

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

CLAIM PETITION NO. 03/NB/SB/2021

Lalit Kumar, aged about 38 years, s/o Sri Ganesh Ram, presently posted as Constable 182 C.P., Police Station Kotwali, Rudrapur, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Department of Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Inspector General of Police, Kumaon Region, Nainital.
4. Senior Superintendent of Police, District Udham Singh Nagar.

.....Respondents

Present: Sri Vinay Kumar, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: FEBRUARY 14, 2023

Present claim petition has been filed for seeking the following reliefs:

“(i) To quash the impugned punishment order dated 16th June 2020 passed by the Senior Superintendent of Police Udham Singh Nagar; whereby the petitioner has been awarded censure entry (Annexure no. 1).

(ii) To quash the impugned Appellant Order dated 25 November 2020 passed by Inspector General of Police, Kumaon Range, Nainital whereby the Departmental Appeal filed by the petitioner has been rejected and thereby affirmed the Punishment order dated 16th June 2020 passed by the Senior Superintendent of Police, Udham Singh Nagar (Annexure No. 2).

(iii) To issue directions in the nature commanding and directing the respondents to grant all service consequential benefits to the petitioner.

(iv) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Briefly stated, the facts are that in the year 2020, while petitioner posted at Rampura Chowki police station, Rudrapur district, Udham Singh Nagar, the Circle Officer, Rudrapur City, Udham Singh Nagar was appointed as an Enquiry Officer, to conduct preliminary enquiry in respect of the charges mentioned in the paper cutting of the daily newspaper 'News Fatafat', wherein it was published that the business of betting is prevalent in Rampura Beat area and monthly amount is being given to the Police, the audio of which has also gone viral. In the preliminary enquiry, the statements of Smt. Bhagwati Kashyap w/o Manoj Kashyap, Prateek Gawa, Sub Inspector K.G. Mathpal and the statements of the petitioner, were recorded. During enquiry, the inquiry officer also obtained the recording of viral audio as well as the Call Detail Report (CDR) of petitioner's mobile. The inquiry officer submitted his report to the Senior Superintendent of Police, Udham Singh Nagar on 11.04.2020. Thereafter, a show cause notice was issued to the petitioner on 20.04.2020 by the SSP, Udham Singh Nagar, requiring the petitioner to submit his reply within 15 days. The petitioner replied to the show cause notice on 04.05.2020. The Disciplinary Authority/S.S.P., Udham Singh Nagar passed the impugned punishment order dated 16.06.2020 imposing minor punishment of Censure Entry by rejecting the explanation of the petitioner to the show cause notice dated 20.04.2020. The petitioner preferred a Department Appeal against the impugned order before the Deputy Inspector General of Police, Kumaon Range, Nainital on 21.06.2020, which was dismissed vide order dated 25.11.2020 by the Departmental Appellate authority and confirmed the punishment order dated 16.06.2020. The Investigating Officer never sought assistance of the petitioner for arrest of the accused, but the authorities have rejected the said contention only on the ground that the accused persons and his family members were in contact with the petitioner. The orders impugned are not sustainable for the reason that

the same are not based on any evidence to support the conclusion arrived at by the authorities to hold the petitioner guilty.

3. Counter Affidavit has been filed on behalf of the respondents stating that in the year 2020, when the petitioner, Lalit Kumar was appointed in Rampura Chowki police station, Rudrapur district, Udham Singh Nagar, then on 24.03.2020 there was a fight/ firing between two parties in Dudhia Nagar regarding betting work, in which on 25.03.2020, the indictment/FIR No. 161/2020 under Section 307/147/148/149/427/ 336 IPC vs. Manoj and others was registered at Police Station Rudrapur. An audio clip of betting business published in 'News Fatafat' in which Smt. Kashyap, resident of Ward No. 12/13, Canal Colony, near Agrasain Hospital, Kichha Road, Rudrapur, recorded in her statements during the investigation that in the audio clipping, I am talking to my lawyer, in which I am telling my lawyer that there is no hearing by the police. My husband Manoj is doing betting work on mobile since 4-6 months. We give 2-3 thousand rupees to each policeman. I told this, when the hearing was not being held, she was angrily telling the lawyer. I have never given money to the police and I do not know whether my husband gives money to the police or not. On the basis of the call details obtained by the investigating officer, the petitioner made 12 calls on Mrs. Bhagwati's mobile phone after 25.3.2020, 70 calls on Mrs. Bhagwati's husband Manoj Kumar's mobile phone after October 2019, Mrs. Bhagwati's son Rohit Kumar's mobile was found to have been talked 5 times after January and 14 times after March with Mohit Kumar. In this way, the petitioner was discriminating in talking to the accused and apprehending the accused even after case was registered under section 307 IPC against the accused. It was found in the investigation not to give any help to the petitioner, which is gross negligence of the petitioner towards his duty. In relation to the above, the petitioner was directed to submit an explanation within 15 days of receipt of the notice while issuing a show cause notice regarding the provision of censure entry by notice dated 20-04-2020, which was replied by the petitioner vide explanation dated 04.05.2020 and the explanation submitted by the petitioner was

