

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

Through Audio Conferencing

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 13/SB/2020**

Ankul Kumar aged about 37 years s/o Shri Raj Pal Singh, Constable, presently posted at P.S. Rajpur, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary (Home), Civil Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun.

.....Respondents.

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

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

**JUDGMENT**

**DATED: DECEMBER 16, 2020**

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

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

*“(i) To issue order or direction to quash the impugned order dated 15.04.2010 (Annexure No. A-1 of the claim petition) and appellate order dated 30.12.2019.*

*(ii) Any other relief, which the Hon'ble Court may deem fit and proper in the circumstances of the case.*

*(iii). To award the cost of the petition to the petitioner.”*

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

On 21.11.2009, the petitioner was posted as Constable in P.S. Vikas Nagar, District Dehradun. One Manjeet Singh Chawla applied for issuance of character certificate before the Magistrate concerned, who requested P.S. concerned to verify the antecedents of said Manjeet Chawla. Whereas, two criminal cases, one Criminal case No. 70/2002 under Section 60/72 of Excise Act and another Criminal Case No. 10/2008 under Section 34 of Police Act were registered against Manjeet Chawla, petitioner Constable Ankul Kumar gave a wrong report that no criminal case was pending against him. Constable Ankul Kumar handed over the report to one Constable Sachin Kumar, who forwarded the same to Police Office, after appending forged signatures of Inspector, Kotwali, Vikas Nagar, without making an entry in the *Dak Register*. When Inspector, Kotwali, Vikas Nagar came to know of the same, he requested Police Office to return the same. Inspector, Kotwali, Vikas Nagar, thereafter, submitted correct report to the Police Office.

Show cause notice was given to the petitioner. He replied to the same. Inquiry officer was not satisfied with the reply and, therefore, he recommended two 'punishments' to the appointing authority, holding him guilty of 'misconduct'. The appointing authority/ SSP, Dehradun awarded two punishments (*viz-*, *censure entry and withholding of integrity*) to the petitioner, *vide* order dated 15.04.2010.

2.1 Firstly, the petitioner preferred Claim Petition no. 11/SB/2018 before this Tribunal, with the following reliefs:

*“(i) To issue an order or direction to quash the impugned orders dated 15.04.2010 (Annexures No. A-1, A-2 & A-3 to the claim petition) and appellate order dated 12.10.2017 (Annexure No. A4).*

*(ii) To issue the order and direction to pay full salary for the suspension period from 14.12.2009 to 09.02.2010 and to quash and set aside the order passed in Annexure: A -3 about the effect of the suspension in salary increments, promotion, pension and leave etc.*

*(iii) To quash and set aside the order dated 15.04.2010 of annexure A-2 about the withholding of integrity.*

*(iv) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

*(vi). To award the cost of the petition to the petitioner. ”*

2.2 The aforesaid Claim Petition was decided by this Tribunal *vide* order dated 10.05.2018 (copy: Annexure A-4), as under:

*“13. As far as possible, nobody should be left remediless , unless he or she sleeps over his/ her rights. Peculiar fact of this case is that the Govt. itself has withdrawn from prosecution. The Govt. has expressed its’ disinclination to proceed further with the criminal case. Departmental appeal has not been decided on merits. It has been dislodged only on the ground of delay, which, in the peculiar facts of this case, seems to be pardonable. Withdrawal of criminal case gave a ray of hope to the petitioners and only then, it appears, they filed departmental appeals, although, high belatedly. This Court, considering the entire conspectus of facts, briefly narrated in the foregoing paragraphs of this judgment, deems it appropriate to relegate the matter to the appellate authority for deciding the departmental appeal of the petitioners, on merits, in accordance with law, purely in the interest of justice.*

*14. Order accordingly.*

*15. The impugned appellate order dated 12.10.2017 (Annexure: A 4) is set aside. Appellate authority is directed to decide the departmental appeals of the petitioners on merits, in accordance with law, at an earliest possible, but not later than ten weeks of presentation of certified copy of this order.”*

2.3 The petitioner preferred departmental appeal dated 13.09.2019 on the basis of judgment dated 10.05.2018 of this Tribunal, without getting success.

2.3 Thereafter, petitioner filed a claim petition No. 77/SB/2018 before this Tribunal, with the following reliefs:

*“(i) To issue an order or direction to quash the impugned orders dated 15.04.2010 (Annexures No. A-1, A-2 & A-3 to the claim petition) and appellate orders dated 22.08.2018 & 13.09.2018 (in both the files Annexure No. A-4).*

*(ii) To issue the order and direction to pay full salary for the suspension period from 14.12.2009 to 09.02.2010 and to quash and set aside the order passed in Annexure: A-3 about the effect of the suspension in salary increments, promotion, pension and leave etc.*

*(iii) To quash and set aside the order dated 15.04.2010 of annexure A-2 about the withholding of integrity.*

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

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

2.4 The said Claim Petition was also disposed of by this Tribunal vide order dated 11.02.2019, with the following directions:

*“The net result would, therefore be that, whereas, this Tribunal does not find any reason to interfere with the findings arrived at by the inquiry officer, appointing/disciplinary authority and appellate authority, this Tribunal finds cogent reasons to substitute the minor punishment of ‘censure entry’ awarded to the petitioners, with ‘fatigue duty.’*

*The claim petitions are, accordingly, disposed of by granting liberty to the petitioners to seek appropriate remedy before appropriate forum, against withholding of their integrity, vide orders dated 15.04.2010 (Annexure: A-2), in accordance with law. Since the petitioners have been pursuing wrong remedy of departmental appeal, therefore, it is also provided that the delay in seeking remedy before appropriate forum shall not come in the way of appropriate authority in deciding the case of petitioners, on merits.”*

2.5 The petitioner again filed departmental appeal dated 16.05.2019, before the Respondent No. 2 stating therein that the impugned order dated 15.04.2010 passed by the respondent No. 3 was illegal and the integrity of the petitioner cannot be withheld as punishment. The appeal of the petitioner was rejected by the respondent No.2 vide order dated 30.12.2019 (Annexure: A-2). Hence, this claim petition.

