

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 68/NB/SB/2019

Yogesh Dutt, s/o Shri Atma Ram, presently posted as Sub-Inspector, Police Station Paati, District Champawat.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Ministry of Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Kumaon Range, Nainital.
3. Senior Superintendent of Police, Rudrapur, district U.S. Nagar.
4. Superintendent of Police, District Champawat.

.....Respondents

Present: Sri Devesh Bishnoi, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: MAY 17, 2023

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

“(i) To issue a direction to the respondent authorities to set aside the Order No. Da-50/2018 dated 13.06.2018 (Annexure No.1) passed by the Senior Superintendent of Police, U.S.Nagar (Respondent no.3).

(ii) To set aside the Order No. Cok-150(27) dated 27.12.2018 (Annexure No.2) of Inspector General of Police, Kumaon Range, Nainital (Respondent no.2).

(iii) To issue a direction/order to the respondent authorities to delete the censure entry from the service record of the claimant/petitioner and to grant him all service benefits which accrued to him during the intervening period.

(iv) To issue a direction to the respondents to grant all consequential benefits to the petitioner.

(v) To allow the claim petition of the claimant/petitioner with costs.”

2. The relevant facts of the case in brief are that in the year 2017, the petitioner while posted as Incharge Police Chowkee Sakainiya, Police Station Gadarpur, District US Nagar, was issued a show cause notice dated 05.05.2018 by the Senior Superintendent of Police, Udham Singh Nagar as to why the censure entry be not given to him as a minor penalty under "The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991". The said Rules hereinafter have been referred to as "Rules of 1991". The allegation against the petitioner, based on the preliminary inquiry, in the show cause notice reads as under:-

“कारण बताओ नोटिस

उप निरीक्षक ना०पु० योगेश दत्त
द्वारा पुलिस अधीक्षक चम्पावत

वर्ष 2017 में जब आप चौकी प्रभारी सकैनिया थाना गदरपुर में नियुक्त थे तो आप द्वारा थानाक्षेत्र गदरपुर एवं सकैनिया से सम्बन्धित अभियोगों की विवेचना सम्पादित की जा रही थी। चौकी सकैनिया से आपका स्थानान्तरण थाना काशीपुर होने पर आप थाना काशीपुर हेतु दिनांक 23-9-2017 को रवाना हुए परन्तु आप इन लम्बित अभियोगों से सम्बन्धित अभिलेख थाना गदरपुर में उपलब्ध नहीं कराये गये। माह दिसम्बर 2017 में आप द्वारा एफआईआर नं०-62/16, एफआईआर नं०-89/17, एफआईआर नं०-97/17, एफआईआर नं०-124/17, एफआईआर नं०-152/17 एवं एफआईआर नं०-196/17 से सम्बन्धित अभिलेख थाना गदरपुर में उपलब्ध कराये गये। जबकि आपको नियमानुसार स्थानान्तरण पर थाना काशीपुर रवाना होने से पूर्व थाना गदरपुर से सम्बन्धित अभियोग/शिकायती प्रार्थना पत्र/अन्य अभिलेख थाना गदरपुर में दाखिल करने चाहिए थे परन्तु आप द्वारा ऐसा न कर 03 माह पश्चात बिलम्ब से अभिलेख उपलब्ध कराये गये। इस प्रकार आपका यह कर्तव्य के प्रति घोर लापरवाही शिथिलता, अकर्मण्यता एवं स्वेच्छाचारिता का द्योतक है।

अतः आप इस नोटिस प्राप्ति के 15 दिवस के अन्दर अपना लिखित स्पष्टीकरण प्रस्तुत करें कि क्यों न आपके इस कृत्य के लिये उत्तराखण्ड [उ०प्र० अधीनस्थ श्रेणी के पुलिस अधि०/कर्म० की (दण्ड एवं अपील) नियमावली-1991] अनुकूलन एवं उपान्तरण आदेश 2002 के नियम-14(2) की विभागीय कार्यवाही के अन्तर्गत आपकी चरित्र पंजिका में निम्नलिखित परिनिन्दा लेख अंकित कर दिया जाये। यदि आपका लिखित स्पष्टीकरण निर्धारित अवधि के अन्दर इस कार्यालय ने प्राप्त नहीं होता है तो यह समझा जायेगा कि आपको उक्त सम्बन्ध में कुछ नहीं कहना है और स्पष्टीकरण के अभाव में एकपक्षीय अग्रिम आदेश पारित कर दिये जायेंगे। प्रकरण से सम्बन्धित जाँच आख्या की छायाप्रति संलग्न है-

