

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

CLAIM PETITION NO. 107/NB/SB/2021

Birendra Singh Bisht, aged about 36 years, s/o Sri Diwan Singh Bisht, r/o Reporting Outpost (ROP) Mangal Parao, Police Station-Haldwani, District Nainital.

.....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. Deputy Inspector General of Police, Kumaon Range, 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 16, 2023

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

“(i) To quash the impugned punishment order dated 17th October 2019 passed by the Senior Superintendent of Police, Udham Singh Nagar, whereby the integrity of the petitioner has not been certified/stopped for the year 2020(Annexure no. 1).

(i)(A) To quash the impugned Punishment order dated 17th October 2019 [Annexure no. 1(A)] passed by the Senior Superintendent of Police Udham Singh Nagar, whereby the claimant has been awarded Censure Entry in the Character Roll.

(ii) To quash the impugned appellate order dated 03rd January 2020 passed by the Deputy Inspector General of Police, Kumaon Range, Nainital, whereby the Departmental Appeal filed by the petitioner has been rejected and the punishment order dated 17th October 2019 passed by the Senior Superintendent of Police Udham Singh Nagar (Annexure no.2) has been affirmed.

(ii)(A) To quash the impugned Appellate Order dated 03rd January 2020 [Annexure no. 2(A)] passed by the Deputy Inspector General of Police, Kumaon Range, Nainital, whereby the Departmental Appeal filed by the claimant against the punishment order has been rejected and the

punishment order dated 17th October 2019 passed by the Senior Superintendent of Police, Udham Singh Nagar, has been affirmed.

(iii) To issue directions in the nature of mandamus commanding the directing the respondents to grant all consequential benefits.

(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 circumstance of the case."

2. Brief facts, according to the claim petition are that during posting of the petitioner as In-charge Police outpost Kundeshwari, Police Station Kotwali, Kashipur, on 27.02.2019, S.S.P., Udham Singh Nagar appointed Addl. Superintendent of Police, Kashipur as preliminary enquiry officer, to enquire into the allegation of illegal collection of Rs. 200/- per vehicle by the members of public from the vehicles engaged in mining at Banjari Gate, Police outpost, Kundeshwari. The Preliminary Inquiry Report was submitted on 12.04.2019. On the basis of preliminary inquiry, two show-cause notices dated 10.06.2019 were served on the petitioner and after considering his replies, the disciplinary authority respondent No. 4 Senior Superintendent of Police, Udham Singh Nagar awarded punishment of censure entry to the petitioner vide order dated 17.10.2019 and passed another order dated 17.10.2019 withholding his integrity certificate for the year 2019. The Petitioner submitted his written reply on 29.07.2019. The Disciplinary Authority did not accept the reply/explanation given by the petitioner and rejected the same, recording a finding that though the petitioner was issued a Show Cause Notice regarding imposition of the minor punishment of Censure Entry, but in view of the provisions of Govt. Order dated 18.12.2003, for which the petitioner has been found guilty, therefore, he has been issued the show cause notice for stoppage of the integrity. The petitioner preferred departmental appeal before the Appellate Authority on 09.11.2019, which was rejected vide order dated 3rd January 2020 by the appellate authority. Hence this claim petition.

