

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,  
BENCH AT NAINITAL.**

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

&

Hon'ble Sri U.D.Chaube

----- Member (A)

**CLAIM PETITION NO. 13/NB/SB/2014**

Smt. Deepa Samant, W/o Sri Prahlad Singh, presently posted as Lady Constable  
52, Civil Police, Police Station-Kotwali, Champawat, District Champawat.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Kumoun Region, Nainital.
3. Superintendent of Police, District Pithoragarh.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel  
for the petitioner

Sri V.P.Devrani, Ld. A.P.O.  
for the respondents

**JUDGMENT**

**DATE: FEBRUARY 26, 2016**

**HON'BLE MR. JUSTICE J.C.S.RAWAT (ORAL):**

1. This claim petition has been filed by the petitioner, Smt. Deepa Samant, Lady Constable for seeking the following reliefs:

*“A. To set aside the impugned punishment order dated 17.08.2013 passed by the Respondent No. 3 (Annexure No. A-1 to Compilation-I) and also the impugned order dated 19.11.2013 passed by the Appellate Authority (Annexure No. A-2 to Compilation-II).*

*B. To direct the respondents not to take the 'Censure' remark into account while making entries in the Service Book of the petitioner.*

*C. To issue any other order or direction directing the Respondents to give all consequential benefits to the petitioner.*

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

*E. Award the cost of the Claim petition in favour of the petitioner."*

2. The petitioner has been working as a Lady Constable, Police Wing, Uttarakhand, a complaint was received to the Appointing Authority alleging therein that Smt. Deepa Dewari is married with Lalit Dewari and the couple has two children but for the last few months, Lalit Dewari, the husband of Smt. Deepa Dewari has an illicit relation with Deepa Samant who is also Sub-Inspector in the Uttarakhand Police. After taking note of the said complaint, the Superintendent of Police, Pithoragarh constituted a preliminary enquiry against the erring officials and Sri Rajeev Mohan, Deputy Superintendent of Police was appointed as a preliminary enquiry officer. He submitted his enquiry report on 06.07.2013, which is annexed as Annexure- A-4 to the claim petition, in which the preliminary enquiry officer has held that the ASI, Lalit Dewari and lady constable Smt. Deepa Samant had illicit relation inspite of being married. It was further held that they also went to Chamoli, Karnparyag, Haridwar and Kashipur and different places together to live in relationship with each other and it was further held that both employees are guilty of the misconduct and the report was submitted to the Superintendent of Police. On the same day, the Superintendent of Police, Pithoragarh issued a show cause notice to the petitioner and asked to submit her explanation within 15 days as to why a penalty of censure may not be awarded to her under the provisions of U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991 as applicable in Uttarakhand.

3. The petitioner submitted her reply to the show cause notice and she denied the allegation of illicit relationship and averred in the reply that she used to visit Lalit Deveri and Deepa Dewari but wife of Lalit Dewari never asked her about relationship between the petitioner and Lalit Dewari. The petitioner has also stated in the reply that she was not aware about personal relation between Lalit Dewari and his wife. She has also stated that the notice issued may be withdrawn and rejected. Thereafter, the Superintendent of Police, Pithoragarh passed the impugned order on 17.08.2013 whereby a penalty of censure entry has been awarded to the petitioner on the allegation of illicit relationship between petitioner and Lalit Dewari. The said impugned entry is as under:

