

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

**CLAIM PETITION NO. 38/SB/2019**

Virendra Kumar, S/o Sri Shri Ram, aged about 45 years, presently posted at Reporting Police Chowki Gauchar, Police Station Karnaprayag, District Chamoli.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Chamoli.

.....Respondents.

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

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

**JUDGMENT**

**DATED: APRIL 29, 2019**

**Justice U.C.Dhyani(Oral)**

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

- “(i) To quash the impugned orders dated 10.10.2018(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 15.02.2019 (Annexure: 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) Any other relief, which the Hon’ble Court may deem fit and proper in the circumstance of the case.
- (iii) To award the cost of this petition to the petitioner”

2. Facts, giving rise to present claim petition, are as follows:

On 12.02.2018, petitioner-Constable was posted as Constable Clerk in Police Chowki Gauchar, which falls within the jurisdiction of P.S. Karnaprayag, District Chamoli. On the selfsame date, petitioner-Constable Clerk received an intimation regarding theft of a 220 Pulsar Motorcycle, registration number U.K. 14-C-5867, from Deval Bazar. On 12.02.2018, at 8:19 AM, Constable 283 C.P. Pradeep Shah and Constable 37 C.P.Rakesh Lal were shown to be deputed for checking duty of the stolen motorcycle. Since petitioner was posted as Constable Clerk at Police Chowki Gauchar, therefore, he recorded an entry in the G.D. to this effect, which means that Constable 283 CP Pradeep Shah was shown to be present at Police Chowki Gauchar and was assigned the duty of tracing out the stolen motorcycle (by the Constable Clerk). Presence of Constable Pradeep Shah, according to his mobile location, was found at Ratura, District Rudraprayag, on the relevant date and time. The allegation is that, whereas, in fact, Constable Pradeep Shah was not present at Police Chowki Gauchar, his presence was wrongly shown to be at the selfsame Police Chowki, by the petitioner Constable Clerk.

The petitioner was given opportunity to show cause, as to why 'censure entry' be not awarded and kept in his service record. The petitioner replied to such 'show cause' notice. He replied that Constable Pradeep Shah was, in fact, present at Police Chowki Gauchar on 12.02.2018 at 8:19 AM. The appointing authority was not satisfied with such reply. S.P.Chamoli, the appointing authority, therefore, directed 'censure entry' (Annexure: A1) in the service record of the petitioner. Aggrieved with the same, petitioner preferred departmental appeal, in which order of appointing authority was affirmed by the appellate authority. Order of appellate authority has been brought on record as Annexure: A 2.

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

3. Ld. A.P.Os., defending the action of the department, at the very outset, submitted that, there is no ground warranting this Court to

interfere in the orders passed by the two authorities below (Disciplinary Authority and Appellate Authority).

4. According to the petitioner, Constable Pradeep Shah was present at Police Chowki Gauchar on the relevant date, at the relevant time. Respondents have, however, taken altogether different stand.
5. Written statement has been filed on behalf of the respondents, along with a counter affidavit of Sri Mithilesh Singh, Deputy Superintendent of Police, Chamoli. Extract of G.D. has been brought on record as Annexure: R 1. Call Detail Report (CDR) of Mobile No. 9897179428 of Constable Pradeep Shah has been filed along with counter affidavit, as Annexure: R 2. Such CDR shows that Constable Pradeep Shah was present at Ratura, District Rudraprayag from 11.02.2018 to 12.02.2018. It means that Constable Pradeep Shah was continuously present at Ratura from 11.02.2018 to 12.02.2018. How can, then, he be present at Police Chowki Gauchar in the morning of 12.02.2019? Extract of G.D. shows that he proceeded from Police Chowki Gauchar on 11.02.2018 at 21:40 PM, he did not return and continued to remain in Ratura on 12.02.2018. On the contrary, he was shown to be present, as against the record, in the morning of 12.02.2018, at Police Chowki Gauchar, by petitioner Constable Clerk. Dice is heavily loaded against the petitioner, for, the respondents have, with the support of documentary evidence, been able to show that Constable Pradeep Shah was located at somewhere else, but not at the Police Chowki Gauchar, in the morning of 12.02.2018. As against the documentary evidence of the respondents, there is oral evidence of the petitioner. Documentary evidence filed on behalf of respondents inspires confidence of the Court. There is, therefore, no scope of interference in the inference drawn by the disciplinary authority, which finding has been affirmed by the appellate authority. A reasonable prudent person, at least, would draw the same conclusion.
6. 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.

