

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 37/SB/2023

Ratan Mani Semwal, aged about 57 years s/o Sri Geetaram Semwal,
Company Commander, 2nd Indian Reserve Battalion, Dehradun.

.....**Petitioner**

with

CLAIM PETITION NO. 196/SB/2023

P.C.B.C.H.M. 4082 Kuldeep Thapa, aged about 58 years, s/o Sri Pal Singh
Thapa, Company Commander, 2nd Indian Reserve Battalion, Dehradun.

.....**Petitioner**

with

CLAIM PETITION NO. 197/SB/2023

Narayan Singh, aged about 50 years, s/o Sri Dewan Singh Bisht Platoon
Commander, c/o Director General of Police, Uttarakhand, Dehradun.

.....**Petitioner**

VS.

1. State of Uttarakhand through Additional Chief Secretary, Home, Govt.
of Uttarakhand.
2. Director General of Police, Police Headquarters, Uttarakhand,
Dehradun.
3. Commandant, IRB-II, Dehradun, Uttarakhand.
4. Deputy Inspector General of Police, PAC Sector, Haridwar.

.....**Respondents**

Present: Dr. N.K.Pant, Advocate, for the Petitioners
Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: 13TH OCTOBER, 2023

Justice U.C.Dhyani (Oral)

Since the facts of the above noted claim petitions and law
governing the field are the same, therefore, these petitions are being

decided by a common judgment and order, for the sake of brevity and convenience.

2. Petitioners, in the above noted claim petitions, have been punished with fine worth a month's salary [or fine equal to one month's pay]. Such punishment orders dated 11.10.2021 are in the teeth of present claim petitions.

3. Impugned punishment orders have been given to the petitioners in exercise of powers conferred under Clause (a) of sub-section (2) of Section 23 of the Uttarakhand Police Act, 2007 (for short, the Police Act). The said provision reads as below:

“23 (2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely -

(a) fine not exceeding one month's salary,

(b) reprimand or censure.”

[Emphasis supplied]

Long title of the Police Act provides that it is ‘an Act to provide for establishment, regulations and management of the Police, redefine its role, duties and its responsibilities.....’

As per Sub-section (2) of Section 1, the Police Act extends to the whole of the State of Uttarakhand and to the Police force of the State deployed outside the State, except the Revenue Police Area.

The words ‘Police Officer’ and ‘Police Personnel’ have been defined in Section 2(p) and 2(g) of the Police Act as-

“Police Officer” means any officer, belonging to the Indian Police Service, Uttarakhand Police Service or Uttarakhand Police Subordinate Service and includes any other service, constituted under this Act.

[Emphasis supplied]

“Police Personnel” means and includes such Police Officers and all other persons, for whom the Appointing Authority is the Director General of Police or any officer subordinate to him, according to Section 2 (q) of the Police Act.

[Emphasis supplied]

4. It is the submission of Ld. A.P.O. that the members of Pradeshik Armed Constabulary (for short, P.A.C.) are deemed to be Police Officers and shall have all the powers, privileges, liabilities, penalties, punishments and protection as a Police Officer, duly enrolled as or subject to by virtue of the Uttar Pradesh Police Act, 1861 or any other law for the time being in force or any rule or regulation made there under, as per Section 5 of the Pradeshik Armed Constabulary Act, 1948 (for short, PAC Act).

5. It will be profitable to extract relevant part of Section 5 of the PAC Act herein below to bring more clarity to the subject:

***“5. Members of P. A. C. to be deemed Police officers.-**
Subject always to the provisions of Sections 6 to 8 every member of the Pradeshik Armed Constabulary shall upon his appointment and as long as he continues to be a member thereof, be deemed to be a Police officer, and, subject to any terms, conditions and restrictions, as may be prescribed, to have and be subject to, insofar as they are not inconsistent with this Act or any rules made thereunder, all the powers, privileges, liabilities, penalties, punishments and protection as a Police officer duly enrolled has or is subject to by virtue of the Police Act. 1861, or any other law for the time being in force, or any rules or regulations made thereunder.”*

6. Section 6 of the PAC Act deals with ‘More heinous offences’, Section 7 deals with ‘Less heinous offences’ and Section 8 deals with ‘Minor punishments’. Petitioners’ cases have not been sent to Court of Law, therefore, Sections 6 & 7 will not be applicable to them. Section 8(3) of the PAC Act provides that ‘no appeal shall lie from an order passed under this section’.