“ 2013

वर्ष 2013 में जब यह महिला आरक्षी पुलिस कार्यालय पिथौरागढ़ में नियुक्त थी तो आवेदक श्री जगदीश सिंह पाटनी, शिविरपाल, आठवी वाहिनी पीएसी बरेली द्वारा पुलिस उपमहानिरीक्षक, कुमायूँ परिक्षेत्र नैनीताल को सम्बोधित प्रार्थना पत्र जिसमें आवेदक द्वारा उप निरीक्षक स0पु0 ललित देवडी के साथ इस महिला आरक्षी के अवैध सम्बन्ध होने तथा उप निरीक्षक स0पु0 ललित देवडी द्वारा अपनी पत्नी के साथ उपेक्षापूर्ण व्यवहार होने आदि आरोप लगाये गये थे। आवेदक द्वारा लगाये गये आरोपों की जाँच पुलिस उपाधीक्षक, पिथौरागढ़ के माध्यम से सम्पादित करायी गयी है। जांच के दौरान लिये गये बयानों तथा इस महिला आरक्षी व उ0नि0स0पु0 ललित देवडी के मोबाइल नम्बरों की काल डिटेल् के आधार पर एवं उ0नि0 द्वारा अपने सरकारी आवास जहां तत्समय उसकी पत्नी निवास कर रही थी, से रात-रात भर गायब रहकर सुबह अपने सरकारी आवास में आना एवं पत्नी से तलाक देने की धमकी देने तथा यह कहना कि उ0नि0स0पु0 द्वारा इस महिला आरक्षी से शादी कर ली है तथा अपनी पत्नी को यह कहकर जाना कि मैं अपने दोस्त की शादी में जा रहा हूँ परन्तु उ0नि0स0पु0 ललित देवडी का इस महिला आरक्षी के साथ अवकाश लेकर चमाली, कर्णप्रयाग आदि स्थानों पर जाना उत्तराखण्ड राज्य कर्मचारियों की आचरण नियमावली 2002 के नियम 3 में उल्लिखित दुराचरण के दोषी पाया गया। इस महिला आरक्षी द्वारा प्रा0जांच के दौरान अपने कथनों में ललित देवडी का इसके कमरे में आने-जाने की बात स्वीकार की गयी है तथा इसके द्वारा उप निरीक्षक स0पु0 ललित देवडी की पत्नी से यह कहना कि तुम अपने पति को सम्भाल लो मैं तुम्हारे पति को नहीं छोड़ सकती हूँ इस महिला आरक्षी का यह कृत्य शादी-शुदा होते हुए

भी दुराचरण को परिलक्षित करता हैं। इस प्रकार इस महिला आरक्षी द्वारा पुलिस जैसे अनुशासित बल में नियुक्त रहकर पुलिस की छवि को धूमिल करता है तथा कर्तव्य के प्रति घोर लापरवाही एवं अनुशासनहीनता का परिचालक है जिसकी घोर निन्दा की जाती है।”

4. The petitioner being aggrieved by the said order, preferred an appeal before the Deputy Inspector General of Police, Kumoun Region and the Deputy Inspector General of Police, Kumoun Region has held in his appeal that the petitioner has been held guilty under Sub-rule (2) and (3) of Rule- 3 of the of the Uttarakhand Government Servants Conduct Rules, 2002. The petitioner was found that she had violated Rule 3(2) and (3) of the Government Servants Conduct Rules, 2002. Sub-rule 03 and 04 of the said Rules are not applicable in the case of the petitioner. Thus, the petitioner by virtue of implication of the said order was found guilty of violating Rule 3 (2). The appeal was dismissed.

5. Feeling aggrieved by the said orders, the petitioner had challenged the said orders before this Tribunal and the respondents have contested the claim petition. Learned counsel for the petitioner mainly contended that the petitioner has been awarded the aforesaid censure entry on 17.8.2013 under Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 read with the U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 as applicable in Uttarakhand. Learned counsel for the petitioner vehemently argued that the present case is not covered under Rule 3 of the said Rules in as much as Rule 3 (2) of the Uttarakhand Government Servants Conduct Rules, 2002 deals with conduct and behavior of a government servant. He further contended that Rule 3(2) for which the petitioner had been held guilty is not attracted in the present case. He further contended that the appointing authority had not quoted any circular order of the Government by which it can be held that the petitioner had violated the Rule 3(2) of the Uttarakhand Government Servants Conduct Rules, 2002. It is further contended that learned A.P.O. has not filed any of the letter or Government Order or any sort of notification which can be dealt with under Rule 3(2) of the Uttarakhand Government Servants

Conduct Rules, 2002. There is no order/Notification holding such acts as alleged against the petitioner as violation of the Conduct Rules, 2002 filed before the Court by learned A.P.O..

