

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 45/NB/SB/2020

Manoj Kumar Kothari, aged about 47 years, s/o Late Sri Girish Chandra Kothari, presently posted as Sub Inspector, Office of Special Investigation Team, Camp Office of Inspector General, 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: APRIL 20, 2023

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

“(i) To quash the impugned Punishment Order dated 29.08.2019 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 Appellate Order dated 20.03.2020 passed by the Inspector General of Police, Kumaon Range, Nainital, whereby the Departmental Appeal filed by the claimant has been rejected and thereby affirmed the Punishment Order dated 29.08.2019 passed by the Senior Superintendent of Police, Udham Singh Nagar (Annexure No.2).

(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 circumstances of the case."

2. Briefly stated, the facts of the case are that in the year 2017, while petitioner was posted as Sub Inspector, Reporting Outpost Kalkata Farm, Police Station Kichha, District Udham Singh Nagar, an FIR No. 56 of 2017 came to be registered on 13.02.2017 under Section 171 E I.P.C. and Section 60 of the Excise Act against one Jasvinder S/o Late Dhara Singh, R/o Matta Farm, Police Station Kichha. The Investigation of the said FIR was entrusted to Head Constable Vijaya Laxmi. On 10.03.2017, the Investigating Officer forwarded the Charge sheet No. 55 of 2017 to the Office of Circle Officer, which was returned back by the Office of the Circle Officer on 27.06.2017 through Constable Deepak Chauhan. The S.S.P., Udham Singh Nagar issued a Show Cause Notice to the petitioner on 24.05.2019 as to why a censure entry be not recorded in his service record for the charges that he has submitted the Case Dairy after one year and nine months that too without removing the objections in the FIR No. 56 of 2017.

3. After receiving the show cause notice, petitioner submitted its reply on 28.06.2017 stating therein that he left the Police Outpost at around 10:45 a.m. for Bareilly for the purposes of Investigation in FIR No. 208 of 2017 and returned back on the same day at around 4:45 p.m. It was submitted that there was no mention of the details in the G.D. of the Police Outpost Kalkata Farm in respect of the letters which Constable Deepak Chauhan had brought. The petitioner specifically stated that the statement given by Constables Jeewan Chandra Bhatt and Deepak Chauhan are false inasmuch as the same has been made to save themselves from the fact that no such entry was made in the G.D. by the Constable Jeewan Chandra Bhatt. The petitioner specifically pointed out that no document/letter pertaining to FIR No. 56 of 2017 was handed over to him either by Constable Jeewan Chandra Bhatt or Constable Deepak Chauhan. Finding the petitioner guilty of being negligent in the investigation of the crime by unnecessarily keeping the isame pending, the SSP, Udham Singh Nagar

passed the impugned Punishment Order, whereby the petitioner was awarded the Censure entry on 29.08.2019.

4. The punishment order was challenged in the departmental appeal by the petitioner, but his appeal was dismissed vide order dated 20.03.2020 on the ground that the departmental proceedings have been conducted as per law and the punishment has been imposed after obtaining the explanation from the petitioner and, therefore, there is no reason to interfere with the finding of the punishing authority. The punishment orders have been challenged on the ground that the same are based on the findings recorded by the Preliminary Inquiry Officer and the said authorities have failed to apply their judicious mind while exercising the power as quasi-judicial authorities; the authorities have failed to take into consideration that the imposition of the punishment entails civil consequences and affect the service benefits of the petitioner and therefore, the orders should be a reasoned orders which is lacking in the present punishment orders ; both the orders have found the claimant guilty of negligent in conducting the investigation of FIR No. 56 of 2017, based on the statements of the Constables Jeewan Chandra Bhatt and Deepak Chauhan, but both the authorities have not given any reason for declining the statement of petitioner; it is a settled law that the Departmental Appellate Authority has to pass a reasoned and speaking order while dealing with the Departmental Appeal, being a quasi-judicial function. But in the present case, the Appellate Authority has not dealt with the grounds taken by the petitioner in the appeal, while rejecting the same. Hence, the claim petition.

