

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

Present: Hon'ble Mr. Rajendra Singh
-----Vice Chairman (J)

CLAIM PETITION NO. 11/NB/SB/2022

Pramod Dhyani, aged about 35 years, s/o Sri Gajendra Prasad Dhyani, r/o House no. 90, Garhwal Vihar Colony, Jaspur Khurd, Kashipur, presently posted Constable Cleaner 3557 IRB First, Bailparao, Ramnagar, Nainital.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home Department, Dehradun.
2. Deputy Inspector General of Police, P.A.C., Uttarakhand, Haridwar.
3. Commandant I.R.B., First Bailparao, Ramnagar, Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate for the petitioner
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 21, 2022

By means of the present claim petition, the petitioner seeks the following reliefs:

“(i) To quash the impugned order dated 04.08.2021 and order dated 08.11.2021 along with its effect and operation and after calling the entire record.

(ii) To issue order or direction to expunge the adverse entry censure recorded in the service record of the applicant and grant all the service benefits or pass any other order direction which this Hon'ble Court may deem fit and proper

under the facts and circumstances stated in the body of the claim petition.

(iii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

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

2.1 The petitioner was inducted in service as Constable in the year 2009 against the substantive vacancy by due process of law. The petitioner, who has driving licence of Heavy Vehicles, opted for M.T. Wing and pursuant to the option, the respondents selected him as Constable Cleaner M.T. Wing on 19.02.2017. Thereafter, the petitioner regularly discharged his services as Driver and after completing six months' service as Constable Cleaner, he was entitled to be considered for Constable Driver (M.T.). Since the respondents have not started exercise for training/selection for the absorption on the post of Constable Driver (M.T.) thus, the petitioner, who has completed six months as Constable Cleaner in August 2017, is continuously being deprived from his legitimate expectation for absorption as Constable Driver.

2.2 On 22.06.2021 some incident of manhandling took place while petitioner was on duty in Gairsen and in the said incident, he got hurt. In the incident, one Vinod Kumar Chauhan, Platoon Commander IRB 1st Bailparao had closed the door from outside while petitioner was having his dinner. When petitioner wanted to go out to give remaining left out meal to the animals, he found that the doors were closed from outside. The petitioner tried to open the doors and shouted who the hail has closed the doors from outside. Mr. Vinod Kumar Chauhan came and opened the doors and started abusing the petitioner because the petitioner shouted on the person who has closed the door. During the arguments went on for a while, the Platoon Commander, Mr. Vinod Kumar Chauhan took the stick and started beating the petitioner. It is relevant to mention here that the petitioner has saved himself and did not make resistance towards the act of the aforesaid person because he was his immediate boss but taking

advantage of his post and position, he hit the petitioner on head with stick and bleeding started then the petitioner also took a stick to defend himself. In the meanwhile, other Constables who were taking their meals with the petitioner came and rescued the petitioner and took the said person to his bed room even though the petitioner was hurt seriously, no medical check up was done.

2.3 Thereafter, Mr. Vinod Kumar Chauhan who was the Platoon Commander has made a false complaint against the petitioner that the petitioner was indulged in abusing and manhandling and also levelled allegations on the petitioner in the influence of intoxicants. On the complaint of the Platoon Commander, the Disciplinary Authority directed for enquiry for the incident and appointed Mr. Ratanmani Pandey, Deputy Commandant, IRB-I, Bailparao as an enquiry officer vide order dated 23.06.2021. The enquiry officer conducted the inquiry, who submitted the inquiry report to the disciplinary authority on 12.07.2021. In the inquiry report, he recorded the statements of all the concerned including the petitioner and Mr. Vinod Kumar Chauhan. The inquiry officer in his conclusion found that the petitioner and Mr. Vinod Kumar Chauhan were equally guilty of manhandling, abusing and indiscipline and he also objected to the behaviour of the P.C. in not getting the medical check up done and has shown his reservations about the conduct of the P.C. in beating the petitioner with stick.

