

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 19/NB/SB/2016

Sundar Lal, S/o Sri Bahadur Ram, Constable, 516 Civil Police, P.S.,
Betalghat, District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Home, Secretariat, Dehradun.
2. Deputy Inspector General of Police, Kumaon Zone, Nainital
3. Senior Superintendent of Police, Nainital, District Nainital.

.....Respondents

Present: Sri Rajendra Arya, Ld. Counsel
for the petitioner
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: SEPTEMBER 19, 2017

(HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J))

1. The petitioner has filed this claim petition for the following reliefs:

“(i) To quash the impugned order dated 1.12.2015 passed by Senior Superintendent of Police, Nainital awarding censure entry to the petitioner and to quash the order dated 16.02.2016 passed by

learned Deputy Inspector General of Police, Kumaon Zone, Nainital whereby the appeal against order dated 1.12.2015 has been dismissed.

(ii) Grant any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

(iii) Award the cost of the petition to the petitioner."

2. Briefly stated facts are that while posted as Constable in Civil Police at P.S. Mukteshwar, District Nainital, the petitioner was found absent from duty on 29.07.2017. An information was received by the respondents that he is misbehaving and abusing the shopkeepers in Bhatalia Bazar in a drunken position, from where he was caught and brought to the hospital and was medically examined. According to the respondents, the petitioner was misbehaving in public place in a drunken position. After conducting preliminary enquiry through C.O., Bhowali, a show cause notice was issued to the petitioner, which was replied by him but without considering his explanation in the reply to the show cause notice and without application of judicious mind, the impugned order was passed by the Senior Superintendent of Police, Nainital and petitioner was awarded a punishment of censure entry. The petitioner preferred an appeal against the order of punishment dated 01.12.2017, but his appeal was also dismissed without application of judicious mind by the respondent no. 2 vide order dated 16.02.2016. Both the orders have been challenged before this Tribunal on the following grounds.

3. That before awarding punishment, no preliminary enquiry was conducted; opportunity of hearing was not given to the petitioner; he was not permitted to participate in the preliminary enquiry; no independent witnesses were examined; the correct procedure of Uttarakhand Government Servant Discipline and Appeal

Rules, 2003 was not followed; so called medical examination was not as per established rules, and medical test did not confirm that the petitioner was under any influence of liquor and only smell test was done. Sufficient explanation of smelling was given by the petitioner in his reply to the show cause notice and it was specifically mentioned that because of stomachache, he had taken Pudin Hara, a medicine which smells like liquor but the disciplinary authority did not apply his judicious mind and explanation given by the petitioner was not considered and order of punishment was passed by the disciplinary authority with a bias attitude and without application of independent mind. The Appellate Authority also did not consider the grounds taken in the appeal and passed an order in a cursory manner. The order passed by the disciplinary authority is contradictory in itself, hence this petition.

4. The petition has been opposed by the respondents with the contention that the impugned punishment order of censure entry dated 01.12.2015 was passed by respondent no. 3 after considering the report of preliminary enquiry, conducted through C.O., Bhowali who recorded the statements of other police personnels and also of the petitioner. The medical examination report of the hospital was also considered. The petitioner was caught and taken for medical checkup at Government Hospital, Padampuri by police and he was indeed found intoxicated in the medical report of the doctor concerned. A member of a disciplined police force, should maintain a dignity of discipline and should not resort to any such behaviour but after absenting from duty, the petitioner was found in a public place in civil dress during his duty hours and was found guilty of grave misconduct. The petitioner was given full opportunity to defend himself by the preliminary enquiry officer and, through a show cause

notice dated 28.10.2015, he was again given an opportunity of hearing. The petitioner replied to the show cause notice but his reply was found unsatisfactory, hence impugned order of punishment of censure entry was passed and his appeal was also rightly rejected. There is no procedural lacunae in conducting the departmental enquiry and punishment as well as appeal rejection order is legally, perfect, correct and valid in the eyes of law, hence the petition deserves to be dismissed.

