

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

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

CLAIM PETITION NO.46/NB/SB/2020

Mohd. Younus, aged about 45 years, s/o Shri Safiq Ahmed, presently posted as Senior Sub Inspector, Police Station- Kotwali Mallital, Nainital, District Nainital.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Department of Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Senior Superintendent of Police, District Nainital.

.....Respondents

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

JUDGMENT

DATED: FEBRUARY 07, 2022

This claim petition has been filed seeking the following reliefs:

“(i) To quash the impugned punishment order dated 31.03.2020 passed by the Senior Superintendent of Police, Nainital, whereby the petitioner has been awarded censure entry (Annexure No. 1).

“(ii) To quash the impugned Appellate Order dated 27.07.2020 passed by the Inspector General of Police, Kumaon Range, Nainital, whereby the Departmental Appeal

filed by the claimant has been rejected and thereby affirmed the Punishment Order dated 31.03.2020 passed by the Senior Superintendent of Police, Nainital (Annexure No. 2)

(iii) To issue directions in the nature of mandamus commanding the directing the respondents to grant all consequential benefits.

(iv) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case. "

2. The claim petition briefly mentions the following:

When the petitioner was posted as Sub Inspector at Police Station Kaladhungi in the year 2018, an FIR No. 62 of 2018 was registered under Section 302 of the IPC and the investigation of the said FIR was handed over to the petitioner. The FIR was lodged on 23rd December 2018 in respect of an incident which took place on 30.11.2018 at around 22:05 hours. The FIR was lodged by one Sukmal Chand Jain, r/o District Meerut, Uttar Pradesh in respect of the incident which took place at Jangle Holiday Resort, Bailparav, Kaladungi. In FIR, Ashish Bansal and Smt. Barkha, who were also the residents of District Meerut, were named as suspects. In the FIR, it was alleged that the accused persons have killed the son of the complainant namely Shakun Jain. It was complained that Shakun Jain was married to Barkha Bansal in the year 2014 and it was stated that Barkha was a divorcee. The complaint further stated that his son Shakun had informed that he fears danger to his life from Barkha and her friend Ashish Bansal. On 29th November 2018 Shakun and Barkha went to Nainital for vacation and along with them Ashish Bansal and his family also went and they stayed at Jangle Holiday Resort Bailparav. In the night of 30th November 2018 at around 10:00 P.M., Shakun and Barkha were sitting in the Lawn of the Resort when on the direction of Barkha, Ashish Bansal fired on Shakun, who during medical treatment succumbed to injuries. The petitioner arrested the accused Ashish Bansal and produced him before the Civil Judge (Junior Division)/Judicial Magistrate, Haldwani on 7th March 2019 for taking remand under Section 304-A of the IPC and Section 30 of the Arms Act.

The learned Judicial Magistrate, however, came to the conclusion on the basis of the statement recorded under Section 161 of CrPC that the offence is not made out under Section 304-A of IPC; instead the same appears to be under Section 302 of IPC and Section 30 of the Arms Act and accordingly the remand order was passed under Section 302 of IPC. Subsequently, the investigation was transferred from the petitioner to Sub Inspector, Kashmir Singh, who completed the investigation and submitted a Charge-sheet on 7th October 2019 before the Competent Court against the accused Ashish Bansal under Section 304 of IPC read with Section 30 of the Arms Act. The Senior Superintendent of Police, Nainital instituted a Preliminary Inquiry against the petitioner by appointing Circle Officer, Ram Nagar, District Nainital as Inquiry Officer. The inquiry was to be made against the charge that the petitioner had tried to take the remand of the accused of FIR No. 62 of 2018 registered under Section 302 IPC initially, under Section 304 IPC and thereafter under Section 304-A of IPC, but the learned Court taking cognizance of the charge granted the remand under Section 302 of IPC.

After receiving the preliminary inquiry report dated 29.10.2019, the disciplinary authority/SSP, Nainital issued a show cause notice to the petitioner as to why he be not awarded censure entry for negligence and dereliction of duties and he was required to submit his reply to the show cause notice within 15 days. The petitioner submitted reply to the show cause notice. The disciplinary authority/SSP, Nainital *vide* impugned order dated 31.03.2020 rejected the reply given by the petitioner and ordered the proposed censure entry to be recorded in the Character Roll of the petitioner. Against the punishment order dated 31.03.2020, the petitioner preferred appeal before the Deputy Inspector General of Police, Kumaon Range, Nainital who rejected the appeal of the petitioner and confirmed the order of the disciplinary authority *vide* impugned order dated 27.07.2020.

Hence this petition.

