

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

Present: Sri V. K. Maheshwari
----- Vice Chairman (J)

CLAIM PETITION NO. 03/N.B./2011

Hem Chandra Durgapal, S/o Sri Jagdish Chandra Durgapal,
R/o Unchapul (Himmatpur Malla), P.O. Haripur Nayak,
Haldwani, District Nainital.

.....Petitioner

Vs.

1. State of Uttarakhand through Secretary, Ministry of Home, Uttarakhand, Dehradun
2. Additional Director General of Police (Crime & Law) Police Headquarters, Uttarakhand, Dehradun
3. Inspector General of Police, Kumaon Region, Nainital, Uttarakhand.
4. Senior Superintendent of Police, Udham Singh Nagar.

.....Respondents

Present: Sri A.D.Tripathi, Advocate
for the petitioner
Sri V.P. Devrani, A.P.O
for the Respondents

JUDGMENT

DATE: JANUARY 30, 2013

1. The present petition is preferred against the censure entry awarded by the S.S.P. on 3.7.2009.

2. Facts as alleged in the petition are that petitioner is a Constable in Police and at the relevant time posted at Udham Singh Nagar was on Casual Leave w.e.f. 23.1.2009 to 28.1.2009. He participated in the marriage function of his relative on 28.1.2009 at 3.15 A.M. at Sindoor Banquet Hall, Haldwani. Unfortunately, a minor clash took place amongst the members of marriage party and immediately, Police Patrol Car reached at the spot. The police party headed by S.I., Tilak Ram Verma had apprehended petitioner and one another person also in the police force U/S 151 CrPC and took to the Police Station. While alighting from Police Cab, one Mahesh Singh a newly recruited Police Constable suddenly colluded with the petitioner and allegedly had a minor injury. Under the pressure of senior officers, Mahesh Singh lodged a First Information Report against the petitioner and a Case No. 41/2009 was registered U/S 353 IPC. On investigation into the said incident, no case was found to be made out against the petitioner and a final report was

submitted before the court concerned, which was also accepted, as Constable, Mahesh Singh did not have any objection. Apart from the investigation, departmental proceedings were also initiated against the petitioner and Mr. Pramod Kumar, S.H.O, Sitarganj was entrusted to conduct the preliminary enquiry who did not find any fault of the petitioner and submitted the enquiry report to the S.S.P., Udham Singh Nagar on 5.3.2009. But the S.S.P. was not satisfied with the findings of the enquiry officer and he directed the enquiry office to conduct enquiry again. Therefore, the enquiry officer submitted a second enquiry report on 28.04.2009 finding the petitioner guilty U/S 353 IPC. Meanwhile, the petitioner was also placed under suspension, but that was revoked on 03.02.2009. On the basis of the second enquiry report, a show- cause notice dated 07.05.2009 was served upon the petitioner. The petitioner submitted reply against that show cause notice. Thereafter, the impugned order awarding the censure entry was passed. Appeal filed by the petitioner against the impugned order is also dismissed vide order dated 20.11.2009 and a revision to the Director General of Police was also dismissed vide order dated 6.5.2010. Hence this petition.

3. The impugned order has been challenged on the following grounds:

- i. That after dropping the criminal proceedings, its not appropriate to award censure entry on the same grounds,
- ii. That the disciplinary authority was not competent to order for the second enquiry,
- iii. That the same enquiry officer had submitted the second enquiry report, which is contradictory to his previous report, which is not fair on his part and it is malafide and against the provisions of Article 21 of the Constitution of India,

4. The petition has been opposed on behalf of the respondents and it has been stated that petitioner participated in a marriage function as a guest on 28.1.2009 at Sindoor Banquet Hall, Haldwani. On information of quarrel, police force headed by Tilak Ram Verma reached at the spot at 3.15 P.M. Tilak Ram Verma, S.I. tried his best to pacify the parties, but all in vain, so he arrested the petitioner and one another person named Vasu Negi U/S 151 CrPC and sent them to police station, Haldwani where petitioner tried to flee away by pushing one recruit police constable, Mahesh Singh. However, who apprehended the petitioner, but he got injury in his nose. Consequently, a criminal case U/S 353 was

registered against the petitioner and departmental proceedings were also initiated. In the enquiry, the petitioner was found guilty and after giving him sufficient opportunity, the impugned order was passed which does not suffer with any irregularity or illegality. The impugned order is perfectly valid and in accordance with rules and needs no interference by the Tribunal.

5. A rejoinder affidavit reiterating the similar facts were also submitted by the petitioner.

6. This is the total evidence on record. I have heard both the parties and perused the record carefully.

7. First of all, it has been contended on behalf of the petitioner that the disciplinary authority had ordered a second enquiry, which is not proper at all and the disciplinary authority should have acted on the basis of first enquiry report only. But in the present case, the disciplinary authority was not satisfied with the report of the enquiry officer, so he ordered to conduct a second enquiry, which is not proper and justified. In support of this contention, the petitioner relies upon the principle laid down by the Hon'ble Supreme Court in Union of India Vs. K.D. Pandey & another (2002) 10,

SCC, 471. I have gone through the above mentioned case. The Hon'ble Supreme Court has laid down that:

“Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussion the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order

of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.”

8. Perusal of the record, in light of the principle laid down by the Hon'ble Supreme Court in the above noted case, reveals that the enquiry into the alleged incident was conducted by the Circle Officer, Sitarganj, who submitted his report on 5.3.2009 and exonerated the petitioner. But the disciplinary authority was not satisfied with the report of the enquiry officer directed the enquiry officer to conduct the enquiry again. Thereafter, the enquiry officer submitted his report again on 28.4.2009 (Copy Annexure -5) in which the petitioner was found guilty of offence U/S 353 IPC. The above circumstances shows that the disciplinary authority redirected the enquiry officer to conduct the enquiry again, which does not seem to be proper procedure as have been laid down by the Hon'ble Supreme Court in the above mentioned case. It seems that the disciplinary authority wanted to obtain the report as desired by him, which cannot be justified. Therefore, the procedure adopted by the disciplinary authority is not in accordance with principle laid down by the Hon'ble Supreme Court.

9. There is another aspect of the matter that the case registered U/S 353 IPC against the petitioner resulted in final report, which has been accepted by the competent Magistrate.

10. Under the above circumstances, the imposing of censure remark against the petitioner does not seem justified and is liable to be expunged and the petition deserves to be allowed.

ORDER

The petition is allowed. The impugned censure remark shall stand expunged from the character roll of the petitioner. A remark shall be posted to this effect in the record. No order as to costs.

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JANUARY 30, 2013
NAINITAL