7. Although, sub-section (2) of Section 23 of the Police Act envisages that a punishment of fine not exceeding one month’s salary, may be awarded to any non-gazetted Police Officer, but there is distinct provision in the PAC Act, which Act, it appears, has not been repealed. There is nothing on record to show that the PAC Act, 1948 has been repealed while enacting Police Act, 2007.

8. Section 8 of the PAC Act, deals with minor punishment. According to Section 8(1), the following minor punishments may be

awarded to any officer of the PAC of and below the rank of Head Constable:

“8. Minor punishments- (1) *The Commandant and subject to the control of the Commandant, an Assistant Commandant or such other officer as may be prescribed, may, without formal trial, award to any officer of the Pradeshik Armed Constabulary and below the rank of head constable, who is subject to authority, any of the following punishments for the commission of any offence against discipline which is not otherwise provided for in this Act or which, in the opinion of the Commandant, Assistant Commandant or officer, as the case may be, is not of sufficiently serious nature to call for prosecution before a criminal court, that is to say.-*

(a) Imprisonment in the quarter-guard, or such other place, as may be considered suitable for a term which may extend to twenty-eight days when the order is passed by a commandant, or, to seven days when it is passed any other officer. Such imprisonment shall involve the forfeiture of all pay and allowances for the period of imprisonment.

(b) Punishment-drill extra guard, fatigue or other duty, not exceeding twenty-eight days, in duration, with or without confinement to the lines.

(c) Fine-not exceeding seven days' pay.”

[Emphasis supplied]

9. The petitioners are officers of the rank of Company Commander (*Dal Nayak*), Indian Reserve Battalion (for short, IRB).

10. Rule 3(g) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (for short, Rules of 1991), defines “Police Officer” to mean police officer of the subordinate rank, below the rank of Deputy Superintendent of Police.

The Rules of 1991 also provide for minor penalties, which can be given to the Police Officers of subordinate ranks, as below:

“4(1)(b): **Minor penalties:**

(i)

(ii) fine not exceeding one month's pay.

.....”

[Emphasis supplied]

11. **It is trite law that special law will prevail over general law. Although there are provisions for punishments in the Police Act, 2007 and Rules of 1991, but since the petitioners are the members of PAC, therefore, the provisions of the PAC Act shall be applicable to them.**

12. At this stage of dictation, Ld. A.P.O. drew attention of the Bench towards Section 12 of the Police Act, 2007, to argue that the petitioners

have now become members of IRB, which has been created by the State Government in exercise of such provision (Section 12) of the Act. In response to the query of the Tribunal, as to which Rules shall be applicable to such members of PAC, who have later become members of the IRB, Ld. A.P.O. submitted that the Police Act, 2007 shall be applicable to them.

13. Section 12 of the Police Act, 2007, is reproduced herein below:

“12. Specialised Police Force. - Notwithstanding anything contained in *this Act, or any other law for the time being in force* -

(1) The State Government may, by general or special order, create Specialised Police Force and may also determine the number, functions and responsibilities of such Police Force.

(2) A specialized Police Force may comprise of such administrative structure and hierarchy, as may be prescribed.

(3) The duties, responsibilities, powers and privileges of a Specialised Police Force may be such, as prescribed by the State Government.

(4) The State Government may, by a general or special order, disband or rationalize such a Specialised Police Force at any time.”

[Emphasis supplied]

Nothing has been brought on record to show that something has been ‘prescribed’ in exercise of powers conferred under Section 12 of the Police Act, 2007. Moreover, the Police Act nowhere says that the punishment to the members of the specialized police force will be the same as that of other Police Officers or Police Personnel under the said Act.

14. The delay in filing the claim petitions was condoned in view of the judgment dated 10.01.2022 of the Hon’ble Supreme Court in Misc. Application No. 21 of 2022 in Suo Motu Writ Petition (Civil) no 03 of 2020, on account of Pandemic Covid-19.

15 The above noted petitioners have, in their replies, admitted that they were absent from duty for a while. They have given their explanations for their brief absence. Their contention is that their explanations have not been considered and the punishment given to them is not prescribed under the Rules applicable to them.

