

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

**WRIT PETITION NO 144(S/S) OF 2017
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 157/NB/SB/2023]**

Sub-Inspector Satish Kumar Sharma, , s/o Late Sri Gopal Dutt Sharma,
presently posted in S.D.R.F. Battalion, Jollygrant, Dehradun.

.....Petitioner

VS.

1. Director General of Police, Police Headquarters, State of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, District Udham Singh Nagar.

.....Respondents.

(virtually)
Present: Sri Sandeep Kothari, Advocate, for the petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.

JUDGMENT

DATED: AUGUST 01, 2024.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order,
in WPSS No. 144/2017 , Sub Inspector Satish Kumar Sharma vs. The Director
General of Police, Uttarakhand and others, on 31.10.2023, as follows:

“

(3) Petitioner is serving as Sub-Inspector in Civil Police, thus, he is a public servant. In this petition, he has challenged the order passed by Senior Superintendent of Police, Udham Singh Nagar, whereby punishment of 'censure' was given to him. He has also challenged the orders passed by Appellate Authority as well as Revisional Authority.

(4) Since petitioner is a public servant; therefore, he is amenable to the jurisdiction of a Tribunal established under UP Public Service (Tribunals) Act, 1976.

(5) Since petitioner has an alternative remedy of approaching Tribunal, therefore, Registry is directed to remit the record of writ petition to Public Service Tribunal, after retaining photocopy of entire writ petition.

(6) With the aforesaid direction, writ petition stands disposed of."

2. Writ Petition No. 144 (S/S) of 2017 is, accordingly, reclassified and renumbered as Claim Petition No. 157/NB/SB/2023. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

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

"a. Issue a writ, order or direction in the nature of Certiorari to quash the order dated 18.04.2013 (Annexure No.-3) passed by the Senior Superintendent of Police, Udham Singh Nagar, the respondent no. 3, whereby, the adverse entry had been awarded to the petitioner for the year 2013 with regard to the dereliction of duty.

b. Issue a writ, order or direction in the nature of Certiorari to quash the order dated 12.10.2013 (Annexure No.- 5) passed by the respondent no.-2, whereby, the appeal preferred by the petitioner had been dismissed.

c. Issue a writ, order or direction in the nature of Certiorari to quash the order dated 24.09.2014 (Annexure No.- 7) passed by the revisional authority, whereby, the revision petition preferred by the petitioner has been dismissed and the order dated 12.10.2013 passed by the appellant authority has been upheld.

d. Issue a writ, order or direction in the nature of Certiorari to quash the order dated 21.08.2013 (Annexure No.-8) passed by the respondent no.-3, whereby, during suspension period, the petitioner

has been awarded only subsistence allowance which he received during the period of suspension.

e. Issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of this case.

c. Award the cost of writ petition to the petitioner."

4. When a colleague of the petitioner, a Sub-Inspector in Uttarakhand Police and second Investigating officer of a case, lost his departmental case against 'censure entry' arising out of a misconduct, before the disciplinary authority, appellate authority and revisional authority, he filed an application/ petition before the Government in Home Department. His petition was allowed and censure entry awarded to him was expunged *vide* Office Memorandum dated 04.02.2019. Petitioner claims parity with him, who was the second Investigating Officer of the case, whereas the petitioner was the first Investigating Officer of the same case.

5. Petitioner has filed a copy of O.M. dated 04.02.2019 on record. Hon'ble High Court *vide* order dated 28.07.2022 granted permission to him to do so, which (order) reads as under:

"Mr. Sandeep Kothari, Advocate, for the petitioner.

Mrs. Indu Sharma, Brief Holder, for the State.

Learned counsel for the petitioner submits, that in relation to the same set of allegation, where the petitioner, who was working as 1st Investigating Officer, and Mr. Sushil Kumar, who was the 2nd Investigating Officer, they were levelled with the adverse entries.

The adverse entry, which was recorded in the service records of Sushil Kumar, has been expunged, by an order dated 04.02.2019.

Petitioner seeks parity, based on the order of expunction of adverse entries dated 04.02.2019, hence he seeks permission to place the said document on record.

He may do so within a period of two weeks from today.

List thereafter."

6. It is the submission of Sri Sandeep Kothari, Ld. Counsel for the petitioner that the petitioner, who was working as first Investigating Officer and Sri Sushil Kumar, who was the second Investigating Officer, were given censure entries. The censure entry, which was recorded in the character roll

of Sri Sushil Kumar, has been expunged *vide* order dated 04.02.2019. The cases of the petitioner and Sri Sushil Kumar are identical. Petitioner should be granted the same relief which was given to Sri Sushil Kumar. Ld. Counsel for the petitioner submitted that censure entry given to the petitioner should be expunged by the Tribunal on the basis of parity.

7. In reply, Sri Kishore Kumar, Ld. A.P.O. submitted that the facts of the case of Sri Sushil Kumar are not before the Tribunal, therefore, it is difficult to ascertain whether petitioner's case is identical to the case of Sri Sushil Kumar or not.

8. Ld. Counsel for the petitioner reiterated that on the same facts the petitioner and Sri Sushil Kumar were given censure entry. Sri Sushil Kumar's censure entry has been expunged by the Govt. *vide* order dated 04.02.2019, therefore, petitioner deserves similar treatment.

9. The Tribunal has gone through the record of the case, including the pleadings of the parties, affidavit and Counter Affidavit filed by the contestants etc. Same case crime number, which pertains to P.S. Rudrapur, District Udham Singh Nagar, the allegations raised in the F.I.R. were firstly enquired into, as Investigating Officer, by the petitioner. Subsequently, the investigation was transferred to Sri Sushil Kumar. The disciplinary authority found lapses on their part and after due process, awarded censure entry to both of them, for misconduct. Whereas Sri Sushil Kumar's censure entry has been expunged by the Govt., petitioner Sri Satish Kumar Sharma has yet to avail that remedy.

10. The case of Sri Sushil Kumar and case of present petitioner appear to be identical, but it will not be proper for the Tribunal to usurp the jurisdiction of the Govt. and substitute its own discretion for the discretion exercised by the Govt. in this regard. Moreover, scope of judicial review before the Tribunal is very limited.

11. Proper will it be, on the part of the Tribunal, to grant liberty to the petitioner to file the application/petition to the Govt. to seek parity with

Sri Sushil Kumar. Government has ample powers to revise/ review any decision given by subordinate authority(ies) under the law governing the field.

12. Sri Sandeep Kothari, Ld. Counsel for the petitioner submitted that the petitioner will file application/ petition to the Govt., seeking parity with Sri Sushil Kumar, therefore, a direction be given to the Govt. in the Home Department to decide such application/ petition, as expeditiously as possible, in accordance with law. Ld. A.P.O. did not object to such innocuous prayer of Ld. Counsel for the petitioner in the interest of justice.

13. The petition is disposed of, by giving liberty to the petitioner to file suitable application/ petition before the Government in the Home Department. If such application/ petition is filed before the appropriate authority, the same shall be decided as expeditiously as possible, without unreasonable delay, in accordance with law. Delay in filing the same is condoned, inasmuch as the litigation was pending before the authorities concerned and the Law Courts. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUS 01, 2024
DEHRADUN

VM