

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

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

CLAIM PETITION NO.40/NB/SB/2020

Kailash Goswami, aged about 35 years, s/o Kunwar Nath, r/o P.S. Baijnath,
P.O. Garud, District Bageshwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Uttarakhand, Police Headquarters, 12, Subhash Road, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Senior Superintendent of Police, Udham Singh Nagar, Bilaspur-Rudrapur, Haldwani Road, Rudrapur, District Udham Singh Nagar.
5. Superintendent of Police, Bageshwar, behind Vikas Bhawan Off, Almora-Bageshwar Road, Dunga Patli, District Bageshwar.

.....Respondents

Present: Sri Piyush Tiwari, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: JANUARY 28, 2022

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

“i) Issue an order or direction, directing the respondents to quash 02 show cause notice dated 10.06.2019 proposing penalty of “Censure” and “withholding of integrity certificate for the year 2019”.

ii) Issue an order or direction, directing the respondents to quash 02 orders dated 17.10.2019 imposing penalty of "Censure" and "withholding of integrity certificate for the year 2019".

iii) Issue an order or direction, directing the respondents to quash 02 orders dated 07.02.2020 wherein appeal against penalty of "Censure" and "withholding of integrity certificate for the year 2019" were upheld.

iv) Issue any other or further, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

v) To award the cost of the petition in favour of the petitioner and against the respondents."

2. According to the Claim Petition, the facts in brief are as follows:

In the year 2019, the petitioner was posted at Chowki Kundeshwari, Kotwali Kashipur in District Udham Singh Nagar. During his posting there, on 27.02.2019, one Khurshid was found to be making illegal recovery near Banjari Gate Picket from the drivers of dumpers of mining material. A police team 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 dated 10.06.2019 were served on the petitioner on the basis of a preliminary inquiry report dated 12.04.2019 and after considering his replies, the disciplinary authority respondent No. 4 Senior Superintendent of Police, Udham Singh Nagar awarded a censure entry to the petitioner vide order dated 17.10.2019 and passed another order dated 17.10.2019 of withholding his integrity certificate for the year 2019. Thereafter, petitioner went into appeals against these orders and the Deputy Inspector General of Police, Kumoun Range, respondent No. 3 rejected both the appeals filed by the petitioner.

Hence this claim petition.

3. Two separate Counter Affidavits have been filed by the Respondents no. 1 to 4 and Respondent No. 5. Rejoinder Affidavits to these Counter Affidavits have also been filed on behalf of the petitioner. I will refer to these affidavits as and when required.

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

5. Learned Counsel for the petitioner has *inter-alia* argued that the preliminary inquiry the incident of 27.02.2019, in which the said Village Guard was found taking bribe from the driver of a dumper, implicated almost all the staff of the Police Chowki Kundeshwari, including the petitioner and not only the petitioner but many other police personnel were posted out on the same ground and the penalties of censure and withholding of integrity certificate were imposed upon them. However, this Tribunal has quashed these penalties in respect of 11 personnel in their respective claim petitions vide order dated 15.07.2021 and 26.07.2021. A copy of the order dated 15.07.2021, passed in Claim petition No. 66/NB/SB/2020 has also been filed with the rejoinder affidavit. The following excerpts of this judgment are quoted below:

“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 (₹-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 30.10.2019 and 25.06.2020 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."

6. Replying to the above, learned A.P.O. has argued that according to Rule 14(2) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as Rules of 1991), the show cause notice is required to state the action proposed to be taken against the delinquent. Rule 14(2) of the Rules of 1991 is reproduced herein below:

"14(2) Notwithstanding anything contained in sub-rule(1) punishments in cases referred to in sub-rule (2) of rule 5 may be imposed after informing the police officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal."

