the order dated 11.12.2020, also found lacuna in the notice. She has also quoted a decision rendered by the Hon'ble Apex Court in Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273, in which the following has been observed:

“.....Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

.....

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is 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.”

[Emphasis supplied]

7. Learned ACJM, therefore, found in para 13 of her order dated 11.12.2020, that the petitioner, as I.O., did not make efforts to send notice to the accused persons within two weeks of registration of FIR. The I.O. did not refer the same to the S.S.P. for extension of time either. No order u/s 41A(4) CrPC was obtained for arrest of the accused

persons. The notice u/s 41A CrPC was vague and incomplete and was prepared only as a formality.

8. Pursuant to the inquiry and after considering the explanation given by the petitioner in response to the notice issued to him, the Disciplinary Authority awarded him 'censure entry', against which departmental appeal was dismissed by the Appellate Authority.

9. Minor punishment has been awarded to the petitioner as per the observation of learned ACJM, Rudrapur, district Udham Singh Nagar, and upon inquiry. The observations thus made by learned ACJM, Rudrapur in her order dated 11.12.2020 were based on the facts, which remain unchallenged. This was a judicial verdict, which has attained finality. There is no procedural lacuna in conducting the departmental proceedings. Relevant Rules have been followed. Scope of judicial review is very limited [Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301]. No interference is called for in the impugned orders, which are based on judicial order, passed by the learned ACJM, Rudrapur, district Udham Singh Nagar and after inquiry.

10. It may be noted here that in Bhupendra Singh and others vs. State of U.P. and others, (2007)(4) ESC 2360 (All)(DB), the Division Bench of Hon'ble High Court of Judicature at Allahabad, has held that the provisions of Rule 4(1)(b)(iv) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 are valid and *intra vires*. Censure entry, can therefore, be awarded.

11. In her arguments, Ms. Devika Tiwari, learned Counsel for the petitioner has not only challenged the impugned orders on merits, she has also assailed the same on the ground of proportionality. Ms. Devika Tiwari, learned Counsel for the petitioner submitted that the Tribunal can take judicial notice of the fact that Lockdown, on account of Pandemic Covid-19, started on 22.03.2020. She submitted that the FIR was lodged on 18.08.2020 and no doubt, there was delay in sending notice u/s 41 A CrPC, but the Tribunal should take judicial notice of the fact that after the lockdown, many places were declared as

containment zones, the petitioner himself was tested positive to Covid-19 and it became difficult for him to affect notice under section 41 CrPC on the accused persons. The petitioner thus suffered from pandemic and he was under quarantine. Whereas, the Tribunal finds that there is no scope for interference in the orders of the Disciplinary Authority and Appellate Authority in holding the petitioner guilty of carelessness in conducting the investigation, the Tribunal finds that there is scope for reconsideration on the quantum of punishment given to the petitioner on account of pandemic Covid-19.

12. Ms. Devika Tiwari, learned Counsel for the petitioner, at this juncture, submitted that liberty may be granted to the petitioner to file statutory revision before the competent authority and the delay, in filing the same may be condoned. This Tribunal has observed, in a number of decisions, that the remedy of statutory revision is available to a delinquent, against the orders of disciplinary authority and appellate authority. Learned Counsel for the petitioner further submitted that the petitioner has been punished for not serving the notices u/s 41 CrPC on the accused persons. Although it was theoretically possible but was practically difficult for the petitioner to serve such notices on the accused persons, for fear of death (on account of pandemic). A large number of casualties occurred during pandemic. Hon'ble Supreme Court visualized the situation arising out of the challenges faced by the country on account of Covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general laws of limitation or under any special laws (both Central and /or State) due to the outbreak of the Covid-19 pandemic in *Suo Motu Writ Petition (Civil) No. 03/2020*. Hon'ble Supreme Court observed that "we also take judicial notice of the fact that the steep rise in COVID-19 virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 virus, thus, requires extraordinary measures to minimize the hardship of litigant—public in all the states. We, therefore, restore the order dated

23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.” Although such observations were for the litigants in extending limitation, but the fact remains that the Hon’ble Supreme Court has highlighted the gravity of the situation in these decisions, which might be, as a citizen, valid for the petitioner as well. She submitted that police officials are also part of the society, they do not live in vacuum and therefore their hardships should also have been considered by the superiors in the police department. It is not a case in which an accused was arrested without service of notice under section 41 CrPC. Rather, it is a case in which judicial remand was refused on the ground of defective notice u/s 41 CrPC and that no notice was served upon them on time.

13. It is true that the petitioner, if he was not able to affect service of notices u/s 41 CrPC on the accused persons within the stipulated time, should have requested the police chief of the district to extend the time, for which he is, definitely, guilty. Yet, there are mitigating circumstances in favour of the petitioner on account of pandemic Covid-19. Such mitigating circumstances call for reconsideration of the punishment awarded to the petitioner by the revisional authority.

