BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

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

------ Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

CLAIM PETITION NO. 20/SB/2021

Pratap Singh, Senior Sub Inspector, Civil Police, presently posted at Thana Paithani, District Pauri Garhwal, Uttarakhand..

………Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Range, Uttarakhand.
3. Senior Superintendent of Police, District Dehradun.

..….Respondents

Present: Sri B.B.Naithani, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JANUARY 11, 2022

Justice U.C.Dhyani (Oral)

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

"1.(a) This Hon'ble Tribunal may be pleased to quash the impugned orders no. D-51/19 dated 24.07.2019 by which censure entry has been made.

(b) This Hon'ble Tribunal may further be pleased to quash the appellate order no. C.O.G.-C.A.-Appeal-03(Dehradun)/2020 dated

15.02.2020 by which the appeal made by the petitioner has been rejected.

2. This Hon'ble Tribunal may further be pleased to pass suitable direction to the respondents to delete the entries made in service records with respect to the above said punishment order and appellate order.

3. This Hon'ble Tribunal may further be pleased to issue any order or direction which this Hon'ble Tribunal may deem fit and proper under circumstances of the case.

4. This Hon'ble Tribunal may kindly be further pleased to award cost to the petitioner."

2. Brief facts, giving rise to present claim petition, are as follows:

2.1 During petitioner's posting as Sr. Sub-Inspector at Kotwali, Patel Nagar, Dehradun, in the year 2018, a motor accident took place on 06.11.2018 at 08:10 PM near Inter State Bus Terminus (ISBT), Dehradun. Petitioner along with Inspector, Kotwali, Patel Nagar (for short, Inspector) and Sub-Inspector, Police Post Bazar, Patel Nagar (for short, S.I.), reached immediately to Mahant Indresh Hospital, Dehradun (for short, hospital), where the injured was admitted. When petitioner, Inspector and S.I. reached the hospital, one Sri B.R. Arya (for short, informant) was present. He introduced himself as father of the injured. The Police Officers visiting the hospital were informed that the informant was retired Deputy Superintendent of Police (Dy.S.P.), who gave an application in writing to the Police Officers, requesting to get it registered. The application was handed over to the petitioner in presence of Inspector and S.I. While handing over the application, informant specifically told the petitioner not to register the case for the time being and to call the concerned Driver. Having regard to the words of the informant, petitioner made all the efforts to locate the Driver, but he could not be located, as correct bus number was not mentioned in the application.

2.2 The informant wrote a letter on 28.11.2018 to SSP, Dehradun, informing about the theft of a bag of injured (his son) in the premises of the hospital. From 06.11.2018 to 28.11.2018, the informant never inquired about theft of the bag, which, according to the petitioner, is an afterthought.

2.3 It was only on 30.11.2018 that the Inspector instructed the petitioner to get the FIR registered, which was registered on the same day. As per law, the responsibility to register a complaint lies with the Officer In-Charge, P.S. The petitioner was instructed to get the FIR lodged only on 30.11.2018. Preliminary enquiry was conducted by S.P. City.

2.4 Show cause notice , along with draft censure entry was issued to the petitioner on 14.05.2019 (Annexure: A-6) under Rule 14(2) of the Police Officers of Subordinate Ranks (Punishment and Appeal) Rule,1991. The petitioner gave his reply to the show cause notice on 29.05.2019. The SSP, Dehradun, was not satisfied with the reply filed by the petitioner to the show cause notice and awarded censure entry *vide* order dated 24.07.2019 (Annexure: A 1), holding that it was a misconduct on his part. The same was done without following prescribed procedure, as laid down in the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rule,1991(for short, the Rules of 1991). The petitioner filed a departmental appeal against the order of 'censure entry', without yielding any success. Faced with no other alternative, petitioner has filed present claim petition.

3. Written Statement has been filed by Ld. A.P.O. on behalf of respondents enclosing the affidavit of SSP, Dehradun, in support of departmental action. According to W.S., 'censure entry' was rightly awarded to the petitioner, which was upheld by the appellate authority. Both the orders are under challenge in present claim petition. According to W.S., the claim petition should be dismissed, as the orders impugned were passed according to law and after complying with the principles of natural justice.

4. Rejoinder Affidavit has been filed by the petitioner against the Counter Affidavit filed on behalf of respondents.

5. When the claim petition was taken up on 02.03.2021, for admission, Ld. Counsel for the petitioner submitted that although the appellate authority passed the order on 15.02.2020, but the same was

received by the petitioner on 06.03.2020, as is evident from order dated 04.02.2020, issued by SSP, Pauri Garhwal.

6. What is the extent of Court's power of judicial review on administrative action? This question has been replied by Hon'ble Supreme Court, in para 24 of the decision of *Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301,* in the following words:

> "24.The decisions referred to hereinabove highlight clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."

