

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

Present: Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.44/NB/SB/2020

Vikas Kumar Chaudhary, s/o Sri Om Pal Singh, r/o Village Boodpur Jat, P.S.
Manglor, District Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Division, Nainital.
4. Superintendent of Police, Udham Singh Nagar.

.....Respondents

Present: Sri Nadim Uddin, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: DECEMBER 14, 2021

This petition has been filed on 31.07.2020 for seeking the following reliefs:

"a) To issue an order or direction to quash the impugned orders dated 20.10.2018 (Annexure No. A-1 to the claim petition) and appellate orders dated 25.05.2019 (Annexure No. A-2).

b) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

c) To award the cost of the petition to the petitioner."

2. The petitioner has challenged the order dated 20.10.2018 passed by Respondent no. 4 by which he has been awarded 'censure entry' and order dated 25.05.2019 passed by Respondent no. 3, as Appellate Authority, by which, petitioner's appeal has been dismissed. While admitting the petition on 31.07.2020, the issue of delay was kept open to be decided at

the time of final hearing. Since the limitation period of one year after the appellate order ends on 25.05.2020 (after 15.03.2020), further delay in filing the claim petition is condonable in view of the order of Hon'ble Apex Court in *Suo Motu Writ Petition (Civil) No. 03/2020* and the same is hereby condoned.

3. Brief facts of the case, according to the claim petition, are as below:

The petitioner was appointed in Uttarakhand Police Department on 08.11.2002 on the post of Police Sub Inspector. From 17.08.2017 to 31.12.2018, petitioner was posted as Sub Inspector at STF Kumaon Unit, Pantnagar under the subordination of S.S.P., STF, Dehradun. In this period, he was not under the subordination of Respondent No. 4. During his above posting, one Sri Gurfan made an anonymous and false complaint against the petitioner. In this complaint, he alleged that petitioner received and returned Rs. 1,50,000/- for the settlement of matter under other Police Officer. Without adopting procedure laid down in G.O. No. 690/XXX (2)/2010 dated 23.06.2010 of Govt. of Uttarakhand and without asking for affidavit and producing evidence in support of complaint, respondent no. 4 ordered preliminary enquiry *vide* order No. 46/2017 dated 23.10.2017.

Preliminary inquiry officer without appreciating the facts and circumstances of the case, held the petitioner guilty but did not recommend any punishment. Copy of the inquiry report dated 04.06.2018 was given to the petitioner with show cause notice, which was issued to the petitioner, stating that petitioner received and returned Rs.1,50,000/- for the settlement of matter under other Police Officer. The petitioner could not submit his reply to the show cause notice due to bad health condition and due to his disability after gunshot injury. Respondent no. 4 passed impugned order dated 20.10.2018 for recording 'censure entry' in the Character Roll of the petitioner for the year 2018. Against this order, petitioner filed an appeal to the Appellate Authority (D.I.G. Kumaon, Nainital) narrating all the facts and circumstances and legal provisions of the case. Respondent no. 3 without appreciating the grounds taken in the appeal and without going

into the material available on record, rejected the appeal in cursory manner *vide* his order dated 25.05.2019.

4. Counter Affidavit on behalf of the respondents states that the orders which are being questioned by the petitioner in the claim petition have been passed with due transparency and as per law. In the year 2017, when the petitioner was posted in STF Unit, Kumaon, Pantnagar, then for the incident of Tractor theft, an FIR No. 160 of 2014 under section 379 of IPC was registered at P.S. Gadarpur and in investigation, the accused Irshad s/o Fyaj Hussain r/o Village Swar Khurd disclosed the name of accused Gaffar Hussain. Gaffar Hussain, for deleting his name from the case contacted Mr. Ehsan Ali s/o Khalil Ahmed r/o Jutiya P.S. Shadjadnagar District Rampur and gave him Rupees Five Lakhs. Thereafter, Ehsan contacted the petitioner and made a deal with him and the petitioner assured him that he will manage the case after a discussion with S.H.O. The petitioner demanded two lakhs rupees in the name of S.H.O. Gadarpur from Ehsan and thereafter Ehsan, Gaffar and Gufran met with the petitioner in Rudrapur and they gave him Rupees 1.5 Lakh. It is relevant to mention here that when the Gadarpur police arrested the accused Gaffar Hussain and sent him to Jail, then the brother of Gaffar Hussain made complaint for returning the money and asked Ehsan to return the money. Thereafter, Ehsan talked with the petitioner and petitioner returned Rupees 1.5 lakh. Thus the name of the petitioner came up in the matter for taking bribe.

