

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

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

CLAIM PETITION NO. 63/NB/SB/2020

Saroj Kamboj, w/o Sri Prem Chand, r/o Subhash Nagar, Karanprayag, P.S.
Karanprayag, District Chamoli.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Division, Nainital.
4. Superintendent of Police, Udham Singh Nagar.

.....Respondents

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

JUDGMENT

DATED: MARCH 21, 2022

This claim petition has been filed seeking the following reliefs:

"a) To issue an order or direction to quash the impugned orders dated 26.02.2020 (Annexures No. A-1 to the claim petition) and appellate orders dated 26.07.2020 (Annexure No. A-2).

b) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

c) To award the cost of the petition to the petitioner."

2. Brief facts as mentioned in the claim petition are as follows:

The petitioner was posted as Sub-Inspector at Police Station, Bazpur from 01.02.2019 to 19.08.2019, under the subordination of Respondents No. 1, 2, 3 & 4. She is posted at GRP Police Station, Kathgodam under S.P.,

Government Railway Police (GRP), Haridwar since 22.08.2019, as Chowki Incharge, Kashipur. An investigation of case registered on FIR No. 420/18 u/s 376/420/504/506 IPC was handed over to the petitioner on 05.02.2019. The petitioner investigated the case and attempted to arrest the accused and pursued the complainant to get her statement recorded under section 164 CrPC before the Magistrate in May, 2019. In this period, the petitioner was working on 29 investigations of cases of heinous crimes and was also deputed in law and order duty, VIP duty work and Chaiti Mela duty at Kashipur.

A preliminary enquiry was conducted against the petitioner following which, show cause notice was issued to the petitioner stating that the petitioner has delayed the investigation of FIR No. 420/2018 and has shown negligence and unwillingness and acted against the rules. The petitioner sent her reply by post to the above show cause notice. Without considering her reply and without appreciating the actual fact and legal provisions of the case, the respondent no. 4 passed the impugned order dated 26.02.2020 (Annexure No. 1) for recording a 'censure entry' in her Character Roll. The appeal of the petitioner against this order was also cursorily rejected by the respondent no. 3 *vide* his order dated 26.07.2020 (Annexure No. 2).

Hence this petition.

3. Counter Affidavit has been filed on behalf of the respondents and subsequently Rejoinder Affidavit has also been filed on behalf of the petitioner.

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

5. Learned Counsel for the petitioner has raised the following legal issues:

(i) The impugned orders are in violation of the provisions of the Uttarakhand Police Act, 2007 as they have been passed under the

provisions of U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the Rules of 1991) which were repealed vide section 86 of the Uttarakhand Police Act, 2007.

(ii) At the time of passing of the punishment order, the petitioner was posted as Police Sub Inspector, GRP under subordination of S.P., GRP, Haridwar and not under the subordination of Respondent no. 4. Therefore, respondent no. 4 had no authority to award punishment to the petitioner under section 23 of the Uttarakhand Police Act, 2007.

(ii) Recording of 'censure entry' in the Character Roll cannot be termed as punishment under the Uttarakhand Police Act, 2007 and Rules of 1991.

(iv) The incident and matter of enquiry relate to the year 2019 but respondent no. 4 ordered to record 'censure entry' in the Character Roll of the petitioner in 2020.

6. Learned A.P.O. has argued that Section 86 of Police Act 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. This 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 under the subordination of Respondent no. 4 and therefore, Respondent no. 4 had the authority to award her 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.

7. The Tribunal finds force in the argument of learned Counsel for the petitioner that the censure entry, if any were to be ordered to be recorded in Character Roll of the petitioner, should have been for the year 2019 and not for the year 2020.

8. Observing that the impugned punishment order dated 26.02.2020 states that the written explanation of the petitioner to the show cause notice has not been received till that time while the petitioner has filed a reply dated 10.01.2020 to the show cause notice (Annexure No. 5 to the claim petition), the Tribunal asked learned Counsel for the parties to submit clarification on this point. Learned A.P.O. submitted that the explanation of the petitioner to the show cause notice is not available in the file of the department. On the other hand, learned Counsel for the petitioner asserted that the same has been acknowledged in the Counter Affidavit as well as in the appellate order.

9. On perusal of the appellate order, it is revealed that the appellate authority has written in this order that the punishment order has been issued (by the disciplinary authority) after thorough examination of the explanation/reply of the appellant (petitioner) to the show cause notice and not finding the same satisfactory. While on the other hand, respondent no. 4 as disciplinary authority writes in the punishment order that 15 days' time was given to submit written explanation to the show cause notice but even after passage of more time, the written explanation has not been submitted, which makes it clear that the petitioner has nothing to say in her defence and that the proposed punishment of 'censure' in the show cause notice is acceptable to her and in the absence of her explanation, it is not proper to keep this disciplinary proceeding pending further.

10. In view of the above contradictory position in the impugned orders, both these orders deserve to be quashed and set aside and

respondent no. 4 is required to pass a fresh order after thorough consideration of the explanation of the petitioner (Annexure No. 5) along with other relevant material.

11. In view of the above, the impugned orders (Annexures No. 1 & 2) are hereby set aside and the matter is remitted to the respondent no. 4 for passing fresh, speaking and reasoned order in accordance with law. Needless to say that if some punishment is imposed on the petitioner *vide* such order, she will have the right to appeal against the same before the appellate authority as per rules. The claim petition is accordingly disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: MARCH 21, 2022
DEHRADUN.
KNP