3. The claim petition has been opposed on behalf of the respondents by filing Counter Affidavit.

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

5. Learned Counsel for the petitioner has argued that the preliminary enquiry was conducted into the allegation of the illegal collection of Rs. 200/- per vehicle by the members of public from the vehicles engaged in mining at Banjari Gate, Police outpost, Kundeshwari. The Preliminary Enquiry Officer recorded the statement of the petitioner, who at the relevant point of time was posted as the in-charge of the police outpost Kundeshwari. The statements of 25 police personnel were recorded by the Preliminary Enquiry Officer, apart from the statement of the petitioner. After recording the statement of the Constables and other Police Personnel posted at Banjari Gate Picket and after collecting the evidence, the Preliminary Inquiry Officer held that the role and the nature of duty discharged by 15 Constables create suspicion. Preliminary Inquiry Officer held that the evidence available against the Police Personnel also raises involvement of the petitioner, who was posted as Incharge of the Police Outpost Kundeshwari and that the petitioner failed to keep his subordinate Police Personnel under control. The Preliminary Inquiry Officer held the petitioner and 14 Constables guilty. On the basis of the Preliminary Inquiry Report dated 12.04.2019, the S.S.P., Udham Singh Nagar issued a Show Cause Notice dated 10.06.2019. The Petitioner submitted his written reply on 29.07.2019 against the show cause notice stating that that he remained posted at Police Outpost Kundeshwari, Police Station Kashipur between 28.01.2019 to 27.02.2019. The petitioner was not aware about the involvement of the Constables in illegal gratification. The Disciplinary Authority did not accept the reply/explanation given by the petitioner to the show cause notice and rejected on the ground that the Preliminary Inquiry Officer has found the conduct of the petitioner to be suspicious for the reason that the subordinate Police Personnel have been found involved in illegal collection of money and implicated almost all the staff of the Police Chowki Kundeshwari, including the petitioner and the penalties of censure and withholding of integrity certificates was imposed upon them. Learned Counsel for the petitioner has argued that Constables have challenged the punishment orders

passed by the respondents, based on the same preliminary inquiry, before this Tribunal and Tribunal has quashed the punishments in their respective claim petitions. A copy of the judgment and order dated 26.07.2021, passed by this Tribunal in Claim petition No. 78/NB/SB/2020, Birendra Singh vs. State of Uttarakhand & others has been enclosed with the claim petition and submitted that the present case is covered by the judgment passed by this Tribunal. The following excerpts of this judgment are quoted below:

“4. In his argument, the learned counsel for the petitioner has pointed out that the respondent No. 3 Senior Superintendent of Police, Udham Singh Nagar has committed a grave legal flaw in the show-cause notices which were served to the petitioner. The respondent No. 3 has shown his pre-mind set condition in the show-cause notices and has demonstrated his intention to award the punishment of censure to the petitioner in the first case and to withhold his integrity certificate for the year 2019 in the second matter.

5. On the perusal of record, this contention of the petitioner is found to be correct. Senior Superintendent of Police, Udham Singh Nagar in both show-cause notices both of similar number and date (n16/2019 dated 10.06.2019) to the petitioner has clearly mentioned the punishment proposed to be awarded to the petitioner and in the first case it is proposed to award a censure entry to him and in the second case it is proposed to withhold his integrity certificate for the year 2019.

6. Learned counsel for the petitioner has presented the rulings of the Hon’ble Apex Court in the case of Managing Director, ECIL, Hyderabad and others Vs. B. Karunakaran and others reported in (1993) 4 SCC 727 to support his argument. Further, he has submitted the orders passed by the Hon’ble High Court of Uttarakhand at Nainital in Writ Petition No. 192 (S/S) of 2017 Constable 51 AP Jogender Kumar Vs. State of Uttarakhand & others decided on 05.05.2017 in which it is again held that if the disciplinary authority shows its mind to impose the penalty of censure upon the petitioner without hearing his explanation it is a violation of principles of natural justice. To further support his argument, the judgement in Writ Petition (S/B) No. 133 of 2015 Mahesh Chandra Gupta Vs. State of Uttarakhand and others by a bench headed by the Hon’ble Chief Justice which upholds this view is also presented before this court.

7. Learned A.P.O. has contended that although the facts of the case as they stand out and the enquiry which was done and the conclusion reached by superior authorities are entirely correct and the charges levelled against the petitioner are substantiated by proper and adequate evidence but it is a fact that the show-cause notices issued to the petitioner are bad in law and this fact is hard to justify.

8. On the basis of the above, I agree with the submission of the learned counsel for the petitioner that show-cause notices issued to the petitioner are liable to be quashed since there is violation of laid down rules and procedure. Therefore, without going into the facts of the case, proceedings itself are liable to be quashed.

