

**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)

INTERIM RELIEF APPLICATION

ORDERS

[In Claim Petition No. 66/SB/2020]

Deepak Semwal

vs.

State of Uttarakhand and others

Present: Dr. N.K.Pant, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

DATED: July 12, 2021

Justice U.C.Dhyani (Oral)

An interim relief application has been filed by the petitioner, in the present claim petition, for directing the respondent to permit him to participate in current exercise, being undertaken by the respondent department, for filling up promotional posts of Sub Inspector (Civil Police/Intelligence).

2. Petitioner is a Constable in Uttarakhand Police and is presently posted in Civil Lines Dehradun. *Vide* order dated 09.06.2021 (Annexure: IR-05), candidature of the petitioner was cancelled on the ground that he has been awarded 'censure entry' on 30.04.2020.

3. It may be noted here that when censure entry was awarded to the petitioner *vide* order dated 30.04.2020 (Copy: Annexure- A 1), he preferred departmental appeal, which was dismissed by the Inspector General of Police, Garhwal Range *vide* order dated 21.07.2020 (Copy: Annexure- A2). Aggrieved with the same, he has filed Claim Petition No. 66/SB/2020, before this Tribunal, in which arguments have been heard in part. This interim relief application has been filed by the petitioner, subsequently, on 23.06.2021.
4. In claim petition, the petitioner has sought quashing of order dated 30.04.2021 (Annexure- A 1) passed by SSP, Dehradun and the appellate order dated 21.07.2020, passed by I.G. Police, Garhwal Range (Annexure- A 2). Besides the same, petitioner has also sought direction for release of pay and allowances during 18.02.2018-26.02.2018 (suspension period), among others.
5. The imputation against the petitioner Constable is that, in the year 2018, when he was posted in Civil Lines, Dehradun, then, on 04.02.2018, at 9:00 pm, he consumed beer in Counting Office, Police Lines with Head Constable 64 CP Yogendra, Constable 603 Dharmendra, Constable 226 CP Vivek and Constable 1626 CP Sanjeev. Such activity of the petitioner (along with others) was made viral in the social media. Such transmission has tarnished the image of the Police. Such an act of a member of disciplined force, consuming beer in Counting Office, Police Lines, is condemnable and is indicative of arbitrariness and indiscipline on the part of the petitioner. Such act and conduct of the petitioner was, therefore, 'censured'.
6. Preliminary Enquiry was conducted by C.O., Dehradun in March, 2018. She submitted her report on 25.03.2018 (Annexure: A 4) to SSP, Dehradun. A show cause notice dated 28.03.2018 (Annexure: A5) under Rule 14 (2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991) (as applicable to Uttarakhand), was served upon the petitioner under the orders of SSP, Dehradun. Petitioner filed his reply to such show cause notice. The SSP, Dehradun (Respondent No.4), was not satisfied with the explanation submitted by the petitioner. Hence, impugned order

dated 30.04.2020 (Annexure: A 1) was passed by SSP, Dehradun. 'Censure entry' was awarded to him.

7. Aggrieved with the same, petitioner preferred a departmental appeal, without getting any success. Inspector General of Police, Garhwal Range (Appellate Authority), *vide* order dated 21.07.2020 (Annexure: A-2) affirmed the decision taken by Respondent No.4 on 30.04.2020 (Annexure: A-1). Petitioner has challenged both the orders in the claim petition, in which present interim relief application has been filed.

8. 'Censure entry' has been awarded to the petitioner for misconduct. What is misconduct? The same finds mention in Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002, as below:

“3(1) Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;

3(2) Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behaviour and conduct which may be in force.”

[Emphasis supplied]

9. The word 'devotion', may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

10. Discipline is the foundation of every orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public.

11. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and at all times, conduct himself in accordance with specific or implied order of Government. It is duty of the Govt. servant to be loyal, diligent, faithful and obedient.

12. The terms 'misconduct' or 'misbehaviour' have not been defined in any of the Conduct Rules or Civil Services Rules. The dictionary meaning of the word 'misconduct' is nothing but bad management, malfeasance or culpable neglect of an official in regard to his office. In short, it can be said that misconduct is nothing but a violation of definite law, a forbidden act. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.
13. The word 'misconduct' covers any conduct, which, in any way, renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. The term 'misconduct' usually implies an act done willfully with a wrong intention. So dereliction of or deviation from duty cannot be excused.
14. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behaviour and conduct which may be in force.
15. It will also be pertinent to reproduce Rule 4-A of the Uttaranchal Government Servants' Conduct Rules, 2002, herein below for convenience:

"4-A Consumption of intoxicating drinks and drugs- A Government servant shall-

 - (a) Strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;
 - (b) Not be under the influence of any intoxicating drinks or drugs during the course of his duty and shall also take due care that the performance of his duties at any time is not affected in any way by the influence of such drinks or drug;
 - (c) Refrain from consuming any intoxicating drinks or drug in a public place;
 - (d) Not appear in a public place in a state of intoxication;
 - (e) Not use any intoxication drink or drug to excess."

(Emphasis supplied)
16. Petitioner was doing duty at the relevant point of time, when he consumed beer with his colleagues, in Counting Office, Police Lines, Dehradun.

17. It is the submission of Ld. Counsel for the petitioner that there is no evidence on record to suggest that the petitioner, along with others, was consuming 'beer'. According to learned Counsel, the substance which was being consumed by the petitioner, along with others, has not been sent for chemical examination. This Tribunal is unable to subscribe to such submission of Ld. Counsel for the petitioner, for the following reasons:

17.1 This Tribunal is not deciding criminal appeal against the petitioner. It is (judicially) reviewing the orders passed by the disciplinary authority and appellate authority, in which the standard of proof is 'preponderance of probability', and not 'proof beyond reasonable doubt'. Normally, in criminal matters, a plea is taken by the accused that the substance, which was allegedly being consumed, was not intoxicating substance. In such cases, usually the Courts take a view that chemical examination of the substance, allegedly being consumed by the accused, was necessary. In the instant case, it is not so. This Tribunal is examining the matter in 'judicial review' and not in 'appeal'. In response to the query of the Bench, Ld. A.P.O. pointed out that the petitioner has admitted in preliminary enquiry conducted by Addl. Superintendent of Police, Ms. Niharika Bhatt, that he had consumed beer, along with others, in Counting Office, Reserve Police Lines, Dehradun.

17.2 Moreover, it is a case of minor penalty, in which the procedure prescribed under sub- rule (2) of Rule 14 of the Rules of 1991 has been followed. The said sub-rule is also being extracted herein below for convenience:

"14(2) Notwithstanding anything contained in sub-rule(1) punishments in cases referred to in sub-rule(2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal."

[Emphasis supplied]

18. *Prima facie*, a case of ‘misconduct’, has been made out against the petitioner. He has been awarded ‘censure entry’, which entails civil consequences.
19. Further, the ‘cause of action’ in interim relief application appears to be different. Whereas the claim petition has been filed for setting aside the censure entry, and for release of pay and allowances of the suspension period, the interim relief application has been filed for staying the order dated 09.06.2021, whereby candidature of the petitioner for Rankers’ departmental promotion has been cancelled, which is a subsequent event, which is although consequential, but without amending the claim petition. The outcome of the interim relief would have been no different, even if the claim petition would have been so amended or fresh claim petition filed for such subsequent cause of action.
20. Since, *prima facie*, a case of ‘misconduct’ has been made out against the petitioner, therefore, the Tribunal is unable to grant him the interim relief. Interim relief application is, therefore, dismissed.

RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 12, 2021
DEHRADUN

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