2.4 After receiving the enquiry report, the respondent no. 3 issued show cause notice to the petitioner on 17.07.2021 to show cause as to why the punishment of censure be not awarded in his record as per Rule 14(2) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 along with copy of the enquiry report. The petitioner replied to the show cause notice and denied the allegations and requested to cancel the show cause notice as well as the proposed punishment. The petitioner in his reply specifically mentioned that he has immediately informed to his higher authority *i.e.* Assistant

Commandant who is also the Wing Commander of M.T. and stated that he suffered injuries in the incident and he has not opposed his higher officer, Mr. Vinod Kumar Chauhan. He further stated that since his initial appointment, no inquiry has been conducted against him and his service career is unblemished and nor he has done any indiscipline and has not been carelessness.

2.5 The Disciplinary Authority without considering the reply of the petitioner and by mentioning the reply of the petitioner not satisfactory, passed the impugned punishment order on 04.08.2021. The petitioner preferred an appeal before the appellate authority (respondent no. 2) against the punishment order dated 04.08.2021. The appellate authority rejected the same vide order dated 08.11.2021 without applying his mind on the legal issue raised by the petitioner in his appeal. Hence this petition.

3. The respondents have filed Counter Affidavit stating that in the year 2021, while on duty in Gairsen on 22.06.2021, the petitioner shown indiscipline, abusing and quarrelling with Post Commander (Special Category)/3053, Vinod Kumar Chauhan in the state of consumption of alcohol. A preliminary inquiry was ordered and Sri Ratanmani Pandey, Assistant Commandant/Deputy S.P., IRB-I, Bailparao, Ramnagar, Nainital was appointed as an enquiry officer in the matter. In the preliminary inquiry, the inquiry officer finding the petitioner and the Post Commander (Special Category) / 3053, Vinod Kumar Chauhan guilty of displaying discipline and using of abusive words and fighting each other, proposed departmental proceeding against both the personnel under Rule 14(2) of the Uttarakhand (U.P. Police Officers of the Subordinate in Ranks (Punishment and Appeal) Rules, 1991, Adaptation and Modification Order 2002 and vide letter no. D-14/21 dated 17.07.2021 issued show cause notice for the censure entry and they were directed to furnish written explanations within 15 of the receipt of the notice. The petitioner submitted reply to the show cause notice requesting apology in the case. The disciplinary authority did not find the explanation satisfactory,

punished the petitioner with the punishment of censure entry vide order dated 04.08.2021. The petitioner submitted his representation against the impugned order which was also rejected by the Deputy Inspector General of Police, PAC, Uttarakhand Sector Haridwar vide order dated 08.11.2021. It has been contended that the disciplinary authority found the explanation submitted by Sri Vinod Kumar Chauhan satisfactory and cancelled the show cause notice and only awarded warning for future. The respondents have stated that the impugned orders have been passed after following the due procedure of law and accordingly before passing the punishment order, full opportunity of hearing was given to the petitioner. The punishment order is as per law. The appellate authority after due consideration and examination of the facts of the case, passed the appellate order and rejected the appeal, which is also just and proper and is as per law. Hence, the claim petition is liable to be dismissed.

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

5. It has been argued on behalf of the petitioner that the enquiry officer conducted the inquiry, who submitted the inquiry report to the disciplinary authority on 12.07.2021. In the inquiry report, he recorded the statements of all the concerned including the petitioner and Mr. Vinod Kumar Chauhan. The inquiry officer in his conclusion found that the petitioner and Mr. Vinod Kumar Chauhan were equally guilty of manhandling, abusing and indiscipline and he also objected to the behaviour of the P.C. in not getting the medical check up done and has shown his reservations about the conduct of the Post Commander in beating the petitioner with stick. It has also been argued on behalf of the petitioner that as per the inquiry report, the petitioner and the Post Commander both seem to be equally guilty of abusing each other and indulged in manhandling and thus seem to be guilty of indiscipline, but the petitioner was singled out by the disciplinary authority for the punishment of censure entry and the Post Commander was given warning only, which

shows the malafide and arbitrary act and step motherly treatment towards the petitioner.