7. 'Judicial review of the administrative action' is possible under three heads, *viz;*

(a) illegality,
(b) irrationality and
(c) procedural impropriety.

Besides the above, the 'doctrine of proportionality' has also emerged, as a ground of 'judicial review'.

8. Ld. A.P.O. has, therefore, made an endeavour to justify the punishment orders, during course of his arguments. According to Ld. A.P.O., it is a case of failure on the part of petitioner to register the FIR on time. This Tribunal confronted him with various discrepancies and contradictions in the departmental story, to which Ld. A.P.O. replied that there may be certain insignificant anomalies in the departmental

proceedings, but the fact remains that the petitioner alone is responsible for not lodging the FIR relating to cognizable offence, promptly.

9. Law relating to 'information to the Police and their powers to investigate' has been given in Chapter XII of the Code of Criminal Procedure. 1973 (for short, the Code). Section 154 of the Code deals with information in cognizable cases. Such Section reads as below:

> "154.(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
>
> (2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant."

10. One of the noticeable feature of Section 154 of Cr.P.C. is that the responsibility has been entrusted to 'Officer In-Charge of Police Station' to reduce the information in writing 'by him or under his direction'. It also enjoins upon the Officer In-Charge of a P.S. to enter the substance of information (FIR) ' in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.' (G.D.).

11. Statutory law, therefore, stipulates that the responsibility to lodge the FIR is of Officer In-Charge of a P.S., who may either do it on his own or may direct someone under him to do the same. Normally such work is done by a subordinate Police Official, called *Head Moharrir*.

12. It goes without saying that offences punishable under Sections 279, 337, 338 IPC are cognizable offences. Even a private person may arrest or cause to be arrested any person, who, in his presence commits a non-bailable and cognizable offence (Section 43 Cr.P.C.).

13. This Tribunal should not be taken to mean, in the backdrop of the facts of present case, that the petitioner, who was posted as S.I. in the Police Station concerned, did not owe a duty to get the FIR registered. The petitioner S.I. was duty bound to obey the command of his superior

(Inspector). The question is- whether he failed to perform his obligation or not?

14. Although the scope of intervention in judicial review is very limited, as has been referred to by us in one of the foregoing paragraphs of this judgment, but if we peep into the facts of present claim petition, we gather that a case for judicial intervention is clearly made out.

15. The reasons are not far to seek. Application (Annexure: A 3) narrates only about the accident (and not the theft). There is material discrepancy, as to whether copy of FIR was given to the petitioner or not? Whether he was responsible for causing delay in lodging the FIR or not?

16. In the letter written by the informant to SSP, Dehradun (Copy: Annexure: A 4), the informant, who is a retired Dy.S.P., has mentioned that the copy was given to S.I., coming from Chowki (and not the petitioner), who was a S.I. in Police Station concerned (but in spite of that the Inspector did not lodge the FIR). A copy of FIR (Annexure: A 5) would reveal that such FIR was lodged on 30.11.2018 by the Inspector. The FIR was scribed by Constable 938 Hukum Singh of PS. Patel Nagar. Whereas the other documents reveal that the FIR was lodged on 26.11.2018, FIR would indicate that the same was lodged on 30.11.2018.

16.1. Annexure: A 6, dated 14.05.2019, is copy of show cause notice to the petitioner. Such show cause notice indicates that a written complaint about the accident and information regarding the theft was given by the Inspector to the petitioner, on which (complaint) no action was taken and FIR could be registered only on 30.11.2018. Annexure: A-7, which is copy of preliminary enquiry report dated 25.04.2019 by S.P. City, addressed to SSP, Dehradun, has the narration of statements of the informant, Inspector, S.I. and the petitioner. In Annexure: A-7, the informant stated that, Inspector rang him twice, saying that his written complaint was missing and, therefore, requested the informant to give the complaint again (for registration), to which the informant

refused saying that in a cognizable offence the Inspector ought to have lodged the FIR on receiving the information.

16.2. In Annexure: A-7, the statement of the petitioner has also been recorded in which he stated that a copy of application was given to him with the direction not to lodge the FIR, but to call the Driver of the vehicle, who committed the accident. The petitioner also stated that the Driver could not be traced. Annexure: A-7 also mentions the statement of the S.I., endorsing the statement of the petitioner, that the informant requested the petitioner and S.I. not to register the FIR.

16.3. The fact of accident was already in the knowledge of the Inspector. There is an anomaly in the statement of the Inspector that as per the P.E. report of S.P. City, the FIR was lodged on 26.11.2018, whereas in fact, it was lodged on 30.11.2018. The S.P. City, in her preliminary enquiry report dated 25.04.2019, *prima facie* found carelessness of S.I. and not of the petitioner. It was only in subsequent report dated 06.05.2019 that the S.P. City found carelessness on the part of petitioner also.