3. Counter Affidavit has been filed on behalf of the respondents stating that when the petitioner was posted at Police Station, Kaladhungi then an First Information Report bearing No. 62/18 under section 302 IPC was registered and petitioner being investigating officer, during investigation converted the section 302 IPC to 304 IPC. The petitioner further tried to take remand of the accused under section 304-A IPC from the concerned Court but the concerned Court refused to grant remand under Section 304-A IPC and issued the remand order under Section 302 IPC and sent the accused in judicial custody. In the preliminary enquiry, it was found that the petitioner by misusing his power and position converted the offence of 302 IPC to 304-A IPC without any solid and reliable evidence. The preliminary enquiry officer also found that the petitioner had not enquired into the contents of the affidavit given by Barkha Jain (wife of deceased) during investigation and also did not take the bullet in his control which was recovered from the body of the deceased. The preliminary enquiry officer also found that the petitioner was careless during investigation and did not discharge his duties devotedly. Thus, the petitioner was found guilty of negligence/ carelessness and insensibility.

According to C.A., the contentions of the petitioner are misconceived and based on twisted facts and misrepresentation and hence are liable to be rejected and the claim petition is liable to be dismissed.

4. Though the petitioner's Counsel sought time to file Rejoinder Affidavit but the same has not been filed.

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

6. The contention of learned Counsel for the petitioner is that the departmental proceedings initiated against the petitioner are not sustainable inasmuch as the Punishment and Appeal Rules, 1991 have been framed in exercise of power under the provisions of Indian Police Act, 1861 and the said Act has been repealed by enactment of Uttarakhand Police Act, 2007 (hereinafter referred to as 'Act of 2007') and no Punishment and

Appeal Rules have been framed by the State under Section 87(1) of the Act of 2007. Further the punishment proposed against the petitioner has not been included under Section 23 of the Act of 2007. Responding to this, learned A.P.O. has replied that U.P. Police Officers of Subordinate Ranks (Punishment and Appeal Rules), 1991 (hereinafter referred to as the 'Rules of 1991') have been adopted in the State of Uttarakhand by Adaptation and Modification order, 2002. Further, 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. Section 23(2) of the Act of 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.”

It is clear from the above that punishment of censure is mentioned under Section 23(2) of the Act of 2007 in addition to having been mentioned in the Rules of 1991.

7. It has also been contended on behalf of the petitioner that the remand Court while granting the remand of the accused under Section 302 IPC did not indict the petitioner for seeking remand under Section 304-A IPC and that the preliminary enquiry report and the show cause notice nowhere allege that conversion of Section 302 IPC to Section 304-A IPC for taking remand was done by the petitioner with ulterior motive or to give undue benefit to the accused and that mere error in judgment cannot be a ground for holding disciplinary proceedings against the petitioner.

8. The Tribunal observes that remand order was sought by the petitioner under Section 304-A IPC and under Section 30 of the Arms Act.

The remand order states that on the basis of FIR, Statement under Section 161 CrPC, facts and circumstances and Police papers, prima-facie, the matter appears to be under Section 302 IPC and Section 30 of Arms Act. Subsequently, in the preliminary enquiry, it was found that petitioner converted the offence to Section 304-A of IPC without any solid evidence. The petitioner included the affidavit of Barkha Jain in the investigation but while recording her statement did not ask her about the facts mentioned in her affidavit while there were serious contradictions in the affidavit and the statement of Barkha Jain. Deceased, Shakun Jain was admitted in Fortis Hospital, Noida on 01.12.2018 where he was operated upon by the doctors and bullet was taken out of his chest. Shakun Jain died on 09.12.2018. The petitioner conducted the investigation in the matter upto 19.03.2019 but he did not take the statements of doctors of Fortis Hospital and did not even take possession of the bullet taken out during operation of the deceased which was an important evidence in the crime.

9. From the above, it is clear that though there was no indictment of the petitioner by the Remand Court or allegation of ulterior motive or of giving undue benefit to the accused against the petitioner, *prima-facie*, his gross negligence, carelessness and lack of devotion to duty, have been duly made out in the preliminary enquiry.

10. It has also been contended on behalf of the petitioner that the punishment order has been passed without following the principles of natural justice and that the show cause notice was issued by the disciplinary authority by way of formality only. No reason has been given to deny the legal grounds taken by the petitioner in his reply to show cause notice. The appeal of the petitioner against the punishment order has also been rejected on the ground that the disciplinary authority has proceeded in the matter as per law and after conclusion of the departmental enquiry, the petitioner has been awarded the punishment in which no procedural lapses were found and hence there is no need to change the punishment awarded to the petitioner.

11. The Tribunal finds that the disciplinary authority in the impugned order dated 31.03.2020 has given point-wise observations on the explanation/reply furnished by the petitioner to the show cause notice and then held the explanation/reply to be baseless and without force and thereafter, the proposed censure entry has been ordered to be recorded in the Character Roll of the petitioner. A perusal of the appellate order further reveals that disciplinary authority had obtained legal opinion on the reply/explanation of the petitioner from the Joint Director (Law), Prosecution Office, Nainital and after thorough examination of the preliminary enquiry, petitioner's reply to the show cause notice and legal opinion, has passed the final order.

12. The appellate authority has also, parawise, dealt with all the contentions made in the appeal of the petitioner and has found the appeal to have no force and therefore, rejected the same.

13. In view of the above, the Tribunal finds no reason to interfere with the impugned orders and the claim petition is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: FEBRUARY 07, 2022
DEHRADUN
KNP