

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

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

----- Member (A)

Claim Petition No. 12/NB/SB/2022

Gulab Singh (male) aged about 40 years S/o Sri Tala Singh presently working as Sub Inspector, Civil Police, Kotwali Bhowali, District Nainital

..... Applicant

Versus

1. State of Uttarakhand, through Secretary, Home, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Inspector General of Police, Kumaun Region, Nainital.
3. Senior Superintendent of Police, Nainital.
4. Circle Officer of Police, Haldwani, District Nainital.

..... Respondents

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

JUDGMENT

DATED : **24.09.2024**

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

- “I. Issue an order or direction to the respondents to set aside the censure entry dated 17.11.2020 passed by the respondent no. 3, consequential effect of suspension order dated 20.12.2020 passed by respondent no. 3 and appellate order dated 24.04.2021 passed by respondent no. 2 (contained as Annexure No. 1, 2 and 3 to the claim petition)

- II. Issue an order or direction directing the respondents to pass the order keeping in abeyance the effect and operation of the censure entry dated 17.11.2020 passed by the respondent no. 3, suspension order dated 20.12.2020 passed by respondent no. 3 and appellate order dated 24.04.2021 passed by respondent no. 2 (contained as Annexure No. 1, 2 and 3 to the claim petition)
- III. Issue an order or direction to the respondent authority to not give any effect in the future promotion avenues available to the applicant.
- IV. Issue an order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case may kindly be passed.
- V. Award the cost of the petition.”

2. In brief, the facts of the case are that one Criminal Case No. 136 of 2020 under Section 457, 380, 411 IPC was registered and the accused of the said case Pawan Kumar Kushwaha was in the police custody. On 02.07.2020 in the morning he fled/disappeared from the police station by cheating and manhandling the Police Constable named as Gulshan Giri. In the morning about 5:00 AM Constable No. 148 Civil Police Deepak Gola informed by telephonic message that accused Pawan Kumar has fled pushing the Constable Gulshan Giri. Thereafter total staff of the concerned police station started search of Pawan Kumar and ultimately he was traced and arrested on 02.07.2020 itself from the forest of Jamrani, Damuwadhunga. Against this lapse the higher authorities started disciplinary proceeding against the petitioner. The petitioner was innocent. When the accused absconded, the petitioner was on night duty and was doing checking and patrolling duty in the area of concerned police station. In the month of July 2020 COVID-19

pandemic was in peak, there was shortage of Constables at each police station of the district. Most of the police strength was deployed at the border of the State for checking the tourist vehicles for infected persons. The main reason of absconding of the accused was that the toilet of the police station was out of the boundary of the police station and there was no other public toilet installed within the boundary of the police station. The Constable Gulshan Giri had tried to check and arrest the accused, but he succeeded in absconding. But within a few hours he was again arrested, then only for this innocuous event the petitioner was given a censure entry on 17.11.2020 (Annexure No. 1 to the claim petition) by Senior Superintendent of Police, Nainital (Respondent No. 3) and also suspended on 04.07.2020 by Senior Superintendent of Police, Nainital (Respondent No. 3) and appellate order dated 24.04.2021 passed by Inspector General of Police, Kumaun Region, Nainital (Respondent No. 2). A show-cause notice was given to the applicant on 23.08.2020 (Annexure No. 4 to the claim petition) by which it was alleged that on 01.07.2020 the FIR was lodged under Section 457, 380, 411 against Pawan Kumar Kushwaha, who absconded from the police custody on 02.07.2020 in the morning at 05:00 AM. Although the accused was arrested the same day but the punishing officer has alleged that there was negligence on the part of the petitioner. On 18.07.2020 (Annexure No. 5 to the claim petition) the respondent No. 4 has submitted the report of preliminary enquiry after interrogating the Constable No. 524 Civil Police Govind Prasad, suspended Sub-Inspector Gulab Singh, suspended Constable 148 Civil Police Deepak Gola and suspended Constable Civil Police Deepak Giri. Being aggrieved by the impugned orders dated 17.11.2020, 20.12.2020

and 24.04.2021, the present claim petition has been filed before this Tribunal.

3. Counter affidavit has been filed by the respondents stating therein that impugned orders dated 17.11.2020, 20.12.2020 and 24.04.2021 were correct and justified. Hence, this present claim petition filed by the petitioner is baseless and 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. It is interesting to note that this Claim Petition No. 12/NB/SB/2022 has been filed on the basis of earlier judgment dated 28.03.2023 in Claim Petition No. 13/NB/SB/2021 Constable 672 CP Gulsan Giri Vs. State of Uttarakhand & others wherein Constable 672 CP Gulsan Giri is the same delinquent Police Officer who was prima facie culprit of letting go the arrested accused Pawan Kumar Kushwaha from the police custody in the present petition too.

