

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

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

**CLAIM PETITION NO. 13/NB/SB/2021**

Constable 672 CP Gulsan Giri s/o Late Shri Sher Giri, r/o Eco Town, Dhaan Mill, presently posted as Constable, Suchna Cell, Police Station, Haldwani, District Nainital.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Principal Secretary, Home Affairs Department, Dehradun.
2. Inspector General (I.G.), Kumaon Region, Nainital, District Nainital.
3. Senior Superintendent of Police, Nainital, district Nainital.

.....Respondents.

Present: Sri Rajesh S. Nagarkoti, Advocate, for the petitioner  
Sri Kishor Kumar, A.P.O., for the Respondents

**JUDGMENT**

**DATED: MARCH 28, 2023**

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

*“a. To quash the impugned order dated 17.11.2020 as well as impugned order dated 17.02.2021 along with its effect and operation and after calling the entire record.*

*b. To issue order or direction to expunge the adverse entry censure recorded in service record of the applicant and grant all the service benefits or pass any other order direction which this Hon'ble Tribunal deem fit and proper under the facts and circumstances stated in the body of the claim petition.*

*c. To any other award which the Hon'ble Tribunal may think for the applicant.”*

2. The facts of the case in brief are that while posted as Constable at night surveillance/monitoring duty at police station Mukhani, on 02.07.2020, one accused Pawan Kumar raised the voice to go for toilet, but no bathroom or toilet facility was available in lockup at the police station Mukhani. The accused fled from the police custody from police station Mukhani, Haldwani who was detained by the police in relation of FIR No. 136/202, U/s 457,380, 411 I.P.C. Police station Mukhani, Haldwani Distt. Nainital. On that day, no sanataripahra duty/sanTRY guard duty was deployed by the senior officer at Thana Mukhani. Sanatari Pahra duty/sanTRY guard is duty bound to sort out the problem as to discharge urinal, toilet etc. raised by the accused person at police custody in thana's lockup. It is submitted that the petitioner was not engaged as SanTRY Pahara duty in said date, as he was engaged at surveillance/monitoring duty.

The petitioner due to diligently discharged his duty to taken the accused person for toilet because only three police persons namely night officer, surveillance/monitoring duty (petitioner) and Karyalekha engaged at night duty in Mukhani Thana. It is submitted that the night officer went for patrolling and Karyalekha engaged as work in first floor of thana building and present petitioner was engaged for RT. set, telephone duty, vehicle monitoring as well as maalkhana & lockup at ground floor of the thana building. So to discharge their duty, the petitioner took the accused person for toilet which is situated near the main gate in Thana. The accused during discharging the urinal suddenly pushed the petitioner and fled from there. The petitioner ran behind the accused to catch him but due to the darkness, the said accused fled from there. The petitioner without any delay informed to thana. All real facts disclosed by the petitioner before the enquiry officer which is also mentioned in the enquiry report. The petitioner attempted to catch the accused which is recorded in CCTV camera. The accused was caught at the Damuadhunga area on 02.07.2020 at day time, but the respondent no. 3 without enquiring the matter in cursory manner suspended the applicant from

04.07.2020 to 09.07.2020 and constituted the preliminary enquiry against the petitioner.

In the preliminary enquiry, the enquiry officer recorded the statements of the constable 524 C.P. Govind Prasad, constable 148 CP. Deepak Gola, S.I. C.P. Gulab Singh & petitioner also. The petitioner presented all real facts before the enquiry officer and after collecting the evidence, the enquiry officer held that there is no negligence on part of the petitioner & other police officers, however the enquiry officer mentioned in enquiry report that para 62 of the police regulation are violated. Under para 62 of police regulation, it is clearly mentioned that a santry shall be appointed in days and night time at every thana and his duty to protect the prisoners in lockup, vault, maalkhana and all the property in thana etc. It is also mentioned in said para that the duty of santry has to be only three(3) hours. The duty of the petitioner was 10 hours which seems to be that the petitioner's duty was not in the sentry pahara duty on date of incident. Therefore, the orders passed by the respondent no 2 & 3 are not sustainable in eye of law.

