

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

Present: Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO.40/NB/SB/2021**

Rohitash Singh, aged about 49 years, s/o Sri Bhoop Singh, presently posted as Senior Sub Inspector Police Station/ Kotwali Lalkuan, District Nainital. Permanent Resident Village Manudwakhera Tehsil Jaspur, District Udham Singh Nagar

.....**Petitioner**

**vs.**

1. State of Uttarakhand through Principal Secretary, Home Department, Dehradun.
2. Inspector General of Police Kumaon Region Nainital
3. Senior Superintendent of Police, Nainital, District Nainital

.....**Respondents**

Present: Sri N.K. Papnoi, Advocate, for the petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents

**JUDGMENT**

**DATED: 28<sup>TH</sup> JANUARY, 2022**

This claim petition has been filed seeking the following reliefs:

*“(i) To quash the impugned order 11.12.2020 and order dated 22.03.2021 along with its effect and operation and after calling the entire record.*

*(ii) To issue order or direction to expunge the adverse entry censure recorded in the service record of the applicant and grant all the service benefits or pass any other order direction which this Hon'ble Court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.*

*(iii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case"*

2. Brief facts, according to the claim petition, are as follows:

During the posting of the petitioner as S.H.O. (Station House Officer), Betalghat, District Nainital, respondent no. 3 directed the Addl. Superintendent of Police, Haldwani, District Nainital to hold enquiry on the complaint of Mr. Amir Tomar, Advocate, against the petitioner on two points. The first point was about not taking any action in the matter of illegal mining when Sub-Inspector Sadik Hussain had stopped 7-8 dumpers of M.L.A. on which the petitioner asked the Sub-Inspector not to take any action. The second point was about misbehaviour with Mr. Tribhuvan Singh, Village Pradhan and threatening him to handcuff and drag him to the police station.

The enquiry officer recommended for only warning to the petitioner in his inquiry report. In pursuant to the inquiry report, respondent no. 3 issued a show cause notice to the petitioner on 06.06.2020 and directed him to submit his reply within 15 days. In the show cause notice, respondent no. 3 mentioned the punishment of censure to the petitioner. This act was against the provision of law laid down by Hon'ble Apex Court in case of M.D. ECIL vs. B. Karunakaran and also in violation of the judgement and order of the Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015, Mahesh Chandra Gupta vs. State of Uttarakhand and others.

The petitioner submitted his reply but surprisingly the respondent authority in utter haste passed the impugned order awarding censure to the petitioner on 11.12.2020, which was the same as mentioned in the show cause notice. Against this order, a statutory appeal filed by the petitioner was also rejected by Appellate Authority *vide* its order dated 22.03.2021 in a cursory and stereotyped manner.

Hence, this claim petition.

3. Counter Affidavit has been filed on behalf of the respondents justifying the impugned orders.

4. Rejoinder Affidavit has been filed by the petitioner reiterating the correctness of the claim petition. It is further stated in the rejoinder affidavit that the respondents while passing the impugned punishment orders have not followed the procedure and the disciplinary authority while considering the show cause notice has only observed that since the petitioner has not given satisfactory reply to show cause hence the punishment orders is being passed; thus the observation of the disciplinary authority is running contrary to the various judgements of the Hon'ble Apex Court which provide that while passing the punishment order it is the duty of the disciplinary authority to give reasoning on the averments made by the delinquent in his reply to show cause. It is relevant to mention here that the appellate authority also ignored this fact while rejecting the statutory appeal of the petitioner.

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

6. Learned Counsel for the petitioner has, *inter alia*, argued that the respondent no. 3, before appointing the enquiry officer,

did not submit the charge sheet on the petitioner and straight away appointed the enquiry officer for enquiry/ charge. He, moreover, had already made up its mind to award the punishment of censure to the petitioner as the same has been mentioned in the show cause notice. He relied upon the judgement of Hon'ble Apex Court passed in the case of M.D. ECIL vs. B. Karunakaran and judgements of Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015 "Mahesh Chandra Gupta vs. State of Uttarakhand and others" and WPSS No. 192 of 2017 "Constable 51 AP Jogender Kumar vs. State of Uttarakhand and others".