6. Learned A.P.O. refuted the contentions of learned counsel for the petitioner. Learned A.P.O. pointed out that the petitioner is a lady constable and she has to maintain discipline at all the times of her personal life and the petitioner had been living in illicit relationship with one Sub-Inspector of the Police, which diminish and tarnish the image of the Police as well as it conveys a bad and immoral message amongst disciplined forces.

7. We have heard learned counsel for the petitioner and learned A.P.O. for the respondents and have gone through the record carefully. Rule 3(2) of the Uttarakhand Government Servants Conduct Rules, 2002 provides as under:

*“Every government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force.”*

The Hindi version of the said Rules is as under:

“प्रत्येक सरकारी कर्मचारी को राज्य कर्मचारी रहते हुए उसके व्यवहार तथा आचरण को विनियमित करने वाल तत्समय प्रवृत्त विशिष्ट (Specific) या विवक्षित (Implied) शासकीय आदेशों के अनुसार आचरण करना होगा।”

(The phrase “*at all times*” word quoted above in sub rule 2 by italic did not find place in the Hindi version of the notification).

8. At the outset, we would like to mention that English version of the said rules says as ‘at all the times’. Whereas, Hindi version of the said Rules does not mention above phrase in the sub-section. Thus, there is discrepancy between Hindi version and English version of the Rules produced by learned A.P.O. before us. It is settled that if there is some inconsistency between two versions, the Hindi version would prevail in the matter. In these circumstances, it cannot be held that government servant should adhere to the Rule 3(2) at all the times of his/her life. Hon’ble High Court of Allahabad in the case of **State of U.P. Vs. B.N. Singh and other, Special Appeal no. 754 of 1969, 454**, the bench comprising of Hon’ble Justice R.S. Pathak (the then as was)

later on became CJI and Justice R.L. Gulati, in which a police official fell in love with the wife of a judicial officer and he kept her in so many places for her illicit relation in Uttar Pradesh and Uttarakhand also. A charge was framed against the police official that they hired a room and spent their summer in the hill station of Almora in May and June and they lived there on leave. Apart from that there was also a charge that delinquent kept wife of a judicial officer in so many places viz Mirzapur, Varanasi, Allahabad and Lucknow etc. In this case, Administrative Tribunal, U.P. found the delinquent guilty of the charge and recommended a disciplinary proceedings to the State Government and the State Government passed the termination order. The said order was challenged before the Hon'ble Allahabad High Court and the learned Single Judge allowed the writ petition. The State of U.P. preferred a special appeal before the Division Bench of Hon'ble Allahabad High Court. The Allahabad High Court concluded in the said judgment and held that the authority could not demonstrate before the appointing authority that the acts of keeping wife of other person had affected the discharge of their duties and if discharge of duties had not been affected by the acts of the respondent, the delinquent cannot be punished.

9. In the light of the above, the Hon'ble High Court in para 5, 14 and 27 has held as under:

*“5. Coming now to the merits, action was taken against the respondent under Rule 1 of the U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947. Rule 4 runs as follows:*

*“4 (1) The Governor may refer to the Tribunal cases relating to an individual Government servants or class of Government servants or government servants in a particular area only in respect of matters involving.*

- (a) Corruption;*
- (b) Failure to discharge duties properly;*
- (c) Irremediable general inefficiency in a public servant of more than ten years standing; and*
- (d) Personal immorality.*

(2) *The Governor may, in respect of a gazetted government servant on his own request, refer his case to the Tribunal in respect of matters referred to in sub-rule(1)."*