14. The Hon’ble Supreme Court in *Rajasthan Tourism Development Corporation Limited and Another vs. Jai Raj Singh Chauhan*, (2011)13 SCC 541, has observed as under:

“22. We have no doubt that if the learned Single Judge and the Division Bench were apprised of the law laid down by this Court, the former may have instead of substituting the punishment of dismissal from service with that of stoppage of two increments with cumulative effect remitted the matter to the disciplinary authority with a direction to pass fresh order keeping in view the fact that the writ petitioner had already suffered by remaining out of employment for a period of about seven years.

23. At this juncture, we may note that learned counsel for the appellants fairly agreed that ends of justice will be served

by remitting the matter to the disciplinary authority with a direction that the respondent be awarded a minor punishment provided an undertaking is given by him not to claim wages for the period between the dates of dismissal and reinstatement. Learned counsel for the respondent that his client will not claim pay and allowances for the period during which he remained out of employment.

24. *In the result the appeal is allowed, the orders passed by the learned Single Judge and the Division Bench of the High Court are set aside and the following directions are given:*

1. The Corporation is directed to reinstate the respondent within a period of 15 days from the date of receipt/production of a copy of this order.

2. The respondent shall not be entitled to wages for the period between the dates of dismissal and reinstatement.”

[Emphasis supplied]

15. The Tribunal cannot usurp the jurisdiction of the police authorities. It cannot substitute its own decision for the discretion of the departmental authorities. The Tribunal can, at best, suggest the revisional authority to reconsider the case of the petitioner on the quantum of punishment. If revisional authority considers that the pandemic genuinely prevented the petitioner from affecting service of notices u/s 41 CrPC on the accused persons, it may award lesser punishment, but the Tribunal is afraid, it cannot award ‘other minor penalty’, as prescribed under the Rules, to the petitioner because he is a Sub-Inspector. ‘Other minor penalty’ may be awarded to the Constables and Head Constables only, as per Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 and not to the S.I.s & above. The petitioner, in the peculiar facts of the case, if found fit, may be let off with warning. But everything will depend on the discretion of the Revisional Authority. Hon’ble Supreme Court has, no doubt, given directions for notice of appearance [Arnesh Kumar v. State of Bihar (2014)8 SCC 273], but has also highlighted hardships faced during pandemic Covid-19 [Suo Motu Writ Petition (Civil) No. 03/2020]. Petitioner is undoubtedly guilty of carelessness in affecting service of notices, he should have, referred the matter to

Superintendent of Police of the district, if he was unable to affect service within time, yet it may not be out of place to mention here that 'fear of death' might have prevented him from doing the same. The petitioner is, accordingly, granted liberty to file statutory revision. If such revision is filed within a reasonable time (say, within four weeks of supply of certified copy of this decision), the delay in filing the same is condoned.

16. Learned Counsel for the petitioner also placed judgment and order dated 12.04.2023, passed by this Tribunal in Claim Petition no. 74/SB/2023, Vijay Pratap Singh vs. State of Uttarakhand & others. She drew attention of the Bench towards paras 4 and 5 of the aforesaid decision, to submit that the Tribunal should observe that the effect of censure entry, in the instant case, shall come to an end after two years. Paras 4 & 5 of the judgment dated 12.04.2023 are being reproduced hereinbelow for convenience:

"4. Ld. Counsel for the petitioner prayed that a declaration be given that the effect of censure entry dated 28.06.2018 which has been affirmed by the appellate authority vide order dated 30.11.2018, has come to an end. According to Circular No. 3/K-551-82 dated 17.07.1991 of U.P.PHQ, Allahabad-I, the effect of petty punishments shall be for one year, effect of censure entry and adverse entry shall be for three years end effect of withholding of integrity shall be for five years. The new Rules, the Uttarakhand Procedure of Selection for Promotion in the State Services (Outside the Purview of the Public Service Commission) (Amendment) Rules, 2018, have come into force on 07.09.2018, according to which the effect of censure entry will be for five years. Since the censure entry was awarded on 28.06.2018, appeal against which was dismissed on 30.11.2018, therefore, the petitioner's case will not be covered by the Rules of 2018.

5 In this way, since the effect of censure entry dated 28.06.2018, which has been affirmed on 30.11.2018, has come to an end, therefore, it is directed that the impugned order dated 28.06.2018 and appellate order dated 30.11.2018 shall not come in the way of petitioner's service benefits in future [provided all other things remain equal]."

[Emphasis supplied]

17. It is, accordingly, provided that since the effect of 'censure entry' is for five years, the same, in the instant case, was given to the

petitioner on 17.11.2021, therefore, the effect of such 'censure entry', which entails civil consequences, will come to an end after two years hence *i.e.* on or after 17.11.2026.

18. Liberty is also granted to the petitioner to approach this Tribunal, again, in fresh claim petition, if cause of action still survives (to him).

19. Claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 30TH NOVEMBER 2023
DEHRADUN
KNP