

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

**CLAIM PETITION NO. 44/NB/SB/2015**

Vijay Goswami, Constable 93 CP, presently posted as Constable at Police Station, Someshwar, District Almora.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Home, Uttarakhand, Dehradun.
2. Director General of Police, Government of Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Kumoun Region, Nainital, District Nainital.
4. Superintendent of Police, Almora, District, Almora.
5. S.H.O., Almora, District Almora.

.....Respondents

Present: Sri D.K.Joshi, Ld. Counsel  
for the petitioner.  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: DECEMBER 09, 2016**

1. The petitioner has asked for the following relief:

*“1. To quash the impugned orders dated 01.4.2015 and order dated 11.03.2015 passed by respondent No. 3 & 4 respectively (Annexure No. A1 and Annexure No. A2)*

*2. To direct the respondent to remove the censure entry awarded to the petitioner from his service record.*

3. *To issue any order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

4. *Award the cost of the clam petition in favour of the applicant.*

”

2. Briefly the facts giving rise to the petition are that the petitioner joined the service as constable in the Police Department on 24.04.2002. While posted at Almora, in the month of February, 2015, petitioner was in dire need of leave for two/three days to look after his ailing mother residing at Ramnagar and for this purpose, he moved leave application before respondent No. 5, SHO, Almora on 02.02.2015 in advance asking for the leave from 6.2.2015 to 9.2.2015. After getting knowledge that the leave has not been sanctioned, the petitioner, on 6.2.2015 after performing his night duty from 10 P.M. to 5 A.M., personally appeared before the respondent no. 5 and requested for grant of leave to him so that he could get his mother medically examined. According to the petitioner, respondent no. 5, SHO Puran Lal Verma started scolding at the petitioner and denied to grant any leave which disappointed the petitioner so badly that he could not stop his emotion and still requested for grant of leave for the sack of his mother. Ultimately, the petitioner was granted two days leave for 7 & 8 February, 2015 and he left the station at 12:10 P.M.

3. After returning from leave on 9.2.2015, the petitioner came to know that he has been transferred to Someshwar, other police station in the district and after joining his duty there, the petitioner received a show cause notice on 20.2.2015 issued by respondent no. 4 alongwith the enquiry report whereby the petitioner was asked to show cause as to why censure entry be not awarded in his Character roll. The petitioner submitted his reply to the show cause notice alongwith all actual facts before the respondent no. 4, but discarding his explanation, the petitioner was punished vide order dated 11.03.2015 (Annexure : A2) and the censure entry was awarded to him. After receipt of copy of

punishment order on 26.03.2015, the petitioner filed an appeal before respondent no. 3, which was rejected vide order dated 01.04.2015 (Annexure: A1) and the circumstances involved in the case and the petitioner's unblemished past service career was not taken into account. The petitioner has always been obedient to his superiors and performed his duty with full sincerity and dedication. He was continuously doing night duty for last two years and in the absence of leave break and in case of emergency, he asked for leave to look after his ailing mother, but was punished on the vague charges. Hence this petition.

4. The petition has been opposed by the respondents with the contention that the petitioner being a member of the force, was duty bound to abide with the Rules and he did not appear in proper uniform before his superior and misbehaved with him on 6.2.2015. Even if, there were compelling circumstances before him, he was duty bound to submit his request politely before the superiors, but by quarrelling and by adopting unwarranted behaviour before his superiors, petitioner misconducted as per the Uttarakhand (Uttar Pradesh Subordinate Police Officers of the Rank(Punishment &Appeal)) Rules, 1991, adoption and modification order 2002. The respondents have also contended that disciplinary proceedings against the petitioner were conducted as per rules and law and after being found guilty in a just, fair and proper enquiry, he was given an opportunity to show cause and was rightly punished by the competent authority with the punishment of censure entry and his appeal was also disposed of by a speaking order. There is no procedural lacunae in conducting the preliminary enquiry and after submission of the enquiry report, the disciplinary authority also afforded an opportunity to the petitioner and there was enough evidence to substantiate the charges levelled against the petitioner and in relation to show cause notice with proposed punishment, petitioner's reply was rightly considered and punishment order was passed. It is also contended that the petitioner in his reply admitted the charges by

writing the words “प्रार्थी द्वारा भावावेश में आकर यदि कुछ गलती से हो गया हो तो प्रार्थी क्षमा-प्रार्थी है।” Petitioner, being the member of a disciplined force, cannot be permitted to adopt indisciplined behaviour. Hence, punishment order as well as appellate order is correct and as per law and the petition deserves to be dismissed.