*Rule 2(e) defines 'personal immorality' for the purpose of Rule 4 as follows:*

*Rule 2(e). 'personal immorality' means vicious habits relating to drink, sex and gambling which reduce the utility of a public servant so as to damage government or the official generally in public esteem'."*

*Clause(d) of Rule 2 defines "failure to discharge duties properly" to include such acts and omissions on the part of a government servant as are likely to weaken the position and prestige of the government of the Indian Union or the Government of Uttar Pradesh or which indicate an absence of loyalty and devotion to the Union of India or any feeling of loyalty towards any State outside the Indian Union."*

*"14. On the facts of this particular case it is not possible to hold that respondent had the vicious habit of sex. He had indulged in sex with Mrs. Joshi not because of his habitual propensity in that regard but because of the background of an old and frustrated friendship between him and Mrs. Joshi. It is true that the episode lasted for quite a few months and the respondent must have indulged in sexual intercourse with Mrs. Joshi more than once but all these acts constitute a series in a single episode in the respondents' life. And then Mrs. Joshi was not a woman of ill repute whom the respondent had been visiting over a period of several months.*

*Assuming that some sort of habit of sex could be attributed to the respondent on the facts of the case, the more important question is as to whether this habit of the respondent had reduced his utility as a public servant, so as to damage government or official generally in public esteem. Normally, the habit of sex, gambling or drinking does not adversely affect the mans' health and capacity to work. Such a person as a result of his addiction loses interest in work and his efficiency goes down. There is no finding that the utility of the respondent had been reduced in that sense nor indeed is there any finding that the*

*respondent's affair with Mrs. Joshi became a public scandal so as to damage the prestige of the government or of the respondent generally in public esteem. There is no doubt that one of the allegations proved against the respondent is that he divulged his secret to Mr. Joshi but that only added injury to the insult so far as Mr. Joshi was concerned. It could not be expected, nor indeed is there any suggestion in that regard, that Mr. Joshi gave any publicity to this affairs. Having regard to the normal human conduct Mr. Joshi must have tried to keep this thing as secret as possible so as to save himself of the humiliation which he had suffered at the hands of the respondent as well as his own wife. I am therefore, in respectful agreement with the opinion expressed by the learned Single Judge that the incidents which have been proved against the respondent do not constitute personal immorality for purposes of Rule 4..”*

*“27. (Hon'ble Justice Pathak) On the question whether the respondent can be said to have failed to discharge his duties properly within the meaning of Rule 2(d), my brother Gulati has dealt with it in his judgement. The charge as framed does not indicate that the enquiry as to the whereabouts of Smt. Joshi was made by the officers named therein in their official capacity and that the respondent failed to discharge any statutory duty attached to his office. In this regard also, I am of opinion that the reference is without jurisdiction. ”*

10. The Uttarakhand Government Servant Conduct Rules, 2002 has no provision by which the ‘personal immorality’ could be a ground for misconduct as provided in U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947. The report of preliminary inquiry, copy of which has also been given to the petitioner is annexed as Annexure-A-4. The finding of the enquiry officer is as under:--

“इसी प्रकार महिला आरक्षी दीपा सामन्त जो कि शादी-शुदा है महिला आरक्षी दीपा सामन्त ने अपने कथनों में टी0एस0आई श्री ललित देवड़ी का अपने कमर में आने-जाने की बात स्वीकार की गयी है तथा महिला आरक्षी दीपा सामन्त उप निरीक्षक स0पु0 ललित देवड़ी की पत्नी से यह कहना कि तुम अपने पति को सम्भाल लो मैं तुम्हारे पति को नहीं छोड़ सकती हूँ महिला आरक्षी

