

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

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

CLAIM PETITION NO. 44/NB/SB/2021

Const. 824 C.P. Chandra Shekhar Joshi, aged about 34 years, s/o Sri Lalit Mohan Joshi, presently posted at Police Station, Pantnagar, District Udham Singh Nagar.

.....Petitioner

vs.

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

.....Respondents

Present: Sri Dinesh Gahtori &
Sri Naveen Chandra Tiwari, Advocates, for the petitioner.
Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: APRIL 21, 2022

This claim petition was filed on 05.07.2021 seeking the following reliefs:

“1) To set aside inquiry report dated 10.04.2020, the orders dated 06.11.2020 passed by S.S.P., Udham Singh Nagar and order dated 31.05.2021 passed by Inspector General of Police, Kumaon Range, Nainital.

2) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the facts and circumstances of the case.

3) To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.”

2. Consequently, petitioner filed an amendment application dated 15.09.2021 vide which he also sought setting aside of the order dated

28.06.2021, according to which, petitioner was excluded from the selection process of Head Constable, Civil Police/Intelligence, as his appeal against the minor punishment awarded to him had been rejected by the Inspector General of Police, Kumaon Range, Nainital.

3. The Tribunal, on 27.07.2021 had passed the following orders on the interim relief sought by the petitioner:

“An interim relief has been prayed for by the petitioner to stay the effect and operation of the order dated 06.11.2020 (Annexure: A2), passed by S.S.P., Udham Singh Nagar/Disciplinary Authority, by which he was awarded censure entry. He filed departmental appeal against the same. The same was dismissed by Inspector General of Police, Kumaon Range, Nainital *vide* order dated 31.05.2021 (Annexure: A3). Aggrieved with the same, he filed Claim Petition No. 44/NB/SB/2021, in which interim relief has been prayed for staying the effect and operation of the above noted orders.

2. In claim petition No. 44/NB/SB/2021, petitioner has sought, *inter-alia*, quashing of inquiry report dated 10.04.2020 (Annexure: A1), order dated 06.11.2020 (Annexure: A2) passed by S.S.P., Udham Singh Nagar/Disciplinary Authority and order dated 31.05.2021 (Annexure: A3), passed by Inspector General of Police, Kumaon Range/Appellate Authority.

3.1 The facts giving rise to the claim petition, in which present interim relief has been sought, are as follows:

3.2 According to the petitioner, he was appointed as Constable in the year 2007 and was posted at various places in District Udham Singh Nagar. On 23.01.2020, one Constable 189 CP Chandra Shekhar Bhatt was posted from 8 PM SL. 26 (23-01-2020) to 8AM (of 24.01.2020) at police check post SIDCUL. Petitioner was posted at police check post, SIDCUL on 23.01.2020 from 8 AM to 8 PM. These facts regarding petitioner (Sri Chandra Shekhar Joshi) and Sri Chandra Shekhar Bhatt were recorded in the G.D. at Sl. 9, 18 and 26 of 23.01.2020. In the G.D. of 24.01.2020, the petitioner was relieved by Constable Ganesh Singh at 6 PM. Meaning thereby, on 23.01.2020, the petitioner was assigned duty from 8 AM to 8 PM and on 24.01.2020, he was assigned duty from 8 AM to 8 PM.

3.3 The petitioner was served a show cause notice by respondent No. 3 on 13.08.2020 alleging that while on duty on 23/24.01.2020, at police check post, SIDCUL, P.S. Pantnagar, a call was received by Dial 112 regarding a quarrel near Parle Chowk, which was informed by Dial 112 employees to police check post, SIDCUL. This information was recorded by the petitioner in G.D. dated 24.01.2020 at 12:10 AM. It is submitted that on 24.01.2020, the petitioner resumed charge of duty at 8 AM, so it was not possible for the petitioner to record the incident at 12:10 AM of 24.01.2020.

3.4 Petitioner submitted his explanation on 24.01.2020 at 8AM, denying the charges levelled against him. Petitioner stated that when he resumed duty, he was informed by Sri Chandra Shekhar Bhatt about the incident. He then, informed the incident to Chowki-in-Charge. Since petitioner was not on duty at the time of incident, he therefore, was wrongly charged. Sri Chandra Shekhar Bhatt was on duty at the relevant time, and therefore, he was responsible for the negligence. It appears that

due to similarity in the names of Sri Chandra Shekhar Bhatt and present petitioner (Sri Chandra Shekhar Joshi), the petitioner has wrongly been charged.

3.5 Preliminary inquiry was conducted by Additional S.P., Udham Singh Nagar, who submitted his report on 10.04.2020 to the respondent No. 3. In his report dated 10.04.2020, the statement of Constable Chandra Shekhar Bhatt was also recorded, who admitted the fact that at the time of incident he was on duty. The petitioner was also called by the inquiry officer and his statement was also recorded.