5. Rejoinder affidavit has been filed by the petitioner reiterating the same facts as stated in the petition with the contention that the allegation levelled against the petitioner are baseless and vague and the witnesses examined, nowhere has stated that the petitioner abused with his superior authority. The petitioner was present before his superior officer wearing proper uniform and on that day, he was on night duty and after completing his duty, he appeared before his superior in proper dress and made his submission humbly but he has been punished on vague charges.

6. I have heard learned counsel for the parties and perused the pleadings, evidence and other relevant record submitted before the court.

7. By the impugned order, which has been challenged by the petitioner, he has been awarded a censure entry regarding his misconduct against his superior and appearing before his superior without proper uniform, which is necessary as per the Police Regulations. The petitioner has denied from both the charges and he has submitted that on that day, he was at night duty from 10:00 P.M. to 5:00 A.M. and he appeared to make his request for leave before the respondent no.5 on 6.2.2015 in a day time at about 10:00 A.M. and he was not on his police duty at that time. Learned A.P.O. has submitted that as per the Police Regulations, a police personnel is presumed to be on duty for 24 hrs. He has referred to para 22 and 61 of the Police Regulations, which reads as under:

“22. पुलिस अधिकारी सदैव कर्त्तव्यारूढ होंगे और जिले के किसी भाग में नियोजित किए जा सकेंगे— प्रत्येक पुलिस अधिकारी इस अधिनियम में अन्तर्विष्ट सब प्रयोजनों के लिए, सदैव कर्त्तव्यारूढ माना जायेगा और किसी भी समय साधारण पुलिस जिले के किसी भी भाग में पुलिस अधिकारी के रूप में नियोजित किया जा सकेगा।

61. कान्सटेबिल नागरिक पुलिस के अधिकार एवं कर्त्तव्य— नागरिक पुलिस (civil police) के आरक्षी विशेष अवसरों के अतिरिक्त (except) सशस्त्र नहीं होंगे। इनका मुख्य कर्त्तव्य अपराध रोकना है।

उन्हें जनता के प्रति विनम्र (विनीत— courteous) और विचारवान (considerate) होना चाहिए, जिनके वे सेवक हैं। प्रत्येक आरक्षी को जो कर्त्तव्य पर हो, निर्धारित वर्दी पहननी होगी, सिवाय जबकि उसके उपभोग की अपेक्षा न होने वाले किसी विशेष पता लगाने (जासूसी अथवा पता लगाने) के कार्य पर नियुक्त किया जाये जिनमें वेष बदलने की अपेक्षा हो।”

8. The plain reading of the para 22 conveys the meaning that police officer will be treated on duty for 24 hrs and he can be deputed in the district for duty in any part of the day. This does not mean that the person will be discharging the duty for 24 hrs fully. This mean that he can be deputed on duty for the normal duty hours in the day or night, wherever the exigency may arise. Para 61 which has reference to the constable, says that every police constable who is on duty, must wear the prescribed dress unless he is deputed on specific duty where, he is required to hide his identity. Learned A.P.O. has argued that according to para 61, a police constable is required to wear the dress 24 hrs. Learned counsel for the petitioner has argued that this does not mean that a police constable will remain in dress even if he is in his bed room. The court is of the view that the combined reading of para 22 and 61 convey the meaning that wherever the police constable is deputed to perform his duty during the day or night, whatever the case may be, he should be in proper dress.

9. It is not disputed that on those days, the petitioner was deputed for night duty and he was supposed to be in dress during those hours but when he was relieved from his duty in the day time, he was not supposed to remain in police dress, but when he appeared before

his superior for making request for leave, he was supposed to appear before him in proper dress. The petitioner has submitted that he was wearing the proper dress, worm Pant & Shirt along with a over jacket at that time.

10. The month of February, in Almora is very cold and it can be presumed that if the petitioner was wearing jacket resembling with the police dress, he cannot be treated without proper dress for that moment. The concerned para of the Police Regulations requires the police personnel to be in dress on normal duty hours, hence, the petitioner was not on duty in day time on 6.2.2015 and he was not supposed to wear full police dress in day time. Furthermore, he has stated before the enquiry officer about his dress. Hence, this allegation and the reply of the petitioner to this part was not properly considered by the disciplinary authority and it was not disposed of by a reasoned order, which was necessary in view of the reply submitted by the petitioner. On this count, the censure entry against the petitioner cannot be justified.

