

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
DEHRADUN**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

**CLAIM PETITION NO. 07/ SB/2015**

Surendra Singh Kushwaha S/o late Sri K.S.Kushwaha, aged about 57 years S.I., presently posted at Police Station Baijnath, Distt. Bagheshwar.

.....Petitioner

**Versus**

1. State of Uttarakhand through Secretary (Home), Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Director General of Police, Uttarakhand, Police Head Quarter, Subhash Road, Dehradun.
3. Additional Director General of Police (Administration), Uttarakhand, Dehradun.
4. Inspector General of Police, Garhwal Region, Uttarakhand.
5. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri L.D.Dobhal, Ld. Counsel  
for the petitioner.

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

**JUDGMENT**

**DATED: JUNE 30, 2017**

1. The petitioner has filed this petition with the prayer to quash the impugned punishment order dated 29.12.2009 (Annexure- 1) passed by the Respondent No.5, appellate order dated 10.09.2010 (Annexure-2) passed by the Respondent No.4, order passed in revision by Respondent No. 3 dated 8.11.2011 (Annexure- 3) and the order dated 01.09.2014 (Annexure-4) passed by Respondent No. 1 in review

petition, imposing the penalty of censure upon the petitioner, along with the cost of the petition.

2. Facts in brief are that in the year 2009 while the petitioner was posted as Sub Inspector in District Chamoli, he received a show cause notice on 12.11.2009 issued by the Respondent No.5, S.S.P., Dehradun to show cause as to why he be not awarded an adverse entry in his A.C.R. for the year 2009 when he was posted at Police Station, Sahaspur, Dehradun. It is stated that, when petitioner was holding the charge of P.S. Sahaspur, he transferred/ handed over the investigation of a criminal case registered at Police Chowki, Selaqui under Section 394 IPC to a under trainee S.I., Sri Kuldeep Singh, who, under the influence and guidance of the petitioner wrongly conducted the investigation and submitted the final report in that case. As the Circle Officer was not satisfied with the investigation and final report, therefore on 30.09.2009 rejecting the final report, the inquiry was again entrusted to the petitioner to re-inquire into the matter, but the petitioner made only a formal inquiry by recording the statement of Eye Witnesses and again submitted a final report in that case and closed the inquiry. It was stated in the notice that if the petitioner had guided the trainee Sub Inspector in the right direction while investigating the offence and had he himself conducted the investigation correctly, the result would have been different. The offence of robbery registered under Section 394 IPC was converted into a lighter category under Section 323 IPC, hence, the petitioner was alleged to have committed gross negligence and dereliction of his duties while doing his job. Accordingly, the show cause notice was issued to the petitioner to show cause as to why a censure entry be not awarded to him.
3. The show cause notice was replied by the petitioner and he categorically made it clear in his reply that he was not the In-charge of Police Station, Sahaspur at the relevant time i.e. on 14.05.2009 when the case was registered and investigation was handed over to the under trainee S.I., Sri Kuldeep Singh rather at that time he was attached to the Circle Office, Vikas Nagar and Sri Santhil, I.P.S. was the Station Officer

In-charge of P.S. Sahaspur and the inquiry was handed over by Sri Santhil to the trainee Sub Inspector Kuldeep Singh. It was also submitted that petitioner never influenced or guided Sri Kuldeep Singh instead Sri Kuldeep himself has rightly conducted the investigation and after taking statements of the Eye Witnesses, conducted the investigation and final report was rightly submitted. The final report was ultimately accepted by the Court.

4. It is also contended that without considering the reply of the petitioner the impugned order was passed by the Respondent No.5 on 29.12.2009 and the petitioner was held guilty of gross negligence and adverse entry was recorded in his record. The appeal preferred against the order dated 29.12.2009, was rejected by Respondent No.4 without considering the facts and evidence on record and without considering this fact that the petitioner was not the Station House Officer of the concerned Police Station rather Sri Santhil was the Station House Officer In-charge at that time. Without considering the grounds mentioned in appeal, it was decided in a mechanical manner and no finding was recorded to the fact that as to who actually was the Station Officer at that time when the investigation was handed over to the trainee Sub Inspector Sri Kuldeep Singh.
5. It is also contended that the revision preferred by the petitioner against the appellate order was also dismissed by the Respondent No.3 on 8.11.2011 in a cursory manner by a non speaking order. After having information of that order, the petitioner filed writ petition No. WPSS 2014/2011 before the Hon'ble High Court of Uttarakhand which was dismissed on the ground of alternative remedy. Thereafter, the petitioner filed a review application in the said writ petition to file a review of the order of revision before the State Government which was decided on 13.08.2013 by the Hon'ble Court and accordingly the petitioner filed a review petition against the order passed in revision, before the State Government of Uttarakhand i.e. Respondent No.1 which was dismissed vide order dated 01.09.2014. The information was

received by the petitioner on 13.10.2014, thereafter this petition has been filed before the Court on the following grounds:

That the impugned order passed by the disciplinary authority, S.S.P., Dehradun was against the facts and evidence on record, therefore, the order is erroneous in law. The order passed by the appellate authority was not based on material and was against the facts on record. The appellate authority also did not consider the fact that when the complaint was registered on 14.5.2009, at that time petitioner was not the Officer In-Charge of P.S., Sahaspur rather Mr. Santhil, I.P.S. was the Officer In-Charge of the Police Station and no inquiry was handed over by the petitioner to the trainee S.I. Sri Kuldeep Singh. The appellate authority passed the order in mechanical manner. The order passed in revision is also a non speaking order without application of mind. All the respondents have passed the impugned orders without taking into consideration the relevant material and facts on record. No opportunity of hearing was given to the petitioner, neither any reliance was placed on the judgment cited by him. Respondents passed the impugned order just to save the skin of higher authorities and the petitioner was made escape goat. Hence, this petition was filed for the relief sought as above.