वर्ष 2018

“वर्ष 2017 में जब यह उ०नि० चौकी प्रभारी सकैनिया थाना गदरपुर में नियुक्त थे, तो इनके द्वारा थानाक्षेत्र गदरपुर एवं सकैनिया से सम्बन्धित अभियोगों की विवेचना सम्पादित की जा रही थी। चौकी सकैनिया से इनका स्थानान्तरण थाना काशीपुर होने पर यह थाना काशीपुर हेतु दिनांक 23-9-2017 को रवाना हुए, परन्तु इनके द्वारा लम्बित अभियोगों से सम्बन्धित अभिलेख थाना गदरपुर में उपलब्ध नहीं कराये गये। माह दिसम्बर 2017 में इनके द्वारा एफआईआर नं०-62/16, एफआईआर नं०-89/17, एफआईआर नं०-97/17, एफआईआर नं०-124/17, एफआईआर नं०-152/17 एवं एफआईआर नं०-196/17 से सम्बन्धित अभिलेख थाना गदरपुर में उपलब्ध कराये गये। जबकि इनको

नियमानुसार स्थानान्तरण पर थाना काशीपुर रवाना होने से पूर्व थाना गदरपुर से सम्बन्धित अभियोग/शिकायती प्रार्थना पत्र/अन्य अभिलेख थाना गदरपुर में दाखिल करने चाहिए थे परन्तु इनके द्वारा ऐसा न कर 03 माह पश्चात बिलम्ब से अभिलेख उपलब्ध कराये गये इस प्रकार इनका यह कृत्य कर्तव्य के प्रति घोर लापरवाही, शिथिलता, अकर्मण्यता एवं स्वेच्छाचारिता का द्योतक है जिसकी परिनिन्दा की जाती है।

संलग्न यथोपरि।
संख्या द-50/2018
दिनांक मई 05, 2018

वरिष्ठ पुलिस अधीक्षक,
ऊधमसिंह नगर

4. The petitioner submitted the reply to the show cause notice on 06.06.2018 and denied the charge levelled against him.
5. Senior Superintendent of Police, Udham Singh Nagar perused the reply to show cause notice and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of censure entry on 13.06.2018.
6. The petitioner filed an appeal against the impugned punishment order which was rejected by the Inspector General of Police, Kumaon Range, Nainital on 27.12.2018.
7. The petitioner has contended in the claim petition that on his transfer from the Incharge Police Chowki Sakainiya, Police Station Gadarpur, District US Nagar to Police Station Kashipur, he moved to Police Station Kashipur on 23.09.2017. The petitioner was entrusted with the investigation of many crimes including the crimes under F.I.R nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017. During investigation, although all the records pertaining to the aforementioned F.I.RS were available in the office, however, few papers relating to the aforesaid F.I.RS were left with him inadvertently. The same, thus could not be handed over at the Police Station Gadarpur. However, when he came to know of the same, he immediately handed over the remaining papers of the FIR nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017, at the Police Station Gadarpur. As such, he had no ill intention to have retained the papers concerned. The respondent no. 3, considered the investigation done by the

petitioner as an act of carelessness, inaction & arbitrariness and a preliminary enquiry was setup in the matter. The enquiry was conducted by the CO., Bazpur, who submitted his Enquiry Report on 28.04.2018 to the respondent no 3.

8. On the basis of the enquiry report, the respondent no 3 issued a show cause notice no G50/2017 dated 05.05.2018 to the petitioner, as to why he be not punished under Rule 14(2) of the Uttarakhand UP Police Officers of Subordinate Ranks (Punishment & Appeal) Rules, 1991] Adaptation & Modification Order 2002. Having received the show cause notice dated 05.05.2018, the petitioner submitted his reply vide letter dated 06.06.2018. In his reply, petitioner clarified the inadvertent slip up at his hands, and denied to have done any act of carelessness or negligence. The respondent no 3, however, was not satisfied with the aforesaid reply dated 06.06.2018 of the petitioner and passed punishment order no. G-50/2018 dated 13.06.2018, whereby "Censure Entry" was imposed against him.

