

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S. Nayal

-----Member (A)

**CLAIM PETITION NO. 08/NB/DB/2018**

H.C. 65 Civil Police Rajiv Kumar S/o Shri Dheer Singh, R/o Kasba oon District Shamli, presently posted at P.S. Kichha, District Udham Singh Nagar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. D.I.G., Kumaon Range, Nainital.
3. S.S.P., Udham Singh Nagar.

.....Respondents

Present: Mrs. Monika Pant, Ld. Counsel  
for the petitioner.

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

**JUDGMENT**

**DATED: MARCH 13, 2019**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

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

*"i) To quash the order dated 02.05.2018 passed by D.I.G. Kumaon Range, Nainital.*

*ii) To quash enquiry report dated 21/03/2014 (Annexure: 1) and the impugned order dated 08/12/2014 (Annexure: 2) passed by S.S.P., Udham Singh Nagar and*

*impugned order dated 27/05/2015 (Annexure: 3) passed by the departmental appellate authority.*

*iii) To issue appropriate directions to the respondents to consider the future promotions of the petitioner without being prejudiced by the impugned orders herein.*

*iv) To pass any appropriate order as learned Tribunal may please to think, fit and proper according to facts, reasons and circumstances of the case.*

*v) To allow the petition with cost."*

2. Briefly stated facts are that the petitioner is a Head Constable in Uttarakhand Police. The Uttarakhand Police promotes Constables/Head Constables to the post of Sub-Inspector (Rankers) through a departmental written examination. One such written examination was conducted on 23.01.2011 in District Tehri Garhwal. On complaint of some irregularities committed in the said examination, the Director General of Police ordered a CBCID inquiry on 14.02.2011. The CBCID after conducting the inquiry submitted its report dated 16.06.2011 and found that 7 candidates who appeared in the written examination (one of them is the petitioner) did not sit on their allotted seat in the examination hall and they wrote their examination by sitting somewhere else outside the examination hall.

3. Apart from the 7 Constables/Head Constables, it was also found by the CBCID that other officers including the Superintendent of Police have committed irregularities in conducting the written examination.

4. The 7 Constables who were found guilty by the CBCID belong to Districts Udham Singh Nagar (3 constables), Nainital (2 constables) and Bageshwar (2 constables). It was decided by the Police Department that apart from supervisory officers, the departmental action be taken against 7 constables under Rule 14(1) of the U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991. Departmental

proceedings for major punishment were initiated in Udham Singh Nagar district against 3 constables including the petitioner. The petitioner was given the charge sheet on 27.04.2012. The charges were denied by the petitioner and he filed reply to the charge sheet on 26.05.2012. On completion of the enquiry, the inquiry officer submitted its report on 21.03.2014 to the Senior Superintendent of Police, Udham Singh Nagar. The inquiry officer reached to the conclusion that the written examination was given by the petitioner by sitting at some other place and not at the seat allotted to him in the examination hall.

5. Thereafter, a show cause notice was issued to the petitioner by the Senior Superintendent of Police, Udham Singh Nagar on 29.03.2014 (Annexure-A 8). The petitioner filed his reply to the show cause notice on 17.04.2014. After due consideration to the reply to the show cause notice, the Senior Superintendent of Police, Udham Singh Nagar passed a reasoned order and awarded a punishment of reduction to a lower scale for one year on 8.12.2014 (Annexure-A-2). The departmental appeal filed by the petitioner to the Deputy Inspector General of Police, Kumoun Region was also rejected by the Appellate Authority on 27.05.2015.

6. The petitioner filed a claim petition No. 32/NB/DB/2015 before this Court, which was decided by this Tribunal vide order dated 13.03.2018 and it was held that the petitioner may be allowed to make a representation to the appellate authority for deciding the issue of different treatment to different constables belonging to different districts, as all constables and their districts fall under the jurisdiction of the appellate authority and the matter was remanded to the appellate authority to consider the representation of the petitioner in respect of the issue of parity/discrimination with respect to constables of districts Udham Singh Nagar, Nainital and Bageshwar as a part of Appeal against the punishment order. He was directed to decide such representation as

a part of Appeal by a reasoned order as per rules and law within a period of eight weeks.

