

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 25/SB/2013

Ravindra Shah, S/o Sri M.L.Shah, R/o 155, Pratap Nursery Road,
Panditwari, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home,
Dehradun,
2. Director General of Police, Headquarters, Subhash Road,
Dehradun,
3. Inspector General of Police, Garhwal Range, Pauri, Uttarakhand,
4. Superintendent of Police, Uttarkashi,

.....Respondents

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4. Superintendent of Police, Uttarkashi,

.....Respondents

Present: Dr Aparna Singh, Counsel
for the petitioners
Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: JANUARY 29, 2014

DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)

1. The following orders are under challenge in these claim petitions:
 - A. An adverse remark recorded by the Superintendent of Police, Uttarakashi in the Character Roll of the petitioner vide order dated 14.09.2011,
 - B. Order dated 14.09.2011 withholding the integrity of the petitioner passed by the Superintendent of Police, Uttarkashi.
2. These two punishments have been awarded on the basis of a common enquiry arising out of the same facts given below; therefore, these petitions are being decided by the common judgment.
3. The facts as stated in both these petitions in brief are that the petitioner, a Sub Inspector in the department of Police, while posted as Officer In charge, Police Station, Dharasu, District Uttarkashi conducted investigation of the case crime no. 12 of 2009, State Vs. Vijay Singh Padiyar, (Marketing Inspector) u/s 409/420 and submitted the final report in the matter after about seven months. Several objections were raised by the Public Prosecutor against the final report.
4. On the order of the Superintendent of Police, the matter was reinvestigated and it was found that sufficient evidence exists for prosecution of the accused, therefore, submitted charge sheet in the

matter. Consequently, it was found that the petitioner with the view of extending unlawful benefit to the accused submitted final report with malafide intentions, consequently the Superintendent of Police, after issuing show cause notice to the petitioner and on considering the reply of the petitioner, ordered to record impugned adverse remark in the Character Roll of the petitioner vide order dated 14.9.2011.

5. Apart from the above adverse remark, the integrity of the petitioner was also withheld by a separate order, but passed on the same date.

6. The departmental appeals against both the orders were also dismissed therefore, these petitions.

7. The petitioner had challenged the order of adverse remark in claim petition no. 25/SB/2013, while the order of withholding the integrity is challenged in claim petition no. 26/SB/ 2013.

8. These petitions are opposed on behalf of the respondents i.e. State of Uttarakhand, Director General of Police, I.G. of Police and Superintendent of Police, Uttarkashi and it has been stated in the written statements filed in the abovementioned petitions that an investigation in case crime no. 12/2009 was entrusted to the petitioner and it was clear from the record that the accused involved in that case had caused embezzlement to the extent of Rs. 51,05366/- which he later deposited in the Govt. account, but the petitioner despite having sufficient evidence oral as well as documentary, dishonestly just to extend unlawful benefit to the accused, Vijay Singh Padiyar, a Marketing Inspector, submitted final report in the matter, that too after seven months. The Assistant Prosecuting Officer raised objections on the final report, therefore, the matter was ordered to be reinvestigated and it was found that the offence of embezzlement was

committed by the accused; resultant charge sheet was submitted against the accused. Thereafter, finding dereliction of duty and acting dishonestly, Superintendent of Police, Uttarkashi issued show cause notice to the petitioner and after considering his reply, the impugned orders were passed, which are lawful, valid and justified and there is no scope of interference, and the petitions are liable to be dismissed.

9. Rejoinder affidavits have also been filed by the petitioner in both the abovementioned petitions reiterating the same facts as have been stated in the petitions.

10. We have heard both the parties at length and also have gone through the record carefully.

11. First of all, it has been contended vehemently on behalf of the petitioner that the orders of punishment have been passed by the Superintendent of Police, Uttarkashi, whereas he was not the Appointing Authority of the petitioner at the time of awarding the punishment, therefore, both orders under challenge have been passed without the lawful authority and are liable to be quashed on this ground alone. In support of this contention, the judgment passed by this Tribunal in C.P. 74/2010, Harpal Singh Vs. State of Uttarakhand & others on 23.12.2010 have been referred. We have also gone through the judgment carefully. The facts reveal that the incident relates to District Uttarkashi and disciplinary proceedings were initiated in district Uttarkashi, but before conclusion of the enquiry, the petitioner was transferred to District Dehradun. The orders of the punishment were passed by the Superintendent of Police, Uttarkashi and were communicated to S.S.P, Dehradun for further communication to the petitioner. In our opinion, the Superintendent of Police, Uttarkashi was the Appointing Authority of the petitioner at the relevant point of time. The transfer of the petitioner to District

Dehradun at the time of passing the impugned orders makes no difference. As at that time also, the Superintendent of Police, Dehradun for the sake of argument maybe called as the appointing authority. The Rank of the Superintendent of Police, Uttarkashi and Superintendent of Police, Dehradun is the same. Therefore, it cannot be said that the impugned order has been passed by any authority, which is below the rank of the appointing authority and there is no violation of the provisions of Article 311 of the Constitution of India. As regards the decision of the case cited by the learned counsel for the petitioner is concerned, it is not applicable in the present case because in that case, the petitioner was transferred to State of Uttarakhand from the State of U.P. and because of the change of the State, the position and status of the appointing authority had also changed, therefore, the facts of that case are totally different as from the case in hand and petitioner is not entitled for any benefit on that basis of that case. Under the above circumstances, we are of the opinion that the contention of the petitioner is not tenable and no benefit can be extended to the petitioner.

12. It has further been contended that integrity of the petitioner has been withheld on the basis of the enquiry, which is not proper. As withholding the integrity is not a punishment or penalty provided under the rules and thus, the impugned order of withholding the integrity is de hors the rules and by any stretch of imagination, it cannot be justified. The contention of the petitioner carries weight. In fact that rules, do not provide penalty/punishment of withholding the integrity. When the rules do not prescribe the penalty of withholding the integrity then awarding such a remark as a punishment cannot be held justified. Moreover, it's also clear that censure entry had already been awarded as punishment to the petitioner and for the same act the imposition of another punishment does not seem reasonable or

justified. Therefore, this part of punishment cannot be sustained and the petition to that extent deserves to be allowed.

13. No other point has been raised or argued. Therefore, on the basis of the above discussion, we are of the opinion that the order of withholding the integrity of the petitioner for the year 2011 is liable to be quashed, while there is no scope of interference in the impugned order awarding the censure remark in the character roll of the petitioner, consequently, the petition no. 26/SB/2013 in which the order of withholding the integrity has been challenged, deserves to be allowed, while the petition no. 25/SB2013 in which the order of awarding censure entry is liable to be dismissed. We do not find any ground for awarding cost to either party.

ORDER

The Claim Petition No. 26/SB/2013 is hereby allowed and the impugned order dated 14.9.2011 withholding the integrity of the petitioner for the year 2011 is hereby set aside. The respondents are directed to expunge this remark from the character roll of the petitioner within two months from today. The claim petition no. 25/SB/2013 is hereby dismissed. No order as to costs. Copy of this judgment shall also be kept in claim petition no. 26/SB/2013 also.

Sd/-
D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-
V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JANUARY 29, 2014
DEHRADUN

KNP