BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

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

------ Member (A)

CLAIM PETITION NO. 35/NB/SB/2020

Devendra Ram Verma (Male), aged about 45 years, S/o Late Sri Mani Ram Verma, R/o Village Nai Basti, P.O.-Munshyari, District-Pithoragarh. Presently posted as Constable Civil Police Number 188, Police Station Kapkot, District Bageshwar.

……Petitioner

VERSUS

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

……Respondents

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

JUDGMENT

DATED: JULY 15, 2021

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

> *"(i) To quash the impugned order 17.10.2019 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:-

In the year 2019, the petitioner was posted at Banjari Gate, Chowki Kundeshwari, Kotwali Kashipur in District Udham Singh Nagar. During his posting there, a certain Khurshid was found to be making illegal recovery from the driver of a dumper full of mining material. A police team headed by Sri Dinesh Ballabh Sub-Inspector, Thana Kashipur arrested the accused Khurshid and recovered from him a sum of Rs. 2400/- illegal money which was taken by him from the mining dumpers. On further enquiry the petitioner and accused Khurshid were found to be in collusion in illegal recoveries from the mining vehicles. On this basis, two show-cause notices n-16/2019 dated 10.06.2019 were served to the applicant on the basis of a preliminary inquiry report dated 12.04.2019 and after considering his replies the disciplinary authority respondent No. 3 Senior Superintendent of Police Udham Singh Nagar awarded a censure entry to the petitioner vide order No. n-16/2019 dated 17.10.2019 and passed an order of withholding his integrity certificate for the year 2019 in the second enquiry by order No. n-16/2019 dated 17.10.2019 . Thereafter, the petitioner went into the appeal and the Deputy Inspector General of Police, Kumoun Region, Nainital respondent No. 2 rejected both the appeals filed by the petitioner vide order No. COK-Appeal-04/2020 dated 07.02.2020. Hence, the petitioner approached the Tribunal for quashing the orders dated 17.10.2019 passed by Senior Superintendent of Police, Udham Singh Nagar respondent No. 3 and orders dated 07.02.2020 passed by Deputy Inspector General of Police, Kumoun Region, Nainital respondent No. 2.

3. Learned counsel for the petitioner and learned A.P.O. have appeared before the Tribunal to argue their respective cases. At the outset itself, both the learned counsels have agreed to confine their argument to a single point of law which would be the deciding factor in this petition. They have agreed that apart from the facts of the case it will be sufficient to argue on this point alone.

4. In his argument, the learned counsel for the petitioner has pointed out that the respondent No. 3 Senior Superintendent of Police, Udham Singh Nagar has committed a grave legal flaw in the show-cause notices which were served to the petitioner. The respondent No. 3 has shown his pre-mind set condition in the show-cause notices and has demonstrated his intention to award the punishment of censure to the petitioner in the first case and to withhold his integrity certificate for the year 2019 in the second matter.

5. On the perusal of record, this contention of the petitioner is found to be correct. Senior Superintendent of Police, Udham Singh Nagar in both show-cause notices both of similar number and date (न-16/2019 dated 10.06.2019) to the petitioner has clearly mentioned the punishment proposed to be awarded to the petitioner and in the first case it is proposed to award a censure entry to him and in the second case it is proposed to withhold his integrity certificate for the year 2019.

6. Learned counsel for the petitioner has presented the rulings 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** to support his argument. Further, he has submitted the orders passed by the Hon'ble High Court of Uttarakhand at Nainital in **Writ Petition No. 192 (S/S) of 2017 Constable 51 AP Jogender Kumar Vs. State of Uttarakhand & others decided on 05.05.2017** in which it is again held that if the disciplinary authority shows its mind to impose the penalty of censure upon the petitioner without hearing his

explanation it is a violation of principles of natural justice. To further support his argument, the judgement in **Writ Petition (S/B) No. 133 of 2015 Mahesh Chandra Gupta Vs. State of Uttarakhand and others** by a bench headed by the Hon'ble Chief Justice which upholds this view is also presented before this court.

7. Learned A.P.O. has contended that although the facts of the case as they stand out and the enquiry which was done and the conclusion reached by superior authorities are entirely correct and the charges levelled against the petitioner are substantiated by proper and adequate evidence but it is a fact that the show-cause notices issued to the petitioner are bad in law and this fact is hard to justify.

8. On the basis of the above, I agree with the submission of the learned counsel for the petitioner that show-cause notices issued to the petitioner are liable to be quashed since there is violation of laid down rules and procedure. Therefore, without going into the facts of the case, proceedings itself are liable to be quashed.

ORDER

The claim petition is allowed. Impugned orders dated 07.02.2020 and 17.10.2019 are quashed and set aside.

However, the liberty is reserved to the respondents to proceed with the matter in accordance with law. Notice is taken of the fact that the inquiry report has already been given and it is not necessary to give the same again.

(A. S. NAYAL)
MEMBER (A)

DATE: JULY 15 , 2021
NAINITAL

BK