9. Being aggrieved by the impugned punishment order dated 13.06.2018, the petitioner preferred appeal before the respondent no. 2 through the respondent no.4 on 01.10.2018. The respondent no. 2, however, did not consider the grounds taken in the appeal and rejected the same vide order no COK-150 (27) dated 27.12.2018 on the ground that it is time barred.

10. The petitioner has stated in his reply to show cause notice that there was no ill intention on his part when certain documents relating to the aforesaid FIR nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017, were left to be handed over at the Police Station, Gadarpur when he was transferred to Police Station Kashipur. The petitioner had undertaken his work of investigations with utmost responsibility and due diligence. The respondent no. 2 has not considered that it is within the competence of the respondent no. 2, to allow the delay in filing the appeal by the before the respondent no. 2. The impugned order passed by the respondent no. 3 has been passed without going into the details of the facts of the case. The same

has been passed in cursory & mechanical manner, and are against the Rules natural justice and hence the same deserves to be quashed.

11. The claim petition has been opposed on behalf of the respondents. It has been stated that when the petitioner was In-charge Chowki, Sakeniya, P.S. Gadarpur, then he was given investigation related to P.S. Gadarpur and Chowki Sakeniya. Thereafter, he was transferred to P.S. Kashipur and was relieved on 23.09.2017, but he did not return the records of the pending cases. As per Rule, the petitioner has to return the records of the FIRs and other records before his relieving to P.S. Kashipur. The petitioner returned the records related to P.S. Gadarpur after a lapse of three months. The departmental proceedings have been initiated against him and the matter was scrutinized by higher authorities and by following the procedure as defined in Rule 14(2) of the Uttarakhand (U.P. Police officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 adoptions and modification orders 2002, awarded the punishment of censure entry in service record of the petitioner. The punishment order is justice and proper and has been passed with due transparency and as per law. In connection of the charges, the preliminary enquiry was conducted and C.O. Bazpur, Mr. Mahesh Chandra Binjola *vide* its inquiry report dated 28.04.2018 has concluded that the petitioner has been found carelessness, inactive for his conduct when he was transferred to P.S. Kashipur from P.S. Gadarpur and he has submitted the records of the cases of P.S. Gadarpur after a lapse of three months. The respondent no. 3 issued a show cause notice dated 05.05.2018 to the petitioner, to which, he submitted reply on 06.06.2018. The disciplinary authority after due consideration and the procedure as defined in Rule 14(2) of the Rules of 1991 awarded the minor punishment of censure entry in the service record of the petitioner. The appellate authority after rejected the appeal of the petitioner finding the same as baseless *vide* order dated 27.12.2018. The claim petition liable to be dismissed.

12. The petitioner has also filed rejoinder affidavit and the same averments have been reiterated and elaborated in it which were stated in the claim petition.

13. I have heard both the parties and perused the record including the inquiry.

14. Learned Counsel for the petitioner has argued that the respondent no. 3 has not considered the explanation submitted by the petitioner, that there was no motive behind non-submission of certain documents relating to the aforesaid FIR nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017. These were left to be handed over at the Police Station, Gadarpur, when he was transferred to Police Station Kashipur, on account of an inadvertent mistake at his hand. Against the impugned punishment order dated 13.06.2018, the petitioner preferred appeal, which was rejected by the appellate authority vide order dated 27.12.2018 on the grounds that it is time barred. The respondent no. 2 did not consider the grounds taken in the appeal. In reply to the show cause notice, the petitioner has stated that there was no ill intention on his part when certain documents relating to the aforesaid FIRs and were left to be handed over at the Police Station, Gadarpur, when he was transferred to Police Station Kashipur. The petitioner had undertaken his work of investigations with utmost responsibility and due diligence. The respondent no. 2 has not considered that it is within the competence of the respondent no. 2, to allow the delay in filing the appeal by the before the respondent no. 2. The impugned order passed by the respondent no. 3 has been passed without going into the details of the facts of the case. The same has been passed in cursory & mechanical manner, and are against the Rules natural justice. The impugned order passed by the respondent no. 2 is based on technicalities, which ought not be adopted in the cases of imputation of penalties. The delay in filing the statutory appeal should be considered liberally, that too when the same is technical.

