

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

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

----- Member (A)

Claim Petition No. 145/NB/SB/2022

Subhash Chaudhari (Head Constable 02) (Male), Civil Police, aged about 40 years, S/o Shri Ram Ratan Singh, R/o Pushp Vihar, Phase-2 Awas Vikas Kashipur, District Udham Singh Nagar, currently posted as Head Constable at Thana Ramnagar, District Nainital

..... Petitioner

Versus

1. State of Uttarakhand, through Principal Secretary Home, Government of Uttarakhand, Dehradun
2. Director General of Police, Uttarakhand Police, Uttarakhand Police Headquarters
3. DIG Kumoun Range, Uttarakhand Police, Nainital
4. SSP Nainital, District Nainital

..... Respondents

Present : Ms. Shruti Joshi, Advocate for the petitioner  
Sri Kishore Kumar, A.P.O. for the respondents.

**JUDGMENT**

DATED : **29<sup>th</sup> November, 2024**

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

- “1. Issue a direction or order for quashing impugned order dated 25.01.2020 passed by SSP Nainital and order dated 03.06.2020 passed in departmental appeal by DIG Kumaun, Nainital (Annexure No. 1 and 2 respectively),
2. Issue a direction or order for removing a Censure Entry from the character roll of the petitioner,

3. Issue a direction or order which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case,
4. Cost of the petition be awarded in favour of the petitioner.”

2. In brief, the facts of the case are that on 02.04.2002, the petitioner was enrolled in Uttarakhand Police as a Constable and at present he is a Head Constable, Civil Police at P.S. Ramnagar, District Nainital. On 25.07.2019, the respondent No. 4 issued a show-cause notice No. ढ-05/19 to the petitioner under the provision of 4 (1) (kh) of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, seeking why punishment be not given to the petitioner in accordance with the enquiry report dated 22.05.2019. The petitioner denied all allegations against him and submitted his detailed reply to the SSP, Nainital. The enquiry report dated 22.05.2019 has failed to establish any charge against the petitioner but acting in a malafide manner to save the skin of Police Personnel posted at Head Clerk office the petitioner has been made scapegoat. Without considering the reply and any evidence against the petitioner, the SSP, Nainital, acting in illegal and arbitrary manner passed impugned order dated 25.01.2020 (Annexure No. 1 to the claim petition) whereby censure entry was ordered to be entered in character roll of the petitioner. Feeling aggrieved by the punishment order dated 25.01.2020, the petitioner preferred a departmental appeal dated 08.05.2020 (Annexure No. 6 to the claim petition) before DIG Kumaun Range, Nainital. The departmental appellate authority, without considering the points of law and relevant facts and acting in a mechanical manner, confirmed the order passed by SSP, Nainital against the petitioner by order dated 03.06.2020 (Annexure No. 2 to the claim petition). Feeling aggrieved by the illegal order dated 03.06.2020, the petitioner preferred a review/revision application before the DGP, Uttarakhand Police challenging the illegalities made by the authorities. On 23.10.2020 the review/revision

application before DGP, Uttarakhand was denied to be entertained by the authorities, after rejection of the departmental appeal.

3. The petitioner then had filed a writ petition No. 340 (S/S) of 2021 before the Hon'ble High Court of Uttarakhand at Nainital, but on 26.02.2021 the Hon'ble High Court disposed off the writ petition regarding present cause of action, with a direction of availing remedy at the Public Services Tribunal. Hence, this present claim petition.

4. Counter affidavit has been filed by the respondents stating therein that as per rules after the preliminary enquiry, a show-cause notice No. ढ-05/19 dated 25.07.2019 was given to the petitioner under the provision of 4 (1) (kh) of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. Later on, on 25.01.2020 an order No. ढ-05/19 has been passed regarding a 'censure entry' to be recorded in the character roll of the petitioner, as per rules and regulations. Hence, this present claim petition filed by the petitioner is liable to be dismissed.

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

6. I have heard the learned Counsels for the parties and perused the records. This is a strange and unique case of collapse of discipline in the State Police Department at the district level where it seems that the right hand does not know what the left hand is doing. This situation shamefully seems to be existing at all levels of the ground staff as well as at the supervisory levels. In this instant case, one Constable No. 750 Civil Police Raj Kumar goes on 10 days' causal leave w.e.f. 05.03.2018 and never reports back at the place of his duty for a period of one year, and none is bothered to initiate an enquiry or disciplinary proceedings simply because there is no "friendly coordination"

between the lower functionaries responsible for reporting the matter to the higher authorities. Ironically enough everybody knew that the defaulter Constable is absconding, but no actions were taken because another Constable 495 Civil Police Kailash Ram did not submit the “much needed” report for one year.