7. Learned A.P.O. has argued that the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal Rules), 1991 (hereinafter referred as the 'Rules of 1991') have been adopted in the State of Uttarakhand and Rule 14(2) of these Rules is about the procedure to be followed in the case of minor punishments and this Rule reads as under:

*"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."*

According to the abovementioned Rule, punishment proposed is required to be mentioned in the show cause notice.

8. 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.”*

9. The Tribunal further observes that the judgement of the Hon'ble Apex Court in the case of M.D. ECIL vs. B. Karunakaran relied upon by the learned Counsel for the petitioner is about the case of major punishment where it is required that the disciplinary authority should provide a copy of the inquiry report to the delinquent and provide opportunity of giving representation/ reply on the same before it arrives at its conclusion with regard to the guilt or innocence of the employee and decides to impose penalty on the delinquent. The report of the inquiry officer as referred to in the above judgement of the Hon'ble Apex Court is after charge-sheet having been issued under disciplinary proceedings of major punishment and an inquiry officer having been appointed by the disciplinary authority to inquire into those charges.

10. In the instant case, there has been no contemplation of major punishment and the enquiry report of Addl. S.P. is of preliminary enquiry, which is a simple fact finding enquiry and not an enquiry under disciplinary proceedings for major punishment. The Tribunal, therefore, finds no fault in the show cause notice issued to the petitioner (copy Annexure: A4) wherein the proposed censure entry has also been mentioned

and the petitioner has been asked to submit written explanation against the facts found against him in the preliminary enquiry. A copy of the preliminary enquiry report has also been enclosed with the show cause notice.

11. Learned Counsel for the petitioner has also argued that the respondent no. 3 was not the appointing authority of the petitioner and thus he was not having the authority to award punishment to the petitioner under Section 23 of the Uttarakhand Police Act, 2007. The Tribunal observes that Section 23(2) of Uttarakhand Police Act, 2007 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 petitioner was a non-gazetted police officer subordinate to respondent no. 3, who was the Senior Superintendent of Police, District Nainital, and as such, he could award the punishment of censure to the petitioner, according to Section 23(2) of the Uttarakhand Police Act, 2007.

12. As mentioned in the rejoinder affidavit, learned Counsel for the petitioner has argued that in the impugned punishment order dated 11.12.2020, the disciplinary authority has only observed that since the petitioner has not given satisfactory reply to show cause notice, hence, the punishment order is being passed. It is contrary to various judgements of Hon’ble Apex Court, which provide that while passing punishment order, it is the duty of disciplinary authority to give reasoning on the averments made by the delinquent in his reply to show cause.

13. The Tribunal observes that, in the impugned order, the disciplinary authority has not mentioned what the petitioner has said in his explanation. It has just been written that whatever arguments/ facts have been stated in the explanation, they have only been stated with the objective of getting exonerated from this disciplinary proceeding, which are baseless and without substance, no benefit of which is in the favour of the petitioner in this disciplinary proceeding. The disciplinary authority, in this impugned order, has given certain arguments regarding issue of illegal mining and the audio recording of the discussion between the petitioner and S.I. Sadik Hussain about the said illegal mining, being made viral on the social media by the latter, tarnishing the image of the police, which can be deemed to be the reasoning given by the disciplinary authority on the averments made by the petitioner in his reply to the show cause notice on this point. However, as regards the second point, which was about the petitioner's threatening talk with Sri Tribhuvan Singh, village pradhan, nothing has been mentioned in the impugned order as to what was the reasoning/ finding of the disciplinary authority on the averments of the petitioner on that point. Still the proposed censure entry has been awarded as it was mentioned in the show cause notice, which includes this point as well.

14. The Tribunal thus finds that the reply of the petitioner to the show cause notice has not been dealt with properly and objectively by the disciplinary authority and on this ground the impugned order of punishment deserves to be quashed. Consequently, the appellate order also needs to be set aside. The disciplinary authority is at liberty to make an objective consideration of all the averments made by the petitioner in his reply to the show cause notice and pass a fresh speaking and reasoned order, in accordance with law.

**ORDER**

15. In the light of above observations, the claim petition is allowed and the impugned orders are set aside, with liberty as above.

No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

*DATED: 28<sup>TH</sup> JANUARY, 2022*  
*DEHRADUN*  
*RS*