

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

Present: Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 34/NB/SB/2020

ASI(M) Geeta Chauhan, aged about 40 years, w/o Sri Nandan Singh Chauhan, presently serving at Police Office, Pithoragarh, District Pithoragarh

.....**Petitioner**

vs.

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

.....**Respondents**

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

JUDGMENT

DATED: 10TH MARCH, 2022

This claim petition has been filed seeking the following reliefs:

“(i) To set aside the impugned order dated 18.04.2020 passed by respondent no. 2 and order dated 06.11.2019 passed by respondent no. 3.

(ii) To issue order or direction to expunge the censure entry recorded in the service record of the applicant and grant all the service benefits or pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iii) To award the cost of the petition in favour of the applicant."

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

The petitioner is discharging her duties as ASI (M) in Police Office, District Pithoragarh. For her alleged absence from duties on certain occasions, respondent no. 4 was appointed to conduct the enquiry against the petitioner. On the basis of enquiry report of respondent no. 4, respondent no. 3 issued a show cause notice to the petitioner on 30.10.2019, purportedly, in exercise of power under *proviso* to Rule 14 U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991.

In response to the show cause notice, the petitioner narrated entire facts and circumstances to prove her innocence and also enclosed the OPD receipts of Civil Hospital, Pithoragarh, whereby her doctor advised her rest on 26.09.2019, 27.09.2019 and 05.10.2019. However, respondent no. 3, without considering the reply of the petitioner, passed an order dated 06.11.2019 ordering censure entry to be inserted in the character roll of the petitioner. Petitioner's appeal against this order was also dismissed by respondent no. 2 *vide* order dated 18.04.2020. Hence, the claim petition.

3. Counter affidavit has been filed, on behalf of the respondents, stating that the petitioner was absent on 26.09.2019, 28.09.2019 and 05.10.2019, without any leave and permission. The petitioner never informed the authorities about her ill health and absence. For this act, the petitioner was suspended by order no. 104/2019 dated 07.10.2019 with

immediate effect and the suspension was revoked on 12.10.2019. The enquiry was conducted by the Circle Officer, Pithoragarh against the unauthorized absence of the petitioner and in the enquiry, the enquiry officer found her guilty for the unauthorized absence. In disciplined department like police, the unauthorized absence of the petitioner shows her negligence and indiscipline.

For illegal and unauthorized absence, the petitioner was served show cause notice for censure by the Disciplinary authority under the provisions of Uttarakhand Subordinate Police Officers (Punishment and Appeal) Rules 1991 (Adoption and modification order- 2002) (hereinafter referred to as 'Rules of 1991').

After considering the reply of the petitioner to the show cause notice, the Superintendent of Police awarded the punishment of censure to her *vide* order dated 06.11.2019. Against this order, the petitioner preferred statutory appeal before the Appellate Authority, which was rejected *vide* the order of Appellate Authority dated 18.04.2019 after consideration of the grounds of the appeal and record. The Appellate Authority found that the Disciplinary authority has adopted the due process and after giving opportunity to the petitioner, the punishment order has been passed; thus the punishment order is just and proper. The counter affidavit states that the claim petition is devoid of merits and the claim petition should be dismissed with costs.

4. Rejoinder affidavit has been filed on behalf of the petitioner, mainly stating that the very initiation of the entire disciplinary proceedings from the stage of charge sheet is bad and the entire act including the proposed notice is illegal and not tenable in the eyes of law. The departmental enquiry is not an empty formality and the enquiry officer as well as disciplinary authority are exercising quasi judicial function and

are required to follow the principle of natural justice and fairness in every act and in the instant case, the entire exercise is against the principle of natural justice. The averments of the claim petition are reiterated in the rejoinder affidavit.

5. I have heard the learned Counsel for the parties and perused the record.

6. The following contentions have been raised on behalf of the petitioner:

- a) The enquiry officer should conclude the enquiry in unbiased manner and cannot make recommendation for a particular punishment to be imposed on the delinquent and cannot make such comments, which go against the delinquent. In the present case, the enquiry officer found the petitioner guilty of the charges and thereafter submitted his enquiry report.
- b) In the impugned punishment order dated 06.11.2019, no reasons have been indicated for rejecting the averments of the reply of the petitioner to the show cause notice.
- c) The petitioner had made several legal and factual submissions in her appeal but the Appellate Authority did not consider them and passed the appellate order dated 18.04.2020 with absolute non-application of mind. The Hon'ble Apex Court in the case of "Deokinandan Sharma vs. Union of India & others" reported in 2001(5) SCC 340, has held that the appellate authority is duty bound to pass reasoned order dealing with the appellant's contentions. In the case of "State of Uttaranchal & others vs. Kharak Singh" reported in 2008(8) SCC, the Hon'ble Apex Court has held that the appellate authority is required

to support his decision with reference to enquiry records.