A show cause notice dated 23.08.2020 was issued to the petitioner. The Respondent no. 3 awarded the punishment of "Censure" through his show cause notice. It is also submitted that in the show cause notice, the punishment has been mentioned. The aforesaid act of the respondent no. 3 shows his pre-mind set condition that he has made his mind to award the punishment of censure. Thus the reply of the petitioner is a futile exercise. The petitioner replied to the show cause notice vide letter dated 03.09.2020 to the respondent no. 3, but the respondent no. 3 without considering the preliminary enquiry report dated 18.07.2020 as well as reply to the show cause notice and material available in record, the impugned order dated 17.11.2020 has been passed in a cursory manner under U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991, under Rule 14(2) of Adaptation and modification order 2002 of departmental proceeding as well as para 23(2) of Uttarakhand

police Act-2007. Aggrieved with the impugned order dated 17.11.2020; the petitioner filed the departmental appeal before respondent no. 2 but the respondent no. 2 without considering the appeal, rejected the same vide order dated 17.02.2021 and affirm the impugned order dated 17.11.2020.

The respondents no 2 & 3 without considering the preliminary enquiry report passed the impugned order dated 17.11.2020 as well as 17.02.2021 & 20.12.2020 which are arbitrary, illegal and against the law. The petitioner right from his appointment faithfully and diligently discharged his duties to the satisfaction of his superior authority in respondent department. The length of petitioner service was unblemished and his service record is excellent but after passed the impugned order dated 17.11.2020 as well as order dated 17.02.2021 passed by the respondent no 3 & 2 the petitioner is suffering from mental and financial agony. Hence this petition.

3. C.A. has been filed on behalf of the respondents. It has been stated in the C.A. that on 01.7.2020, the petitioner was assigned night surveillance duty from 20.00 hrs to 06.00 hrs in police station Mukhani. On 02.07.2020, one of the accused, Pawan Kumar Kushwaha, detained in police custody, voiced for toilet. Due to non- availability of toilets in the police station, the petitioner was forced to go to the toilet located near the main gate of the police station premises. When the accused repeatedly asked him to go to the toilet, at about 04.50, the petitioner took the accused in handcuffs with the help of a mobile phone to the toilet located near the police station gate. While doing toilet, the accused suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran away taking his hand from the handcuffs. On the basis of preliminary inquiry, it was found that the accused Pawan Kumar Kushwaha was handcuffed to the main gate of the police station premises with the help of mobile light due to lack of electricity at that time. When the petitioner taken the accused to the nearby toilet, the accused managed to escape. On trying to overpower the

accused, the petitioner suffered injuries and lost her mobile phone due to push and shove, but the petitioner did not pay attention to the important night vigil duty in which the two accused were also detained. The petitioner at his discretion taken the accused to the toilet. The petitioner should have called Constable 148 CP, Deepak Gola, working on the night work. If Constable 148 CP Deepak Gola had been called by the petitioner at that time, then this incident would not have happened. Similarly, from the point of view of vigilance, the petitioner should have informed about this fact to the Night Officer, Sub-Inspector, Mr. Gulab Singh, because there is no toilet facility inside the lock-up and the toilet is located at the main gate of the police station outside the lock-up. In the case in question, it was not only the duty of the petitioner, but considering the responsibility of duty of night vigil, full vigilance should have been taken keeping in view the possibility of the accused absconding from the custody, which has not been done by the petitioner, for which the petitioner has been found fully guilty. The preliminary inquiry found the petitioner constable guilty of laxity and negligence in the duty of monitoring the accused by not exercising his discretion. Finding this act of the petitioner to be a sign of negligence and carelessness towards his duty, a show cause No-83/2020 dated 23.08.2020 was issued to the petitioner, in response to which, the petitioner gave his written explanation dated 26.08.2020. Finding the reply to the show cause notice unsatisfactory, the punishment order of censure entry dated 23.08.2020 has been awarded to the petitioner under Rule 4(1) (Kha) sub rule (4) of the Uttarakhand/Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991] Adaptation and Modification- 2002 and under the provisions of Para-23 (2) (b) of the Uttarakhand Police Act. Against the impugned order, the petitioner constable Gulshan Giri filed his appeal. The appellate authority, Inspector General of Police, Kumaon Range, Nainital, finding the appeal being baseless, vide order dated 17.02.2021 rejected the same. The orders impugned the perfectly legal, valid and have been passed as per law. Hence, the claim petition is liable to be dismissed.

