

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

Present: Hon'ble Mr. Ram Singh
----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube
-----Member(A)

CLAIM PETITION NO. 03/N.B./S.B./2015

R.P. Kohli S/o Sri Durga Ram Kohli, Presently working as Sub Inspector at
P.S. Betalghat, District Nainital.

.....Petitioner

Versus.

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Additional Director General of Police (Administration) Uttarakhand,
Dehradun.
3. Deputy Inspector General of Police (Kumaon Range) Nainital.
4. Senior Superintendent of Police, Nainital.

.....Respondents.

Present: Sri B.N. Maulekhi, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: SEPTEMBER 07, 2016

(Hon'ble Mr. Ram Singh, Vice Chairman (J))

1. Petitioner seeks to set aside the punishment order 22.05.2014 (Annexure-2) passed by the Deputy Inspector General of Police, Kumaun Range, Nainital awarding adverse entry (as awarded to the petitioner) and its appellate order dated 11.11.2014 (Annexure-1) passed by the Additional Director General of

Police (Administration) Uttarakhand dismissing the appeal of the petitioner.

2. Brief facts of the petition are that the petitioner in the year 2012 was posted as Sub Inspector, Police at Police Station Kaladhungi. On 30.03.2012 a semi burnt dead body along with a suicide note was found at Kaladhungi- Haldwani Motor Road, which was later on identified as Dharendra Kumar S/o Lali Ram R/o Village Guljarpur Bunki, Kaladhungi, District Nainital. Anand Ram, brother of deceased Dharendra Kumar, submitted an application on 31.03.2012 at Police Station Kaladhungi raising suspicion of murder of his brother by his associates namely Mauni alias Man Singh and garage owner Suresh Pal Singh. The investigation of the aforesaid matter was handed over to the petitioner on 31.03.2012. Call details report of mobile phone No. 9045400951 of deceased disclosed that the deceased Dharendra Kumar made a long talk of 474 seconds on 30.03.2012 with Kumari Suman Budhlakoti. The suicide note of deceased Dharendra Kumar was later on sent for identification of the handwriting to forensic laboratory and it was found that the handwriting on that note was of the deceased.
3. The record also reveals that a complaint was also made to the National Human Right Commission, New Delhi, and vide Commission's order dated 08.05.2012, C.B.C.I.D. was directed to inquire into the aforesaid matter and submit a report. The report of CB C.I.D. dated 30.03.2013 (Annexure-3) disclosed it a case of suicide and it was also stated in the report that the investigation in the matter was not completed by the petitioner even after lapse of one year and disciplinary action against the petitioner was recommended.
4. On the basis of the aforesaid report, the S.S.P., Nainital issued a show-cause notice dated 2.8.2013 (Annexure-4) to the petitioner for awarding censure entry against the petitioner. The petitioner

submitted his reply on 25.8.2013 (Anexure-5) to the show cause notice explaining the delay in the inquiry. The S.S.P. Nainital considering the reply of the petitioner, passed order dated 11.09.2013 (Annexure-6) and cancelled the show cause notice dated 2.8.2013 with a warning to the petitioner, not to repeat such delay in disposal of application in future.

5. The record also reveals that the complaint was also made to the Police Complaint Authority, Uttarakhand, which was dismissed finding the fact that the deceased committed suicide and there was no evidence of negligence on the part of any Police Personnel.
6. The appointing/ disciplinary authority, Deputy Inspector General of Police, Kumaun Range, Nainital, after taking notice of the report of CB C.I.D., issued a show cause notice dated 23.12.2013 (Annexure-8) to the petitioner. The petitioner submitted his reply dated 20.01.2014 (Annexure-9) to the show cause notice. Finding the reply of the petitioner unsatisfactory, the Deputy Inspector General of Police, Kumaun Range, Nainital vide his order dated 22.05.2013 awarded censure entry to the petitioner and the same order was confirmed by the appellate authority Additional Director General of Police, Headquarter, Dehradun on 9.9.2014 (Annexure-10).
7. The petitioner has challenged both the orders on the ground that the orders of respondents are illegal, improper and against the evidence. The show cause notice issued by the D.I.G., Kumaun Range was against the principle of natural justice and petitioner cannot be punished twice for the same cause of action because the S.S.P., Nainital had dropped the proceedings and as such the D.I.G. had no authority to reopen the case on his own. Furthermore, the disciplinary authority also exonerated Station Officer Chandra Mohan who was responsible for not lodging report in time and punishment was passed against the

petitioner only. Once the S.S.P., Nainital had discharged the notice, the D.I.G. could not reopen the case on his own and the National Human Right Commission never passed any order to take any disciplinary action against the petitioner. No unwanted delay in the investigation was made by the petitioner and he was neither negligent to his duties nor any dilatory tactics were adopted by him. The disciplinary authority has failed to consider the facts that different authorities after inquiry, did not find it a case of murder and finding a case of suicide, the inquiry was closed and without application of mind the disciplinary authority passed the punishment order.