15. On behalf of the respondents, it has been argued that the petitioner was In-charge Chowki, Sakeniya, P.S. Gadarpur, then he was given investigation related to P.S. Gadarpur and Chowki Sakeniya. Thereafter, he was transferred to P.S. Kashipur and was relieved on 23.09.2017, but he did not return the records of the pending cases. As per Rule, the petitioner has to return the records of the FIRs and other records before his relieving to P.S. Kashipur. The petitioner returned the records related to P.S. Gadarpur after a lapse of three months. The departmental proceedings have been initiated against him and the matter was scrutinized by higher authorities and by following the procedure as defined in Rule 14(2) of the Uttarakhand (U.P. Police officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 adoptions and modification orders 2002, awarded the punishment of censure entry in service record of the petitioner. The punishment order is justice and proper and has been passed with due transparency and as per law. In connection of the charges, the preliminary enquiry was conducted and C.O. Bazpur, Mr. Mahesh Chandra Binjola *vide* its inquiry report dated 28.04.2018 has concluded that the petitioner has been found carelessness, inactive for his conduct when he was transferred to P.S. Kashipur from P.S. Gadarpur and he has submitted the records of the cases of P.S. Gadarpur after a lapse of three months. The respondent no. 3 issued a show cause notice dated 05.05.2018 to the petitioner, to which, he submitted reply on 06.02.2018. The disciplinary authority after due consideration and the procedure as defined in Rule 14(2) of the Rules of 1991 awarded the minor punishment of censure entry in the service record of the petitioner. The appellate authority after rejected the appeal of the petitioner finding the same as baseless *vide* order dated 27.12.2018.

16. In view of the above, it is clear that the petitioner was entrusted with the investigation of many crimes including the crimes under F.I.R nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017. During investigation, although all the records pertaining to the aforementioned F.I.RS were available in the office, however, few papers relating to the aforesaid F.I.RS were left with the petitioner and the same were not handed

over at the Police Station Gadarpur. When the petitioner was asked about the pending investigations, then he handed over the remaining papers of the FIR nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017, at the Police Station Gadarpur, U.S. Nagar. Though he had no ill intention to have retained the papers concerned. The respondent no. 3 considered the investigation done by the petitioner as an act of carelessness, inaction & arbitrariness and a preliminary enquiry was setup in the matter. A show cause notice was issued on 05.05.2018 to the petitioner, to which, the petitioner had given reply. In reply, the petitioner has stated that there was no motive behind non-submission of certain documents relating to the FIRs no. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017. These were left to be handed over at the Police Station, Gadarpur, when he was transferred to Police Station Kashipur, on account of an inadvertent mistake at his hand.

17. The petitioner has himself admitted in reply to the show cause notice that all the records pertaining to the aforementioned F.I.Rs. were available in the office, however, few papers relating to the aforesaid F.I.Rs. were left with the petitioner inadvertently and same could not be handed over at the Police Station Gadarpur and when he was asked about the pending investigations then only, he came to know of the same, he immediately handed over the remaining papers of the FIR nos. 62/206, 89/2017, 97/2017, 124/2017, 152/2017 & 196/2017, at the Police Station Gadarpur, U.S. Nagar.

18. This Tribunal finds that the petitioner was transferred to P.S., Kashipur from Chowki Sakainiya and he was relieved on 23.09.2017 to P.S. Kashipur but he has not returned/submitted the records of the pending investigations. As per rule, the petitioner should have handed over all the records to P.S. Gadarpur, but the petitioner returned the aforesaid records to P.S., Gadarpur after a lapse of three months, that too, when the he was asked about the pending records, which clearly shows the carelessness on the part of the petitioner.

19. This Tribunal is of the view 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 and carelessness was proved. The inquiry officer submitted his 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. 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 carelessness towards his duty and passed the impugned punishment order of censure entry. 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. The petitioner has filed the appeal, which was rejected by the appellate authority, as the petitioner filed the same beyond the prescribed time.

20. 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, 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: MAY 17, 2023
DEHRADUN
KNP