found baseless. The respondent authorities after following the due procedure as prescribed in the Uttarakhand (U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991, adoption and modification orders 2002 passed the punishment order and the appellate authority after going through the record and evidence rejected the appeal of the petitioner. Thus the punishment orders are just and proper and no interference of this Hon'ble Court is required in the matter and the claim petition is liable to be dismissed.

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

5. It has been argued on behalf of the petitioner that during the course of Preliminary Enquiry, the statements of Smt. Bhagwati Kashyap W/o Manoj Kashyap were recorded, who denied the allegations made in the viral audio recording and stated that she has not made any allegation regarding payment of money to the Police Personnel. The statements of Sub Inspector K.G. Mathpal, Police outpost Incharge Rampura was also recorded, who in his statements has denied the allegations made in the viral audio recording. It is stated that regular action has been taken against the antisocial elements within his area. On 24.03.2020, there was a scuffle between the two groups at Dudhiya Nagar, for which an FIR. No. 161/2020 under Sections 307, 117, 148, 149, 427 and 336 I.P.C. was registered. It was stated that during investigation of said crime, one accused Arjun Thakur was arrested and sent to jail, other accused were absconded. The statements of petitioner were also recorded, wherein he denied the allegations made in the viral audio recording. In his statement, the petitioner pointed out that he was posted at Rampura Beat for more than two years and has been posted as Beat Constable as a result most of the persons in the area are known to him. Some of the persons also have his mobile number and informed him about any incident taken place in his Beat Area. The petitioner also narrated about the incident which took place in the month of March at the time of Holi. The petitioner in his

statement pointed out that since Manoj and his family members had a history of cases against them and therefore, the petitioner had their number in order to obtain any information if required. The petitioner in his cross-examination before the Preliminary Enquiry Officer specifically stated that he never called the accused persons, on the contrary it was they who had called him. The Enquiry Officer after analysing the evidence brought on record during the Preliminary Enquiry by way of statements of the witnesses recorded, viral audio recording etc., held that the allegations made in the viral audio recording pertaining to the payment of money to the police personnel were made with ill intention and in anger, which she has admitted in her statement. The Preliminary Enquiry Officer in his enquiry admitted that the statement made in the recording that the amount was being given to the police personnel could not be established by concrete evidence. It was also not proved as to whom and when the amount was paid. Smt. Bhagwati Kashyap had tried to malign the image of the Police Department. The Enquiry Officer in his Preliminary Enquiry Report dated 11.04.2020 concluded that the petitioner had spoken to Manoj who was wanted in the case registered under Section 309 of I.P.C. and had not assisted the Investigating Officer in investigation and therefore, the same creates doubt against the petitioner. It was concluded that it could not be proved that the amount from betting was being given to the petitioner. In order to have the knowledge of the activities/ incident in his area, the petitioner is required to have to contact with all types of persons of his area. Contact with the local residents help the Police in getting timely information of any illegal activity happening in the area. It was pointed out that no adverse evidence was brought against the petitioner before the Preliminary Enquiry Officer and the petitioner has been found guilty only on the basis of suspicion. He pointed out that so far as allegation of having spoken with Manoj for 70 times, it was clarified that Manoj was the informant of the petitioner, who provided the information of the area to the petitioner. It was stated that due to the imposition of lockdown in the State, the Investigating Officer himself was engaged in

maintenance of law and order, due to which the accused Manoj Kashyap could not be arrested. It was stated that the Investigating Officer never sought the assistance of the petitioner for arrest of accused Manoj Kashyap or any other accused. The Investigating Officer has nowhere stated that the Petitioner has not assisted in Investigation and the Petitioner has failed to discharge his duties properly or has not cooperated in the investigation or in the arrest of the accused person and inspite thereof, the Disciplinary authority and the appellate authority have held the Petitioner guilty of the charges levelled against him. It has also been argued that the charges for which the preliminary enquiry was conducted by the Circle Officer, Rudrapur City, the petitioner has been exonerated, as the lady which had made allegation has not supported the same, but without putting to notice by the Preliminary Enquiry Officer, the petitioner has been held to be guilty of not cooperating in the investigation. The orders impugned dated 16.06.2020 and 25.11.2020 passed by the Authorities are not sustainable for the reason that the same are not based on the evidence collected during the Preliminary Enquiry, but the same have been passed on the basis of surmises and conjunctures.