7. 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 upheld by the Appellate Authority.
8. '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.

9. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety, but there is a case for interference on the ground of 'doctrine of proportionality', as has been argued by Ld. Counsel for the petitioner. It has been provided in the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991 that the Constables may be punished with 'fatigue duty', a description of which shall be given, in a subsequent paragraph, at an appropriate place, in this judgment.
10. In the matter of Writ Petition No. 6525 of 2004 Deep Narain Singh vs. State of U.P. & others, decided on 02.01.2006, which case has been reported in the name of Udai Pal Singh vs. State of U.P., (2006(2) ESC1036 (Alld) (L.B.), Ld. Single Judge of the Hon'ble High Court of Judicature at Allahabad, has held that the punishment of censure entry being provided under the heading "Minor Penalties" in Rule 4 of the Rules is not at all in conformity with the provisions of Section 7 of the Police Act & Rule 4(1) (b) (iv) of the Rules being in conflict with Section 7 of the Act, is *ultra vires*.

11. In the Writ Petition No. 16436 of 2006 Bhoopendra Singh vs. State of U.P., Ld. Single Judge of Hon'ble Allahabad High Court, doubting the correctness and disagreeing with the law laid down in the Deep Narain's case (*supra*) referred the matter to be decided by a Larger Bench by formulating the following question:

“Whether Rule 4(1)(b)(iv) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, is *ultra vires* to the provisions of Section 7 of the U.P. Police or not and whether the law to the said extent has been correctly laid down in Deep Narain's case or not?”

12. A Division Bench of Hon'ble High Court of Allahabad (Bhoopendra Singh vs. State of U.P & others, 2007 (4) ESC (All) (DB) referring to the various provisions, held that the view taken in the case of Deep Narain Sing (*supra*) is not the correct view and held that the provisions of Rule 4(1)(b)(iv) of the Rules are valid and *intra vires* and the ‘censure entry’ can be awarded. In addition to the punishments mentioned in sub-rule (1), Head Constables and Constables may also be inflicted with the following punishments—

- (i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty)
- (ii) Punishment Drill not exceeding fifteen days.
- (iii) Extra guard duty not exceeding seven days.
- (iv) Deprivation of good-conduct pay.

13. In addition to the punishments mentioned in sub rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:

- (i) Tent pitching;
- (ii) Drain digging;
- (iii) Cutting grass, cleaning jungle and picking stones from parade grounds;
- (iv) Repairing huts and butts and similar work in the lines; and
- (v) Cleaning Arms.

14. The scheme of punishment, which may be awarded to such Class of Police Personnel, is that they may be provided ‘Major Penalties’ as well as ‘Minor Penalties’, which includes ‘other Minor Penalties’. ‘Minor Penalties’ and ‘other Minor Penalties’ appear to be at par with each

other. It is a different fact that, whereas ‘Minor Penalties’ entail civil consequences, ‘other Minor Penalties’ do not entail such consequences. Nevertheless, the fact remains that they are there in the Rule Book and have been placed, *at par*, with each other.

15. Considering the insinuation, which has been approved against the petitioner in the instant case, this Court feels that the ends of justice will be met, if the petitioner, in the peculiar facts of the case, is awarded with ‘other Minor Penalty’, *viz*, ‘Fatigue Duty’, instead of ‘Minor Penalty’. This Court is, therefore, inclined to interfere, only to this extent, on the ground of emerging ‘doctrine of proportionality’, substituting ‘censure entry’ with ‘fatigue duty’.
16. Order accordingly.
17. The claim petition thus stands disposed of. No order as to costs.

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: APRIL 29, 2019*  
*DEHRADUN*

VM