

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

Present: Hon'ble Mr. Ram Singh

----- Vice-Chairman (J)

CLAIM PETITION NO. 41/NB/SB/2015

Manisha Rani, D/o Late Sri Ramu, Serving as A.S.I (M)/Assistant Accountant, 46th Battalion P.A.C. Task Force, Rudrapur, District Udham Singh Nagar.

.....**Petitioner**

VERSUS

1. State of Uttarakhand through Secretary, Home Affairs, Dehradun.
2. Deputy Inspector General of Police, P.A.C., Uttarakhand, Police Headquarters, Dehradun.
3. Commandant 46th Battalion P.A.C. Task Force, Rudrapur, District Udham Singh Nagar.

.....**Respondents**

Present: Sri Rajesh Pandey, Ld. Counsel
 for the petitioner

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

JUDGMENT

DATE: MAY 28, 2018

1. The petitioner has filed this petition for the following reliefs:-

"I. To quash the order No. 09/2015, dated 19.03.2015, passed by the respondent no. 3 and order dated 02.09.2015 passed in Appeal No. 5(A)-46-22/15 by Respondent No. 2.

II. To direct the respondents to remove the censure entry from the character roll/Service Book of the applicant.

III. To direct the respondents to pay all the allowances to the petitioner during her suspension period.”

2. Briefly stated facts giving rise to the petition are that in the year 2014, petitioner was posted as ASI (M)/Assistant Accountant, 46th Battalion P.A.C. Task Force, Rudrapur and she was assigned the work of payment of salary of employees of the office. As per contention of the petitioner, she was on leave w.e.f. 12.4.2014 to 29.04.2014 on account of illness and death of her father.

3. Respondent No. 2, DIG, PAC, decided the appeal of one Constable Vinod Kumar vide his order dated 16.4.2014, in which Vinod Kumar was sanctioned Earned Leave w.e.f. 19.06.2013 to 03.07.2013 (total 15 days) and Head Clerk of that office, accordingly prepared a note on 25.4.2014 for the accounts branch to pay the salary of Constable Vinod Kumar. When, the said note was communicated to Accounts Branch, the then Accountant, Kriti Ballabh Joshi endorsed the same to the petitioner, who was assigned the work of preparing salary, but petitioner was leave on that day. After returning from leave, order was communicated to the petitioner on 29.04.2014, but she slept over the matter nearly for 5 months and the payment of balance salary of Constable Vinod Kumar, for the aforesaid 15 days of sanctioned leave, could not be made within time.

4. Constable Vinod Kumar submitted his request through his letter dated 26.10.2014 to DIG, PAC, upon which, DIG passed an order that appropriate action be taken against the responsible persons. As the petitioner was, *prima facie* found responsible for delay in payment of salary of Constable Vinod Kumar, hence, she was put under

suspension vide order dated 20.11.2014 and a preliminary inquiry was initiated in the matter.

5. The inquiry officer, Sri Vimal Kumar Acharya, Assistant Commandant, 46th PAC conducted the inquiry as per Rules and the statements of witnesses were recorded, including the statement of the petitioner. Inquiry officer found the imputations levelled against the petitioner as proved and submitted his report.

6. The Disciplinary Authority after perusal of the inquiry report and agreeing with the same, issued a show cause notice dated 24.12.2014 along with copy of inquiry report to the petitioner, to which, petitioner replied and after considering her reply dated 13.1.2015, as per Rule 14(2) of the Uttar Pradesh (Uttarakhand) Police Officers of the Subordinate in Rank (Punishment & Appeal) Rules, 1991, the disciplinary authority proceeded in the matter and finding her reply unsatisfactory and against the rules, facts and law, the respondent no. 3, Disciplinary Authority, passed the impugned punishment order dated 19.03.2015 (Annexure: 2) by which censure entry was ordered to be recorded in the character roll of the petitioner.

7. Dissatisfied with the order of the Disciplinary Authority, petitioner preferred an appeal, before the appellate authority, respondent no. 2, but the same was decided and rejected on merit. Hence, this petition was filed by the petitioner for the above mentioned reliefs on the following grounds:

That the petitioner was never communicated and was having no knowledge of the leave sanctioned order, passed by respondent no. 2, as she was on leave at the relevant time. Being unaware about the order dated 25.4.2014, she did not proceed in the matter. The petitioner was on leave due to illness of her father and later on illness of her brother. Inquiry officer wrongly drawn

the conclusion that the petitioner and other person ASI (M) (Assistant Accountant), Rajendra Singh Bora were responsible for negligence and dereliction of duties. Respondent no. 3 also did not appreciate the documents and statement recorded in the departmental proceedings. This fact was totally ignored that being on leave, the petitioner was not responsible for the lapse. The leave sanction order was not entered in the hand order book but it was entered in Casual Leave register of accounts branch. The appeal was decided by respondent no. 2 without considering the facts stated by the petitioner in her reply. The punishment as well as appellate order needs to be set aside accordingly.

