

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

Present: Honøble Mr. Ram Singh

----- Vice Chairman (J)

Honøble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 08/NB/SB/2017

Rajeev Uniyal, S/o Shri Dinesh Uniyal, Presently posted as Sub Inspector
Kotwali Nagar, Haridwar, Distt. Haridwar.

í í í í í Petitioner

Versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand,
Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaun Range, Nainital.
4. Senior Superintendent of Police, Nainital, Distt. Nainital.

í í .Respondents.

Present: Sri K.K.Tiwari & Sri Shakti Singh, Ld. Counsel
for the petitioner.

Sri Ved Prakash Devrani, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: SEPTEMBER 10, 2018

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

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

*“(i) To set aside the impugned order dated 20.10.2011 passed
by respondent No.3 and order dated 29.03.2011 passed by
respondent No.4.*

(ii) To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iii) To award the cost of the petition in favour of the applicant.

2. According to the claim petition, while posted as Sub Inspector, Kotwali Nagar, Haldwani, a preliminary inquiry was conducted against the petitioner for alleged misconduct and commenting the superior officers with disregard, on 12.09.2010 at Police Station Haldwani. After conducting the preliminary inquiry, the inquiry officer found him guilty and accordingly, submitted his report to respondent No.4 on 18.10.2010.

3. After perusing the inquiry report, a show cause notice was issued to the petitioner by S.S.P., Nainital, respondent No.4, on 04.11.2010 and petitioner was called upon to show cause as to why a censure entry be not recorded in his character roll. Petitioner submitted his reply to the show cause notice, in which he mentioned entire facts and circumstances to prove his innocence in the matter. Respondent No.4, without considering the issue raised by the petitioner in his reply, passed the impugned order dated 29.03.2011 (Annexure: 2), by which censure entry was ordered to be entered in his character roll. No reason was indicated for accepting the recommendation of inquiry officer who misinterpreted the statements given by the witnesses and sent his recommendation with the sole objective to punish the petitioner.

4. Against the punishment order passed by respondent No.4, an appeal was filed by the petitioner before the Deputy Inspector General of Police, Kumaun Range, Nainital, respondent No.3. Respondent No.3 decided and dismissed his appeal vide order dated 20.10.2011, without application of mind and without considering the facts pleaded in the appeal. A revision was also preferred before respondent No.2 on 11.08.2016, which was returned on the ground of non-maintainability.

5. In response to the information sought by the petitioner under Right to Information Act, he was replied that the censure entry was awarded to the petitioner under The Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 (for short, Rules of

1991), whereas in 2007, a separate Police Act was enforced in the State of Uttarakhand. According to the petitioner, there was no material or basis for punishing the petitioner, hence, this petition was filed for the abovementioned reliefs.

6. Petition was opposed by the respondents. In the Counter Affidavit it has been averred that after conducting a fair and impartial inquiry, petitioner was found guilty and after considering his reply to the show cause notice, the impugned punishment of 'censure entry' was passed against the petitioner by respondent No.4. The appellate authority after considering all the facts and grounds raised by the petitioner in his appeal, passed a reasoned order and his appeal was dismissed on merit. Being a member of Police Force, petitioner was duty bound to abide by the discipline, but he was found guilty for misconduct. His reply to the show cause notice was found totally unsatisfactory. There is no perversity in the order passed by the respondents. His reply was duly considered by the authorities and it was found that the imputations are based on facts and evidence and the claim petition being devoid of merit, deserves to be dismissed.

7. Heard learned counsel for both the parties and perused the record.

8. Petitioner, while serving as Sub Inspector in the year 2010 in CCR Haldwani, was sent for health check up in Base Hospital, Haldwani on 12.09.2010, as per his statement of being ill. His *Rawanagi* was entered in General Diary of City Control Room, but he did not make any medical checkup either in the Base Hospital, Haldwani or in any other hospital and on a false pretend of being ill, he avoided the Government duty of being deputed at *Nanda Devi Mela* at Nainital. He was also charged to tear the pages of G.D. of City Control Room, Haldwani and to utter the words of disregard to the senior officers. A detailed preliminary inquiry was conducted by Addl. Superintendent of Police, Nainital, in which petitioner was given full opportunity of hearing. His statement was also recorded by the inquiry officer, wherein it was found that instead of getting medically examined on 12.09.2010, he went to his room for rest and contradictory statement was

given by him during the course of inquiry. The inquiry report (Annexure: 3) was prepared by the inquiry officer on the basis of statements of the relevant witnesses. Agreeing with the inquiry report, a show cause notice was issued to the petitioner and his reply to the show cause notice was duly considered by respondent No.4 and the impugned punishment order was passed by him. Respondent No.4 specifically mentioned that the explanation submitted by the petitioner was not satisfactory, hence, a 'censure entry' was ordered to be recorded in his character roll. The punishment order (Annexure: 2) was passed after considering all the facts and circumstances.

9. The appeal preferred by the petitioner was thoroughly considered by the appellate authority, respondent No.3, and all the contentions raised by the petitioner were dealt with and thereafter a reasoned order was passed on 20.10.2011 (Annexure: 1).

10. Petitioner did not file any petition within the prescribed time of limitation and this petition was filed on 25.04.2017, after a delay of about six years. However, the petitioner has submitted that he filed a revision against the order passed by the respondents, but the same was returned on the ground of non-maintainability, in the year 2015.

11. This Court finds that even the revision was also time barred and as per the relevant Rules, the opportunity of revision is not available to the petitioner under the new Police Act, 2007.

12. Petitioner has submitted that under the provision of RTI, Act, information was sought from the office of respondents that under what provision he was punished and in reply to the same, letter dated 17.08.2012 (Annexure: 7) was made available to the petitioner, wherein it was clarified that the punishment was awarded under the provisions of Rules of 1991.

13. This Court finds that it makes no difference, because the petitioner was awarded sufficient opportunity of hearing, all the principles of natural justice were followed, punishment was awarded after considering the reply of the petitioner and the kind of punishment is also provided under the old Rules and new Rules.

12. We are of the view that there is no perversity in the order passed by the respondents and Court cannot interfere into the subjective satisfaction of the disciplinary authority. The claim petition, being devoid of merit, deserve to be dismissed.

ORDER

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

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: SEPTEMBER 10, 2018
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