6. Replying to the above, learned A.P.O. has argued that according to Rule 14(2) of the Uttar Pradesh Police Officers of the Subordinate Ranks

(Punishment and Appeal) Rules, 1991, the show cause notice is required to state the action proposed to be taken against the delinquent. Rule 14(2) of the Rules of 1991 is reproduced herein below:

“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.”

7. Learned Counsel for the petitioner has also argued that the impugned orders have been passed in violation of the provisions of Uttarakhand Police Act, 2007 inasmuch as they have been passed under the Rules of 1991 which were repealed by section 86 of the Act of 2007. 9. Learned A.P.O. has argued on this point that Section 86 of the Act of 2007 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. The Tribunal finds force in such contention of learned A.P.O.

8. Learned Counsel for the petitioner has also argued that dual punishment of censure and withholding of integrity cannot be given for the same case and the punishment for withholding the integrity certificate is neither provided under the Rules of 1991 nor in the Act of 2007. The integrity of a person can although, be withheld for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be withheld as a punishment. Learned Counsel for the petitioner has referred to the judgment dated 27.05.2021 passed by this Tribunal in Claim Petition No. 34/DB/2020, Umesh Giri Vs. State & ors, relevant paragraphs of which are quoted below:

“6. The subject matter of present claim petition is squarely covered by the decision rendered by Hon’ble Apex Court in Vijay Singh vs. State of U.P. and others (2012) 5 SCC 242. The issue is no longer res-integra. The relevant paragraphs of the said decision are reproduced herein below for convenience:

2. The instant case is an eye opener as it reveals as to what extent the superior statutory authorities decide the fate of their subordinates in a casual and cavalier manner without application of mind and then expect them to maintain complete discipline merely being members of the disciplined forces.

3. The facts necessary to decide this appeal are as under: A. The appellant when posted as Sub-Inspector of Police at Police Station, Moth, District Jhansi in the year 2010, had arrested Sahab Singh Yadav for offence punishable under Section 60 of the U.P. Excise Act and after concluding the investigation, filed a chargesheet before the competent court against the said accused. B. During the pendency of the said case in court, a show cause notice was served upon him by the Senior Superintendent of Police, Jhansi dated 18.6.2010 to show cause as to why his integrity certificate for the year 2010 be not withheld, as a preliminary enquiry had been held wherein it had come on record that the appellant while conducting investigation of the said offence did not record the past criminal history of the accused.

5. The disciplinary authority, i.e. Senior Superintendent of Police without disclosing as under what circumstances not recording the past criminal history of the accused involved in the case had prejudiced the cause of the prosecution in a bailable offence and without taking into consideration the reply to the said show cause, found that the charge framed against the appellant stood proved, reply submitted by the appellant was held to be not satisfactory. Therefore, the integrity certificate for the year 2010 was directed to be withheld vide impugned order dated 8.7.2010.

6. Aggrieved, the appellant preferred an appeal before the Deputy Inspector General of Police on 20.8.2010 raising all the issues including that it was not necessary to find out the past criminal history of the accused in bailable offence and the punishment so imposed was not permissible under the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as "the 1991 Rules"). The appeal stood rejected by the appellate authority vide order dated 29.10.2010.

7. Being aggrieved, appellant preferred a revision before the Additional Director General of Police which was dismissed vide order dated 29.3.2011 observing that withholding integrity certificate did not fall within the ambit of the Rules 1991. Therefore, the said revision could not be dealt with on merit and thus was not maintainable. Aggrieved, appellant filed a Writ Petition which was dismissed by the High Court by the impugned judgment and order dated 19.7.2011. Hence, this appeal.

10. The appellant is employed in the U.P. Police and his service so far as disciplinary matters are concerned, is governed by the Rules 1991. Rule 4 thereof provides the major penalties and minor penalties and it reads as under:-

"4. Punishment .- (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely -

- (a) Major Penalties-
 - (i) Dismissal from service;
 - (ii) Removal from service.
 - (iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.
 - (b) Minor Penalties-
 - (i) Withholding of promotion;
 - (ii) Fine not exceeding one month's pay;
 - (iii) Withholding of increment, including stoppage at an efficiency bar;
 - (iv) Censure.
- (2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments-
- (i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty);
 - (ii) Punishment Drill not exceeding fifteen days;
 - (iii) Extra guard duty not exceeding seven days;
 - (iv) Deprivation of good-conduct pay.