8. Respondents opposed the petition on the ground that the petitioner was found negligent to his duties and he unnecessarily kept the inquiry pending for one year which was not justified. The disciplinary authority afforded reasonable opportunity of hearing to the petitioner and finding the reply of the petitioner unsatisfactory, the punishment order was passed by the disciplinary authority. It is further stated by the respondents that as the petitioner was a Police personnel of the rank of Sub Inspector, hence his disciplinary authority was the D.I.G., Kumaun Range, Nainital and the order of the S.S.P., Nainital was not a part of disciplinary proceedings. There is no illegal impediments in the inquiry and the petition deserves to be dismissed.
9. After hearing both the parties and careful consideration of the entire record, we do not find any reason to interfere in the matter because of the reason that the petitioner being Police personnel of Sub Inspector rank, D.I.G. is his disciplinary /appointing authority. The argument of the Ld. Counsel for the petitioner has been that the S.S.P., Nainital passed the order with a warning to the petitioner for future and discharged the notice. The argument of Ld. Counsel for the petitioner is correct

but the S.S.P., Nainital was not the disciplinary authority in this case. Even if the order of S.S.P., Nainital discharging the notice and concurrently giving warning was not the order of acquittal after a full dressed inquiry which could have been started only by the disciplinary authority i.e. D.I.G.. Furthermore, the D.I.G., Nainital after taking notice of the fact, issued a show cause notice on 23.12.2013,(Annexure-8) to the petitioner and in Para-2 it was specifically written that after setting aside the order of the S.S.P., Nainital, this show cause notice is being issued. The disciplinary authority always has a right to take action and the D.I.G. was within his legal right to start the disciplinary proceedings and show cause notice was rightly issued after setting aside the order of the S.S.P., Nainital. Opportunity was given to the petitioner and finding the reply of the petitioner unsatisfactory, a reasoned order was passed by the disciplinary authority.

10. This Tribunal cannot look into the matter on the basis of facts. In this case the disciplinary authority has taken a note of the fact of delay and negligence on the part of the petitioner and thereafter a proper show cause notice was issued and a reasoned order was passed. Accordingly the appellate authority also passed a reasoned order after affording proper opportunity of hearing to the petitioner.
11. Ld. Counsel for the petitioner has raised a point that once S.S.P., Nainital has taken an action against the petitioner, then the higher authority i.e. D.I.G. cannot suo-moto take action as an appellate authority. This argument of Ld. Counsel for the petitioner is not correct, on the basis of facts that the appointing authority for the Sub Inspector is D.I.G., Nainital, therefore, he had a right to take action against the petitioner. If, for the sake of arguments, the contention of Ld. Counsel of petitioner is taken into consideration and the D.I.G., Nainital,

according to him be treated as appellate authority, even then the D.I.G., Nainital was within his right to take notice of the things at his own as per Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules 1991 (as amended by Uttarakhand). By the Uttarakhand Amendment in 2002 a proviso was added in Rule 20 which reads as under:

“प्रतिबन्ध यह है कि अपीलीय अधिकारी स्वप्रेरणा से विभागीय परीक्षण में पारित किसी दण्ड आदेश जिसके विरुद्ध इस नियम के आधीन कोई अपील प्रस्तुत न की गयी हो की विधि मान्यता या औचित्य के सम्बन्ध में या ऐसी परिस्थिति अनियमितता के सम्बन्ध में अपना समाधान करने के प्रयोजनार्थ उसके अभिलेख मांग सकता है और उनका परीक्षण कर सकता है और उनके सम्बन्ध में ऐसा आदेश पारित कर सकता है जैसा वह उचित समझे।

अग्रेत्तर प्रतिबन्ध यह है कि प्रभावित व्यक्ति को मामले में सुनवाई का युक्तियुक्त अवसर दिये बिना प्रथम परन्तुक के आधार पर कोई आदेश नहीं दिया जायेगा।”

According to this provision, the appellate authority suo-moto can take cognizance of the legality and propriety of any order of his subordinate authority and can call the record and pass any such order which he thinks proper. The only condition is that before passing any such order, the affected person should be given opportunity of hearing. In this case, D.I.G., Nainital, if, according to the arguments of the Ld. Counsel for the petitioner is considered as appellate authority (which obviously he is not), even then he was within his right to take notice of the things by calling record and after setting aside the order of S.S.P., Nainital and after affording opportunity of hearing to the petitioner he has passed the impugned order of punishment dated 22.05.2014.

12. Although either the parties did not raise this point but perusal of the record reveals that the impugned punishment order of D.I.G., Nainital which is depicted as the order dated “May 22, 2013”, the year 2013 appears to have wrongly been written due

to typographical error. Because, while going through the contents of the order it is clear that the order contains this fact that notice dated 23.12.2013 was received on 10.1.2014 and thereafter explanation was submitted by the petitioner which was received on 24.1.2014, hence the punishment order might have been passed in the year 2014 on the same date i.e. May 22 instead of May 22, 2013. It is a clear error which has not been raised either by the petitioner or by the respondents. But, on the basis of the events, this Court is of the view that this order was issued in the year 2014 instead of 2013 which is placed as Annexure-2 to the claim petition. At first page of this order (Annexure-2), an endorsement is written to S.O.BTL to inform the concerned and thereafter the same be returned back to this office with noting and signature. The page 1 of Annexure-2 also contains seal of confidential office of the S.S.P., Nainital which clarifies that this paper was received as paper No. 2659/14 on 24.5.2014. All these facts clarify that this order was issued in May 2014, hence, the impugned order, which is written as May 22, 2013, leaves no doubt that it was issued after the show cause notice, after giving opportunity of hearing and after considering the reply of the petitioner.

13. Considering all the circumstances, the petition has no merit and deserves to be dismissed.

ORDER

The claim petition is dismissed. No order as to costs.

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: SEPTEMBER 07, 2016
NAINITAL

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