

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 73/NB/DB/2021

Constable 124 (Civil Police) Kapil Kumar, aged about 41 years, s/o Sri Sher Singh, r/o Punjabi Colony, Jaspur, District Udham Singh Nagar (Uttarakhand).

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Secretariat, Dehradun.
2. Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, Udham Singh Nagar (Rudrapur).

.....Respondents.

Present: Sri Naddim Uddin & Asif Ali, Advocates, for the Petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 27, 2022

Per: Sri Rajeev Gupta, Vice Chairman (A)

[The claim petition has been filed in Hindi and necessary translations have been made by the court in this order]

This claim petition has been filed seeking the following reliefs:

- (a) *The impugned punishment order dated 06.02.2020 (Annexure No. 1 to the claim petition) and appellate authority's order dated 01.03.2021 (Annexure No. 2 to the claim petition) be quashed and set aside and declaring the same illegal and void, respondents be directed to expunge the punishment given to the petitioner from his Character Roll and other records.*
- (b) *The salary and allowances of the suspension period and all consequential benefits like releasing of withheld pay increment and the arrears of pay and other admissible service benefits be provided to the petitioner.*

- (c) *Other relief which the Hon'ble Tribunal made deem fit according to the circumstances of the case.*
- (d) *The Cost of the petition be ordered to be given to the petitioner.*

2. The brief facts according to the claim petition are as below:

The petitioner was recruited on the post of Constable in the Uttarakhand Police in the year 2001 and after training, his first posting was done under the Superintendent of Police, Pithoragarh in Pithoragarh District. Thereafter, he has been transferred to District Udham Singh Nagar, where he has been posted till the date of this claim petition. In the year 2017, when the petitioner was posted in Police Station, Kashipur, a complaint was made against the petitioner that on 23.09.2017, one Aaryan alias Ajeet Kumar s/o Bahadur Singh was brought to Thana Jaspur for inquiry in certain matter and to get him released from the Jaspur police/save him from the case, the petitioner demanded Rs. 1 lakh and after getting a bribe of Rs. 50,000/- went without permission outside his work area to police station, Jaspur.

A complaint was made to Deputy S.P., Kashipur on phone by the ruling party leader, Khilendra Chaudhary, on which Deputy S.P. sent senior Sub-Inspector to the resort of Sri Khilendra Chaudhary to get written complaint in the name Sri Bahadur Singh and sent report against the petitioner to respondent no. 3, on which respondent no. 3 illegally suspended the petitioner and ordered Additional S.P., Kashipur for preliminary inquiry, who without evidence of independent witnesses and considering the version of the petitioner, gave the finding that the petitioner was guilty.

Respondent no. 3 ordered for disciplinary proceedings to be conducted by Smt. Kamlesh Upadhyay, Additional Superintendent of Police, Crime, district Udham Singh Nagar. After her transfer, Sri Pramod Kumar, Additional Superintendent of Police, Crime, District Udham Singh Nagar was asked to conduct the disciplinary proceedings. Sri Pramod Kumar, Addl. S.P., Crime held the petitioner guilty of getting a bribe of Rs. 50,000/- and submitted his findings to respondent no. 3,

in which, he illegally recommended the dismissal of the petitioner from police force. Respondent no. 3 without recording reasons, accepted such findings and gave show cause notice to the petitioner for punishment of dismissal.

The petitioner replied to the show cause notice, stating legal principles and the grounds of the illegality of the departmental proceedings, findings and notice. Subsequently, the petitioner was punished with reversion to the minimum pay scale of constable for three years *vide* impugned order dated 06.02.2020 (Annexure No. 1 to the claim petition). His appeal against the same was initially not accepted by the respondent no. 2 holding the same as time barred. The petitioner had to approach the Hon'ble High Court. The Hon'ble High Court *vide* order dated 20.11.2020, directed the respondent no. 2 to dispose of the appeal on merits within four weeks. The respondent no. 2 without impartially considering the facts and grounds of the appeal, rejected the same *vide* impugned order dated 01.03.2021 (Annexure no. 2 to the claim petition).

Hence the claim petition.

3. Counter Affidavit has been filed on behalf of the respondents and Rejoinder Affidavit has been filed on behalf of the petitioner.
4. We have heard learned Counsel for the parties and perused the record. Written arguments have also been filed on behalf of the petitioner.
5. The petitioner has made many legal averments in the claim petition, which have also been made in the reply to the show cause notice sent to the respondent no. 3 as well as in the appeal preferred by the petitioner against the punishment order before respondent no. 2. Respondents no. 3 & 2 respectively have given reasons for not accepting the same in the punishment order and appellate order respectively. We are not reproducing the same as they are already part of the record.

