

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

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 86/NB/SB/2023

Const. 516 CP Sunder Lal (Male) aged about 41 years S/o Late Sri Bahadur Ram R/o Village Syaldoba P.O. Syaldoba District Almora

..... Applicant/Petitioner

Versus

1. State of Uttarakhand, through Principal Secretary Home Department, Dehradun
2. Deputy Inspector General of Police Kumaon Region Nainital
3. Senior Superintendent of Police Nainital

..... Respondents

Present : Sri Harish Adhikari, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents.

JUDGMENT

DATED : **24.09.2024**

This claim petition has been filed seeking the following reliefs:-

- “A. To quash the impugned order 18.06.2021 and order dated 31.12.2022 alongwith its effect and operation and after calling the entire record.
- B. To issue order or direction to release the withheld salary of the petitioner of 30 days along with interest or pass any other order direction which this Hon'ble court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.

C. To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. In brief, the facts of the case are that the petitioner was inducted in service as a Constable in the respondent department against the substantive vacancy and by due process of law. The respondent No. 3 ordered for a preliminary enquiry for the incident that took place on 08.03.2021 at Chowki Mangoli of Police Station Mallital, Nainital. On 13.05.2021 the enquiry officer submitted its enquiry report to the respondent No. 3. After receiving the enquiry report, the respondent No. 3 issued a show-cause notice on 17.05.2021 (**Annexure No. 3** to the claim petition) to the petitioner for showing cause as to why not award him punishment of fine equivalent to 30 days of salary as per Rule 14 (2) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 alongwith the copy of the enquiry report and directed him to reply the same within 15 days. Pursuant to the directions of the respondent No. 3, the petitioner vide his reply dated 25.05.2021 (**Annexure No. 4** to the claim petition) replied the show-cause notice and denied the allegations and requested to cancel the show-cause notice as well as the proposed punishment. The disciplinary authority, without considering the reply of the petitioner, superficially mentioned that the reply of the petitioner is not satisfactory, passed the impugned order on 18.06.2021. The disciplinary authority has not considered the reply of the petitioner and only mentioned that the reply of the petitioner has not been found satisfactory, and has not given its finding, thus the impugned punishment order dated 18.06.2021 (**Annexure No. 5** to the claim petition) is liable to be set-aside. Feeling aggrieved by the impugned order dated 18.06.2021 the petitioner preferred a statutory appeal before the respondent No. 2 through proper channel and

requested the respondent No. 2 to quash the punishment order. Thereafter, the appellate authority without applying mind on the legal issue raised by the petitioner rejected the appeal on 14.06.2022 on the ground of delay. The respondent No. 3 in its show-cause notice mentioned the punishment. The aforesaid act of the respondent No. 3 shows his pre-mind set condition that he had made up his mind to award the punishment to the petitioner. Thus, the reply of the petitioner is a futile exercise. The aforesaid act of the disciplinary authority is against the provisions of law laid down by the Hon'ble Apex Court in case of **M.D. ECIL vs. B. Karunakaran** and also it is in violation of the judgment and order of the Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015 "**Mahesh Chandra Gupta vs. State of Uttarakhand and others**" as also against the judgment passed in WPSS No. 192 of 2017 "**Constable 51 AP Jogender Kumar vs. State of Uttarakhand and others**". The act of the respondents is arbitrary, malafide and illegal and against the provisions of Article 14, 16 and 21 of the Constitution of India. Hence, the claim petition.

3. Counter affidavit has been filed by the respondents stating therein that impugned orders dated 18.06.2021 and 31.12.2022 were correct and justified. Hence, this present claim petition filed by the petitioner is liable to be dismissed.

4. Rejoinder affidavit has also been filed reiterating the facts mentioned in the present claim petition.

5. I have heard the learned Counsel for the parties and perused the records.

6. Without going into the merits of the case, it is apparent at the outset that the respondent No. 3 issued a show-cause notice dated 17.05.2021

based upon the preliminary enquiry report dated 13.05.2021. Nevertheless, the impugned show-cause notice dated 17.05.2021 declares vividly a pre-meditated mind set of the Punishing Officer, i.e., respondent No. 3 as to what punishment has been contemplated against the delinquent Police Officer in advance. It goes without saying that the pre-meditated mind set in turn contaminates the entire quasi judicial proceeding as conducted by the Punishing Officer. The petitioner has not only replied the show-cause notice but also has hinted about some local political influence into this issue. Learned Counsel for the petitioner also has mentioned that due to the prevailing politics at the local level the departmental officers were cajoled into taking action against the petitioner. This aspect has not been scrutinized in the punishment order.

7. So far as the enquiry report is concerned, the Court has found no fault in the procedure. However, an erroneous show-cause notice has given rise to an unjustifiable conclusion and erroneous verdicts consequently. Therefore, the impugned orders dated 18.06.2021 and 31.12.2022 are contaminated ab initio, and liable to be quashed as such.

8. On this matter, the petitioner has relied upon the provisions of law laid down by the Hon'ble Apex Court in case of **M.D. ECIL vs. B. Karunakaran**. Also it is in violation of the judgment and order of the Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015 "**Mahesh Chandra Gupta vs. State of Uttarakhand and others**" as also against the judgment passed in WPSS No. 192 of 2017 "**Constable 51 AP Jogender Kumar vs. State of Uttarakhand and others**".

9. This Court does not mean to say by the aforesaid conclusion that a delinquent Police Officer should not be punished for his unlawful acts of

omission or commission. Nevertheless, a proper procedure of disciplinary action is a must in deciding the quantum of punishment after a judicious scrutiny. In the light of this observation, it would be appropriate to issue a fresh show-cause notice to the delinquent Police Officer as per the rules without declaring in advance the quantum of punishment contemplated, if the charges are found correct against the erring Police Officer. This is needless to say that this entire new disciplinary proceeding must be completed within a period of six months.

ORDER

Therefore, the impugned orders dated 18.06.2021 and 31.12.2022 stand quashed. The department would initiate the disciplinary proceedings afresh on the basis of the preliminary inquiry dated 13.05.2021, if the appointing authority deems it necessary. No order as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: SEPTEMBER 24, 2024
NAINITAL

BK