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

5. Learned Counsel for the petitioner has argued that while petitioner was posted at night surveillance/monitoring duty at police station Mukhani, on 02.07.2020, in the morning, one accused Pawan Kumar raised the voice or alarm to go for toilet, but no bathroom or toilet facility was available in lockup at the police station Mukhani was fled from the police custody from police station Mukhani, Haldwani who was detained by the police in relation of FIR No. 136/202, U/s 457,380, 411 I.P.C. Police station Mukhani, Haldwani Distt. Nainital. On that day, no Santari pahra duty/santriy guard duty was deployed by the senior officer at Thana Mukhani. Sanatari Pahra duty/santriy guard is duty bound to sort out the problem as to discharge urinal, toilet etc. raised by the accused person at police custody in thana's lockup. It is submitted that the petitioner was not engaged as sentry pahara duty in said date, as he was engaged at surveillance/monitoring duty. The petitioner took the accused person for toilet which is situated near the main gate in Thana. The accused during discharging the urinal suddenly pushed the petitioner and fled from there. The petitioner ran behind the accused to catch him but due to the darkness, the said accused fled from there. The petitioner without any delay informed to thana. All real facts disclosed by the petitioner before the enquiry officer which is also mentioned in the enquiry report. The petitioner attempted to catch the accused which is recorded in CCTV cameras. The accused was caught at the Damuadhunga area on 02.07.2020 at day time.

6. It has been argued on behalf of the respondents, it has been argued that when the petitioner taken the accused to the nearby toilet, the accused managed to escape. On trying to overpower the accused, the petitioner suffered injuries and lost her mobile phone due to push and shove, but the petitioner did not pay attention to the important night vigil duty in which the two accused were also detained. The petitioner at his

discretion taken the accused to the toilet. The petitioner should have called Constable 148 CP, Deepak Gola, working on the night duty. If Constable 148 CP Deepak Gola had been called by the petitioner at that time, then this incident would not have happened. Similarly, from the point of view of vigilance, the petitioner should have informed about this fact to the Night Officer, Sub- Inspector, Mr. Gulab Singh, because there is no toilet facility inside the lock-up and the toilet is located at the main gate of the police station outside the lock-up. It was not only the duty of the petitioner, but considering the responsibility of duty of night vigil, full vigilance should have been taken keeping in view the possibility of the accused absconding from the custody, which has not been done by the petitioner, for which the petitioner has been found fully guilty. The preliminary inquiry found the petitioner constable guilty of laxity and negligence in the duty of monitoring the accused by not exercising his discretion. Finding this act of the petitioner to be a sign of negligence and carelessness towards his duty, a show cause No-83/2020 dated 23.08.2020 was issued to the petitioner, in response to which, the petitioner gave his written explanation dated 26.08.2020. Finding the reply to the show cause notice unsatisfactory, the punishment order of censure entry dated 23.08.2020 has been awarded to the petitioner under Rule 4(1)(*Kha*) sub rule (4) of the Uttarakhand/Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991] Adaptation and Modification- 2002 and under the provisions of Para-23(2)(b) of the Uttarakhand Police Act. Against the impugned order, the petitioner constable Gulshan Giri filed his appeal. The appellate authority, Inspector General of Police, Kumaon Range, Nainital, finding the appeal being baseless, vide order dated 17.02.2021 rejected the same.