6. It has been argued on behalf of the respondents that that in the year 2021, while on duty in Gairsen on 22.06.2021, the petitioner shown indiscipline, used abusive words and quarrelling with up with Post Commander (Special Category) / 3053, Vinod Kumar Chauhan, in the state of consumption of alcohol. In the preliminary inquiry, the inquiry officer found the petitioner and the Post Commander (Special Category)/3053 Vinod Kumar guilty of displaying discipline and using of abusive words and fighting each other, proposed departmental proceeding against both the personnel under Rule 14(2) of the Uttarakhand (U.P. Police Officers of the Subordinate in Ranks (Punishment and Appeal) Rules, 1991, Adaptation and Modification Order 2002 and vide letter no. D-14/21 dated 17.07.2021 issued show cause notice for the censure entry and they were directed to furnish written explanation within 15 of the receipt of the notice. The petitioner submitted reply to the show cause notice. The disciplinary authority did not find the explanation submitted by the petitioner satisfactory and punished him with the punishment of censure entry but the disciplinary authority found the explanation submitted by Sri Vinod Kumar Chauhan satisfactory and cancelled the show cause notice and he was given warning for future. Hence, the claim petition is liable to be dismissed.

7. After hearing both the parties and perusing the record, the Tribunal finds that the Disciplinary Authority directed for enquiry for the incident of abusing and manhandling in the state of consumption of alcohol by the petitioner with Sri Vinod Kumar Chauhan. Mr. Ratanmani Pandey, Deputy Commandant, IRB-I, Bailparao was appointed as an enquiry officer, who conducted the inquiry and submitted his report to the disciplinary authority on 12.07.2021. The enquiry officer recorded the statements of all the concerned including the petitioner and Mr. Vinod Kumar Chauhan. The enquiry officer found that the petitioner and Mr. Vinod Kumar Chauhan

both seem to be equally guilty of manhandling, using abusive words and indiscipline. The conclusion drawn by the inquiry officer in his report, is as under:

सम्पूर्ण जाँच के उपरान्त बयानों, अभिलेखों एवं जानकारी करने के उपरान्त मैं इस निष्कर्ष पर पहुँचा हूँ कि आरक्षी क्लीनर 3557 प्रमोद ध्यानी एवं पीसीवी विनोद कुमार पोस्ट पर नियुक्त रहते हुए आपस में अपशब्दों का प्रयोग करने एवं लड़ाई-झगड़ा कर अनुशासनहीनता प्रदर्शित करने के दोषी प्रतीत होते हैं।

8. In support of his case, learned Counsel for the petitioner cited a decision of Hon'ble Supreme Court in Rajendra Yadav vs. State of Madhya Pradesh and others (2013) 3 SCC 73. The relevant paras of which are quoted herein below:

"8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is [Director General of Police and Others v. G. Dasayan](#) (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan

and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In Shaileshkumar Harshadbhai Shah case, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

9. The fact of this case is also similar to the aforesaid decision of Hon'ble Supreme Court. The Tribunal is of the view that the petitioner and the Post Commander, Vinod Kumar Chauhan both were equally guilty of abusing each other and indulged in manhandling, but the petitioner was singled out by the disciplinary authority for the punishment of censure entry and the Post Commander was given warning, which is arbitrary and discriminatory. The disciplinary authority, who was exercising quasi-judicial function, was required to follow the principles of natural justice and fairness while awarding the punishment. The appellate authority while passing the order on the appeal submitted by the petitioner against order of disciplinary authority, also did not apply his mind and rejected the same in cursory manner. The action of the respondents is perverse and the punishment awarded is against the principles of natural justice. The enquiry officer recorded the statements of relevant witnesses during the course of inquiry as per rules. From the statements of the witnesses, it is

not clear that the petitioner was in the state of intoxication. The petitioner has also denied in his statements the allegation of Mr. Vinod Kumar Chauhan. None of the witnesses, examined by the inquiry officer has specifically stated that the petitioner was in the state of intoxication at the time of incident. To ascertain consumption of alcohol, blood/urine test was necessary, which has not been done in this case. Hence, it cannot be said that the petitioner had consumed alcohol at the time of incident. Accordingly, the claim petition deserves to be allowed and the impugned orders deserve to be set aside.

ORDER

The claim petition is allowed. The impugned punishment order dated 04.08.2021 (Annexure no. 2) passed by the respondent No. 3 and appellate order dated 08.11.2021 (Annexure no. 1) passed by the respondent No. 2 are hereby set aside. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner. The petitioner will not be denied the other benefits of service on the basis of abovementioned censure entry. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: SEPTEMBER 21, 2022.
DEHRADUN
KNP