In this regard, a detailed inquiry as per law was initiated and the Circle Officer, Bazpur was appointed as Inquiry Officer and the Inquiry Officer after recording the statements of concerned persons found the petitioner guilty. A show cause notice was issued under the provisions of Rule 14(2) of the U.P. Police Officers of the Subordinate in Rank (Punishment and Appeal) Rules, 1991 (adaptation and modification order 2002). The petitioner did not submit reply to the show cause notice subsequent to which, punishment order dated 20.10.2018 granting censure entry to the petitioner was passed.

5. Against this Counter Affidavit, Rejoinder Affidavit has been filed by the petitioner mainly stating that all the proceedings are based on the basis

of an anonymous and false complaint of Sri Gufran against the petitioner after three years of alleged act in 2017. In this complaint, he has alleged the petitioner to have received and returned Rs. 1,50,000/- for settlement of matter under other Police Officer. Without adopting procedure laid down in G.O. No. 690/XXX(2)/2010 dated 23.06.2010 of Govt. of Uttarakhand and without asking for the affidavit and producing evidence in support of complaint, Respondent no. 4 ordered preliminary inquiry *vide* his order No. 46/2017 dated 23.10.2017.

6. I have heard learned Counsel for the petitioner and learned A.P.O. and perused the record.

7. Learned Counsel for the petitioner has argued that the petitioner was posted as Sub-Inspector at STF Kumaon Region, Pantnagar under the subordinate of S.P., STF, Dehradun and at the time of alleged incident, he was not under the subordination of Respondent no. 4. Learned A.P.O. argues on the other hand that he was posted within the territorial jurisdiction of district Udham Singh Nagar and all segments of Police working in the District are under the subordination of S.P. of the District. The Court is in agreement with the same.

8. Learned Counsel for the petitioner has also argued that the impugned punishment orders are in violation of the provisions of Uttarakhand Police Act, 2007 (hereinafter referred to as the Act of 2007) and have been passed under the provisions of the U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991, which were repealed by Section 86 of the Uttarakhand Police Act, 2007. Learned A.P.O. has argued on this point that Section 86 of the Act of 2007 states that earlier Rules or Regulations shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made under the corresponding provisions of this Act, and shall continue to be in force unless and until superseded by anything done and action taken under this Act. The Tribunal finds force in such contention of learned A.P.O. Learned A.P.O. has further argued that the incident for which petitioner has been punished relates to the posting of the petitioner in District Udham Singh Nagar and

therefore, Respondent no. 4 had the authority to award him the punishment prescribed under Section 23(2) of the Act of 2007, which reads as under:

“23 (2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely-

- (a) fine not exceeding one month’s salary,*
- (b) reprimand or censure.”*

The Court agrees to above argument of learned A.P.O. and holds that the Respondent no. 4 had the authority to award the punishment of censure to the petitioner.

9. Learned Counsel for the petitioner has also argued that G.O. No. 690 dated 23.06.2010 annexed as Annexure: A6 to the claim petition, which requires affidavit and evidence to be taken from the complainant before proceeding further on complaint, has not been followed in the case of the complaint made against the petitioner and without the same, preliminary inquiry was ordered. The Court observes that this G.O. has been issued keeping in view the rising tendency of false complaints. Non-following of this G.O. does not vitiate the subsequent preliminary inquiry wherein, the petitioner has been found to have received bribe of Rs. 1,50000/- lakh for getting the name of accused Gaffar Hussain excluded from the crime and to have returned this amount when the accused Gaffar Hussain was sent to Jail in the crime.

10. Learned Counsel for the petitioner has also argued that the petitioner has not committed any such mistake or negligence or breach of some Rule/Provision on which punishment order can be issued. Since no such Rule or order has been mentioned in the show cause notice which has been violated by the petitioner, the impugned punishment order is against the principles of natural justice. The Court observes that in the show cause notice, it is written that the act of taking bribe by the petitioner shows willful negligence, serious laxity, indiscipline etc. while being appointed in a disciplined Police Force and the petitioner has been called upon to submit his written explanation why censure entry be not recorded in his Character Roll under Rule 14(2) of the Uttarakhand [Uttar Pradesh Police Officers of

Subordinate Ranks (Punishment and Appeal) Rules, 1991] Adaptation and modification order 2002(hereinafter mentioned as Rules of 1991). The draft censure entry is also mentioned in the show cause notice and the preliminary inquiry report has been enclosed with the show cause notice.

