

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

CLAIM PETITION NO. 36/SB/2019

Raees Raja son of Mohammad Idris, aged about 28 years, Constable, Police Lines,
District Rudraprayag.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Haridwar.

.....Respondents.

Present: Sri V.P.Sharma, Advocate
for the petitioner.

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

JUDGMENT

DATED: APRIL 15, 2019

Justice U.C.Dhyani(Oral)

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

“(i) To issue order and direction to quash the impugned order 12.04.2018 (Annexure No. A-1) by which censure entry has been awarded by the respondent no. 3 in the service record of the petitioner as well as appellate order dated 16.07.2018 (Annexure No. A-2) by which appeal of the petitioner has also been rejected by the respondent No.2 along with its effect and operation also.

(ii) To issue order and direction to pay the entire salary for the suspension period from 25.10.2017 to 01.11.2017.

(iii) Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.

(iv) To award cost of this petition to the petitioner. ”

2. The facts, giving rise to the present claim petition, are as follows:

The petitioner, a Constable in the Uttarakhand Police, was issued a show cause notice (Annexure: A-3) on 08.03.2018, alleging therein that he was having relations with liquor *mafias* and gamblers, as a consequence of which, the image of the police was tarnished. The petitioner was given opportunity to show cause, as to why a 'censure entry' be not awarded and kept in his service record.

The petitioner did not respond to such show cause notice. The Appointing Authority/S.S.P., Haridwar, therefore, directed 'censure entry' (Annexure: A-1) in the service record of the petitioner. Aggrieved with the same, the petitioner preferred a departmental appeal, in which, the order of the Appointing Authority was affirmed. The order of the Appellate Authority has been brought on record, as Annexure No. A-2.

Feeling aggrieved with the same, the petitioner has preferred present claim petition.

3. Ld. A.P.O., defending the departmental action, submitted that the orders impugned do not warrant any interference. The Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.

4. It may be stated, at the very outset that the petitioner never responded to the show cause notice (Annexure: A3). As has been mentioned above, a show cause notice was served upon the petitioner, as to why a 'censure entry' be not awarded to him? No reply to the 'show cause' notice was given by the petitioner. The reply has, however, been given, for the first time, in present claim petition.

5. According to the petitioner, he made phone calls to various people, because they were his informers. Inquiry file has been placed

before the court, to show that the petitioner made phone calls, to various people, who were accused in different criminal cases, such as, Excise Act and Gambling Act. Petitioner has admitted doing phone calls to various people, during the course of inquiry (Ref: his statement to inquiry officer), although he submitted that these people were police informers.

6. It is possible that a Police Constable may contact several people in his area, to seek information, to take clue of criminal activities. In other words, a police official may solicit information from the public, to collect some information about criminal activities of wrong doers. But, in the instant case, if the argument of the petitioner is presumed to be true, why such information was tried to be gathered from the wrong doers only? This fact is not under dispute that the persons to whom the petitioner made phone calls, were accused persons in different criminal cases. An inference, therefore, can be drawn that the petitioner contacted criminals of the area to pass on information about police activities (to them). A reasonable prudent person would, at least, draw the same conclusion.

7. Not only that, the contents of 'show cause' notice speaks in volumes, against him, which notice was not replied to by the petitioner.

8. His services were also put under suspension *w.e.f.* 25.10.2017 (wrongly typed as 28.10.2017) till 01.11.2017.

9. A question was raised, as to whether the services of the petitioner could be put under suspension, if he was to be given a 'minor penalty'? The petitioner is a police constable. His services are governed by the Uttar Pradesh Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991. Rule 17 of the said Rules, is quoted herein below, for convenience:-

"17. Suspension--(1)(a) A Police Officer against whose conduct an enquiry is contemplated, or is proceeding, may be placed

under suspension pending the conclusion of the enquiry in the description of the appointing authority or by any other authority not below the rank of Superintendent of Police, authorized by him in this behalf.

(b) A Police Officer in respect of or against whom an investigation, enquiry or trial relating to a criminal charge is pending may at the discretion of the appointing authority under whom he is serving be placed under suspension, until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Police Officer or is likely to embarrass him in the discharge of his duties or involves moral turpitude. If the prosecution is instituted by a private person on complaint, the appointing authority may decide whether the circumstances of the case justify the suspension of the accused.”

[Emphasis supplied]

10. Had it been the case a Govt. Servant, other than a police official, the situation would have been different, as is envisaged in Rule 4 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, which is quoted herein below, for reference:-

“Suspension- (1) A Government Servant against whose conduct an inquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the Appointing Authority;

Provided that suspension should not be resorted to unless the allegations against the Government Servant are so serious that in the event of their being established may ordinarily warrant major penalty:

.....”

[Emphasis supplied]

11. Learned counsel for the petitioner read the statement of the Inspector Incharge, Kotwali, recorded during the departmental inquiry and submitted that the petitioner was falsely implicated on account of displeasure of his superior officer. Learned counsel further submitted that petitioner had conversation with several people in the area, because they were his informers and a compromise had already taken place with one Mohd. Fayaz, the complaint, against whom, the

insinuation was that, he was involved in narcotics activities. The court is not inclined to grant any favour to the petitioner, on account of the aforesaid submissions. The reasons are not far to seek. As has already been mentioned earlier, the petitioner talked to accused persons on telephone to pass on information regarding the activities of the police department. Such accused persons cannot be his informers. Had he contacted the people from the public, who were not accused persons, in criminal cases, the situation would have been different. Further, a compromise took place in a matter, which finds mention in the extract of G.D., that one Mohd. Fayaz, who was involved in narcotics activities, and whose father levelled allegations against the petitioner that he had taken a sum of Rs. 5000 plus, as illegal gratitude. Legally, such compromise was not possible and even if it was so, the same does not exonerate the petitioner from the charges levelled against him. There is another side of the coin also. Merely because somebody has leveled allegations of corruption against the petitioner, the same does not mean that the same are true, unless proved in 'due process'. An admission/ confession made before a Police Officer, is not admissible. Therefore, such compromise is not relevant to the decision of present claim petition.

12. Having heard learned counsel for the parties, this Tribunal is of the view that 'due procedure of law' has been followed while holding the delinquent guilty of misconduct. No legal infirmity has, successfully, been pointed out in the same.

13. Any allegation against the delinquent Police official, may not be treated as true, but when such insinuation is fortified by some substance, on record, the court may draw an adverse inference against the delinquent. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present case is adjudged from the

aforesaid yardstick, this Tribunal finds no reason to interfere in the inference drawn by the Disciplinary Authority, as affirmed by the Appellate Authority.

14. Judicial review of the administrative action is possible under three heads, viz:

- (a) illegality,
- (b) irrationality and
- (c) procedural impropriety.

Besides the above, the 'doctrine of proportionality' has also emerged, as a ground of 'judicial review' of late.

15. The orders under challenge, in the instant case, are neither illegal, nor irrational, nor do they suffer from procedural impropriety. This court would have thought of substituting 'minor penalty' with 'other minor penalty', on the ground of proportionality, had it not been a serious case. But, since the substantiated allegations against the petitioner are that he was in contact with liquor *mafias*/gamblers and was, thereby, instrumental in passing on information (to them) regarding the activities of the police, therefore, this court is not inclined to interfere on the ground of emerging 'doctrine of proportionality' also.

16. As a consequence thereof, this Tribunal does not find any substance in the grounds, taken up in the claim petition.

17. The claim petition, therefore, fails and is dismissed. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 15, 2019
DEHRADUN

KNP