11. The petitioner was also awarded censure entry on account of the charge that he misbehaved with his superior i.e. SHO, Sri Puran Lal Verma on 6.2.2015 and while making his submission for leave, he was not polite and humble and misbehaviour was committed by him. Learned counsel for the petitioner has argued that the charges levelled on this count are very vague because neither in the G.D. recorded by the respondent no. 5 nor in his report to Police Superintendent, nor in the show cause notice, it was clarified that what type of activity the petitioner did at that time. No specific words uttered by the petitioner was clarified in the G.D. or in the report to the S.S.P., nor in any evidence produced by the department before the enquiry officer. The first evidence regarding this charge is the entry recorded by the respondent no. 5 in the G.D. No. 15 at 10:05 P.S. Almora, which was written as under:

“ इस समय का 0 93 विजय गोस्वामी मेरे समक्ष बिना वर्दी पहने अवकाश हेतु पेश हुआ मेरे द्वारा अवगत कराया गया कि अवकाश पर अधिक लोग होने के कारण दिनांक 8/2/15 से स्वीकृत की जायेगी तो बड़ी अभद्रता से वार्ता करने लगा। इस सम्बन्ध में पुलिस अधीक्षक महोदय को अलग से रिपोर्ट प्रेषित की जायेगी एवं तस्करा अंकित किया जाता है।”

12. The second evidence is the letter dated 6.2.2015 written by the respondent no. 5 to S.P. Almora (Annexure: R1), which reads as under:

“सेवा में,

श्रीमान पुलिस अधीक्षक महोदय,  
अल्मोड़ा।

महोदय,

निवेदन इस प्रकार है कि मैं SHO पूरन लाल वर्मा आज दिनांक 06.02.2015 की प्रातः अपने कार्यालय में राज कार्य सम्पादित कर रहा है। समय 10:05 बजे कानि 0 93 नापु 0 विजय गोस्वामी सादे वस्त्रों में अवकाश हेतु मेरे समक्ष पेश होने आया मेरे द्वारा कानि 0 को अवकाश पर अधिक कर्मचारी होने व दिनांक 08.02.2015 से अवकाश स्वीकृत किये जाने हेतु कहा गया तो कानि 0 द्वारा मुझे प्रभारी निरीक्षक के साथ अभद्रता से वार्ता की गई। उक्त सम्बन्ध में रो 0 आम दिनांक 06.02.2015 रपट न 0 15 समय 10:05 बजे में तस्करा दर्ज किया गया।

अतः महोदय से निवेदन है कि कानि 0 93 नापु 0 विजय गोस्वामी का स्थानान्तरण थाना स्थानीय से अन्यत्र करने की कृपा करें।

रिपोर्ट सादर सेवा में प्रेषित है।

दिनांक 06.02.2015

प्रभारी निरीक्षक”

13. During the enquiry, statements of the respondent no. 5, Sri Puran Lal Verma, SHO, Kotwali, Almora, Head Mohirir, Ganga Singh, Thana Kotwali, Almora, Constable Kailash Bhatt, Kotwali, Almora, Constable, Narayan Verma, Constable Prakash Chandra Nagarkoti and the Constable Shraavan Kumar were also recorded and statements have been reproduced in the report of the enquiry officer, Deputy S.P., Almora (Annexure: R2).

14. In the statement, respondent no. 5, nowhere has stated that what type of specific word was used by the petitioner, what sort of specific activity, he did, which amounted to misbehaviour. All other witnesses have simply uttered that on the point of leave, some talks were going on between SHO and Constable Goswami, but none of the

witnesses has specified about any objectionable words uttered by the petitioner and his objectionable behaviour. Hence, there is no specific evidence to show that the petitioner has uttered any objectionable words or language towards his superior or his behaviour was unwanted. Simply saying by respondent no. 5, SHO, Puran Lal that petitioner misbehaved with him, is not sufficient to sustain the charge, particularly when the other witnesses who were although junior to the respondent no. 5, have not stated any such word that the petitioner has misbehaved with his superior. They have simply stated that some talks were being exchanged between the petitioner and SHO about the grant of leave. The statement given by the petitioner before the enquiry officer was very specific that after having knowledge about denial of leave, he appeared before his superior in proper dress and made his request for grant of leave which was not accepted initially, but petitioner after telling him about his family problems, again requested for the same. Although petitioner has stated that he was abused by his superior and SHO spitted on his face and then two days leave was granted. The petitioner in his statement has stated about the misbehaviour with him by his superior. This part of his statement may be considered as a counter to save from any punishment, but other independent witnesses' statement will be seen who nowhere clarified about such words. Independent witness has not clarified any kind of misbehaviour by the petitioner with his superiors and only talks about leave cannot be treated misbehaviour in the absence of specific word and conduct.

