

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

CLAIM PETITION NO. 80/SB/2023

Sri Dilber Singh Negi, aged about 38 years, s/o Late Sri Dev Singh Negi, Constable No. 151, Civil Police, presently posted at Thana Kalsi, District Dehradun, Uttarakhand .

.....Petitioner

vs.

1. The State of Uttarakhand through Secretary, (Home), Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Dy. Inspector General of Police, Uttarakhand, Garhwal Region, Dehradun.
3. Senior Superintendent of Police, District Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JANUARY 08, 2024

Justice U.C.Dhyani (Oral)

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

- “i) To quash the impugned punishment order No. D-31/2021 dated 5.06.2021 and order No. N-259/2020 dated 05.06.2021 (Annexure Nos. A-1 & A-2) of Respondent No.3 and appellate order dated 27.12.2022 of

Respondent No.2 with its effect and operation and all consequential benefits.

- ii) To issue any other order or direction, which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.
- iii) To award the cost of the petition.”

[Emphasis supplied]

2. On 30.12.2020, the petitioner was posted as Constable in P.S. Cantt, District Dehradun. According to the petitioner, in December 2020, his wife Smt. Babli Negi, who is also working as a Constable in the Police department, along with his daughter, were admitted in the hospital. They were Corona positive. The petitioner was ‘quarantined’ at his house at Selakui from 23.12.2020. The petitioner moved an application for casual leave up to 27.12.2022 to the Officer In-Charge, P.S. Cantt. Since his wife and daughter were under treatment in Doon Hospital, therefore, P.S. concerned ordered him to stay at home and remain under quarantine for three days and also remain in touch with P.S. Cantt to make sure the return to duty only after he becomes Corona negative.

2.1. On 30.12.2020, a person named Narari, who was working in the shop of the property dealer Santosh Kala, came to the house of the petitioner and threatened him why did he take the house from him. On the same day at about 10 PM, when the petitioner was present at his home with his friend Constable Sanjay Kumar, two persons namely, Narari and Santosh Kala came to his house and hit the door of the tenants and the door of Sri Sanjay Kumar. A loud noise like firing was heard by the petitioner. Sri Sanjay Kumar called Police Control Room 112. After some time, Police Force came from P.S. Selakui and inquired about the firing. Police officials of Selakui P.S. gathered impression that the information given by the petitioner and others was false. They took the petitioner and Santosh Kala to the Police Station, where Police misbehaved with them in the lockup. He was beaten up by S.I. Pravesh Rawat and his staff.

3. The imputation against the petitioner was of indiscipline and misconduct that he consumed liquor in his residence at Selakui with his friends

Constable Sanjay Kumar & Santosh Kala, when he was under quarantine. They assaulted and hurled abuses at each other. Petitioner sent false information to Police Control Room 112, which tarnished the image of Police.

4. Show cause notice dated 05.06.2021, along with draft censure entry was given to the petitioner under the Uttarakhand Police Act, 2007.

5. Petitioner was also issued show cause notice in respect of his suspension and suspension allowance. He was put under suspension *vide* order dated 31.12.2020 but later on reinstated *vide* order dated 01.06.2021. Petitioner was suspended for giving false information to Police Control Room, regarding firing, under influence of liquor, misbehaving with *Cheetah* Police and medical staff.

6. Preliminary enquiry was also conducted in the matter. Petitioner submitted reply to the show cause notice dated 05.06.2021. The disciplinary authority was not satisfied with the same and awarded 'censure entry' *vide* order dated 29.06.2021 (Annexure: A-1). Feeling aggrieved with the same, petitioner filed departmental appeal, which departmental appeal was dismissed by the appellate authority *vide* order dated 27.12.2022 (Annexure: A-3).

7. Petitioner also submitted his reply to the show cause notice issued in respect of his suspension and suspension allowance. The disciplinary authority did not find such explanation submitted by the petitioner satisfactory and passed an order on 29.06.2021 itself, that the petitioner will not be entitled to any allowance, other than what he has received during suspension period (Annexure: A-2).

8. Counter Affidavit has been filed on behalf of respondents. While defending the departmental action, Ld. A.P.O. submitted that due process of law has been followed while holding the petitioner guilty, which finding has been affirmed by the appellate authority. The scope of judicial review is very limited, therefore, the impugned orders do not call for interference. Ld. A.P.O. cited various decisions rendered by Hon'ble Apex Court, in support of his submission, which decisions are as under:

Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301;
Johri Mal's case, (1974) 4 SCC 3; Lalit Popli vs. Canara Bank & others

[Appeal (Civil) 3961 of 2001]; State of Karnataka vs. Umesh (Civil Appeal Nos. 1763-1764 of 2022); Government of Tamilnadu and another vs. A. Rajapandian, (1995)1 SCC 216; and State of Karnataka vs. N. Gangaraj (Civil Appeal No. 8071 of 2014.

9. At this juncture, Ld. Counsel for the petitioner submitted that the petitioner wants to highlight the facts and grounds, taken by him in the claim petition, before the revisional authority, therefore, the petitioner may be given liberty to file the revision against the impugned orders. In reply, Ld. A.P.O. submitted that permission of the Tribunal is not required for filing statutory revision. Petitioner can do it on his own.

10. Rule 23 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (for short, 1991 Rules), as applicable to State of Uttarakhand, reads as below:

“23. Revision-(1) An officer whose appeal has rejected by any authority subordinate to the Government is entitled to submit an application for revision to the authority next in rank above by which his appeal has been rejected within the period of three months form the date rejection of appeal . on such an application the power of revision may be exercised only when in consequent of flagrant irregularity , there appears to have been material injustice or miscarriage of justice.

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(2)

[Emphasis supplied]

11. In this context, it will be apt to reproduce order dated 24.12.2021 passed by Hon’ble High Court in WPSS No. 1451 of 2021, hereinbelow for convenience:

“As would be apparent from the scrutinization of the impugned orders, which are challenged by the petitioner in the present writ petition.

The order of punishment has been imposed upon the petitioner by the respondents authority, while exercising their powers under Uttar Pradesh Police Officers and Subordinate Rank, Rules, 1991, which has been made applicable, even after the enforcement of the Uttarakhand Police Act, 2007.

As a consequence of the set of allegations of misconduct levelled against the petitioner, by virtue of the impugned order, which has been passed while exercising the powers under Section 23 (1) (d) of the Uttarakhand Police Act, 2007, the petitioner was placed under the lowest in the cadre for a period

of one year. As against the principal order of punishment passed by the Deputy Inspector General of Police, on 20.02.2021, the petitioner preferred an appeal under the Rules of 1991, which too has been dismissed.

Under the Rules of 1991, if any person is aggrieved by an appellate order, imposing the punishment for the misconduct, provided under the Rules, a provision of revision has been contemplated under Rule 23 of the Rules.

Hence, this writ petition is dismissed with the liberty left open for the petitioner to approach before the next superior authority, to the appellate authority to file a revision under Rule 23 of the Rules of 1991.”

12. The petitioner, therefore, has statutory remedy to file revision under Rule 23 of the Rules of 1991, which opportunity cannot be denied to him by the Tribunal, inasmuch as, to file revision is his entitlement.

13. The claim petition thus stands disposed of, leaving it open to the petitioner to file statutory revision under Rule 23 of the Rules of 1991, as prayed for by him. Delay in filing the same is condoned in the interest of justice. No order as to costs.

14. Rival contentions are left open.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 08, 2024.
DEHRADUN

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