

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr.A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 19/DB/2019

Rajiv Prasad S/o Late Sh. Sunder Lal Semwal, aged about 32 years, Fireman, Fire Station, Dakpatthar, Vikas Nagar, Dehradun.

.....Petitioner

vs.

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

.....Respondents.

Present: Sri L.D.Dobhal, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 21, 2019

Justice U.C.Dhyani(Oral)

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

“A. That the respondents be directed to pay to the applicant the bonus and to expunge the words ‘harsh warning’ in his ACR and it be substituted by only ‘warning’ and he be also paid arrears of his ACP. Interest be also awarded.

- B. That any other appropriate directions be issued to the respondents to the above effect.
- C. That any other order or direction, which the Hon'ble Tribunal thinks fit, be also awarded.
- D. Costs of the petition be also awarded."

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

The petitioner, a Fireman, in Fire Department of Government of Uttarakhand, was awarded censure entry *vide* order dated 29.08.2016, for the misconduct committed by him. Aggrieved against the same, he preferred a departmental appeal to DIG, Garhwal Region, which appeal was dismissed *vide* order dated 06.04.2017. Thereafter, the petitioner filed a claim petition no. 29/SB/2017, which was decided by this Tribunal *vide* order dated 13.03.2018. 'Censure entry' awarded to the petitioner was although set aside, but the petitioner was 'warned' to be careful in future. He was let off with a 'warning'. When the respondents did not do anything, the petitioner sent a representation to Respondent No.3, along with copy of order, and requested her to comply with the order of the Tribunal.

The representation of the petitioner was partly allowed. He was granted benefit of ACP. He was, however, not granted bonus for the financial year 2016-17. The penalty of 'censure' was expunged. He was given 'severe warning' instead of 'warning', which is against the judgment of the Tribunal.

The petitioner came to know that some other Firemen/ Constables, namely, Constable Sandeep Rawat, Constable Vijay Pal, Constable Lalit Mohan, Constable Harish Sawant, Constable Vineet Kumar and Constable Driver Vipin Rana, who were given 'warning' for the selfsame act, for which the petitioner was awarded 'censure entry', were paid bonus for the financial year 2016-17. The petitioner is a victim of discrimination, inasmuch as other similarly situated Firemen and Constables have been given bonus for that financial year.

The present claim petition has, therefore, been filed by the petitioner to cure the aforesaid malaise.

3. Counter affidavits/ Written Statements have been filed on behalf of respondents no. 1 to 3. It has been averred, in the C.A./W.S. filed by respondent no.3 that the order of the Tribunal has been complied with. Benefit of Assured Career Progression Scheme (ACP) has also been given to him. He is, however, not entitled to bonus. He is not entitled to other reliefs, as prayed for by him, in present claim petition.
4. Rejoinder Affidavit has been filed on behalf of petitioner. In para 7 of the R.A., it has been averred that although the petitioner has been given the benefit of arrears of ACP, but, he is also entitled to interest on delayed payment of such arrears. Further, he has been given 'severe warning' instead of 'warning', which is against the letter and spirit of the order of the Tribunal. It has also been indicated that after passing of the order of the Tribunal, the petitioner has been placed in the same category in which his colleagues, who were given 'warning', were placed. These employees were paid bonus. Therefore, the petitioner is also entitled to such bonus, as per "The Payment of Bonus Act, 1965", as of right. The petitioner cannot be deprived of his legal right. The insinuation against the petitioner was simple, The allegation was that, in an agitation termed as 'Mission Akrosh', protesting disparity in pay scales of Police Force and Fire Service, he posted a message in social media, such as, on Face book, Twitter and WhatsApp. Such an act of the petitioner amounts to dereliction of duty. Explanation was sought from the petitioner, who denied ever posting such a message on social media.
5. This Tribunal, by a reasoned judgment, held that although the petitioner is guilty of misconduct, the 'censure entry' awarded to him should be set aside in the given facts of the case. He should be given a 'warning', instead, which is not a punishment. It is not necessary for a disciplinary authority to impose even minor penalty, if someone is

found guilty of misconduct. Present petitioner may, in such a circumstance, should be let off with a warning on parity.