7. The aforesaid defaulter police personnel No. 750 Civil Police Raj Kumar was supposed to report back on duty on 17.03.2018, but he failed to report back and remained absent. Subsequently, on 28.03.2018 a medical certificate was submitted from his side showing his illness as the cause of his absence. This matter was supposed to have been taken cognizance of by the Second Clerk (character roll) and the petitioner. It is alleged that the illness certificate of defaulter police personnel No. 750 Civil Police Raj Kumar dated 28.03.2018 was endorsed down to the Constable 495 Civil Police Kailash Ram for a report which was not submitted by him for one year.

8. It was also alleged that due to lack of coordination between petitioner and Second Clerk (character roll) proceedings against absent police personnel was delayed for one year and penalty of censure was proposed against the petitioner vide show-cause notice dated 25.07.2019.

9. It appears that an enquiry was ordered by the respondent No. 4 on 04.04.2019, upon which S.P. (Crime/Traffic), Nainital submitted a detailed enquiry report on 22.05.2019. Gist of enquiry is that the Inspector Incharge of Police Station Kaladhungi, one Naresh Chauhan, Head Constable 02 Civil Police Subhash Chaudhari (the petitioner) and Constable 495 Civil Police Kailash Ram were found guilty of gross negligence, and serious dereliction of duty, in this matter.

10. Based upon this enquiry report, the respondent No. 4 issued a show-cause notice dated 25.07.2019 to the petitioner to show-cause as to why he should not be given an adverse/censure entry in his character roll. The petitioner's reply towards the show-cause notice was not found satisfactory, and on 25.01.2020 the respondent No. 4 passed the punishment order against the petitioner wherein an adverse/censure entry was given to the petitioner. Appeal against this punishment order was also rejected by the respondent No. 3 on 03.06.2020 by a detailed order.

11. In this regard, the petitioner's allegation is that the petitioner has been made scapegoat of, by the Senior Police Officers for saving the skin of other responsible police personnel. Apparently, the enquiry report dated 22.05.2019 also corroborates the fact that it was not only the petitioner but also others who had been found guilty, prima facie, for the default in question. Nevertheless, it does not reduce the gravity of the default as made by the petitioner.

12. Initially, the petitioner sought relief from the Hon'ble High Court of Uttarakhand at Nainital wherein the Hon'ble Bench questioned the petitioner to tell as to why the concerned writ petition should be entertained under Article 226 of the Constitution of India, instead by State Public Services Tribunal:-

“Learned Counsel for the petitioner very fairly conceded that this matter may be entertained by the State Public Services Tribunal, but he seeks indulgence that directions may be issued to the Tribunal to consider the claim of the petitioner expeditiously.

The dispute is related to the service matter, which can very much be entertained by the State Public Service Tribunal and the petitioner can avail efficacious remedy from there. Therefore, this Court is of the

view that the instant writ petition may not be entertained under Article 226 of the Constitution of India and is liable to be dismissed.

The writ petition is dismissed accordingly.”

13. The petitioner’s endeavor in this present claim petition is to take benefit of the Hon’ble Apex Court’s milestone observation that without application of mind, the disciplinary proceedings should not be finalized. To that end the petitioner points out that the final punishment order as sanctioned by the respondent No. 4 against the petitioner suffers from a premeditated mind and prejudice against the petitioner. Nevertheless, this Court is not convinced by the petitioner’s logic. Of course, the respondent No. 4 has decided to finally award the same punishment as was proposed earlier, but here the gravity of petitioner’s indiscipline is such that nothing less could have been awarded by the Punishing Officer to the petitioner.

14. This is true that in the enquiry report there are other police personnel also who have been found guilty, prima facie, alongwith the petitioner, but there are no documents available before this Court to conclude that they have not been punished or have been let out scot-free without any further enquiry or disciplinary proceedings. So far as the petitioner’s conduct is concerned, it is a very serious dereliction of duty in a discipline-based department. Therefore, the claim petition does not succeed and is liable to be dismissed. Nevertheless, the Police Department must take care of the other defaulters also at the same time.

### **ORDER**

Accordingly, the claim petition is hereby dismissed. Apart from this verdict regarding the claim petition in question, the respondent No. 2 is advised by this Court to initiate a fresh analysis and consideration pertaining to the non-reporting of this serious offence of an absconding police personnel

for a period of one year, and positively institute fresh disciplinary proceedings against all the erring police personnels found guilty in the enquiry report dated 22.05.2019. This action is imperative in accordance with Hon'ble Apex Court's observation in the Civil Appeal No. 1334 of 2013 (Arising out of SLP (Civil) No. 2070 of 2012, Rajendra Yadav Vs. State of MP & others, decided on 13<sup>th</sup> February, 2013. No orders to costs.

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

*DATE: November 29, 2024*  
*NAINITAL*  
*BK*