

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

(Through audio conferencing)

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

----- Chairman

Hon'ble Mr. A.S.Nayal

-----Member (A)

ORDERS

On

INTERIM RELIEF

[In Claim Petition No. 44/NB/SB/2021]

Chandra Shekhar Joshi

vs. State of Uttarakhand and others

Present: Sri Dinesh Gahtori &
Sri Naveen Chandra Tiwari, Advocates, for the petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

DATED: JULY 27, 2021

Justice U.C.Dhyani (Oral)

An interim relief has been prayed for by the petitioner to stay the effect and operation of the order dated 06.11.2020 (Annexure: A2), passed by S.S.P., Udham Singh Nagar/Disciplinary Authority, by which he was awarded censure entry. He filed departmental appeal against the same. The same was dismissed by Inspector General of Police, Kumaon Range, Nainital *vide* order dated 31.05.2021 (Annexure: A3). Aggrieved with the same, he filed Claim Petition No. 44/NB/SB/2021, in which interim relief has been prayed for staying the effect and operation of the above noted orders.

2. In claim petition No. 44/NB/SB/2021, petitioner has sought, *inter-alia*, quashing of inquiry report dated 10.04.2020 (Annexure: A1), order dated 06.11.2020 (Annexure: A2) passed by S.S.P., Udham Singh Nagar/Disciplinary Authority and order dated 31.05.2021 (Annexure: A3), passed by Inspector General of Police, Kumaon Range/Appellate Authority.

3.1 The facts giving rise to the claim petition, in which present interim relief has been sought, are as follows:

3.2 According to the petitioner, he was appointed as Constable in the year 2007 and was posted at various places in District Udham Singh Nagar. On 23.01.2020, one Constable 189 CP Chandra Shekhar Bhatt was posted from 8 PM SL. 26 (23-01-2020) to 8AM (of 24.01.2020) at police check post SIDCUL. Petitioner was posted at police check post, SIDCUL on 23.01.2020 from 8 AM to 8 PM. These facts regarding petitioner (Sri Chandra Shekhar Joshi) and Sri Chandra Shekhar Bhatt were recorded in the G.D. at Sl. 9, 18 and 26 of 23.01.2020. In the G.D. of 24.01.2020, the petitioner was relieved by Constable Ganesh Singh at 6 PM. Meaning thereby, on 23.01.2020, the petitioner was assigned duty from 8 AM to 8 PM and on 24.01.2020, he was assigned duty from 8 AM to 8 PM.

3.3 The petitioner was served a show cause notice by respondent No. 3 on 13.08.2020 alleging that while on duty on 23/24.01.2020, at police check post, SIDCUL, P.S. Pantnagar, a call was received by Dial 112 regarding a quarrel near Parle Chowk, which was informed by Dial 112 employees to police check post, SIDCUL. This information was recorded by the petitioner in G.D. dated 24.01.2020 at 12:10 AM. It is submitted that on 24.01.2020, the petitioner resumed charge of duty at 8 AM, so it was not possible for the petitioner to record the incident at 12:10 AM of 24.01.2020.

3.4 Petitioner submitted his explanation on 24.01.2020 at 8AM, denying the charges levelled against him. Petitioner stated that when he resumed duty, he was informed by Sri Chandra Shekhar Bhatt about the incident. He then, informed the incident to Chowki-in-Charge. Since petitioner was not on duty at the time of incident, he therefore, was wrongly charged. Sri Chandra Shekhar Bhatt was on duty at the relevant time, and therefore, he was responsible for the negligence. It appears that due to similarity in the names of Sri Chandra Shekhar Bhatt and present petitioner (Sri Chandra Shekhar Joshi), the petitioner has wrongly been charged.

3.5 Preliminary inquiry was conducted by Additional S.P., Udham Singh Nagar, who submitted his report on 10.04.2020 to the respondent No. 3. In his report dated 10.04.2020, the statement of Constable Chandra Shekhar Bhatt was also recorded, who admitted the fact that at the time of incident he was on duty.

The petitioner was also called by the inquiry officer and his statement was also recorded.

