

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 08/ SB/2016

Khajan Singh Chauhan S/o Late Kundan Singh Chauhan Presently posted as S.I. in Police Station, Kotdwar, District Pauri Garhwal, Uttarakhand.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Dehradun.
3. Superintendent of Police, Pauri Garhwal.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: MAY 04, 2017

1. The petitioner has filed this petition for an order or direction to set aside the impugned punishment order dated 08.11.2013 (Annexure: A-1) and the appellate order dated 24.10.2015 (Annexure: A-2) passed by Respondent Nos. 3 and 2 respectively and for a direction to remove the endorsement of censure entry from his character roll along with the cost of the petition and any other relief which the Tribunal may deem fit.
2. Facts giving rise to the present petition are that at the relevant time the petitioner was posted as Chowki In-charge in Thana Dharmakote, District Pauri Garhwal in 2013. The accused Ajay Pal Singh was detained in

Lockup in criminal case No. 07/2013 under Section 307 IPC. The accused absconded from the lockup when he was being brought for food to the mess. At that time the petitioner was not present at the Police Station and had gone for dinner and before leaving Thana, he had issued instructions and warning to his subordinates regarding conduct of the accused.

3. On 11.09.2013, the petitioner filed an F.I.R. against Head Moherrir Dinesh Rana, Constable Dipendra Singh and Constable Satish Kumar for the alleged negligence committed regarding absconding of the accused. A preliminary inquiry was conducted in the matter by the Deputy Superintendent of Police and finding was recorded that the petitioner is guilty of laxity of control over his subordinate to ensure the compliance of their duty. Thereafter, a show cause notice was issued on 03.10.2013 to which petitioner submitted his reply dated 20.10.2013 and denied the charges levelled against him. Thereafter, Respondent No.3 vide order dated 08.11.2013 passed the impugned punishment order and the petitioner was awarded censure entry. Against the impugned punishment, an appeal was preferred by the petitioner on 02.02.2014 before the appellate authority, Respondent No.2, but the same was rejected vide order dated 24.10.2015. Hence this petition has been filed for the relief sought as above.
4. The petition was opposed on behalf of all the respondents and it has been alleged that the food for the accused was to be provided in the Hawalat whereas he was illegally taken to the mess by the employees and no such instruction was recorded in the G.D. of Thana on behalf of petitioner. If the petitioner had been vigilant for his duties and had effective control over his subordinates, the accused might not have absconded. In the preliminary inquiry, the petitioner was rightly found guilty and the impugned punishment order was rightly passed. The preliminary inquiry was conducted as per rules and the punishment order passed by the respondents is in accordance with departmental rules. The petition has no merits and deserves to be dismissed.
5. I have heard both the sides and perused the record carefully.

6. The petitioner has raised the plea that the inquiry officer in his inquiry found the petitioner guilty of laxity (लापरवाही) in his duties and not for any indiscipline(अनुशासनहीनता), insolence (अकर्मण्यता) and willfulness (स्वेच्छाचारिता). There were no such charges against the petitioner. The disciplinary authority has differed from the report of the inquiry officer and enhanced the charges in the show cause notice and punishment order, but no reasons of difference were recorded by the disciplinary authority in the show cause notice. Hence, the punishment order is wrong, illegal and is liable to be quashed.
7. I have gone through the finding of the inquiry officer and the show cause notice issued by the disciplinary authority. The inquiry officer in his report has held that Sri Khazan Singh Chauhan, (petitioner) who was posted as Thana Adhyaksh, was found guilty on account of laxity on his part and he was not able to ensure the compliance of the duty of his subordinates. Whereas, other Constable Clerk Dinesh Singh and Constable Satish Kumar were found guilty for non compliance and Head Moherrir Dinesh Rana, Constable Dipendra Singh were found guilty for gross negligence. The Disciplinary authority while issuing the show cause notice has enhanced the punishment and recorded the conduct of the petitioner as 'gross negligence, indiscipline, insolence and willfulness, and these were added beyond the report of the inquiry officer. Being in-charge of Police Station, the petitioner was supposed to have an effective control on his subordinates. According to him, at the time of the incident, he was not at the Thana and had gone for his dinner and he had recorded an entry in the G.D. No. 32 at 2.20 P.M. on 08.09.2013 that the accused is a person of crook mind and he can commit any incident, hence, he should be regularly checked in the lockup. The accused had absconded from the custody when he was being carried for food to the mess, whereas the accused was to be provided food in the lockup itself. There is a provision in the Police Regulation that the Police Station In-charge will remain at the Station and will have control over his Thana and his subordinates and if he leaves the Station, he would make entry in the G.D. but the petitioner had not made any entry in the G.D. about his

absence while he left his Thana for his dinner. This shows that the inquiry officer has rightly held that the petitioner was not sincere to his duties and he did not have good control over his subordinates. Hence, the inquiry officer has rightly held that the petitioner was guilty of laxity to ensure the compliance of duty by his subordinates. As regards entry of indiscipline, insolence and willfulness is concerned, no such finding was recorded by the inquiry officer and this fact was added in the show cause notice by the disciplinary authority differing from the inquiry report. Hence, these three words 'indiscipline (अनुशासनहीनता), insolence (अकर्मण्यता) and willfulness(स्वेच्छाचारिता)' were added without following the procedure of Law/Rule and to this extent the punishment order is not correct in law whereas entry about laxity in duty, is correct.

8. Ld. Counsel for the petitioner has also argued that the proper procedure was not followed and a detailed inquiry was not conducted. The Court is of the view that there is no procedural fault as the inquiry was conducted for a minor punishment and after preliminary inquiry, proper opportunity by show cause notice was afforded to the petitioner. The Court cannot go into the details and merits of subjective satisfaction of the disciplinary authority. The petitioner had preferred an appeal before the appellate authority and the appellate authority had passed a detailed order. But the fact has been ignored that the entry about indiscipline (अनुशासनहीनता), insolence (अकर्मण्यता) and willfulness (स्वेच्छाचारिता) was awarded as punishment beyond the findings of the inquiry officer. To this extent the impugned order as well as the appellate order deserves to be set aside.

ORDER

The claim petition is partly allowed to the extent that the order of respondents awarding entry of indiscipline (अनुशासनहीनता), insolence (अकर्मण्यता) and willfulness(स्वेच्छाचारिता) to the petitioner, is against the principle of natural justice and law whereas entry regarding laxity/negligence towards his duties was passed following the procedure of rules and on the basis of inquiry conducted as per law. Hence, the respondents are directed to delete the words indiscipline (अनुशासनहीनता),

insolence (अकर्मण्यता) and willfulness(स्वेच्छाचारिता) and to amend the punishment of censure entry awarded to the petitioner accordingly within a period of one month from the date of the copy of the order is received by the respondents. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: MAY 04, 2017
DEHRADUN.

VM