6. The Tribunal observes two major flaws in the disciplinary proceedings which are as below:

- i. In the punishment order (Annexure No. 1), it has been mentioned that the petitioner has written in para 1 of his explanation to the show cause notice that this notice is against law, baseless, based on wrong facts and liable to be rejected. The impugned order states that this statement of the petitioner is accepted (*Sweekaar Hai*). It appears to have been written by mistake. It should have been written as not accepted (*Asweekaar hai*) as the same is in tune with further parts of this order. If such statement of the petitioner was acceptable then there was no cause for any punishment to be imposed upon the petitioner. Respondent no. 3 should have gone through the typed order carefully before signing the same.
- ii. During the disciplinary inquiry, the petitioner requested for examination of Sri Rajeev Chauhan, in whose handwriting the complaint letter was given against the petitioner and the inquiry officer agreed to the same. The petitioner also requested for examination of the following documents in the disciplinary proceedings:
 - (a) The G.D. of 23.09.2017 of Police Station, Jaspur, to verify the arrest of so called Aaryan or of bringing him to the police station.
 - (b) The relevant records available in Police Station, Jaspur, to verify whether the said Aaryan was minor.
 - (c) G.D. of 23.09.2017 of Police Station, Jaspur, to verify the genuineness of the charge of the custody of the so called Aaryan having been given to the petitioner.
 - (d) Related records of Police Station, Jaspur, to verify the letters given by the Deputy S.P. to Incharge Inspector for inquiry into the complaint of the matter and the records related to action on the same.

- (e) The G.D. of Police Station, Kashipur, to verify moving out and return of the petitioner on that day.
- (f) Record relating to the action on the crime of the demand of so called bribe by the petitioner.

7. This request was made to Smt. Kamlesh Upadhyay, the then inquiry officer, but neither she nor the successor inquiry officer Sri Pramod Kumar, who has given the findings, have mentioned about the examination of these documents nor recorded any reasons why examination of these documents was not necessary/relevant to the case in hand. Sri Pramod Kumar has recorded the statement of the petitioner on 27.02.2019 in which he has said that already the prosecution and defence proceedings have been completed in the matter and now no oral or documentary evidence is to be produced by him.

8. The Tribunal feels that in the disciplinary proceedings for major punishment, it was necessary for the inquiry officer to have either examined the documents, as requested by the petitioner or to have given cogent reasons for not accepting his request. Even if the petitioner has subsequently stated before the successor inquiry officer that no further documentary evidence is to be produced, the inquiry officer should have, on his own, examined these documents or recorded cogent reasons for not examining the same.

9. In his explanation to the show cause notice, the petitioner has *inter-alia* stated in para 12 that the disciplinary inquiry officer has not considered the documentary evidence mentioned by the petitioner. The disciplinary authority (respondent no.3) should have taken care to examine such documentary evidence at his level before passing the impugned order (Annexure: A1) or given cogent reasons for not considering the same before finalizing the disciplinary proceedings.

10. On the basis of the above lacuna alone, the matter needs to be remitted back to the disciplinary authority (respondent no. 3) for

consideration of the matter afresh after examination of the concerned documents and if they are not relevant to the proceedings, then to record reasons for the same. The disciplinary authority may also give an opportunity of personal hearing to the petitioner before finalizing the disciplinary proceedings. The disciplinary authority may also keep in mind that during the disciplinary inquiry, most of the witnesses have gone against the statements made by them during preliminary inquiry. The official respondents' version, which was based on the complaint made by Bahadur Singh cannot be deemed to be sufficient evidence against the petitioner, as Bahadur Singh himself has changed his statement. The disciplinary authority may also consider gathering additional evidence to arrive at the truth of the matter. The Tribunal simultaneously holds that standard of proof required in disciplinary proceedings is not as stringent as in the case of criminal prosecution and preponderance of probability can be deemed to be sufficient proof of the misconduct of the employee in the disciplinary proceedings.

11. With the above observations, the impugned orders at Annexures: 1 and 2 are set aside and the matter is remitted to the disciplinary authority (respondent no.3) for taking action as detailed above. The disciplinary authority may pass a fresh reasoned and speaking order to finalize the disciplinary proceedings, within a period of three months, on presentation of certified copy of the order. Suitable decision may also be taken about the pay and allowances of the suspension period of the petitioner thereafter.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 27, 2022
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KNP