16. Petitioners' contention is that PAC Rules only are applicable to them. If fine was to be imposed on them, such fine could be, at the most, equal to seven days' pay. Learned A.P.O., on the other hand, justified departmental action, on the basis of averments made in the C.A. that such punishment is permissible under the Police Act, 2007. The Tribunal observes that the PAC Act has not been repealed while enacting Police Act, 2007. Therefore, Police Act will not be applicable to the petitioners. Learned A.P.O. submitted that the petitioners are the members of the Special Police Force [Indian Reserve Battalion (IRB-II)] and PAC Act will not be applicable to them. The Tribunal observes that there is a provision in the Police Act (Section 12) that Rules shall be framed for the Special Police Force [words 'as prescribed' have been used]. Where are these Rules? Had such Rules been framed, they would have been notified in the Official Gazette (Section 87 Police Act, 2007), which reads as below:

"87. Power to make Rules and Regulations.-(1) The State Government may make Rules for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be, before the House of the State Legislature.

(3) The Director General of Police may frame Regulations, with the approval of the State Government, in respect of matters, specified in this Act.

(4) State Government may direct the Director General of Police to amend any Regulation made by him in such manner, as it may be direct and thereupon, the Director General of Police shall amend the Regulation in the manner as directed.

(5) Every Rule and Regulation made this Act shall be notified by the State Government in the Official Gazette."

[Emphasis supplied]

17. Parties could not place such Rules (if any) before the Bench. If the petitioners are the members of the Special Police Force (and not the members of PAC), then no punishment could legally be imposed on them, in the absence of Rules.

18. Piquant situation has arisen here, which needs to be reconciled by the respondent department. In substance, such punishments which have been given to them could not be given by the disciplinary authority, which has been upheld by the appellate authority. [There is no provision for Appeal in the PAC Act] Maximum punishment prescribed, in such a situation, is fine not exceeding seven days' pay. Disciplinary authority

has exceeded its jurisdiction by imposing fine of a month's salary. The same calls for inference.

19. *Prima facie*, the petitioners appeared to have committed 'misconduct', inasmuch as they left their workplace without making entries in the General Diary (G.D.). They have admitted that they left the workplace and have assigned different reasons for doing so. They returned and resumed their duties after a while. But they did not indicate so in the G.D. They should have done so. Legally, they could not have left their POST without making entry in G.D. (*Rawangi and Aamad*). At the same time, when they offered their explanations for their absence, the disciplinary authority should have considered the same, before making up its mind whether any punishment should be given to them and if so, what should be the quantum of such punishment, as per relevant Rules applicable to them. These are precisely the reasons, as to why the impugned orders require interference.

20. It is beyond the competence of the Tribunal to substitute its own discretion for the discretion of the Competent Authority in view of decision rendered by Hon'ble Supreme Court in *Rajasthan Tourism Development Corporation Limited and Another vs. Jai Raj Singh Chauhan*, (2011)13 SCC 541, in which the following was observed:

"22. We have no doubt that if the learned Single Judge and the Division Bench were apprised of the law laid down by this Court, the former may have instead of substituting the punishment of dismissal from service with that of stoppage of two increments with cumulative effect remitted the matter to the disciplinary authority with a direction to pass fresh order keeping in view the fact that the writ petitioner had already suffered by remaining out of employment for a period of about seven years.

23. At this juncture, we may note that learned counsel for the appellants fairly agreed that ends of justice will be served by remitting the matter to the disciplinary authority with a direction that the respondent be awarded a minor punishment provided an undertaking is given by him not to claim wages for the period between the dates of dismissal and reinstatement. Learned counsel for the respondent that his client will not claim pay and allowances for the period during which he remained out of employment.

24. In the result the appeal is allowed, the orders passed by the learned Single Judge and the Division Bench of the High Court are set aside and the following directions are given:

1.The Corporation is directed to reinstate the respondent within a period of 15 days from the date of receipt/production of a copy of this order.

2.The respondent shall not be entitled to wages for the period between the dates of dismissal and reinstatement.”

[Emphasis supplied]

21. The Tribunal, therefore, should not usurp the jurisdiction of the disciplinary authority and appellate authority.

22. The impugned punishment orders dated 11.10.2021 and appellate orders dated 08.02.2022 in the above noted claim petitions are, accordingly, set aside, leaving it open to the Competent Authority to reconsider cases of the petitioners, in the light of the above, and pass fresh orders, in accordance with law.

23. Rival contentions are left open.

24. It is made clear that the Tribunal has not gone into other factual and legal aspects of the case, which have been canvassed before the Bench by Ld. Counsel for the petitioners and Ld. A.P.O.

25. Let copies of this judgment be placed on the files of Claim Petitions No. 196/SB/2023 and 197/SB/2023.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 13TH OCTOBER, 2023
DEHRADUN
VM/KNP