7. As per contention of the petitioner, the representation was submitted by him on 26.03.2018 (Annexure: 15) before the appellate authority, mentioning all the points, but the appellate authority without applying its judicious mind, again dismissed his petition vide order dated 02.05.2018 (Annexure: 4) and retained the punishment order dated 08.12.2014, passed by the S.S.P., Udham Singh Nagar (Annexure: 2).

8. Now, in the second round of litigation, this petition has been filed by the petitioner for the above mentioned relief, with the following grounds:-

- i. That the appellate authority did not apply its mind before passing the impugned order; the attitude of the respondents have been illegal, arbitrary, malafide and unconstitutional; the order was passed in violation of principles of natural justice and Article 14 of the Constitution of India; the disciplinary authority as well as appellate authority failed to exercise the jurisdiction vested in it by law and brushed aside its responsibility on the ground that the appellate authority has to examine only the procedural irregularity. The disciplinary and the appellate authority committed an error in treating the petitioner discriminately. The similarly situated candidates of different district, who participated in the same examination and were charged with similar act and omission, were not treated similarly and punishment awarded to the petitioner is arbitrary and illegal and his petition deserves to be allowed.

9. The respondents have opposed the petition, mainly on the ground that the disciplinary and appellate authority exercised his jurisdiction properly. The petitioner cannot claim parity in respect to the

punishment as the disciplinary authorities who awarded the punishment, were different. The petitioner was punished after due inquiry and after considering his reply. He was found guilty of not sitting at the allotted seat in the examination hall and was rightly punished by the competent authority. The relief sought by the petitioner cannot be granted, even in view of the facts and circumstances of the matter and the petition deserves to be dismissed.

10. The petitioner also filed Rejoinder Affidavit, reiterating the same averments as stated in the claim petition.

11. We have heard both the sides and perused the record.

12. The main ground of the petition for challenging the punishment order dated 08.12.2014 passed S.S.P., Udham Singh Nagar and appellate order dated 27.05.2015 and order dated 02.05.2018 passed by the departmental appellate authority in the previous petition and also in this petition simultaneously, has been that, out of 7 Constables, who were charged identically in relation to one and the same incident and against whom the departmental proceedings were also conducted jointly, but they were treated differently in award of punishment. While, the petitioner and 2 other constables of Udham Singh Nagar district, were awarded the punishment by the Senior Superintendent of Police, Udham Singh Nagar, two other constables of Bageshwar district were exonerated by the Senior Superintendent of Police, Bageshwar on 7.04.2015. The remaining 2 constables, belonging to Nainital district have also been recommended to be exonerated by the inquiry officer. When the charges against all of them were same and identical, pertaining to one and the same incident, hence, it is highly discriminatory, arbitrary and in violation of Article 14 of the Constitution of India, to punish them differently.

13. Learned counsel for the petitioner has also submitted that the senior officials who were engaged for conducting the examination, e.g.

Invigilators, Centre Incharge and other Supervisory Officers, were responsible for allowing him to sit at different place and they were also found guilty in inquiry, but they were either exonerated or only a simple warning was given to them, though their negligence was much more serious than that of the constables. Hence, very reasonable questions were raised in the previous petition and in this petition also, that different yardsticks were applied by the respondents against different sets of delinquents and even amongst same sets of delinquents (constables), as the respondents have given punishment to some constables and exonerated the others from identical charges for the same incident, which took place on the same day.

