

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

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

----- Member (A)

Claim Petition No. 152/NB/SB/2023

S.I. Govind Ballabh Bhatt (Male) aged about 53 years, S/o Late Sri Devkinandan Bhatt, R/o Village and Post Bisar Tehsil and District Pithoragarh. Presently posted at Kotwali Bageshwar.

..... Petitioner

Versus

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

..... Respondents

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

**JUDGMENT**

DATED : **20.09.2024**

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

- “I. To quash the impugned order 15.07.2023 and 17.04.2023 in league with 24.04.2023 and 22.05.2023 alongwith its effect and operation and after calling the entire record.
- II. To issue order or direction to grant all the service benefits including the pay of suspension period and for two days i.e. 01.10.2022 and 02.10.2022 in view of the provisions of

Fundamental rules as enshrined in the Financial Hand Book or pass any other order direction which this Hon'ble court may deem fit and proper under the facts and circumstance stated in the body of the claim petition.

III. 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 selected and appointed as a Constable in the year 1990 against substantive and permanent vacancy in the respondent department by due process of law. Since the date of his initial appointment the petitioner has never been charge-sheeted and even not a single adverse entry or warning had ever been given to the petitioner. In fact, the petitioner performed his duties and the liabilities to the satisfaction of his superiors and his performance was always appreciated. In the year 2008 the petitioner on the basis of his credentials appeared in the departmental promotional exercise and was declared successful and was promoted to the post of Sub-Inspector. During his service the petitioner was posted in difficult terrains in the State of U.P. as well as State of Uttarakhand while his wife, who resides away from the petitioner, suffered from depression which ultimately resulted into her mental sickness. The petitioner, who was in discipline duties was helpless to look after his wife and whenever the circumstances allowed him he used to go and look after his wife and also provide the medical treatment but there was no progress in the mental health of his wife, due to which, the petitioner himself started to remain in depression, but since his willpower was so strong he never allowed his depression to overcome his performances. On 30.09.2022 his wife was seriously ill and when the petitioner got information about her illness he by intimating his authorities left for his home town Pithoragarh where the petitioner himself got

admitted in the Pithoragarh hospital from 03.10.2022 to 17.10.2022. After overcoming his illness the petitioner took the fitness certificate on 18.10.2022 and submitted his joining alongwith his fitness certificate on the same day i.e. 18.10.2022. It was very much surprising to the petitioner that the respondent No. 3 instead of having a sympathetic view towards the petitioner ordered for enquiry and also placed the petitioner under suspension from 01.10.2022. Thereafter, the enquiry officer completed the enquiry and in the enquiry the petitioner had placed all the documents about his health and submitted the reason to the enquiry officer but the enquiry officer concluded the inquiry and submitted the enquiry report to the respondent no, 3 on 10.11.2022. Pursuant to the enquiry report the respondent No. 3 issue three show-cause notices to the petitioner for the same incident on 23.01.2023, 01.02.2023 and 15.05.2023, almost after three months of the enquiry and directed to him to submit his reply within 15 days. 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. Thus seeking the reply of the petitioner was 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** as also 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**" and against the judgment passed in WPSS No. 192 of 2017 "**Constable 51 AP Jogender Kumar vs. State of Uttarakhand and others**" as well. After receiving the show-cause notice the petitioner submitted his reply to the show-cause notice and denied the allegations and requested to cancel the show-cause notice. Surprisingly the disciplinary authority in utter hot haste

passed the impugned order on 17.04.2023 without examining the submission made by the petitioner, thus the impugned order dated 17.04.2023 is not tenable in the eyes of law. The disciplinary authority in its impugned order passed the punishment which was mentioned in show-cause notice dated 15.05.2023. The respondent No. 3 awarded three different punishments to the petitioner by the order dated 24.04.2023 awarded the punishment of withholding the pay of the two days i.e. 01.10.2022 and 02.10.2022 on the principle that no work no pay. Thereafter, vide order dated 22.05.2023 again passed the order of withholding the pay of the suspension period which from 03.10.2022 to 19.10.2022 of 16 days and by the impugned punishment dated 17.04.2023 the respondent No. 3 had withheld the salary of the petitioner of one month. Thus, the punishment order of withholding one month salary was double jeopardy because the respondent No. 3 firstly for the two days i.e. 01.10.2022 and 02.10.2022 declared as leave without pay and thereafter for 16 days again withhold the salary for the suspension period thus for 18 days the respondent No. 3 already deducted the salary and thereafter for days not allowed the pay thus the respondent No. 3 had withheld the salary of the petitioner for 48 days. Feeling aggrieved by the impugned order dated 17.04.2023 the petitioner preferred a statutory appeal before the respondent No. 2 through proper channel on 01.07.2023 and requested the respondent No. 2 to quash the order of censure entry. Thereafter, the appellate authority without applying his mind on the legal issue raised by the petitioner rejected the appeal on 15.07.2023 in a cursory and stereo type manner. 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 15.07.2023 and 17.04.2023 are 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 only that the respondent No. 3 issued three different show-cause notices dated 23.01.2023, 01.02.2023 and 15.05.2023 respectively. There was no need of it. It is rather incomprehensible. A cursory look at this show-cause notices manifest that the respondent No. 3 had issued these notices with a pre-meditated mind and it seems that this attitude has contaminated the disciplinary proceedings.

7. The petitioner has not only replied the show-cause notices, but also has submitted certain medical documents which should have been judged on merit.

8. 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 17.04.2023 and 15.07.2023 are contaminated ab initio, and liable to be quashed as such.

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 17.04.2023 and 15.07.2023 stand quashed. The department would initiate the disciplinary proceedings afresh on the basis of the preliminary inquiry dated 10.11.2022, if the appointing authority deems it necessary. No order as to costs.

**(Capt. Alok Shekhar Tiwari)**  
Member (A)

*DATE: SEPTEMBER 20, 2024*

*NAINITAL*

*BK*