(3) In addition to the punishments mentioned in sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks-

(i) Tent pitching;

(ii) Drain digging;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines;

(v) Cleaning arms.

11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one.

15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant.

19. Withholding integrity merely does not cause stigma, rather makes the person liable to face very serious consequences. (Vide: Pyare Mohan Lal v. State of Jharkhand & Ors., AIR 2010 SC 3753).

20. Unfortunately, a too trivial matter had been dragged unproportionately which has caused so much problems to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant rules is nonetheless a misconduct.

21. Undoubtedly, in a civilized society governed by rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.

23. Thus, in view of the above, the punishment order is not maintainable in the eyes of law. In the result, appeal succeeds and is allowed. The impugned order dated 8.7.2010 withholding integrity certificate for the year 2010 and all subsequent orders in this regard are quashed. Respondents are directed to consider the case of the appellant for all consequential benefits including promotion etc., if any, afresh taking into consideration the service record of the appellant in accordance with law."

[Emphasis supplied]"

9. On the basis of the above, the Tribunal holds that the integrity of the petitioner can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report, but the same cannot be awarded by way of

punishment because this kind of punishment is neither prescribed in the Rules of 1991 nor in the Act of 2007. Therefore, the impugned order by which integrity certificate of the petitioner is withheld, is liable to be quashed. Though in the C.A., it has been stated that notice for withholding of integrity was issued according to the provisions of the Govt. order No. 1712/Karmik-2/2003 dated 18.12.2003, the same has not been done at the time of filling of the Annual Confidential Report and has actually been done as an adjunct to the proceedings vide which punishment of censure has been awarded to the petitioner. Even the dates of the show cause notices and dates of orders of censure and withholding of integrity are the same. Therefore, the Court holds that withholding of integrity has been done by way of punishment order of integrity is, therefore quashed.

10. Learned Counsel for the petitioner has argued that in reply to the show cause notice, the petitioner has stated that he remained posted at Police Outpost Kundeshwari, Police Station Kashipur between 28.01.2019 to 27.02.2019 and he remained posted for very short duration and was not aware about the involvement of the Constables in illegal gratification. He has pointed out that the inquiry officer has not found the involvement of the petitioner in the allegations. The petitioner also pointed out that none of the persons whose statements were recorded by the inquiry officer has stated about their acquaintance with the petitioner. The Disciplinary Authority did not accept the reply/explanation given by the petitioner to the show cause notice and rejected on the ground that the Preliminary Inquiry Officer has found the conduct of the petitioner to be suspicious for the reason that the subordinate Police Personnel have been found involved in illegal collection of money. Respondent No. 4 disposed of the show cause notice in most mechanical manner and has not given any logical reasoning against the contentions raised by the petitioner. Accordingly, punishment of 'Censure' was imposed on the petitioner vide order No. Da-16/2019 dated 17.10.2019 which is in breach of principle of natural justice.

11. Admittedly, the disciplinary proceedings initiated against the petitioner and culminated in imposition of the punishment order dated 17thOctober 2019 were initiated under the provisions of Uttar Pradesh Police Officers of Subordinate Rank (Discipline and Appeal) Rules, 1991 as applicable in the State of Uttarakhand. In many other disciplinary proceedings related to same incident, the punishment orders have been quashed by this Tribunal and liberty has been reserved to the respondents to proceed with the matter in accordance with law.

12. In view of the above, the claim petition is liable to be allowed and the impugned orders passed by the respondents are liable to be set aside.

ORDER

The claim petition is allowed. The impugned punishment orders dated 17.10.2019 and consequently appellate orders dated 03.01.2020 are quashed and set aside. However, the liberty is reserved to the respondents to proceed with the matter in accordance with law. Notice is taken of the fact that the inquiry report has already been given and it is not necessary to give the same again. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: FEBRUARY 16, 2023
DEHRADUN.
KNP