6. The petition was controverted by the respondents with the contention that there is no procedural and other illegality in the order passed by the respondents. Serious offence of robbery was not investigated properly. The petitioner was the first direct senior officer of the trainee S.I. and he was duty bound to properly guide him which was never done. The case diary was sent to the Circle Office under the signature of the petitioner. Wrong investigation was also made by the petitioner and he influenced his subordinate and committed gross negligence in doing his duties. Proper opportunity of hearing was given to him. There is no merit in the case of the petitioner, hence the petition deserves to be dismissed.

7. Through Rejoinder affidavit, the petitioner has reiterated the facts of his petition and denied the contentions raised in the written statement.
8. I have heard both the parties and perused the record.
9. By the impugned order dated 29.12.2009 passed by Respondent No.5, petitioner was awarded censure entry on the ground of the fact that holding the charge of P.S. Sahaspur, he handed over the investigation of serious crime to a trainee officer Sri Kuldeep Singh and by putting his influence and wrong guidance, the case was got converted from Section 394 IPC to 323 IPC and accordingly the final report was arranged to be submitted. The petitioner has been awarded entry on the ground that being In-charge of the Police Station, he has neglected in his duties and handed over the investigation to a under trainee Sub Inspector who has filed the final report. This fact has been denied by the petitioner by submitting that he was not the Officer In-charge of the Police Station, Sahaspur at that time.
10. Facts reveal that the said F.I.R. was lodged at Police Chowki, Selaqui under the P.S., Sahaspur on 14.05.2009 under Section 394 IPC which was later on converted to a lighter offence under Section 323 IPC by the investigating officer Sub Inspector, Kuldeep Singh on the basis of evidence submitted by the eye witnesses and the complainant and later on a final report was submitted in that case to the Circle Officer, Vikas Nagar. The petitioner in his reply to the show cause notice as well as in his appeal has denied from the fact that he was holding the charge of the P.S., Sahaspur at that time and stated that one I.P.S. Officer Sri Santhil was holding the charge of P.S., Sahaspur. This fact is also confirmed by the certificate issued by the concerned Police Station which is paper No. 33 on record which specifically mentions that from 23.02.2009 to 23.05.2009 the charge of S.H.O., Sahaspur was with Sri Santhil R. Krishan Raj S, I.P.S. On 14.05.2009 as the petitioner was not the Station Officer In-charge of P.S., Sahaspur, hence, and he could not be held guilty for any misconduct or dereliction of duty for handing over the investigation of serious offence to an under trainee S.I. The petitioner submitted this fact specifically in his reply before the

disciplinary authority and also in appeal before the appellate authority, but without considering this fact, the punishment and appellate order were passed which appears to be perverse and is against the facts on record. This perverse finding cannot be allowed to stand.

11. The other ground for awarding the entry is that when the Circle Officer, Vikas Nagar handed over the investigation to the petitioner, he recorded the statement of witnesses and again final report was submitted. In his reply to the show cause notice he has mentioned that the investigation was based on the statements of eye witnesses and final report was submitted before the Court which was ultimately accepted by the concerned Court. In the view of the Court, the petitioner cannot be held guilty of any negligence or dereliction of duty in this respect because when the complainant and the eye witnesses are not supporting the case of prosecution, the investigating officer is bound to act accordingly. The action of the petitioner can be held justified looking into the facts that the final report was also accepted by the Court of Law. Hence, the administrative view of respondents is against the settled judicial principles and cannot be allowed to prevail to say that the petitioner had not conducted investigation properly.
12. After going through the impugned order passed by the Respondent No.5, it is very much clear that in this order it was nowhere discussed as to who was the Station House Officer In-charge of P.S., Sahaspur at that time. Neither in the order passed by the appellate authority or revisional authority this issue was addressed. This Court is of the view that the impugned punishment order dated 29.12.2009, Appellate order dated 10.09.2010, order passed in revision dated 8.11.2011 and the order dated 01.09.2014 were passed without application of mind and are against the record, hence, the whole finding is perverse. Accordingly, the impugned punishment orders appear to be passed in violation of principles of natural justice and are not based on the real facts and evidence, hence, deserve to be set aside.

**ORDER**

The claim petition is hereby allowed. The impugned punishment order dated 29.12.2009 (Annexure- 1) passed by the Respondent No.5, appellate order dated 10.09.2010 (Annexure-2) passed by the Respondent No.4, order passed in revision by Respondent No. 3 dated 8.11.2011 (Annexure- 3) and the order dated 01.09.2014 (Annexure-4) passed by Respondent No. 1 are hereby set aside. Respondents are directed to expunge the said adverse/ censure entry recorded for the year 2009 from the service record of the petitioner within a period of two months from the date of the judgment. No order as to costs.

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

DATED: JUNE 30, 2017  
DEHRADUN

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