15. Looking all these evidence, learned counsel for the petitioner has argued that a vague charge on account of misbehaviour was communicated to him, no specific words were clarified in the notice and accordingly, evidence of independent witnesses about exchange of words between petitioner and SHO, is not sufficient proof to show that those exchange of words were to the tune of misbehaviour with his superiors.



16. When any such charges is levelled against an employee, those specific words must be clarified and written in the charge or show cause notice and in the evidence so as to term his conduct as misbehaviour as alleged. The subordinate employee, submitting his request for leave before his superior, is supposed to be polite and humble. If the words and his behaviour, crosses certain parameters of politeness and humbleness and if he exceeds that limit by uttering specific words to his superior that can amount to misbehaviour (अभद्रता), but in the show cause notice before the charge, in the evidence before the enquiry officer that specific conduct must be mentioned but there was no proof to show that the petitioner has exceeded his limit of normal behaviour. If he was making a repeated request for leave before his superior explaining his family circumstances, that may irritate his superior but such behaviour of the subordinate employee will not amount to misbehaviour unless he crosses the limit of his normal behaviour. Politeness and humbleness in behaviour is expected not from the subordinate but also from the superior officer. Although, the petitioner has come up with the case that when he was asking for leave repeatedly narrating his special circumstances, he was abused by his superior, although this is not the charge to be considered now against the respondent no. 5, because it was open to the petitioner to submit his complaint before his superior officer in this respect, which was not done.

17. The independent witnesses who were examined by the enquiry officer, were also the employee subordinate to the respondent no.5 but neither respondent no. 5 in the G.D. of Thana, in his report/complaint to S.P./ his evidence have clarified about the specific words uttered by the petitioner nor in any writing, he has stated about any specific activities, the petitioner did at that time, which can amount to misbehaviour and simple evidence of witnesses by saying that there were some talks between respondent no. 5 and the petitioner, misbehaviour on the part of the petitioner is not proved.

18. Learned counsel for the respondents has argued that the petitioner has accepted his misbehaviour by saying that प्रार्थी द्वारा भावावेश में आकर यदि कुछ गलती से हो गया हो प्रार्थी क्षमा प्रार्थी है hence it should be presumed that he was guilty. This contention cannot be accepted because if subordinate employee, even if not guilty, is facing an enquiry and if he makes such request to his superior, this shows his humbleness and the respondent department was required to prove the specific behaviour of the petitioner which can be classified in the category of misconduct, which was not done and the enquiry officer and disciplinary authority has not properly considered and appreciated the evidence. The cross examination of the witnesses was not done by the petitioner and this opportunity was not given to the petitioner by the enquiry officer. Even if, relying on the evidence of the witnesses and the contention of the respondent no. 5, the evidence about misbehaviour by the petitioner is not on record and the disciplinary authority did not follow the principles of natural justice and had not adopted the judicious and impartial approach while considering his explanation and without any sufficient evidence of misbehaviour, the petitioner was punished.

19. Learned counsel for the petitioner has also argued that even if it is presumed that while making his submission, the politeness and humbleness was lacking to some extent in the behaviour of the petitioner that should not be treated in the category of misconduct so as to afford the punishment, which can affect his career. This argument is having sufficient force.

20. The petitioner was in dire need of leave to look after his ailing mother and moving leave application on 02.02.2015, 4-5 days in advance, shows that he was not so negligent towards his duty and his special circumstances must have been considered sympathetically with humanitarian approach. The petitioner has also alleged that after joining service in 2002, he has been an employee of very disciplined and

unblemished career, which cannot be ignored by the disciplinary and appellate authorities.

21. The court is of the view that whenever any punishment is awarded to an employee having such a good career, the disciplinary authority should be very cautious to award any type of punishment and every care should be taken and following the principles of natural justice, a judicious approach should be adopted while awarding punishment, which will affect the career of an employee because if any disciplined and sincere employee is awarded punishment without any sufficient reasons, this will result into frustration and that needs to be avoided.

22. Looking into all these circumstances, the court is of the view that the impugned order dated 11.03.2015 was passed without following the principles of natural justice and on the vague charges, not supported by sufficient evidence, punishment of censure entry was given which deserves to be set aside.

**ORDER**

The claim petition is allowed. The impugned order dated 11.03.2015 as well as appellate order dated 01.4.2015 passed by the respondents no. 3 & 4 respectively are hereby set aside. The adverse /censure entry recorded in the service records of the petitioner shall be treated as non-est and respondents are directed to remove the same from the service record of the petitioner. No order as to costs.

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: DECEMBER 09, 2016*  
*NAINITAL*

*KNP*