7. In the impugned judgment dated 28.03.2023, the Tribunal has not only allowed the claim petition but also has observed as follows:-

“7. In view of the above discussion, the Tribunal finds that in the morning of 02.07.2020, one accused Pawan Kumar raised the voice or alarm to go for toilet, but no bathroom or toilet facility was available in lockup at the police station Mukhani was fled from the police custody from police station Mukhani, Haldwani. When the accused

repeatedly asked him to go to the toilet, at about 04.50, the petitioner took the accused in handcuffs with the help of a mobile phone to the toilet located near the police station gate. While doing toilet, the accused suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran away taking his hand from the handcuffs. On the basis of preliminary inquiry, it was found that the accused Pawan Kumar Kushwaha was handcuffed to the main gate of the police station premises with the help of mobile light due to lack of electricity at that time. The petitioner without any delay informed to Thana. The petitioner attempted to catch the accused which is recorded in CCTV cameras. The accused was caught at the Damuadhunga area on 02.07.2020 at day time. All real facts were disclosed by the petitioner before the enquiry officer which is also mentioned in the enquiry report. It is true that the toilet or bathroom facility was not available in Thana lock-up; whenever the petitioner took the accused in handcuffs with the help of a mobile phone to the toilet located near the police station gate. The accused suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran away taking his hand from the handcuffs. On the basis of preliminary inquiry, it was found that the accused Pawan Kumar Kushwaha was handcuffed to the main gate of the police station premises with the help of mobile light due to lack of electricity at the time of incident. The petitioner without any delay informed to Thana. It is relevant that the

petitioner attempted to catch the accused which is recorded in CCTV cameras. The accused was caught at the Damuadhunga area on 02.07.2020 at day time. The preliminary inquiry officer also in his finding recorded that:

यद्यपि दिनांक 02.07.2020 की प्रातः समय करीब 04:50 बजे थाना मुखानी पर बिजली ना हाने के दौरान अभियुक्त पवन कुशवाहा अन्धेरे का लाभ उठाकर लघुशंका के बहाने निगरानी ड्यूटी पर नियुक्त कानि0 672 ना0पु0 गुलशन गिरी को धक्का देकर भागने में सफल रहा। पुलिस अभिरक्षा से फरार अभियुक्त के विरुद्ध थाना मुखानी पर अभियोजन पंजीकृत कर उसे उसी दिन पुलिस द्वारा गिरफ्तार किया जा चुका है जिस दौरान को अप्रिय घटना भी घटित नहीं हुई अभियुक्त के फरार होने के सदोष एवं जान बूजकर किसी पक्ष को लाभ अथवा हानि कारित करने का कोई आशय पुलिस कर्मियों का प्रतीत नहीं होता है।

8. In view of the above, the Tribunal finds that the accused Pawan Kumar raised the voice or alarm to go for toilet, but there was no bathroom or toilet facility available in lockup at the police station Mukhani and at about 04.50, the petitioner took the accused in handcuffs with the help of a mobile phone light due to lack of electricity at that time, to the toilet, located near the police station gate. The accused took the benefit of darkness and toilet, suddenly overturned and pushed the petitioner, on which the petitioner immediately tried to nab him, but accused ran

away taking his hand from the handcuffs. The petitioner attempted to catch the accused which is recorded in CCTV cameras. The petitioner immediately informed about this incident to Thana and the accused was caught at the Damuadhunga area on 02.07.2020 at day time by the police. The petitioner took the accused to toilet near the gate because there was no facility of toilet in the lockup. It was just an unintentional incident and there was no intention of the petitioner to favour or disfavour to the accused. Hence, the impugned orders have been passed without taking into consideration the circumstances that had occurred at the time of incident. Hence, the impugned orders are liable to be quashed and the claim petition is liable to be allowed.”

In the light of the aforesaid judgment, there is no doubt to the fact that the incident was not a result of any unlawful act of omission or commission on the part of the petitioner in this instant petition also, therefore, the challenged orders seem to have been passed in a mechanical manner without due consideration of the existing circumstances and, therefore, are hereby quashed.

ORDER

The claim petition is allowed. The impugned orders of censure entry dated 17.11.2020 passed by respondent No. 3, consequential effect of show-cause notice order dated 20.12.2020 passed by respondent No. 3 and appellate order dated 24.04.2021 passed by respondent No. 2 are hereby set aside. Respondents are directed to expunge the adverse entry

recorded in service record of the petitioner within 30 days from the date of presentation of certified copy of this order. No order as to costs.”

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: SEPTEMBER 24, 2024
NAINITAL
BK