का यह कृत्य शादी-शुदा होते हुए भी इसके दुराचरण को परिलक्षित करता है।

उक्त सन्दर्भ में यह भी स्पष्ट करना है कि उप निरीक्षक स0पु0 ललित देवडी द्वारा अपने कथनों में महिला आरक्षी दीपा सामन्त से पारिवारिक सम्बन्ध होना अंकित कराया है तथा महिला आरक्षी दीपा सामन्त द्वारा केवल बोलचाल होना अंकित कराया है जा उक्त दोनों के बीच कथनों में विरोधाभास तथा संशय की स्थिति उत्पन्न करता है। इस प्रकार उप निरीक्षक स0पु0 श्री ललित देवडो व महिला आरक्षी दीपा सामन्त के शादी-शुदा होते हुये भी एक दूसरे के साथ साथ-साथ रहने एवं अवकाश लेकर जनपद चमोली, कर्णप्रयाग, हरिद्वार, काशीपुर आदि स्थानों पर घूमने हेतु जाना पुलिस जैसे अनुशासित बल में रहते हुये एवं उत्तराखण्ड राज्य कर्मचारियों की आचरण नियमावली 2002 के नियम 3 में उल्लिखित दुराचरण के दोषी पाये जाते हैं।”

11. The disciplinary authority has held in the impugned order (Annexure: A-1) that he is in agreement with the finding recorded by the preliminary enquiry officer and only mentioned that the said misconduct diminishes the image of the Police, which can be held to be gross negligence and indiscipline. It has not been indicated in the order that such act has been committed during the course of her duty. It is also admitted in the preliminary enquiry report that they remained with each other after taking leave.

12. Rule 3(2) of the Uttarakhand Government Servants Conduct Rules, 2002 only provides that every government should conduct himself in accordance with the specific or implied orders of Government regulating behavior and conduct which may be in force. As we have pointed out in the above judgment, the facts were similar but the provisions which were made applicable were different. In the above judgment of Hon'ble High Court, personal immorality as provided in the U.P. Disciplinary (Administrative Tribunal) Rules, 1947 of a government servant, was held to be a misconduct. Whereas, in our rules only the behaviour is a misconduct and that behavior should also be notified by the Government. As we have pointed out that learned A.P.O. could not demonstrate any notification or rule or any Government letter which regulates the conduct of a government servant as provided under

the Rule 3(2) of the said Rules. Learned A.P.O. could not demonstrate that only to keep a lady with illicit relationship with another government servant is a misconduct under rules. In these circumstances, merely to keep a woman or other government servant with him or have a sexual intercourse is not a misconduct. The more important question is as to whether this particular act of the petitioner had reduced her utility as a public servant so as to tarnish the image of the government official generally in public image. In the habit of the petitioner to have illicit relation with another government servant as a result of her addiction sometimes loses interest in the work and efficiency goes down. As we have pointed out above that there is no finding that the utility of the petitioner had been reduced in that sense and there is no finding that the petitioner's affair with another government servant became public scandal to damage the prestige of the Government or the petitioner did not discharge her duty properly. The word used 'behaviour' has a limited meaning that she should conduct her business properly if she misbehaves with others during the duty hours or her behavior obstructs her official duties, in that way it amounts to misconduct. In these circumstances, the case of the petitioner does not fall under Rule 3(2) of the Uttarakhand Government Servants Conduct Rules, 2002.

13. In view of the above, we also hold that the punishing authority has failed to record any finding that the petitioner had affected the daily discharge of their duties by the conduct, which has been alleged against the petitioner and as such the impugned orders are liable to be set aside.

### **ORDER**

The claim petition is allowed. The impugned order of punishment dated 17.08.2013 (Annexure: A1) as well as appellate order dated 19.11.2013(Annexure: A-2) is hereby set aside. No order as to costs.

*Sd/*  
**U.D.CHAUBE**  
MEMBER (A)

*Sd/*  
**JUSTICE J.C.S.RAWAT**  
CHAIRMAN

*DATE: FEBRUARY 26, 2016.*  
*BENCH AT NAINITAL*

*KNP*