**3. The sole question, which arises for consideration of this Tribunal is- whether the ‘integrity’ of a subordinate police officer can be withheld as ‘punishment’?**

4. The subject matter of present claim petition is squarely covered by the decision rendered by Hon’ble Apex Court in Vijay Singh vs. State of U.P. and others (2012) 5 SCC 242. The issue is no longer *res-integra*. The relevant paragraphs of the said decision are reproduced herein below for convenience:

*“2. The instant case is an eye opener as it reveals as to what extent the superior statutory authorities decide the fate of their subordinates in a casual and cavalier manner without application of*

mind and then expect them to maintain complete discipline merely being members of the disciplined forces.

3. The facts necessary to decide this appeal are as under: A. The appellant when posted as Sub-Inspector of Police at Police Station, Moth, District Jhansi in the year 2010, had arrested Sahab Singh Yadav for offence punishable under Section 60 of the U.P. Excise Act and after concluding the investigation, filed a chargesheet before the competent court against the said accused. B. During the pendency of the said case in court, a show cause notice was served upon him by the Senior Superintendent of Police, Jhansi dated 18.6.2010 to show cause as to why his integrity certificate for the year 2010 be not withheld, as a preliminary enquiry had been held wherein it had come on record that the appellant while conducting investigation of the said offence did not record the past criminal history of the accused.

5. The disciplinary authority, i.e. Senior Superintendent of Police without disclosing as under what circumstances not recording the past criminal history of the accused involved in the case had prejudiced the cause of the prosecution in a bailable offence and without taking into consideration the reply to the said show cause, found that the charge framed against the appellant stood proved, reply submitted by the appellant was held to be not satisfactory. Therefore, the integrity certificate for the year 2010 was directed to be withheld vide impugned order dated 8.7.2010.

6. Aggrieved, the appellant preferred an appeal before the Deputy Inspector General of Police on 20.8.2010 raising all the issues including that it was not necessary to find out the past criminal history of the accused in bailable offence and the punishment so imposed was not permissible under the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as "the 1991 Rules"). The appeal stood rejected by the appellate authority vide order dated 29.10.2010.

7. Being aggrieved, appellant preferred a revision before the Additional Director General of Police which was dismissed vide order dated 29.3.2011 observing that withholding integrity certificate did not fall within the ambit of the Rules 1991. Therefore, the said revision could not be dealt with on merit and thus was not maintainable. Aggrieved, appellant filed a Writ Petition which was dismissed by the High Court by the impugned judgment and order dated 19.7.2011. Hence, this appeal.

10. The appellant is employed in the U.P. Police and his service so far as disciplinary matters are concerned, is governed by the Rules 1991. Rule 4 thereof provides the major penalties and minor penalties and it reads as under:-

*“4. Punishment .- (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely -*

*(a) Major Penalties-*

- (i) Dismissal from service;*
- (ii) Removal from service.*
- (iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.*

*(b) Minor Penalties-*

- (i) Withholding of promotion;*
- (ii) Fine not exceeding one month's pay;*
- (iii) Withholding of increment, including stoppage at an efficiency bar;*
- (iv) Censure.*

*(2) 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.*

*(3) 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;*
- (v) Cleaning arms.*

*11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose “any other” major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.*

*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.*

15. *Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant.*

19. *Withholding integrity merely does not cause stigma, rather makes the person liable to face very serious consequences. (Vide: Pyare Mohan Lal v. State of Jharkhand & Ors., AIR 2010 SC 3753).*

20. *Unfortunately, a too trivial matter had been dragged unproportionately which has caused so much problems to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct.*

21. *Undoubtedly, in a civilized society governed by rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.*

23. *Thus, in view of the above, the punishment order is not maintainable in the eyes of law. In the result, appeal succeeds and is allowed. The impugned order dated 8.7.2010 withholding integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. Respondents are directed to consider the case of the appellant for all consequential benefits including promotion etc., if any, afresh taking into consideration the service record of the appellant in accordance with law.”*

*[Emphasis supplied]*

5. **The reply to the question, posed in para 3 of this judgment, therefore is, in the negative. Integrity of a Police Officer of Subordinate Rank cannot be withheld as ‘punishment.’**

6. The punishment imposed upon the delinquent is not provided for under Rule 4 of the Uttar Pradesh Police Officers of Subordinate Rank

(Punishment & Appeal) Rules, 1991. Integrity of a person can be withheld, for sufficient reasons, at the time of filling up the Annual Confidential Report. However, if the statutory rules so provide, it can also be done as punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules of 1991. The rules do not empower the Disciplinary Authority to impose 'any other' major or minor punishment, other than what has been prescribed therein. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings, cannot be awarded.

7. Order accordingly.

8. The claim petition is allowed. Orders impugned dated 15.04.2010 and 30.12.2019 whereby the integrity of the petitioner was withheld as 'punishment' is hereby set aside. In the circumstances, there shall be no order as to costs.

RAJEEV GUPTA  
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI  
CHAIRMAN

*DATED: DECEMBER 16, 2020*  
*DEHRADUN.*

*KNP*