

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

CLAIM PETITION NO. 09/SB/2017

Narendra Singh S/o Sh. Hari Singh aged about 35 years Constable Civil Police,
Thana Ghansali, District Tehri Garhwal, Uttarakhand.

.....Petitioner

VS.

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, District Tehri Garhwal.

.....Respondents.

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

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents.

JUDGMENT

DATED: FEBRUARY 21, 2018

Justice U.C.Dhyani (Oral)

1. Present claim petition has been filed by the petitioner for following reliefs:

“ (a) To issue an order or direction to set aside the impugned punishment order dated 18.12.2012 (Annexure No. A-1 to the petition) and impugned appellate order dated 23.08.2015 (Annexure No. A-2 to the petition) passed by the respondents No. 3 and 2 respectively declaring the same as null and void along with all consequential benefits.

(b) To issue an order or direction to concerned respondent to remove the endorsement of censure entry from the character roll of the petitioner.

(c) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

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

2. Brief facts, giving rise to the present claim petition, are as follows:

On 14.10.2012, when petitioner was posted in P.S. Kotwali, New Tehri, an incident took place at 9.40 p.m.. Allegation against the petitioner was that, he abused and misbehaved with fellow Police Personnel posted in P.S. Kotwali, New Tehri, and also with one accused Shailendra Dabral, who was detained in Police lockup.

A show cause notice was issued to the petitioner on 30.11.2012. He was directed to show cause, as to why a censure entry be not awarded to him? Copy of the show cause notice has been enclosed as Annexure: A-3 to the petition.

Petitioner submitted reply to the show cause notice on 14.12.2012 and denied the charges levelled against him. His reply has been enclosed as Annexure: A-5 to the petition. Respondent No.3, vide order dated 18.12.2012 (Annexure: A-1) awarded punishment of censure entry to the petitioner.

Aggrieved by punishment order, petitioner preferred an appeal, copy of which has been brought on record as Annexure: A-5, to Respondent No.2. Same was rejected by the appellate authority, vide order dated 23.08.2015 (Annexure: A-2). Hence, present claim petition.

3. It is the submission of Ld. Counsel for the petitioner that, the petitioner was punished by Respondent No.3, on the basis of complaint filed by Head Constable Sumer Singh. The allegations were levelled against two Constables, i.e., petitioner and Gaurav Kumar, but in his statement before the inquiry officer, H.C. Sumer Singh gave statement that, only petitioner misbehaved with him and not Constable Gaurav Kumar.

According to Ld. Counsel for the petitioner, these statements of H.C. Sumer Singh, were contradictory to each other.

4. Ld. Counsel for the petitioner further contended that accused Shailendra Dabral, who was detained in Police Lockup, has not been examined by the inquiry officer. The allegation was also that, petitioner used abusive language against the above noted accused.
5. Ld. Counsel for the petitioner also submitted that, whereas, Constable Gaurav Kumar was also a witness to the incident, but he has not been examined by the inquiry officer. According to Ld. Counsel for the petitioner, only interested witnesses have been examined by the inquiry officer and the entire story has been concocted to harm the petitioner.
6. The contents of show cause notice, reply given by the petitioner, report of inquiry officer (Dy. S.P., Tehri Garhwal), punishment order, departmental appeal and appellate authority's order were read over by Ld. Counsel for the petitioner in the open Court. This Court does not feel it necessary to reproduce the contents of these documents, for the sake of brevity and convenience. The proceedings started only when, the incident was recorded by H.C. Sumer Singh in General Diary (G.D.) on 14.10.2012 at 9.40 p.m. The same has also been brought on record as Annexure: A-6.
7. A perusal of the inquiry officer's report will indicate that, the statements of H.C. Yuvraj Singh, H.C. Bijendra Singh, S.I. Sukhpal Singh, S.I. Ashok Kashyap, H.C. Naresh Kumar, S.I. Kehswanand Pandey, S.I. Pramod, H.C. Sumer Singh and Constable Jagat Singh were recorded by him. All the witnesses have supported the departmental story. Statement of petitioner was also recorded by the inquiry officer, who denied the allegations levelled against him. The inquiry officer, in his report, has found that, the petitioner was guilty of misbehaviour with fellow Police Personnel, namely, H.C. Sumer Singh and H.C. Yuvraj

Singh. The allegations levelled against Constable Gaurav Kumar were not substantiated.

8. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Minor penalty has been awarded to the petitioner and, therefore, the procedure, which is required to be followed in major penalty, has not been followed. The statements of H.C. Sumer Singh and H.C. Yuvraj Singh, among others, were recorded by the inquiry officer, while coming to the conclusion that petitioner misbehaved with these two Police personnel. The inquiry officer has not found that, the petitioner misbehaved with Shailendra Dabral, an accused, who was detained in lockup at P.S. concerned, although, in show cause notice, allegation was levelled against the petitioner that he misbehaved with such *detenue* also. In preliminary and fact finding inquiry, no right vests with delinquent to be heard or participate in the inquiry, although, statement of the delinquent employee (petitioner), in the instant case, was also taken by the inquiry officer during the course of inquiry.
9. Judicial interference, in the decision of the disciplinary authority, is permissible, if there is violation of principles of natural justice or statutory regulations, if decision is vitiated by consideration extraneous to the evidence and merits of the case or if the conclusion arrived at, by it, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion. This court does not find any reason, on the basis of record, to interfere with the conclusion arrived at by the inquiry officer or the appellate authority that the petitioner is guilty of misbehaving with fellow Police personnel. Why his peers would falsely implicate him? At least there is no indication on record to suggest the same. One should not lose sight of the fact that the petitioner is a member of disciplined Police force. Comparatively, higher degree of discipline is expected from the personnel of such force. After all, they, among others, take care of 'life and personal liberty', apart from controlling law and order situation.

10. Ld. Counsel for the petitioner, at this stage submitted that, censure entry entails serious civil consequences and, therefore, the Court may consider granting any one of other minor penalty to the petitioner.
11. In reply, Ld. A.P.O. submitted that, the Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.
12. This Court is inclined to agree with the submission of Ld. Counsel for the petitioner for various reasons. Firstly, it has come in the evidence of H.C. Yuvraj Singh that, it is the first incident committed by the petitioner and he has never committed any such incident in the past. Secondly, whereas the allegations of misbehaviour were levelled against the petitioner in respect of accused Shailendra Dabral also, but after inquiry, such allegations were not substantiated. The inquiry officer has found that, the petitioner misbehaved only with two H.C.s and not with the *detenue*, who was detained in the lockup at the P.S. concerned. In show cause notice, allegation was also levelled that, the petitioner misbehaved with the *detenue* and punishment was awarded in this respect also. Thirdly, the inquiry officer has himself submitted, in his inquiry report, that the allegations of intoxication were not substantiated against the petitioner.
13. It has been provided by the U.P. Police Officers of Subordinate Rank(Punishment and Appeal) Rules, 1991 (hereinafter referred to as Rules of 1991) that the Head Constables and Constables may be punished with 'fatigue duty', which shall be restricted for the following tasks:-
 - (i) Tent pitching;
 - (ii) Drain digging;
 - (iii) Cutting grass, cleaning jungle and picking stones from parade grounds;
 - (iv) Repairing huts and butts and similar work in the lines; and
 - (v) Cleaning Arms.

14. Therefore, considering the peculiar facts of the case, this Court deems it appropriate to substitute the minor punishment of 'censure entry' awarded to the petitioner with minor punishment of 'fatigue duty' as mentioned in sub rule (3) of Rule 4 of the Rules of 1991.
15. The net result would, therefore be, that, whereas, this Court does not find any reason to interfere with the findings arrived at by the inquiry officer, appointing/ disciplinary authority and appellate authority, this Court finds cogent reasons to substitute the minor punishment of 'censure entry' awarded to the petitioner, with 'fatigue duty'.
16. Order accordingly.
17. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 21, 2018
DEHRADUN

VM