

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

**REVIEW APPLICATION NO. 02/NB/SB/2024**

In

**CLAIM PETITION NO. 03/NB/SB/2021**

State of Uttarakhand & others

..... **Review Applicants**

**vs.**

Lalit Kumar

.....**Petitioner (Respondent)**

Present: Sri Kishore Kumar, A.P.O., for the review applicants

**JUDGMENT**

**DATED: SEPTEMBER 05, 2024**

This review application has been filed by the State, to review the judgment and order dated 14.02.2023, passed by this Tribunal in Claim Petition No. 03/NB/SB/2021, Lalit Kumar vs. State of Uttarakhand & others.

2. Delay condonation application has also been filed on behalf of the review applicant to condone the delay in filing the review application. A copy of review application alongwith delay condonation application was supplied to the petitioner, to file objections to the review application, but neither the petitioner (respondent herein) has appeared nor objections were filed on behalf on his behalf.

3. The review application before this Tribunal can be filed within 30 days as per Rule 17 of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992. Various grounds have been taken by the petitioner (review applicant) for condoning the delay in filing review application. Considering the sufficiency of grounds taken by the

review applicant, the delay in filing the review application is condoned, in the interest of justice.

4. In his review application dated 29.04.2024, the review applicants have cited various grounds for reviewing the order dated 14.02.2023 and for deciding the claim petition afresh on merits. Learned Counsel for the review applicants have taken the grounds that in view of the judgment of Hon'ble Courts passed in the case of: (1) B.C.Chaturvedi vs. Union of India and ors 1995 (6) SCC 749; (2) Lalit Popli vs. Canara Bank & Ors, Appeal (Civil) 3961 of 2001, on 18 February, 2003; (3) The State of Karnataka vs. Umesh, Civil Appeal Nos. 1763-1764 of 2022, on 22 March, 2022; (4) The State of Karnataka vs. N. Gangraj (Civil Appeal No. 8071 of 2024) on 14 February 2020 and (5) Government of Tamil Nadu and another vs. A. Rajapandian 1995 (1) SCC 216, in which the Hon'ble Courts have held that the court/tribunal cannot interfere with findings of fact based on the evidence and substitute its own independent findings, where finding of disciplinary authority/appellate authority are based on some evidence, Court/Tribunal cannot re-appreciate the evidence and substitute its own finding. It is further submitted that the enquiry officer had found the petitioner guilty in helping the investigating officer and also found that the call details of the petitioner shows that he was in continuous touch with the accused. The review applicants prayed for reviewing the judgment and order dated 14.02.2023 and hear the claim petition afresh and decide the same on the basis of facts stated in the review application.

5. The relevant paragraphs of the judgment dated 14.02.2023 passed by this Tribunal in Claim Petition No. 03/NB/SB/2021 reads as follows:

7. In view of the above discussion, the Tribunal finds that the Preliminary Enquiry was initiated by the Disciplinary Authority in respect of the allegations made in the news report published in the daily Newspaper, pertaining to the betting taking place in the Rampura Beat area and the amount being given to the Police personnel. The Enquiry Officer on the basis of the statements recorded, has come to conclusion that the allegations made in the viral audio recording could not be proved. The statements of Smt. Bhagwati Kashyap were recorded during the preliminary enquiry and on the basis of her statement, concluded that the allegations made in the viral audio recording were made out of sheer anger and frustration only to malign the image of the Police and it could not be proved that the petitioner had received any money out of betting. The orders impugned,

which are based on the report of the Preliminary Enquiry Officer are not sustainable for the reason that the Preliminary Enquiry Officer without any basis came to the conclusion that the petitioner was in contact with the accused Manoj Kashyap and his family members and has not cooperated with the Investigating Officer in the investigation and arrest of the accused persons.

8. During preliminary enquiry neither the petitioner nor the Investigating Officer was asked whether the petitioner had not cooperated in the investigation or arrest of the accused persons, but the Enquiry Officer without any basis has concluded that the action of the petitioner was suspicious. The Investigating Officer in his statement before the Preliminary Enquiry Officer has specifically stated that he has not removed the name of any of the accused from the investigation and that due to the lockdown, the further investigation could not be undertaken, in spite thereof the authorities have concluded that the petitioner has not cooperated in the investigation. Since the show cause notice and the consequent punishment order has been passed by the Disciplinary Authority based on the preliminary enquiry report, which was in respect of the news item published in daily newspaper and therefore, the petitioner could not have been held guilty of a charge which was not the subject of the preliminary enquiry. In reply to the show cause notice as well as in the Departmental Appeal of the petitioner, it has been the specific case of the petitioner that the Investigating Officer never sought the assistance of the petitioner for arrest of the accused, but the authorities have rejected the said contention only on the ground that the accused persons and his family members were in contact with the petitioner. The best person to state that whether the petitioner's assistance for arrest of the accused person, was the Investigating Officer, but he has not made any such statement before the Preliminary Enquiry Officer, therefore, the authorities were wrong to hold that the petitioner had not supported in the investigation. The accused Manoj Kashyap was the informer of the petitioner and therefore, it was not unusual for him or his family member to call the petitioner, who was posted in the Rampura Beat, but the authorities have rejected the said contention only on the ground that the petitioner was in contact with the accused persons.

9. On the basis of the above, the orders impugned in the claim petition are not sustainable for the reason that the same are not based on any evidence to support the conclusion arrived by the authorities, to hold the petitioner guilty. The orders impugned have been passed by the authorities holding the petitioner guilty of not cooperating in the investigation and arrest of the accused only on the basis of the call details obtained by the Enquiry Officer without recording finding that the petitioner had in fact provided the information to the accused regarding the investigation, more particularly, it has been a specific case of the petitioner in the appeal that it is not the charge against him that he has passed any information to the accused. The impugned punishment order dated 16.06.2020 and 25.11.2020 passed by the authorities are not sustainable for the reason that the same are perverse not based on any evidence, hence, are liable to be set aside and the claim petition is liable to be allowed.

#### **ORDER**

The claim petition is hereby allowed. The impugned punishment order dated 16.06.2020 as well as appellate order dated 25.11.2020 passed by the authorities is hereby set aside. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner within 30 days from the date of passing of this order. No order as to costs.

6. After considering all the facts and circumstances of the case available on file, the Tribunal had rightly decided the case of the petitioner on merits. The scope of review jurisdiction is very limited. Review is permissible only when (i) there is an error apparent on the

face of record, (ii) there is clerical or arithmetical mistake or (iii) for any other sufficient reason. None of these three is attracted in this case. There is no manifest error on the face of record. There is no clerical mistake. There is no other sufficient reason to indicate that the order sought to be reviewed should be reviewed in the interest of justice.

7. By filing the present review application, the review-applicants seek to re-open and re-argue the claim petition, which is not permissible in law.

8. In view of the above, I find that judgment and order dated 14.02.2023 has been passed on merits after considering all the facts and circumstances of the case and there is no any error apparent on the face of record. Hence, the review petition has no force and is liable to be dismissed.

9. Accordingly, the review application is dismissed.

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

*DATE: SEPTEMBER 05, 2024*  
*DEHRADUN*  
*KNP*