7. The Tribunal observes that the rulings of Hon'ble Apex Court in the case of Managing Director, ECIL, Hyderabad and others Vs. B. Karunakaran and others quoted in the above judgment relates to major

penalties wherein inquiry report and opportunity of representation is required to be given by the disciplinary authority to the delinquent employee before making up its mind for major penalty. The Tribunal also observes that Hon'ble High Court in its recent judgment dated 25.02.2021 in Writ Petition (S/B) No. 86 of 2021, Nand Kishore Gwari vs. State of Uttarakhand & others, delivered by a Division Bench, headed by Hon'ble C.J. has found nothing wrong in the show cause notice issued under Rule 14(2) of the Rules of 1991 stating that the punishment of censure may be imposed alongwith the draft entry. The relevant extract of the above judgment of Hon'ble High Court of Uttarakhand is quoted below:

“8. Secondly, the learned Tribunal has correctly noted the fact that if the show cause notice dated 20.09.2019 is read holistically, it merely provides an opportunity to the petitioner to place his defense before the department within a period of seven days. The part of the show cause notice quoted by the learned counsel for the petitioner, in fact, belongs to “the draft”, which has been attached with the show cause notice. The draft is of a possible punishment, which may be imposed upon the delinquent officer. The draft does not indicate, and cannot indicate, as to what would be the final and eventual outcome of the inquiry. Therefore, the contention being raised by the learned counsel for the petitioner that the department has already pre-judged the issue is bereft of any merit.”

In view of the above, the Tribunal is not agreeable to quash the show cause notices or further proceedings thereon on this ground, as has been done in some other cases related to the same incident.

8. Learned Counsel for the petitioner has also argued that the impugned orders have been passed in violation of the provisions of Uttarakhand Police Act, 2007 (hereinafter referred to as ‘the Act of 2007’) inasmuch as they have been passed under the Rules of 1991 which were repealed by section 86 of the Act of 2007. He has also contended that respondent no. 4 did not have the authority to issue show cause notice and subsequently impose penalty on the petitioner as the petitioner had been transferred out of district Udham Singh Nagar and had been posted under the jurisdiction of respondent no. 5 in district Bageshwar.

9. 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 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.

10. Learned Counsel for the petitioner has also argued that dual punishment of censure and withholding of integrity cannot be given for the same case and the punishment for withholding the integrity certificate is neither provided under the Rules of 1991 nor in the Act of 2007.

11. It is observed that integrity of a person can although, be withheld for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be withheld as a punishment. Learned counsel for the petitioner has referred to the law laid down by the Hon’ble Apex Court in Vijay Singh vs. State of U.P. and others, (2012)5SCC, 242. Para 11, 14 and 15 of which are important in the context of elucidating present controversy and are reproduced herein below for convenience:-

“11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules, 1991. Integrity of a

person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010)10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors vs. Ananta Saha & Ors., (2011)5SCC 142.).

15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

12. The Tribunal holds that the integrity of the petitioner can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report, but the same cannot be awarded by way of punishment because this kinds of punishment is neither prescribed in the Rules of 1991 nor in the Act of 2007. Therefore, Annexure-18 according to which integrity certificate of the petitioner is withheld, is liable to be quashed. Though in the C.A., it has been stated that notice for withholding of integrity was issued according to the provisions of the Govt. order No. 1712/Karmik-2/2003 dated 18.12.2003, the same has not been done at the time of filling of the Annual Confidential Report and has actually been done as an adjunct to the proceedings vide which punishment of censure has been awarded to the petitioner. Even the dates of the show cause notices and dates of orders of censure and withholding of integrity are the same.

Therefore, the Court holds that withholding of integrity has been done by way of punishment and Annexure: 18 is, therefore quashed.

13. Learned Counsel for the petitioner has further argued that the petitioner was on three days' casual leave from 24.02.2019 and after leave, he reported for duty at about 11:30 AM on 27.02.2019 at P.S. Kashipur. The village guard Khurshid was arrested at around 16:55 hrs. on 27.02.2019 near Banjari Gate Picket who stated that he is collecting money from the Truck drivers on the directions of police personnel. A preliminary inquiry was conducted and the phone calls of Khurshid were traced out. All those Police Constables who had performed duties during the month in Banjari Gate Picket and had made phone calls to the said Village Guard were also examined during the course of preliminary inquiry. The Village Guard in terms of Section 57(1) of the Uttarakhand Police Act, 2007 is deemed to be a public servant as defined in Indian Penal Code. Due to his such status, all the constables posted in Banjari Picket took his assistance and gathered information from him about the activity in vicinity and he also assisted Police Constables of Picket in bringing food and drinking water from the shops located at some remote distance from the Picket. A bare perusal of the show cause notice shows that there is no definite charge, categorically mentioning date, time and place, against the petitioner. The show cause notice states that the petitioner had performed duties on various dates in Banjari Picket and as per the Digital Video Recorder (DVR), the role and work of petitioner is under suspicion. All the Constables posted during the month in Banjari Picket at various times have been taken under suspicion. It is pertinent to mention that DVR is used with analogue camera. It is a wire based security system and cannot record a voice. Learned Counsel for the petitioner has cited various rulings to show that a show cause notice or a charge sheet should not be vague but should be specific. It is essential for a show cause notice to indicate precise scope of the notice and also indicate the points on which the officer concerned is expected to give reply.

