

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

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

----- Member (A)

Claim Petition No. 26/NB/SB/2022

Sandeep Pilkhwal (Male), aged about 40 years, S/o Shri Khadak Singh,
Presently posted as Senior Sub Inspector, Police Station-Kotwali Kiccha,
District Udham Singh Nagar.

..... Claimant

Versus

1. State of Uttarakhand through Principal Secretary, Department of Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Senior Superintendent of Police. District Udham Singh Nagar.

..... Respondents

Present : Sri Vinay Kumar, Advocate for the petitioner (Online)
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : OCTOBER 17, 2024

By means of this petition, the petitioner seeks the following reliefs:

- “(i). To quash the impugned punishment order dated 22nd July, 2020 (wrongly mentioned as 22nd July, 2019) passed by the Senior Superintendent of Police, Udham Singh Nagar, whereby the integrity of the claimant has not been certified/stopped for the year 2020 (Annexure No. 1).
- (ii). To quash the impugned appellate order dated 27th April, 2021 passed by the Inspector General of Police, Kumaon Range, Nainital, whereby the departmental appeal filed by the claimant has been rejected and the punishment order dated 22nd July, 2020 (wrongly mentioned as 22nd July,

2019) passed by the Senior Superintendent of Police, Udham Singh Nagar (Annexure No. 2), has been affirmed.

- (iii). To issue directions in the nature of mandamus commanding the directing the respondents to grant all consequential benefits.
- (iv). To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Brief facts of the case are that vide Letter No. 56/2020 dated 15th May, 2020 issued by the SSP, Udham Singh Nagar a preliminary inquiry was initiated by appointing Circle Officer, Bazpur, Udham Singh Nagar as Preliminary Inquiry Officer to conduct the preliminary inquiry in the matter of the conversation between the persons named as Sanjay and Ajay, wherein Sanjay had been demanding one case/crate of liquor from Ajay in the name of Sub-Inspector Sandeep Pilkhwal, Incharge Outpost. The Preliminary Inquiry Officer conducted the preliminary inquiry and in the course of preliminary inquiry, the Inquiry Officer perused the CD containing the conversation between Sanjay and Ajay and also called Sanjay Rana before the Preliminary Inquiry Officer, who admitted the fact that the voice recorded in the CD is that of Sanjay Rana himself. After verifying the voice of the person conversing in the CD, the statements of Ajay Kumar Gaba, Gurumukh Singh (Driver), Sanjay Rana (Constable), Prakash Chandra Chilkoti (Constable), Rajendra Singh Koranga (Constable) and statement of the claimant were recorded. In the statement made before the Preliminary Inquiry Officer, the claimant pointed out that he was posted as Incharge Outpost Barheni on 10th August, 2019 and the claimant narrated the incident which took place on 10th May, 2020 Claimant denied the specific query that he does not know Ajay Kumar Gaba and that Sanjay Rana was posted in the Police Outpost prior to the posting of the claimant. The claimant further pointed out that Sanjay Rana was Gram Prahari of his village and during COVID-19 pandemic he was posted as SPO. The claimant further pointed out that since Sanjay Rana was also nominated as Police Sarathi, therefore, he had an excess to visit the Police Outpost. The petitioner denied the query

that the claimant received Rs. 20,000/- from the owner of the Dumper through Sanjay Rana. The claimant further pointed out that when the documents pertaining to the vehicle was proper and there was no overloading of the vehicle, therefore, there was no question of the claimant demanding illegal gratification from the owner of the Dumper. Claimant denied the allegation having received an amount of Rs. 15,000/- from the owner of the Dumper and the claimant denied any knowledge about the demand made by Sanjay Rana from Ajay Kumar Gaba in the name of the claimant. After going through the records, the Preliminary Inquiry Officer had submitted his preliminary inquiry report to the SSP, Udham Singh Nagar on 5th June, 2020, wherein he recorded a finding that the claimant in his statement had accepted the fact that Ajay Kumar Gaba wanted to provide one case/crate of the liquor for the staff of the Police Outpost for which the claimant has specifically denied, however, Sanjay Rana insisted that Ajay Kumar Gaba want to voluntarily provide the liquor, which itself shows that the entire issue was in the knowledge of the claimant. The Preliminary Inquiry Officer also recorded that a private person receiving gratification or illegal receiving any benefit in the name of Incharge could not be possible without the involvement of Outpost Incharge. Thus, the Preliminary Inquiry Officer held that the role of the claimant appears to be suspicious in the entire episode. On the basis of the preliminary inquiry report dated 05.06.2020, the SSP, Udham Singh Nagar had issued a show-cause notice dated 16.06.2020 to the petitioner requiring him to show-cause as to why the integrity certificate of the claimant for the year 2020 be not stopped. The claimant was required to show-cause within 15 days of the receipt of the show-cause notice. The show-cause notice, in which it was mentioned that in the preliminary inquiry report, the Inquiry Officer had recorded that it has been proved that Sanjay Rana had demanded the liquor from the owner of vehicle in the name of the claimant, which fact was within the knowledge of the claimant and the said demand could not have been made without knowledge of the claimant. On receipt of the