16.4. Annexure: A-9 is reply dated 29.05.2019 to the show cause notice dated 14.05.2019. There is consistency in such reply and the statement given by the petitioner to S.P. City during preliminary enquiry. He appears to have come to the Tribunal with clean hands.

17. We have discussed above that the primary responsibility of lodging the FIR is of the Officer In-Charge (Inspector) of Police Station, who shall lodge the FIR himself or direct someone under him to do the same. In the instant case, the application was although given to the petitioner, which was in the knowledge of the Inspector and in presence of the S.I., but the informant himself told the Police Officers for not lodging the FIR and wait till the Driver of the vehicle, who committed the accident is traced, but he was never traced, therefore, delay in lodging the FIR occurred, for which the petitioner cannot be blamed.

17.1 Not that, it was not his responsibility to carry out the direction of the Inspector, but the informant himself told the Police Officers not to

lodge the FIR. Further, the responsibility, according to law, is of the Inspector, against whom probably no departmental proceedings were initiated. Petitioner was neither Officer In-Charge of the P.S. nor Officer In-Charge of a reporting Police Chowki, but he was posted as Sr.S.I. in the P.S. concerned. There are various anomalies, which we have noticed above in the departmental narration. There is inconsistency in such narration.

18. Further, the imputation against the petitioner is also not definite. The draft censure entry, which is enclosed with the show cause notice, has mixed up the facts of accident and theft, to put the blame entirely upon the petitioner. The draft censure entry also mentions that the information regarding accident and the theft was in the knowledge of Inspector, Patel Nagar, who gave application to the petitioner, who could lodge FIR only after 20 days on 26.11.2018. All these facts are incorrect. The FIR was not lodged on 26.11.2018, but the same was lodged on 30.11.2018. The application of the informant was only regarding the incident of accident and not about the theft of his son's bag containing cash and other documents.

18.1 The statements, which were taken by S.P. City, during the enquiry, were different from what was mentioned in the draft censure entry.

18.2 Still further, when the application was given by the Inspector to the petitioner on 06.11.2018 and the petitioner did not make any effort to lodge the FIR, what did the Inspector do for 20 days *i.e.* from 06.11.2018 to 26.11.2018 (or 30.11.2018), for the primary responsibility under Section 154 Cr.P.C. is of the Officer In-Charge of the Police Station and not of second Officer.

18.3 Adding to mixing up of vital facts, the draft censure entry proposed that the petitioner be given such entry for the year 2019, whereas the incident took place on 06.11.2018 (*i.e.* year 2018).

19. A reference of the Rules of 1991, pertaining to minor punishment may be given here to bring home the point that the

disciplinary authority should be more circumspect while awarding such punishment. Detailed and elaborate procedure has been provided in the Rules for awarding major punishment. The procedure for awarding minor punishment is although brief (summary), but entails civil consequences, which has the effect on the service career of a Government servant. Wider the powers, more circumspect should be the authority exercising those powers. Minor punishment (of censure) may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputation of the act and omission on which it is proposed to be taken and giving him reasonable opportunity of making such representation as he may wish to make against the proposal. That is all a disciplinary authority has to do. When the imputations of the act or omission are informed to delinquent Police Officer, it is presumed that those imputations have correctly been indicated (*which is not the case here*). If the imputation, which is proposed in the instant case, is based on incorrect facts, such imputation cannot sustain. If the imputation cannot sustain, the punishment imposed on it, shall also not sustain. In the instant case, as has been mentioned earlier, there are material discrepancies in the departmental version. Allegation against the petitioner, at the most, was that he did not register the FIR (which he could not do without the authority of the Inspector). The FIR was of accident only and the factum of theft has subsequently been added to it. The year in which the incident took place, has wrongly been shown in the draft censure entry. Further, there are material contradictions, as to who gave complaint to whom and when. While analyzing the facts, this Tribunal is conscious of the fact that the appeal is not being decided, in which appreciation of both law and facts is permissible. The Tribunal is also conscious of the fact that it is in judicial review only. In such jurisdiction also the probability of indictment (of the delinquent officer) can always be looked into. The Tribunal, on looking at the entire conspectus of the facts and circumstances, is of the view that the accusations against the delinquent petitioner, are incorrect and, therefore, the Tribunal has to intervene in the orders of two authorities below, under judicial review, in the interest of justice.

20. The proposed indictment, with show cause notice and consequential indictment itself, in the aforesaid circumstances cannot sustain. When the foundation itself is weak, no edifice can be built upon the same. Even if it is a departmental proceeding, in which scope of intervention by a Tribunal is very limited, we find this to be one such case in which Tribunal should intervene.

21. Order accordingly.

22. Claim petition is allowed. Impugned punishment order dated 24.07.2019 (Annexure: A 1) and appellate order dated 15.02.2020 (Annexure: A2) are liable to be set aside and are, accordingly, set aside. In the circumstance, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 11,2022
DEHRADUN

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