8. The respondents opposed the petition on the ground that there is no illegality in conducting the inquiry. During inquiry, the statements of the relevant persons Kirtiballabh Joshi, Accountant, Nayak Devendra Joshi, Rajendra Singh Bora, Assistant Numeric, 46th Battalion, PAC, Rudrapur, Fakir Ram, Hawaldar, Nayak Prakash Chandra Tewari, Constable Vinod Kumar and the statement of the petitioner were also recorded by the inquiry officer. There was sufficient evidence to prove that the petitioner was having full knowledge about the leave sanction order passed by respondent no. 2 and the matter was brought into her notice on 29.4.2014 by Accountant, Kirtiballabh Joshi and Nayak Devendra Joshi, but the petitioner remained ideal and negligent towards her duty for a long period of 5 months. According to respondents, petitioner reported back on duty on 29.4.2014 and till August, 2014, she was in the office, but failed to comply with the order passed by the respondent and was negligent to her duty and was rightly punished. After conducting proper inquiry, she was given full opportunity to defend herself; her reply to the show cause notice was considered and was found unsatisfactory. Not only the petitioner, but other responsible persons, were also equally punished, whereas, Kirtiballabh Joshi was punished

on account of lapse in supervision of his office. The petition deserves to be dismissed.

9. I have heard both the sides and perused the record.

10. The petitioner was awarded a censure entry on account of her negligence and dereliction of her duties. Record reveals that during the inquiry, she was given every opportunity to defend herself; inquiry was conducted in accordance with relevant rules; statements of all the relevant witnesses were recorded and the petitioner as well as her successor, Assistant Numeric, Rajendra Singh Bora, were equally punished whereas, the Accountant, Kirtiballabh Joshi was also punished on account of lack of due supervision in accounts branch of the said office.

11. There is no doubt that the petitioner was assigned the work of payment of salary of the staff. Even if, she was on leave from 12.4.2014 to 29.4.2014, there was sufficient evidence during the inquiry that Accountant Kirtiballabh Joshi and Devendra Joshi brought the matter into her notice on 29.4.2014, when she returned on her duty after leave. The petitioner was duty bound to prepare the pay of Constable Vinod Kumar in compliance of the sanction order passed by the respondent no. 2. As the absence period of Vinod Kumar was regularized by the competent authority and his leave was sanctioned hence, on account of this leave sanction period, he was entitled for the balance salary, which was not paid to him and it was delayed for 5 months without any sufficient reasons due to lapse on the part of the petitioner

12. The petitioner has cited the following case laws to support her claim:

- i. Harish Chandra Tewari vs. State of U.P. and others, 2003 Online All 1575,

- ii. Sundara Rajan vs. Deputy Inspector General of Police, Central Range, Tiruchirapalli and others (W.P. No. 894 of 1970)
- iii. Nand Kishore Prasad vs. State of Bihar and others (1978)3 SCC, 366

13. After going through the above cited judgments and facts of this case, the court is of the view that the facts of the above cited cases are totally different from the facts of this case and these case laws are of no help to the petitioner, as this is not the case of the dismissal from service and the inquiry officer or disciplinary authority was having no prior prejudice to the petitioner.

14. This court is of the view that preliminary inquiry was rightly conducted as per the rules; petitioner was given opportunity to show cause; her reply was properly considered on merit and after giving full opportunity of defence and after following the due procedure, she was punished with a minor punishment of awarding censure entry. The court finds that the punishment order as well as appellate order is legally perfect, valid in law and does not require any interference by this Court. Unless the order is perverse to the record, this court cannot test the discretion of the disciplinary authority for awarding the punishment, inasmuch as it is proportionate to the guilt as proved after conducting just, fair and impartial inquiry. This court finds no illegality, irregularity or impropriety in the impugned orders and the claim petition, lacks merit and the same deserves to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: MAY 28, 2018
NAINITAL
KNP