show-cause notice dated 16.06.2020, the claimant had submitted his reply to the show-cause notice on 04th July, 2020 before the SSP, Udham Singh Nagar and in his reply to the show-cause notice, the petitioner had denied the charges levelled against him. Though the claimant challenged the preliminary inquiry report on various grounds including on the merits of the finding given by the Inquiry Officer, apart from other grounds and also challenged the proposed punishment of stoppage of integrity of the claimant as a punishment. The Disciplinary Authority confirmed the proposed punishment by imposing the punishment of stoppage of the integrity of the claimant for the year 2020 vide order dated 22th July, 2020 (wrongly mentioned as 22nd July, 2019). Against the punishment order dated 22th July, 2020 (wrongly mentioned as 22nd July, 2019), the petitioner preferred a departmental appeal before the Appellate Authority/Inspector General of Police, Kumaon Range, Nainital. The departmental appeal preferred by the claimant against the punishment order dated 22.07.2020 (wrongly mentioned as 22nd July, 2019) was rejected on 27.04.2021 by the appellate authority by confirming the punishment order. Hence, the present claim petition has been filed by the petitioner before the learned Tribunal.

3. Counter affidavit has been filed by the respondents stating therein that impugned punishment order dated 22.07.2020 (wrongly mentioned as 22nd July, 2019) and 27.04.2021 were correct and justified. Hence, this present claim petition filed by the petitioner is liable to be dismissed.

4. Learned Counsel for the petitioner did not file any rejoinder affidavit against the counter affidavit filed on behalf of the respondents No. 1 to 4.

5. Heard; and perused the record carefully.

6. The learned Counsel for the petitioner has relied upon Claim Petition No. 34/DB/2020 Umesh Giri Vs. State of Uttarakhand & others (Annexure No. 7) decided on 27th May, 2021 wherein it was held:-

“7. The reply to the question, posed in para 5 of this judgment, therefore is, in the negative. Integrity of a Police Officer of Subordinate Rank cannot be withheld as ‘punishment.’

8. The punishment imposed upon the delinquent is not provided for under Rule 4 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. Integrity of a person can be withheld, for sufficient reasons, at the time of filling up the Annual Confidential Report. However, if the statutory rules so provide, it can also be done as punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules of 1991. The rules do not empower the Disciplinary Authority to impose ‘any other’ major or minor punishment, other than what has been prescribed therein. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings, cannot be awarded.”

7. In the light of above judgment, the impugned punishment order dated 22nd July, 2020 (wrongly mentioned as 22nd July, 2019) passed by the Senior Superintendent of Police, Udham Singh Nagar, whereby the integrity of the claimant has not been certified/stopped for the year 2020 (Annexure No. 1) and the impugned appellate order dated 27th April, 2021 (Annexure No. 2) passed by the Inspector General of Police, Kumaon Range, Nainital, are null and void *ab-initio*.

8. Nevertheless, the Court has not opined anything negative about the enquiry report and subsequent departmental proceeding against the delinquent Police Officer. It is only the category of punishment that has not been found in accordance with the rules, therefore, it is left open for the department to conclude the disciplinary proceeding as per law, provided that the department is sufficiently certain about the infallibility of the evidences as produced against the petitioner, and not upon such evidences which are only based on suspicion and hearsay.

ORDER

The claim petition is allowed. The impugned punishment order dated 22nd July, 2020 (wrongly mentioned as 22nd July, 2019) passed by the Senior Superintendent of Police, Udham Singh Nagar, whereby the

integrity of the claimant has not been certified/stopped for the year 2020 (Annexure No. 1) and the impugned appellate order dated 27th April, 2021 (Annexure No. 2) passed by the Inspector General of Police, Kumaon Range, Nainital are hereby set-aside. No order as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: OCTOBER 17, 2024

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