

**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. 34/DB/2020

Umesh Giri, S/o Sri Radhey Giri, presently posted as Constable, Chowki Damta,
Thana Purola, District Uttarkashi.

.....Petitioner

VS.

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

.....Respondents.

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

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

JUDGMENT

DATED: MAY 27, 2021

Justice U.C.Dhyani (Oral)

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

“(i) To issue an order or direction to quash the impugned orders dated 19.05.2018 (Annexure No. A-1), appellate order dated 30.12.2019 (Annexure No. A-2) and expunge the adverse remark from the service record of the petitioner along with consequential benefits.

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

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

2. Facts, which appear to be necessary, for proper adjudication of present claim petition, are as follows:

Allegedly, the petitioner disclosed the location of Police Officials on mobile phone on 08.06.2017 to one Asif Khan, who is said to be involved in illegal mining activities. A show cause notice was given to the petitioner on 21.03.2018, as to why certification of his integrity be not withheld? In reply, the petitioner submitted that the name of only one person namely, Shanu, figured in the inquiry conducted by the inquiry officer. In other words, involvement of Shanu only came to the fore, who talked to petitioner on mobile phone. Witnesses Mohit Kumar, Satish Kumar and Bhupendra Singh disclosed the name of Shanu to the inquiry officer and did not say anything against the petitioner. The whole inquiry was focused on Shanu. Asif Khan disclosed to the inquiry officer that he had talks with the petitioner. In recorded C.D., there is no whisper regarding demand of Rs. 1 thousand, per overloaded truck. According to the petitioner, it is possible that fake C.D. might have been prepared against those Police Officials, who wanted to take action against mining mafias.

The inquiry officer was not satisfied with the explanation furnished by the delinquent- petitioner. According to the report, Asif Khan alias Shanu was already having mobile number of the petitioner, which shows that petitioner had acquaintance with Asif Khan and he disclosed the location of Police Officials, who used to do checking for mining activities. Accordingly, certification of his integrity was withheld for the year 2017.

Aggrieved with the same, the petitioner preferred a departmental appeal on 26.12.2018. Such appeal was dismissed, as time barred, *vide* order dated 27.12.2018. Aggrieved against the same, petitioner filed Claim Petition No. 11/SB/2019, which was disposed of at admission stage, as follows:

“6. The claim petition is, accordingly, disposed of at the admission stage by granting liberty to the petitioner to file a representation against the impugned order, before next higher authority, in accordance with law. If such a representation is filed by the

petitioner, Annexure- A2 will not come in the way of such authority in deciding the same. Since the petitioner has been pursuing wrong remedy of departmental appeal, therefore, it is also provided that the delay in filing the representation shall not come in the way of appropriate authority in deciding the representation, on merits.

7. It is made clear that this Tribunal has not expressed any opinion on the merits of the claim petition.”

Petitioner filed Representation before the respondent No. 2. Such representation was dismissed *vide* order dated 30.12.2019 (Copy Annexure-A2). Aggrieved with the same, present claim petition has been filed on 20.03.2020.

3. It is the submission of learned Counsel for the petitioner that the orders impugned are illegal, in the sense that integrity of the petitioner could not be withheld as ‘punishment’. Learned A.P.O. on the other hand submitted that the integrity of the petitioner has not been withheld as ‘punishment.’ A perusal of Annexure A-1 would indicate that integrity of the petitioner was withheld as ‘punishment.’

4. It may be noted here that two orders were passed against the petitioner. ‘Censure entry’ was awarded to him. On filing a claim petition, this Tribunal affirmed that the petitioner committed misconduct, but considering the entire conspectus of the case, substituted ‘censure entry’ with ‘fatigue duty’ (other minor penalty). Integrity of the petitioner was withheld on the basis of an incident, which was a subject matter of a ‘censure entry’. Both the orders were passed on the same date i.e., 19.05.2018 (Para-1, Annexure: A2). In para 4 of C.A., filed on behalf of the respondents No. 1 to 3, it has been admitted that the integrity of the petitioner for the year 2017 was withheld as punishment.

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

6. 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]

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

8. 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.

9. Order accordingly.

10. The claim petition is allowed. Orders impugned dated 19.05.2018 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

DATE: MAY 27, 2021
DEHRADUN.
KNP