5. The petition was opposed by the respondents, with the contention that the enquiry officer in its enquiry found the petitioner guilty and the charges are proved against him. In the enquiry, the enquiry officer found that the petitioner has kept the investigation regarding FIR No. 56 of 2017 under section 171 E IPC and 60 Excise Act pending for 1 year and 9 months without any valid and justified reason. This act of the petitioner

shows his carelessness and indiscipline. The reasons explained by the petitioner were not found satisfactory. The enquiry officer after a fair, impartial and transparent detailed enquiry submitted the enquiry report and found the petitioner guilty and charges were proved. Thereafter the disciplinary authority after going through the reply of the petitioner and enquiry report, passed the punishment order, against which, the petitioner preferred appeal before the appellate authority. The respondent authority after following the law and procedure, passed the order accordingly and before passing the punishment order full opportunity of hearing was given to the petitioner. The answering respondent after going through the reply of the petitioner and enquiry report, passed the punishment order as per law which is just and proper. The appellate authority also after due consideration and examining the facts of the case passed the appellate order and rejected the appeal and thus the rejection order is just and proper and is as per law. Hence the claim petition of the petitioner is liable to be dismissed with cost.

6. No Rejoinder Affidavit has been filed on behalf of the petitioner.

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

8. In view of the above facts, it is clear that in the year 2017, the petitioner was posted as Sub Inspector, Reporting Outpost Kalkata Farm, Police Station Kichha, District Udham Singh Nagar. An FIR No. 56 of 2017 came to be registered on 13.02.2017 under Section 171 E of I.P.C. and Section 60 of the Excise Act against one Jasvinder S/o Late Dhara Singh, R/o Matta Farm, Police Station Kichha. The Investigation of the said FIR was entrusted to Head Constable Vijaya Laxmi. On 10.03.2017, the Investigating Officer forwarded the Charge sheet No. 55 of 2017 to the Office of Circle Officer, which was returned back by the Office of the Circle Officer on 27.06.2017 through Constable Deepak Chauhan. The Circle Officer, Rudrapur City, District Udham Singh Nagar was appointed to conduct the

preliminary inquiry against the petitioner on the allegation that an FIR No. 56/2017 under Section 171 E I.P.C. and Section 60 of the Excise Act was lodged at Police Station Kichha and the entire Case Diary was returned by the orders of the Police Inspector on 27.06.2017 through a Constable to the petitioner who was posted at Police Outpost Kalkata Farm along with the objection. According to the statement of Constable 792 Deepak Chauhan, the records and other documents related to the said allegation were handed over to Constable Jeevan Chandra Bhatt appointed at the out post, Kalkatta Farm on 28.06.2020, which has been accepted by him in his statements and it has also been mentioned that after the return of the petitioner, the concerned *Dak* was given to him in front of the Constable, Deepak Chauhan, which contained papers of FIR No. 56/17. During the preliminary inquiry, it has also been confirmed by Constable Deepak Chauhan that the records related to the said allegation were given to the petitioner in his presence by Constable Jeevan Chandra Bhatt. FIR No. 56/2017, Section 60 Excise Act and 171 E IPC has been filed by the petitioner himself in the G.D. report no. 49 of Police Station Kichha dated 23-01-2019 at 1612 hrs. From which it is clear that in the said period, the records related to FIR No. 56/2017, Section 60 Excise Act and 171 E IPC were pending at the level of the petitioner and he kept the investigation pending in the said FIR for a period of one year nine months and submitted the same in the Police Station Kichha on 23.01.2019.

10. This Tribunal finds that during the inquiry, petitioner was given due opportunity of hearing; his statements were also recorded in the inquiry; the inquiry officer recorded his finding on the basis of evidence and, the facts admitted to both the sides and it was found that petitioner's negligence in the investigation, was proved. The inquiry officer submitted his detailed inquiry report which was duly taken into consideration by the Disciplinary Authority and agreeing with the conclusion drawn by the inquiry officer, a show cause notice was issued to petitioner by the Disciplinary Authority.

11. The record also reveals that petitioner submitted his reply to show cause notice, which was duly considered by the Disciplinary Authority and finding the reply unsatisfactory, Disciplinary Authority found the petitioner guilty of negligence and dereliction of duty and passed the impugned punishment order of censure entry.

12. This Tribunal is of the view that the Disciplinary Authority while passing the punishment, adopted the procedure set by law. The petitioner was afforded sufficient opportunity of hearing. This Tribunal cannot go into the subjective satisfaction of the Disciplinary Authority. There is no procedural lacuna in the proceedings and a reasoned order was passed by the Disciplinary Authority.

13. The appeal filed by the petitioner was considered thoroughly and after considering all the facts, narrated by the petitioner in his appeal, the Appellate Authority also passed a detailed order and dismissed his appeal. There is no procedural lacuna in deciding the appeal.

14. In view of the above facts, this Tribunal is of the view that there is no ground of interference in the impugned orders, passed by the Disciplinary Authority and the Appellate Authority, hence, claim petition has no merit and deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: APRIL 20, 2023
DEHRADUN
KNP