11. Learned Counsel for the petitioner also argues that the conclusions of preliminary inquiry are not based on evidence but are based on presumption and that punishment cannot be granted on the basis of preliminary inquiry as the preliminary inquiry is not the disciplinary inquiry and its purpose is only to find whether further action should be taken or not as held by Hon'ble Apex Court in *Nirmala J. Jhala vs. State of Gujarat & another* (2013)4 SCC 301.

12. Learned Counsel for the petitioner further argues that before issuing the punishment order, the petitioner has not been given proper opportunity of hearing and that the draft censure entry is recorded exactly the same in the notice and the order which proves that the notice was a mere formality and it had already been decided to issue such an order. He has also argued that in the matter of minor penalties also, it is necessary to mention the evidences in the order which have not been done in the present case. He has further argued that the provisions for recording censure entry in the Character Roll has been declared illegal by Hon'ble High Court in *WP(S/S) No. 1154 of 2005, Constable CP 69 Anokhelal vs. Senior Superintendent of Police & others* and therefore, the punishment of censure entry cannot be given as minor penalty. He has also argued that respondent No. 3/Appellate Authority has not considered the appeal sympathetically and without recording proper reasons and providing opportunity of hearing, the appeal has been rejected and principles of natural justice have been openly violated.

13. The court observes that the report of the preliminary inquiry has been enclosed with the show cause notice thereby implying that the show cause notice is based on the same and petitioner has been given an opportunity to provide his written explanation against the same. Thus all the evidence collected in the preliminary inquiry becomes the basis on which

show cause notice is based and the petitioner has been given an opportunity to submit his written explanation for the same. The show cause notice is received by the petitioner on 06.08.2018 which gave him 15 days time to submit explanation but after much more time, the Respondent no. 4 has passed the impugned order dated 20.10.2018 holding that the petitioner has not given his written explanation till that time which makes it clear that he has nothing to say in his defence and that the proposed draft censure entry mentioned in the show cause notice is acceptable to him and therefore, censure entry has been ordered to be recorded in the Character Roll of the petitioner.

14. The court observes that the petitioner had sufficient time in which he could have submitted his explanation to the show cause notice. However, petitioner filed his appeal within the prescribed time before Respondent no. 3 stating that ex-parte order has been passed against him. The appeal states that he was not given copy of the preliminary inquiry and other related record and therefore, he could not give his explanation in time to the show cause notice.

15. The Court observes that the petitioner has neither stated this reason for his not submitting explanation to the show cause notice in time in the claim petition, nor filed any evidence that he sought further time from the respondent no.4 for submitting explanation on this ground. The claim petition simply mentions in para 4(10) "that the petitioner after receiving the aforesaid show cause notice could not submit his reply due to his bad health condition and due to his disability after gunshot injury during the duty."

16. Therefore, this Court holds that the petitioner deliberately did not submit his explanation before Respondent No. 4 and went in appeal calling punishment order as ex-parte order.

17. The Court further observes that the Appellate Authority has passed a detailed speaking order after considering various grounds raised in the appeal and has held the appeal to be without force and therefore,

rejected the appeal. The petitioner has not mentioned in the claim petition that he sought opportunity of personal hearing in the appeal which was not granted. Therefore, argument of learned Counsel for the petitioner that petitioner was not given opportunity of hearing has no force. Even otherwise, opportunity of personal hearing is not a mandatory requirement for disposal of the appeal according to the Rules of 1991.

18. Regarding argument of learned Counsel for the petitioner that punishment of censure entry cannot be given as minor penalty according to Judgment in W.P. (S/S) No. 1154 of 2005, it may be mentioned that in plethora of judgments of this Tribunal and Hon'ble High Court, the punishment of 'censure' as minor penalty has been upheld. To quote an example, the Division Bench of Hon'ble High Court of Uttarakhand in Writ Petition (S/B) No. 86 of 2021, Nand Kishore Gwari vs. State of Uttarakhand and others vide its judgment dated 25.02.2021 has upheld the punishment of censure in proceedings under Rule 14(2) of the Rules of 1991.

19. The draft of the censure entry being the same in both the show cause notice and the punishment order cannot be objected to in the instant case because the petitioner did not submit any explanation at all against the show cause notice which indirectly becomes admission of guilt. In such case, the disciplinary authority is not required to pass an elaborate order and there is no reason to change the language of the draft censure entry because nothing new has come up in the proceedings.

20. In view of the above, this Court sees no reason to interfere with the impugned orders and the claim petition has no force.

21. The claim petition is accordingly, dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: DECEMBER 14, 2021
DEHRADUN
KNP