3.6 An incident took place on 24.01.2020, at Parle Chowk, within the jurisdiction of Police Chowki, SIDCUL. Constable Chandra Shekhar Bhatt was on supervisory duty. Constable Chandra Shekhar Joshi was a G.D. writer. They received the information about the incident. They passed on such information to Constable Narendra Singh Bisht and Constable Sunil Kumar, who were doing duty on Cheeta Mobile. They did not try to make a search for injured Ajay Singh. Instead, they scolded the person who assaulted the victim. Accused was set free, after admonition, at their own level, without informing superior police officers. The next morning, dead body of the victim was found near Parle Chowk. Police officials, who were doing duty on Cheeta Mobile, removed dead body from the place of incident, and took the same to district hospital, where the victim was declared 'brought dead'. Dead body was taken to mortuary. Such a serious incident was not brought to the notice of senior police officers.

3.7 It is the submission of learned Counsel for the petitioner that petitioner submitted his explanation on 24.01.2020 at 8 AM that when he resumed his duty, he was informed by Sri Chandra Shekhar Bhatt about the incident. Petitioner informed about the incident to Chowki-in-Charge. It is empathetically submitted by learned Counsel for the petitioner that petitioner was not on duty at the time of incident and therefore, petitioner was wrongly charged. Petitioner was not negligent in his duties. Learned Counsel for the petitioner has made an attempt to project the story that the petitioner has been held guilty under confusion, inasmuch as, a Constable with almost similar name, Sri Chandra Shekhar Bhatt was on duty, and not the petitioner, Sri Chandra Shekhar Joshi. Sri Chandra Shekhar Bhatt, according to learned Counsel for the petitioner, has admitted that fact that he was on duty at the time of incident.

3.8 Learned A.P.O., on the other hand, drew attention of the Tribunal at page No. 34 of the claim petition to argue that not only the petitioner, Chandra Shekhar Joshi, but Chandra Shekhar Bhatt and others were on duty, who 'settled'

the dispute at their own level without informing the higher officers. The petitioner was on duty when the incident took place.

4. In Para 4.8 of the claim petition, petitioner has mentioned that there is no provision for awarding 'censure entry' in Uttarakhand Police Act, 2007. Learned A.P.O. replied that since the Rules have not yet been framed under the Uttarakhand Police Act, 2007, therefore, the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, will apply, in which, provision for awarding censure entry, as minor penalty exists. Even in Uttarakhand Police Act, 2007, there exists a penalty of 'censure'. Since the Rules under the Uttarakhand Police Act, 2007, have not been framed, therefore, Rules of 1991 will be applicable.

5. It is also submitted on behalf of the petitioner that since 'censure entry' entails 'civil consequences', therefore, it does not fall under minor punishment. In all humility, this Tribunal is unable to subscribe to such view of learned Counsel for the petitioner, inasmuch as, censure entry finds place as 'minor punishment' in the Rules of 1991.

6. '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]

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 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]

14. Other grounds have also been taken by the petitioner in his claim petition, but since the Tribunal is considering only interim relief at this stage, therefore, it is not required to go into merits of claim petition in detail, as of now.

15. *Prima facie*, a case of ‘misconduct’, has been made out against the petitioner. He has been awarded ‘censure entry’, which entails civil consequences. ‘Standard of proof’ in departmental proceedings is ‘preponderance of probability’ and not ‘proof beyond reasonable doubt’. Scope of interference in judicial review is very limited. At present, there appears to be no reason as to why senior police officers would have held the delinquent constable guilty of misconduct, like this, without rhyme or reason. Every Govt. servant is a public servant 24x7. It was the collective responsibility of all the police personnel, who were posted at Police Check post SIDCUL, Pant Nagar, Udham Singh Nagar to prevent the crime and bring serious incident to the notice of their superiors.

16. Since, *prima facie*, a case of ‘misconduct’ has been made out against the petitioner, therefore, this Tribunal is unable to grant him the desired interim relief. Interim relief is, therefore, denied to the petitioner.

17. Let copies of this order be supplied to learned Counsel for the petitioner and learned A.P.O., within 48 hrs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 27, 2021
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