3.6 An incident took place on 24.01.2020, at Parle Chowk, within the jurisdiction of Police Chowki, SIDCUL. Constable Chandra Shekhar Bhatt was on supervisory duty. Constable Chandra Shekhar Joshi was a G.D. writer. They received the information about the incident. They passed on such information to Constable Narendra Singh Bisht and Constable Sunil Kumar, who were doing duty on Cheeta Mobile. They did not try to make a search for injured Ajay Singh. Instead, they scolded the person who assaulted the victim. Accused was set free, after admonition, at their own level, without informing superior police officers. The next morning, dead body of the victim was found near Parle Chowk. Police officials, who were doing duty on Cheeta Mobile, removed dead body from the place of incident, and took the same to district hospital, where the victim was declared 'brought dead'. Dead body was taken to mortuary. Such a serious incident was not brought to the notice of senior police officers.

3.7 It is the submission of learned Counsel for the petitioner that petitioner submitted his explanation on 24.01.2020 at 8 AM that when he resumed his duty, he was informed by Sri Chandra Shekhar Bhatt about the incident. Petitioner informed about the incident to Chowki-in-Charge. It is empathetically submitted by learned Counsel for the petitioner that petitioner was not on duty at the time of incident and therefore, petitioner was wrongly charged. Petitioner was not negligent in his duties. Learned Counsel for the petitioner has made an attempt to project the story that the petitioner has been held guilty under confusion, inasmuch as, a Constable with almost similar name, Sri Chandra Shekhar Bhatt was on duty, and not the petitioner, Sri Chandra Shekhar Joshi. Sri Chandra Shekhar Bhatt, according to learned Counsel for the petitioner, has admitted that fact that he was on duty at the time of incident.

3.8 Learned A.P.O., on the other hand, drew attention of the Tribunal at page No. 34 of the claim petition to argue that not only the petitioner, Chandra Shekhar Joshi, but Chandra Shekhar Bhatt and others were on duty, who 'settled' the dispute at their own level without informing the higher officers. The petitioner was on duty when the incident took place.

4. In Para 4.8 of the claim petition, petitioner has mentioned that there is no provision for awarding 'censure entry' in Uttarakhand Police Act, 2007. Learned A.P.O. replied that since the Rules have not yet been framed under the Uttarakhand Police Act, 2007, therefore, the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, will apply, in which, provision for awarding censure entry, as minor penalty exists. Even in Uttarakhand Police Act, 2007, there exists a penalty of 'censure'. Since the Rules under the Uttarakhand Police Act, 2007, have not been framed, therefore, Rules of 1991 will be applicable.

5. It is also submitted on behalf of the petitioner that since 'censure entry' entails 'civil consequences', therefore, it does not fall under minor

punishment. In all humility, this Tribunal is unable to subscribe to such view of learned Counsel for the petitioner, inasmuch as, censure entry finds place as 'minor punishment' in the Rules of 1991.

6. 'Censure entry' has been awarded to the petitioner for 'misconduct'. What is misconduct? The same finds mention in Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002, as below:

“3(1) Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;

3(2) Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behaviour and conduct which may be in force.”

[Emphasis supplied]

7. The word 'devotion', may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

8. Discipline is the foundation of every orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public.

9. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and at all times, conduct himself in accordance with specific or implied order of Government. It is duty of the Govt. servant to be loyal, diligent, faithful and obedient.

10. The terms 'misconduct' or 'misbehaviour' have not been defined in any of the Conduct Rules or Civil Services Rules. The dictionary meaning of the word 'misconduct' is nothing but bad management, malfeasance or culpable neglect of an official in regard to his office. In short, it can be said that misconduct is nothing but a violation of definite law, a forbidden act. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.

11. The word 'misconduct' covers any conduct, which, in any way, renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. The term 'misconduct' usually implies an act done willfully with a wrong intention. So dereliction of or deviation from duty cannot be excused.

12. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behaviour and conduct which may be in force.

13. It is a case of minor penalty, in which the procedure prescribed under sub- rule (2) of Rule 14 of the Rules of 1991 has been followed. The said sub-rule is being extracted herein below for convenience:

“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.”

[Emphasis supplied]

14. Other grounds have also been taken by the petitioner in his claim petition, but since the Tribunal is considering only interim relief at this stage, therefore, it is not required to go into merits of claim petition in detail, as of now.

