

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

Present: Hon'ble Mr. A. S. Nayal

----- Member (A)

CLAIM PETITION NO. 37/NB/SB/2020

Deepak Arya (Male) aged about 38 years S/o Late Sri Puskar Ram Arya, presently posted as A. S. I. (M)/Assistant Clerk in the office of Senior Superintendent of Police Office Almora, District Almora.

.....**Petitioner**

VERSUS

1. State of Uttarakhand through Principal Secretary, Home Department, Dehradun.
2. Deputy Inspector General of Police, Kumoun Region, Nainital.
3. Superintendent of Police, Pithoragarh, District Pithoragarh.

.....**Respondents**

Present: Sri N. K. Papnoi, Ld. Counsel
for the petitioner.
Sri Kishore Kumar, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: JUNE 25, 2021

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

“(i) To quash the impugned order 11.05.2020 and order dated 07.02.2020 alongwith its effect and operation and after calling the entire record.

(ii) To issue order or direction to expunge the adverse entry censure recorded in the service record of the applicant and grant all the service benefits or pass any other order direction which this Hon’ble court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.

(iii) To issue any other order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. In brief, the facts of the claim petition are as follows:-

The petitioner was posted as A. S. I. (M) in District Pithoragarh in February 2013 and was given the charge of Assistant Accountant in the Account Section where he served in this capacity till 2016 and then he was transferred to District Almora. In the year 2010-2011 Venus Enterprises Cinema Line, Pithoragarh supplied writing material to the Police Department, Pithoragarh. After due process of quotations supply was made and the bills for the same were received by the Record Keeper Mr. Kurban Ali, who in turn sent them to the Assistant Accountant Sri Deepak Kumar for payment. These bills remained unpaid for many years and in 2018 Sri Bhuwan Chandra Joshi proprietor of Venus Enterprises made a complaint regarding the delay in payment of his bills and on this complaint an enquiry was set up, in which Deputy Superintendent of Police Pithoragarh after due enquiry

came to the conclusion that the A. S. I. (M) Deepak Arya alongwith Kurban Ali Record Keeper and Assistant Accountant Sri Devendra Matela who had taken charge from Deepak Arya after his transfer in 2016; were responsible for delay in payment of the bills by not taking adequate steps to make the payment. Subsequently, on the basis of the enquiry by the Dy. S. P., Pithoragarh who was appointed as the enquiry officer vide order No. JA-08/2018 dated 17.04.2018 and submitted his report to the Superintendent of Police Pithoragarh, on 20.12.2019; the Superintendent of Police, who was the disciplinary authority of the erring officials issued a show-cause notice to the petitioner on 09.12.2019 in which he mentioned the proposed punishment to be meted out to the petitioner if their explanation was not found satisfactory and finally after considering the reply of the petitioner, passed the impugned order dated 07.02.2020 awarding the same punishment verbatim as mentioned in the show-cause notice dated 09.12.2019. He also issued a warning for the future against Sri Devendra Matela and awarded the punishment of censure entry to Sri Kurban Ali and the petitioner vide order No. 38/2019 dated 07.02.2020. This order was challenged by the petitioner and Record Keeper Kurban Ali by way of appeals and the Appellate Authority Deputy Inspector General of Police, Kumoun Region, Nainital rejected the appeal of the petitioner vide its order No. COK-Appeal-26/2020 dated 11.05.2020, but allowed the appeal of Record Keeper Kurban Ali and set-aside his punishment order of censure entry and gave him a warning for future; vide its order No. COK-Appeal-25/2020 dated 11.05.2020. Thus, feeling aggrieved by the above two orders dated 07.02.2020 passed by the

disciplinary authority the Superintendent of Police, Pithoragarh and order dated 11.05.2020 passed by the appellate authority the Deputy Inspector General of Police, Kumoun Region, Nainital, the petitioner Sri Deepak Kumar has filed this petition.

3. The respondents have stated in their counter affidavit that the petitioner was rightly punished for his act of indiscipline and carelessness as a result of which the rightful payment of Venus Enterprises was delayed for many years. The payment file of Venus Enterprises was unnecessarily delayed by the petitioner and even after his transfer he had not given the bills to his successor due to which the payment was further delayed. This is evident by the fact that bills which were submitted for payment in 2010-11 remained unpaid till 2018 only because of the negligence of the petitioner and other concerned staffs.

4. The petitioner has filed rejoinder affidavit in which he has stated that the petitioner discharged his duties as per the directions of his superior officers and he has falsely been implicated. He has also submitted that disciplinary authority before considering the reply to the charge-sheet expressed his mind for imposing the penalty which is in gross contravention of the views expressed in the judgments of the Hon'ble Apex Court and Hon'ble High Courts in their various judgments in similar cases. One such judgment of **Managing Director, ECIL, Hyderabad and others Vs. B. Karunakaran and others reported in (1993) 4 SCC 727** has also been quoted.