14. Learned Counsel for the petitioner has argued that in reply to the show cause notice, the petitioner has categorically stated that it was not in his knowledge that accused Khurshid is collecting money near Banjari Picket under Kundeshwari Chowki. The petitioner had performed duties at Banjari Gate for only two days during his duty days, no complaint was received in connection with illegal collection of money. The important fact which came later in the knowledge of petitioner which he also mentioned in reply of show cause notice is that on 26.02.2019 at about 1700 hrs Khurshid was called in Kotwali and since then he was under police custody, therefore, it is also under suspicion whether he, in fact, was engaged in the illegal recovery of money from truck driver on 27.02.2019. With regards to contacts with accused Khurshid, it was categorically mentioned in reply of show cause notice that he is a Village guard, the Banjari Picket gate is 15 k.m. from Kundeshwari Chowki where two police constables are deployed. No facility of electricity and water is available. DVR (CCTV) is being operated through battery which gets discharged after some time and for this purpose his assistance is taken. Banjari picket is situated in forest area and the two Armed Constables cannot leave the post. No shops of essential items as well as food items are available therefore, the same is requested through village guard over telephone. The petitioner had pointed out that the DVR was removed from Banjari Gate on 25.02.2019, call details upto 25.02.2019 have been traced out, while the incident occurred on 27.02.2019. Therefore, call details upto the said date are to be checked but no heed was paid on this important point. Respondent No. 4 disposed of the show cause notice in most mechanical manner and has not given any logical reasoning against the contentions raised by the petitioner. Accordingly, punishment of 'Censure' was imposed on the petitioner vide order No. *Da*-16/2019 dated 17.10.2019 which is in breach of principle of natural justice and is without jurisdiction.

15. The Tribunal observes that the contention of the petitioner that accused Khurshid was called to the Police Station on 26.02.2019 at 17:00 hrs and thereafter, he was in the Police custody and therefore, it is under

suspicion whether he, in fact, was engaged in the illegal collection from truck drivers on 27.02.2019, has not been outrightly denied in the impugned order dated 17.10.2019 of Respondent No. 4 imposing the penalty of 'Censure' on the petitioner. About this contention, this order simply states that after arrest of the accused Khurshid with Rs. 2400/- of illegal collection on 27.02.2019, FIR No. 104/19 under section 384 of IPC has been registered, which is verified by report no. 54, time 18:55 of G.D. dated 27.02.2019 of Police Station, Kashipur.

16. In the pleadings before this Tribunal also the respondents have not made specific denial of this contention which in the opinion of this Tribunal is vital in the matter.

17. In many other disciplinary proceedings related to same incident, the punishment orders have been quashed by this Tribunal on a different ground and liberty has been reserved to the respondents to proceed with the matter in accordance with law. In the instant case, it will be in the interest of justice that impugned order of Respondent No. 4 dated 17.10.2019 imposing the minor penalty of censure and the show cause notice for the same are set aside with liberty to the respondents to inquire into the allegation of alleged detention of Khurshid from the evening of 26.02.2019 onwards and other relevant issues and then if required to issue show cause notice to the petitioner under Rule 14(2) of the Rules of 1991 for further proceedings.

ORDER

The claim petition is, accordingly allowed. The impugned show cause notices and punishment orders and consequently appellate orders are also quashed and set aside. However, liberty is reserved to the respondents to proceed in the matter as above. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: JANUARY 28, 2022
DEHRADUN
KNP