6. Two factors, which persuaded this Tribunal to draw the aforesaid conclusion, were— (i) when FIR was filed against the alleged perpetrator of 'Mission Akrosh', the same was investigated, which culminated in submission of final report (FR); and (ii) other similarly placed Firemen/ Constables were given 'warning', by the department. In other words, the department, while dropping the idea of initiating disciplinary proceedings, thought it better to 'warn' the delinquents, at their own level. When others, who were not favoured with such treatment, approached this Tribunal, through claim petition(s), this Tribunal thought it better to give similar treatment to those claim petitioners. When the others were given 'warning' and this Tribunal also directed the respondent authorities to warn the petitioner, why should different treatment be given to him? In other words, 'warning' was sufficient to meet the ends of justice. What purpose would be served by qualifying the word 'harsh or severe' (warning)?
7. Respondent No.3 is, therefore, requested to delete the word 'harsh/severe' and the reprimand be visited with 'warning' only.
8. So far as the payment of bonus is concerned, although this Tribunal, in another judgment, has observed that bonus is an incentive, no right accrues to a Govt. Servant to claim bonus, as a matter of right, but the facts of present claim petition are somewhat different, inasmuch as similarly placed Constables/ Firemen, namely, Constable Sandeep Rawat, Constable Vijay Pal, Constable Lalit Mohan, Constable Harish Sawant, Constable Vineet Kumar and Constable Driver Vipin Rana, have been granted bonus for the selfsame 'misconduct', in the same financial year. Effect and operation of this judgment relates back to the year 2016-17. Not giving similar treatment to the petitioner would amount to violation of Article 14 of the Constitution of India. Even if it be conceded that the petitioner has no legal right to claim bonus, the facts remains that a valuable constitutional right has accrued

to the petitioner, which right cannot be denied to him in the peculiar facts of the case.

9. The information sought for by the petitioner under Right to Information, reveals the following:

- (1) Fireman Sandeep Rawat was given warning by SSP, Dehradun *vide* order dated 28.08.2015.
- (2) Constable Vijay Pal was given warning by SSP, Dehradun *vide* order dated 28.08.2015.
- (3) Constable Lalit Mohan was given warning by SSP, Dehradun *vide* order dated 28.08.2015.
- (4) Constable Harish Sawant was given warning by SSP, Dehradun *vide* order dated 28.08.2015.
- (5) Constable Vineet Kumar was given warning by SSP, Dehradun *vide* order dated 28.08.2015.
- (6) Constable Driver Vipin Rana was given warning by SSP, Dehradun *vide* order dated 28.08.2015.

10. Another information sought for by the petitioner under RTI reveals that Constable Lalit Mohan, Constable Harish Sawant, Constable Vineet Kumar and Constable Driver Vipin Rana were given bonus for the financial year 2015-16 and 2016-17.

11. Thus, all those, who were given 'warning', by the department, were given bonus for the years, which the petitioner was denied. This is not fair to the petitioner. He has been subjected to discrimination by not granting bonus for the corresponding financial year. The impugned order, therefore, calls for interference to this extent.

12. The petitioner has also claimed interest on delayed payment of arrears of ACP.

13. We have yet to come across any judgment, in which interest on delayed payment of arrears of ACP might have been given either by Hon'ble Supreme Court or Hon'ble High Courts. This Tribunal has been relying upon the decisions rendered by Hon'ble Apex Court in *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (S.C.), S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563* and judgment

rendered in claim petition *No.30/DB/2013 Dwarika Prasad Bhatt vs. State and others*, on 22.09.2016 by this Tribunal itself, while directing payment of interest on delayed payment of gratuity, leave encashment, pension and GIS, but not on delayed payment of arrears of ACP. Ld. Counsel for the petitioner has, however, not seriously pressed such claim and, therefore, this issue is decided in favour of respondent department in the manner that the petitioner is not entitled to interest on delayed payment of arrears of ACP.

14. In a nutshell, the petitioner is entitled to bonus for the corresponding year, in which his colleagues, with similar insinuation, were held entitled to the same. Despite having subjected to reprimand or warning, on account of participation in 'Mission Akrosh', they were granted bonus. Secondly, he is not entitled to interest on delayed payment of arrears of ACP. 'severe warning' should, however, be substituted by word 'warning' only.
15. Order accordingly.
16. The claim petition thus stands disposed of. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 21, 2019
DEHRADUN

VM