5. We have heard both the sides and perused the record.

6. Learned counsel for the petitioner has raised a point that the impugned order was passed by the disciplinary authority without application of judicious mind and without considering the explanation of the petitioner against the show cause notice issued to him. The petitioner in his petition has alleged that he was not allowed to participate in the enquiry, but this contention of the petitioner is not correct because the preliminary enquiry (Annexure: 3) conducted through C.O., Bhowali clearly shows that the petitioner was examined and his statement was also recorded by the Enquiry Officer during the preliminary enquiry. The petitioner has specifically stated in his statement before the enquiry officer that on 29.07.2017, he took a medicine "Pudinhara" due to stomachache. The medical test of the petitioner was conducted only through smell (Annexure: 4) which only mentions smelling of alcoholic presence. The petitioner has also stated that the statements of the public people were not recorded. In view of the court, the result of preliminary enquiry cannot be factually challenged before this forum but when a show cause notice was issued to the petitioner on 28.10.2015, and was received by him on 09.11.2015, the same was replied by him on

23.11.2015. Thereafter, the impugned order of punishment was passed on 01.12.2015.

7. Para-2 of the impugned order dated 01.12.2015, reads as under:

“कारण बताओ नोटिस आरोपी आरक्षी 516 ना0पु0 सुन्दर लाल द्वारा दिनांक 09.11.2015 को प्राप्त कर लिया। आरोपी आरक्षी द्वारा कारण बताओ नोटिस प्राप्त होने के उपरान्त लिखित स्पष्टीकरण प्रस्तुत किया गया। परन्तु आपके द्वारा अपने बचाव में कोई लिखित स्पष्टीकरण प्रस्तुत नहीं किया गया। इससे स्पष्ट होता है कि आपको उपरोक्त आरोपों से सम्बन्ध में कुछ नहीं कहना है तथा आप पर लगाये गये आरोप सत्य हैं।”

8. The main contention of the petitioner is that the explanation submitted by him was not even looked into and considered by the disciplinary authority before passing the sentence. It is an admitted fact to the respondents in his written statement that the petitioner submitted his reply to the show cause notice issued by the respondent no. 3 and in his reply, the petitioner has clearly mentioned that he had not taken any liquor rather he took a medicine ‘Pudinhara’ which smells like liquor and only on that basis, the smell of liquor substance was recorded. It is a proven fact that the show cause notice was replied by the petitioner and the respondents have admitted the receipt of the said reply in their counter affidavit/written statement but in para 2 of the impugned order of punishment, the disciplinary authority has recorded a contradictory finding, when it says that the show cause notice issued to the petitioner, was received by him on 9.11.2015 and thereafter, he submitted his written explanation, but in this impugned order, he nowhere dealt with the explanation of the petitioner rather in the very next line, it was recorded that the petitioner has not submitted any written explanation in his defence, hence, it appears that he has to say nothing and charges are true. This para is sufficient to hold

that the disciplinary authority has not applied his mind and has not followed the correct procedure before passing the punishment order. The whole finding is very perverse and against the principles of natural justice and the order of censure entry was passed without considering the explanation of the petitioner; without considering the statement of the petitioner recorded in the preliminary enquiry and without considering the whole circumstances of the case and findings are perverse to the record. Hence, impugned order of punishment is against the procedural law, against the record and the principles of natural justice and was passed without application of mind to the record. Similarly, the order of appellate authority appears to have been passed without considering the record and was passed in cursory manner. Accordingly, the punishment order as well as appellate order deserves to be set aside and the petition is liable to succeed.

ORDER

The claim petition is allowed. The impugned order of punishment dated 01.12.2015 (Annexure No. 1) passed by the respondent No. 3 and appellate order dated 16.02.2016 (Annexure No. 2) passed by the respondent no. 2 are hereby set aside. The respondents are directed to delete the censure entry from the record of the petitioner within a period of three months from today. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: SEPTEMBER 19, 2017
NAINITAL

KNP