15. *Prima facie*, a case of ‘misconduct’, has been made out against the petitioner. He has been awarded ‘censure entry’, which entails civil consequences. ‘Standard of proof’ in departmental proceedings is ‘preponderance of probability’ and not ‘proof beyond reasonable doubt’. Scope of interference in judicial review is very limited. At present, there appears to be no reason as to why senior police officers would have held the delinquent constable guilty of misconduct, like this, without rhyme or reason. Every Govt. servant is a public servant 24x7. It was the collective responsibility of all the police personnel, who were posted at Police Check post SIDCUL, Pant Nagar, Udham Singh Nagar to prevent the crime and bring serious incident to the notice of their superiors.

16. Since, *prima facie*, a case of ‘misconduct’ has been made out against the petitioner, therefore, this Tribunal is unable to grant him the desired interim relief. Interim relief is, therefore, denied to the petitioner.

17. Let copies of this order be supplied to learned Counsel for the petitioner and learned A.P.O., within 48 hrs.”

4. The above order narrates the facts giving rise to the claim petition and also the Tribunal’s observations on certain legal points raised by the petitioner.

5. Page no. 34 of the claim petition as mentioned in the above order, is the concluding page of the preliminary inquiry report of Sri Pramod Kumar, Additional S.P., Crime/Traffic, Udham Singh Nagar, submitted to the S.S.P., Udham Singh Nagar, on the basis of which show cause notice was issued to the petitioner and consequently, minor punishment has been imposed upon him. During this preliminary inquiry, Additional S.P., Crime has also taken statement of the petitioner wherein, he has stated that report No. 2, time 00:10 in the night of 23/24.01.2020 in the General Diary (G.D.) regarding the incident is in his handwriting. The report no. 4, time 03:05 and further report no. 9, time 07:52 have also been entered in the G.D. by him. On this basis, the inquiry officer has held the petitioner to have received the knowledge of

the incident in the night itself. Alongwith others, he has also been found guilty of not informing senior officers about the serious incident and making efforts to dispose of the matter their own level.

6. I have perused Counter Affidavit and Rejoinder Affidavit filed by the respondents and petitioner respectively and heard learned Counsel for the parties.

7. In his explanation to the show cause notice, the petitioner has contended that he was not on duty during night between 23/24.01.2020 but the same has not been accepted by the respondent no. 3 in view of the G.D. entries made in the handwriting of the petitioner, as mentioned above while passing the impugned punishment order dated 06.11.2020. The Appellate Authority has also upheld the order passed by the respondent no. 3. Subsequently, the petitioner has also sent a letter dated 05.06.2021 (Annexure No. 8 to the claim petition) to the Director General of Police, in which it has been again stated that he was not on duty in the night and in the statements of Constables, Narendra Singh Bisht, Sunil Kumar and Chandra Shekhar Bhatt also, he has not been stated to be on duty in the night. He had told all the details to the *Peshkar* of the Preliminary Inquiry Officer, who was recording the statements. But the *Peshkar* told him that the fault is of the three other Constables and he has no role in this. He only has to certify whether the G.D. has been written in his handwriting or not. He was not asked as to why the senior officers were not informed.

8. In the Rejoinder Affidavit, copy of the inquiry done, pursuant to the above letter and the grievance made by the petitioner before the Uttarakhand Police Grievance Redressal Cell, which has been obtained by the petitioner under RTI Act, has been filed as Annexure No. RA-1 to the R.A. This inquiry report is of July 2021 by S.P. Crime, Udham Singh Nagar which holds that the petitioner's duty on 23.01.2020 was from 08:00 A.M. to 8:00 P.M., according to the duty Register and he has also written the G.D. on that date till 11:00 P.M. After 11:00 P.M. till the closure of recording, the G.D. has been written in the handwriting of Constable, Ganesh Singh, whose statement has not been recorded in the preliminary inquiry. It is further held that the

petitioner, after coming to the office of the Police Post at 8:00 AM on 24.01.2020, made entries in the G.D. from night time 00:05 onwards from *Yaddasht* Register to serialize the recording of official work. This report of S.P. Crime also states that about the incident, which took place in the night of 23/24.01.2020, the responsibility to inform the Chowki Incharge was of Constables, Chandra Shekhar Bhatt, Narendra Singh Bisht and Sunil Kumar. Thus, this inquiry report of S.P., Crime upholds the version of the petitioner that he was not on duty in the night of 23/24.01.2020 and he came to know about the incident only after coming to the office at 8:00 AM on 24.01.2020.

9. On the basis of the above, the very imputation, on the basis of which the show cause notice and further minor punishment have been given to the petitioner is not sustainable. Therefore, the impugned punishment order dated 06.11.2020 and consequently, appellate order dated 31.05.2021 are set aside. The order dated 28.06.2021 (Annexure: 1 to the amendment application) by which petitioner has been excluded from the selection process of Head Constable (Civil Police/Intelligence) is also rendered void.

10. The claim petition is, accordingly disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: APRIL 21, 2022
DEHRADUN.
KNP