14. Learned Counsel for the petitioner has also referred following 3 case laws of the Hon'ble Supreme Court:

- i. Director General of Police and others vs. G.Dasayan (1998)2 SCC, 407
- ii. Tata Engineering and Locomotive Co. Limited vs. Jitendra Prasad Singh [2001]10 SCC, 530
- iii. State of Uttar Pradesh and others vs. Raj Pal Singh (2010)5 SCC, 783

15. As the issue of different treatment in respect of different constables working in different district was not deliberated upon before the appellate authority, hence, in previous claim petition No. 32/NB/DB/2015 vide order dated 13.03.2018, matter was remanded to the appellate authority, who has quasi-judicial power in respect of all the Constables including constables of other two districts, who were exonerated. The petitioner was directed to submit a representation to the appellate authority for deciding the issue of different treatment and appellate authority was directed to decide it as per law.

16. In compliance of the court's order dated 13.03.2018, petitioner submitted his representation on 26.03.2018 (Annexure: 15)

but the same was decided and dismissed by the appellate authority vide order dated 02.05.2018, without deciding it with a judicious mind and confined his power only to test the procedural irregularity, and discretionary powers of the punishing authority was not tested by respondent No. 2 on the ground of parity, equality and the principles of natural justice.

17. It is settled principle that a departmental authority while exercising his powers in inquiry and appeal, should act in a quasi-judicial manner. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh and others vs. Raj Pal Singh (2010)5 Supreme Court Case, 783**, has specifically held that in a case where charges are same and identical in relation to one and same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. The facts of that case were similar to the present case.

18. In *Vijay Singh vs. State of U.P. & others (2012)5 SCC, 242*, Hon'ble Apex Court in Para 14 held as under:-

*"14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010)10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors vs. Ananta Saha & Ors., (2011)5SCC 142.)"*

19. The matter was remanded by this Tribunal to the appellate authority and respondent No. 2 (Appellate Authority), who was expected to exercise his powers in a quasi-judicial manner, has decided the matter like an administrative matter. This court finds that the appellate authority did not apply his judicious mind to this matter and the representation of the petitioner was dismissed, simply mentioning

the fact that disciplinary authority is having a right to pass any kinds of punishment and the appellate authority can only see the procedural flaw. But in this matter, the issue before the respondent No. 2 was, the different treatment of the similarly situated persons for the same incident.

20. One more aspect of the matter on the facts is that the persons, who were conducting the examination and were having authority to instruct the petitioner to sit at the proper place, while he wrote examination, were held guilty in inquiry but they were exonerated. According to the petitioner, their act was much more serious but they were treated very sympathetically. The court also finds that the responsibility of the officers, conducting the examination was much more in this respect and allowing the petitioner to sit in other place and permitting him to write his examination, was more objectionable than the conduct of the petitioner. But they were also not punished and were either exonerated or simply warned.

21. Hence, court finds that different yardsticks were applied while awarding the punishment and the principles of natural justice and equality were not followed. The equal treatment amongst equals, were not applied. Not only this, when the matter was remanded to the appellate authority, to exercise his quasi-judicial powers, he has failed to exercise his jurisdiction, powers and discretion vested in it as per law and principles of natural justice.

22. Hence, this court finds that the order of the disciplinary authority as well as of the appellate authority needs to be set aside, in relation to the punishment awarded to the petitioner. The court does not agree with the arguments of learned A.P.O. that the petitioner cannot claim parity in the matter of punishment. It is to be mentioned that the petitioner was nowhere held guilty for adopting any unfair means during the examination and the only charge against him was that



he wrote his examination by sitting at a place which was not allotted to him. This is an irregularity, for which other persons/ counter parts have been exonerated.

23. We are of the view that the impugned order of disciplinary and appellate authority, awarding punishment to the petitioner was discriminatory and needs to be set aside hence, the following order is hereby passed.

**ORDER**

The claim petition is allowed. The impugned orders dated 27.05.2015 and 02.05.2018 passed by the DIG, Kumoun Region, Nainital (Annexure: 3 & 4) and punishment order dated 08.12.2014 passed by S.S.P., Udham Singh Nagar (Annexure: 2) are hereby set aside and the respondents are directed to correct the record of the petitioner accordingly, within a period of three months from today.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: MARCH 13, 2019*  
*NAINITAL*

KNP