- d) Respondent No. 3, in his show cause notice, mentioned the punishment. This act of respondent no. 3 shows pre-mindset condition that he had made up his mind to award the punishment of censure to the petitioner. This act of disciplinary authority is against the provisions of law laid down by the Hon'ble Apex Court in the case of M.D. ECIL vs. B. Karunakaran.

7. The Tribunal observes that in the preliminary enquiry, conducted by respondent no. 4, report of which has been filed as Annexure: A3 to the claim petition, statements of the petitioner and two others have been taken. It has been found that if the petitioner was unwell then, as per rules, she should have informed about the same to the in-charge and should have gone after taking leave, which was not done in the present case, which shows her negligence towards her duties and she has been found guilty of unauthorized absence without taking leave and permission on 26.09.2019, 28.09.2019 and 05.10.2019. In this enquiry report, no punishment has been recommended. The Tribunal observes that it was just a preliminary enquiry and the enquiry officer was duty bound to give a finding about the allegations made against the petitioner.

It is relevant to quote the following extract of judgement dated 25.02.2021 in Writ Petition (S/B) No. 86 of 2021, Nand Kishore Gwari vs. State of Uttarakhand and others.

“7. Needless to say, the function of a preliminary inquiry is to discover the facts with regard to the allegations made against the delinquent officer. The purpose of a preliminary inquiry is not to adjudicate upon the guilt, or innocence of the alleged delinquent officer. Therefore, although the language used in the preliminary inquiry report may not be correct one, but nonetheless the very purpose of holding a preliminary inquiry is

well-known to the department. Although, it is true that in the preliminary inquiry uses the words that “Sub-Inspector Nand Kishor Gaur is found to be guilty”, but the use of these words is unimportant. For, what the preliminary inquiry report would indicate is that the allegations made against the petitioner ‘are found to be true’.”

8. The Tribunal further observes that Rule 14(2) of the Rules of 1991 is about the procedure to be followed in case of minor punishment 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.

9. There is nothing wrong in proposing the draft of censure entry in the show cause notice as has been held in para 8 of the abovementioned judgement of Hon’ble High Court of Uttarakhand, which is excerpted 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.”

10. The Tribunal also observes that, in her reply to the show cause notice, the petitioner has, *inter alia*, stated that it is her first mistake, which may kindly be forgiven; if it is not possible to forgive then for this small mistake, she should be given leave or

leave without pay for this period; petitioner shall not repeat such mistake in future; considering her future, she may kindly be not punished with the punishment of censure.

In her reply, the petitioner has stated that, on 28.09.2019, she was feeling giddy and was having severe headache due to which she could go to office at 12:30 hrs and returned from office after 5:00 PM and on 05.09.2019, she could not be present in the office due to ill health for which she had informed on telephone. However, in the preliminary enquiry, the petitioner stated that on 26.09.2019 and 28.09.2019, she could not go to duty due to ill-health and on 05.10.2019, she was having headache due to which, she could go to office at 12:30 hrs and put her signature in the attendance register. The signatures were made by her after 'A' for absence was entered against her name in the attendance register. Thus, her statement in the reply to show cause notice is contradictory to her statement made before the enquiry officer that she came to office at 12:30 hrs on 28.09.2019.

11. The Tribunal finds that, in the impugned punishment order, the disciplinary authority has considered the explanation of the petitioner to the show cause notice and held that her absence from the office without leave and permission shows her gross negligence towards her duties and indiscipline and accordingly her explanation has not been accepted and the proposed censure entry in the show cause notice has been ordered to be recorded in her character roll. The Tribunal also observes that the petitioner had admitted her guilt with regard to the alleged misconduct and once the guilt is admitted, the disciplinary authority was even otherwise not required to pass an elaborate speaking order.

12. The Tribunal also observes that the Appellate Authority has considered all the points and dealt with all the points raised by the petitioner in her appeal and has passed a reasoned

order dealing with the contentions of the petitioner. Para 4.10 of the claim petition states that several legal and factual submissions were made by the petitioner in her appeal (copy Annexure: A6) to the claim petition. However, a perusal of this annexure does not show any specific legal point to have been raised in the appeal.

13. 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.

14. In the instant case, there has been no contemplation of major punishment and the enquiry report of Dy. 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.

15. In her reply to the show cause notice as well as in her appeal, the petitioner has stated that the punishment of censure

shall lead to adverse effect on her future and that she has been punished with a big punishment. The Tribunal, however, finds that the censure entry is the smallest minor penalty, which can be imposed on the delinquent, according to the Rules of 1991. Other petty punishments prescribed in the Rules of 1991 are only for constables and are not applicable to persons working as Assistant Sub-Inspector.

16. In view of the above, the Tribunal holds that there is no force in the claim petition and the same is hereby dismissed.

In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: 10th March, 2022
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