5. I have heard both the parties.

6. The learned counsel for the petitioner has mainly argued on two points, first of which, that the disciplinary authority Superintendent of Police, Pithoragarh in his show-cause notice to the petitioner mentioned the proposed punishment in the show-cause notice and thereby disclosed his pre mind set to award the punishment of censure to the petitioner. To support his argument, the learned counsel has submitted the case law of **Managing Director, ECIL, Hyderabad and others Vs. B. Karunakaran and others reported in (1993) 4 SCC 727 and Mahesh Chandra Gupta Vs. State of Uttarakhand and others Writ Petition (S/B) No. 133 of 2015 decided on 20.04.2015.**

7. Second point of argument made by the learned counsel for the petitioner is that whereas Sri Kurban Ali Record Keeper and Sri Devendra Matela were also equally guilty of the same charge as the petitioner, they were punished differently as Sri Devendra Matela was let off with a warning by the Superintendent of Police, Pithoragarh and Sri Kurban Ali was also punished selectively by way of quashing the censure entry against him and replacing it by warning in his appeal. Whereas the appeal of the petitioner was rejected and he was given a censure entry and thereby, punishment was awarded selectively to all three officials for the same irregularity. In support of his argument, the petitioner has quoted the judgments of **Rajendra Yadav Vs. State of Madhya Pradesh 2013 SCC (3) Page 73 and Balwant Singh Shah Vs. Managing Director, Garhwal Mandal Vikas Nigam Ltd. 74/1, Rajpur Road, Dehradun & others Writ Petition No. 778 (S/S) of 2009 decided on 09.04.2018.**

8. The petitioner has argued that selective punishment cannot be awarded for collective Act and it is violation of the principle of law.

9. Learned A.P.O. appearing for the respondent Nos. 1 to 3 has pointed out that it is a very obvious case of gross negligence and lack of attention in discharging of one's official duties which is amply proved by the fact that supply of the writing material was made in the year 2010-11 and bills were also received in the same year and the payment was not made for several years and finally the supplier had to bring this to the notice of the superior officers by letter/complaint in the year 2018 after which the process of payment was completed. Learned A.P.O. has also pointed out that the morality and ethical responsibility of a public servant, particularly in a disciplined department like the Police Department is shamed by such gross negligence towards duty and, therefore, punishment meted out after due enquiry was fully justified.

10. In my considered opinion as far as the point regarding unequal punishment awarded to all three different officials is concerned; Sri Kurban Ali as Store Keeper, Sri Devendra Matela and the petitioner Sri Deepak Arya as Assistant Accountant had different responsibilities regarding the payment of bills as is obvious from the designation they hold. One is a Store Keeper and the other is an Account Assistant. Their roles and responsibilities in payment of bills and similar financial matters cannot be the same. In this case too, there is no exceptional circumstance. In Sri Devendra Matela's case, charges against him were dropped mainly because it was found that on his taking charge from Sri

Deepak Arya, Sri Arya had not handed over the matter regarding the payment of unpaid bills to him and he had no knowledge of the same. Therefore, I am of the view that the principle of law that selective punishment for collective act will not be awarded; will not apply in this case. The learned counsel has submitted the rulings of **Rajendra Yadav Vs. State of M.P. & others Civil Appeal No. 1334 of 2013 (Arising out of SLP (Civil) No. 2070 of 2012) decided on 13.02.2013, Man Singh Vs. State of Haryana & others Appeal (Civil) No. 3186 of 2008 decided on 1st May, 2008 and Balwant Singh Shah Vs. Managing Director, Garhwal Mandal Vikas Nigam Ltd. 74/1, Rajpur Road, Dehradun & others Writ Petition No. 778 (S/S) of 2009 decided on 09.04.2018** in support of his argument. I am of the view, the above mentioned rulings of the Hon'ble Supreme Court and the Hon'ble High Courts do not apply in this matter and the punishment meted out to the erring officer will be different according to the responsibilities they held in the office.

11. Other point regarding the mention of punishment in the show-cause notice by the disciplinary authority demands attention. On the perusal of enquiry file, it is ample clear that in the show-cause notice which was given to Sri Deepak Arya A. S. I. (M), the censure entry which is proposed to be given to him in case his explanation is not found satisfactory, has been mentioned. In the show-cause notice No. – N&38/2019 dated December 09, 2019 and in the final order No. N&38/2019 dated February 07, 2020 issued by Superintendent of Police, Pithoragarh, the same punishment has been copied word to word in the final order. The petitioner has a very valid argument on this

point and there are courts' rulings which very clearly support his argument. It is a fact that the Disciplinary Authority opened his mind about the punishment even before considering the reply of the petitioner and this is an act which goes against the principle of natural justice and the laid out rules and procedure. In this regard, the judgments of the Hon'ble Apex Court in the case of **Managing Director, ECIL, Hyderabad and others Vs. B. Karunakaran and others reported in (1993) 4 SCC 727** and judgments of Hon'ble High Court in the case of **Mahesh Chandra Gupta Vs. State of Uttarakhand and others Writ Petition (S/B) No. 133 of 2015 decided on 20.04.2015, Constable 51 AP Jogender Kumar Vs. State of Uttarakhand & others Writ Petition No. 192 (S/S) of 2017 decided on 05.05.2017 and M. Perumal & others Vs. Tamil Nadu Generation and Distribution Corporation & another W.P. Nos. 28133 to 28135 of 2011 decided on 27.01.2012** are relevant in the present case.

12. These facts go against the spirit of natural justice and un-prejudiced enquiry and in contravention of spirit of various rulings given against such procedure by Hon'ble Supreme Court and the Hon'ble High Court of Uttarakhand also. This is an obvious defect in the departmental proceeding conducted against the petitioner.

13. For the reasons stated above, the claim petition deserves to be allowed.

ORDER

The claim petition is allowed. The order dated 11.05.2020 passed by Deputy Inspector General of Police, Kumoun Rage, Nainital and order dated 07.02.2020 passed by Superintendent of Police, Pithoragarh in the matter of the petitioner Sri Deepak Arya are quashed. However, the respondent authority will be at liberty to proceed against the petitioner in accordance with law. No order as to costs.

(A.S. NAYAL)
MEMBER (A)

DATE: JUNE 25, 2021
NAINITAL
BK