7. In view of the above discussion, the Tribunal finds that in the morning of 02.07.2020, one accused Pawan Kumar raised the voice or alarm to go for toilet, but no bathroom or toilet facility was available in lockup at the police station Mukhani was fled from the police custody from police station Mukhani, Haldwani. When the accused repeatedly asked him to go to the toilet, at about 04.50, the petitioner took the accused in

handcuffs with the help of a mobile phone to the toilet located near the police station gate. While doing toilet, the accused suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran away taking his hand from the handcuffs. On the basis of preliminary inquiry, it was found that the accused Pawan Kumar Kushwaha was handcuffed to the main gate of the police station premises with the help of mobile light due to lack of electricity at that time. The petitioner without any delay informed to Thana. The petitioner attempted to catch the accused which is recorded in CCTV cameras. The accused was caught at the Damuadhunga area on 02.07.2020 at day time. All real facts were disclosed by the petitioner before the enquiry officer which is also mentioned in the enquiry report. It is true that the toilet or bathroom facility was not available in Thana lock-up; whenever the petitioner took the accused in handcuffs with the help of a mobile phone to the toilet located near the police station gate. The accused suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran away taking his hand from the handcuffs. On the basis of preliminary inquiry, it was found that the accused Pawan Kumar Kushwaha was handcuffed to the main gate of the police station premises with the help of mobile light due to lack of electricity at the time of incident. The petitioner without any delay informed to Thana. It is relevant that the petitioner attempted to catch the accused which is recorded in CCTV cameras. The accused was caught at the Damuadhunga area on 02.07.2020 at day time. The preliminary inquiry officer also in his finding recorded that:

यद्यपि दिनांक 02.07.2020 की प्रातः समय करीब 04:50 बजे थाना मुखानी पर बिजली ना हाने के दौरान अभियुक्त पवन कुशवाहा अन्धेरे का लाभ उठाकर लघुशंका के बहाने निगरानी ड्यूटी पर नियुक्त कानि0 672 ना0पु0 गुलशन गिरी को धक्का देकर भागने में सफल रहा। पुलिस अभिरक्षा से फरार अभियुक्त के विरुद्ध थाना मुखानी पर अभियोजन पंजीकृत कर उसे उसी दिन पुलिस द्वारा गिरफ्तार किया जा चुका है जिस दौरान को अप्रिय घटना भी घटित नहीं हुई अभियुक्त के फरार होने के सदोष एवं जान बूजकर किसी पक्ष को लाभ अथवा



हानि कारित करने का कोई आशय पुलिस कर्मियों का प्रतीत नहीं होता है।

8. In view of the above, the Tribunal finds that the accused Pawan Kumar raised the voice or alarm to go for toilet, but there was no bathroom or toilet facility available in lockup at the police station Mukhani and at about 04.50, the petitioner took the accused in handcuffs with the help of a mobile phone light due to lack of electricity at that time, to the toilet, located near the police station gate. The accused took the benefit of darkness and toilet, suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran away taking his hand from the handcuffs. The petitioner attempted to catch the accused which is recorded in CCTV cameras. The petitioner immediately informed about this incident to Thana and the accused was caught at the Damuadhunga area on 02.07.2020 at day time by the police. The petitioner took the accused to toilet near the gate because there was no facility of toilet in the lockup. It was just an unintentional incident and there was no intention of the petitioner to favour or disfavour to the accused. Hence, the impugned orders have been passed without taking into consideration the circumstances that had occurred at the time of incident. Hence, the impugned orders are liable to be quashed and the claim petition is liable to be allowed.

### **ORDER**

The claim petition is allowed. The impugned order dated 17.11.2020 and appellate order dated 17.02.2021 are set aside. Respondents are directed to expunge the adverse entry recorded in service record of the petitioner within 30 days from the date of presentation of certified copy of this order. No order as to costs.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

*DATED: MARCH 28, 2023*  
*DEHRADUN.*  
*KNP*