6. On behalf of the respondents, it has been argued that on the basis of the call details obtained by the investigating officer, the petitioner made 12 calls on Mrs. Bhagwati's mobile phone after 25.3.2020, 70 calls on Mrs. Bhagwati's husband Manoj Kumar's mobile phone after October 2019, Mrs. Bhagwati's son Rohit Kumar's mobile was found to have been talked 5 times after January and 14 times after March with Mohit Kumar. In this way, the petitioner was discriminating in talking to the accused and apprehending the accused even after the 307 IPC case was registered against the accused. It was found in the investigation not to give any help to the petitioner, which is gross negligence of the petitioner towards his duty. In relation to the above, the petitioner was directed to submit an explanation within 15 days of receipt of the notice while issuing a show cause notice dated 20-04-2020, which was replied by the petitioner vide explanation dated 04.05.2020 and the explanation submitted by the

petitioner was found baseless. The respondent authorities after following the due procedure as prescribed in the Uttarakhand (U.P. Police Officers of the Subordinate Ranks, (Punishment & Appeal) Rules, 1991 adoption and modification orders 2002, passed the punishment order and the appellate authority after going through the record and evidence rejected the appeal of the petitioner. Thus the punishment orders are just and proper and no interference of this Hon'ble Court is required in the matter and the claim petition is liable to be dismissed.

7. In view of the above discussion, the Tribunal finds that the Preliminary Enquiry was initiated by the Disciplinary Authority in respect of the allegations made in the news report published in the daily Newspaper, pertaining to the betting taking place in the Rampura Beat area and the amount being given to the Police personnel. The Enquiry Officer on the basis of the statements recorded, has come to conclusion that the allegations made in the viral audio recording could not be proved. The statements of Smt. Bhagwati Kashyap were recorded during the preliminary enquiry and on the basis of her statement, concluded that the allegations made in the viral audio recording were made out of sheer anger and frustration only to malign the image of the Police and it could not be proved that the petitioner had received any money out of betting. The orders impugned, which are based on the report of the Preliminary Enquiry Officer are not sustainable for the reason that the Preliminary Enquiry Officer without any basis came to the conclusion that the petitioner was in contact with the accused Manoj Kashyap and his family members and has not cooperated with the Investigating Officer in the investigation and arrest of the accused persons.

8. During preliminary enquiry neither the petitioner nor the Investigating Officer was asked whether the petitioner had not cooperated in the investigation or arrest of the accused persons, but the Enquiry Officer without any basis has concluded that the action of the petitioner was suspicious. The Investigating Officer in his statement before the

Preliminary Enquiry Officer has specifically stated that he has not removed the name of any of the accused from the investigation and that due to the lockdown, the further investigation could not be undertaken, inspite thereof the authorities have concluded that the petitioner has not cooperated in the investigation. Since the show cause notice and the consequent punishment order has been passed by the Disciplinary Authority based on the preliminary enquiry report, which was in respect of the news item published in daily newspaper and therefore, the petitioner could not have been held guilty of a charge which was not the subject of the preliminary enquiry. In reply to the show cause notice as well as in the Departmental Appeal of the petitioner, it has been the specific case of the petitioner that the Investigating Officer never sought the assistance of the petitioner for arrest of the accused, but the authorities have rejected the said contention only on the ground that the accused persons and his family members were in contact with the petitioner. The best person to state that whether the petitioner's assistance for arrest of the accused person, was the Investigating Officer, but he has not made any such statement before the Preliminary Enquiry Officer, therefore, the authorities were wrong to hold that the petitioner had not supported in the investigation. The accused Manoj Kashyap was the informer of the petitioner and therefore, it was not unusual for him or his family member to call the petitioner, who was posted in the Rampura Beat, but the authorities have rejected the said contention only on the ground that the petitioner was in contact with the accused persons.

9. On the basis of the above, the orders impugned in the claim petition are not sustainable for the reason that the same are not based on any evidence to support the conclusion arrived by the authorities, to hold the petitioner guilty. The orders impugned have been passed by the authorities holding the petitioner guilty of not cooperating in the investigation and arrest of the accused only on the basis of the call details obtained by the Enquiry Officer without recording finding that the petitioner had in fact provided the information to the accused regarding

the investigation, more particularly, it has been a specific case of the petitioner in the appeal that it is not the charge against him that he has passed any information to the accused. The impugned punishment order dated 16.06.2020 and 25.11.2020 passed by the authorities are not sustainable for the reason that the same are perverse not based on any evidence, hence, are liable to be set aside and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 16.06.2020 as well as appellate order dated 25.11.2020 passed by the authorities is hereby set aside. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner within 30 days from the date of passing of this order. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: FEBRUARY 14, 2023
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KNP