

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

CLAIM PETITION NO. 24/DB/2017

Sanjay Singh S/o Sh.Guman Singh Kentura aged about 30 years, presently working and posted as Fireman at Fire Station Sumerpur, district Rudraprayag, 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, Uttarakhand.
3. Superintendent of Police, Pauri Garhwal, Uttarakhand.

.....Respondents.

Present: Sri V.P.Sharma, Counsel
for the petitioner.

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

JUDGMENT

DATED: FEBRUARY 22, 2018

Justice U.C.Dhyani (Oral)

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

“ (a) To declare that the punishment of censure entry has the same effect as of major punishment hence can't be awarded to the petitioner without following the procedure prescribed for the major punishment.

(b) To issue an order or direction to set aside the impugned punishment order dated 23.04.2015 (Annexure No.A-1 to the claim petition) and impugned appellate order dated 23.05.2016 (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. .

(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 06.07.2014, when the petitioner was posted as Fireman at Fire Station, Kotdwar, an incident of scuffle and assault took place between two groups of Firemen at around 9 p.m.. On account of such incident, petitioner was transferred to District Rudra Prayag on administrative grounds on 29.07.2014.

A show cause notice along with a copy of preliminary inquiry report was served upon the petitioner on 13.03.2015.. The petitioner submitted his reply to the show cause notice to Respondent No.3 on 23.03.2015. Respondent No.3 punished the petitioner with the punishment of 'censure entry', vide order dated 23.04.2015. Aggrieved against the same, petitioner preferred an appeal to Respondent No.2 in July, 2015, but the same was dismissed by the said respondent. Hence, present claim petition.

3. It is the submission of Ld. Counsel for the petitioner that, the petitioner has been falsely implicated in the case on account of previous enmity with Fireman Prem Singh, who assaulted the petitioner on an earlier occasion on 06.03.2014. Ld. Counsel for the petitioner submitted that, the petitioner himself sustained injuries in previous incident, which occurred on 06.03.2014, and also during present incident, which occurred on 05.07.2014.

4. Ld. Counsel for the petitioner further submitted that the petitioner sustained fracture in his limb (forearm) on 06.03.2014. Since, he was nursing that injury, therefore, he was not in a position to assault anybody, much less complainant on 05.07.2014.

5. Ld. Counsel for the petitioner was at pains to argue that a dispute arose between two groups of Firemen, and, although, petitioner was posted at Fire Station, Kotdwar on that date, but he did not do anything and has been falsely implicated on account of his previous enmity with complainant F.M. Prem Singh.
6. In reply, Ld. A.P.O. submitted that the procedure laid down in Rule 14(2) of the U.P. Police Officers of Subordinate Rank(Punishment and Appeal) Rules, 1991 (hereinafter referred to as Rules of 1991) has been followed, therefore, there is no scope of judicial intervention in the instant case.
7. The contents of show cause notice, reply given by the petitioner, report of inquiry officer (Circle Officer, Haridwar), punishment order, departmental appeal and appellate authority's (I.G., Garhwal Zone)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 reported by F.M. Vipin Kumar to Fire Station Officer on 05.07.2014 at 9.30 p.m..
8. A perusal of the inquiry officer's report will indicate that, the statements of Fire Station Officer Madan Bahadur Khatri, Driver Naresh Babu, UPNAL Driver Sultan Singh, F.M. Sandeep Sharma, F.M. Ravi Thapa, F.M. Amit Verma, F.M. Vipin Kumar, F.M. Balbir Singh Chauhan, F.M. Pradeep Kumar(III), F.M. Prem Singh, F.M. Deepak Rathore, F.M. Ajab Singh Yadav, Inspector In-charge, P.S.Kotwali, Kotdwar Pramod Shah and S.I. Anil Kumar 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 altercation and committing assault with fellow personnel. The allegations levelled against F.M. Vipin Kuma and F.M. Ajab Singh were not substantiated. Fire Station Officer and In-charge

Leading Fireman were found guilty of not having proper control over their subordinates. Likewise, another In-charge Leading Fireman was also found guilty of fleeing away from the spot and not reporting the matter to his superiors. Ten Firemen were found guilty of altercation in the presence of their superior and were, therefore, awarded censure entry. Only one Fireman has approached this Tribunal.

9. 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 as many as fifteen Firemen/ Police Officers were recorded by the inquiry officer, while coming to the conclusion that petitioner had altercation with fellow personnel in presence of his senior officer. 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.
10. 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 committing indiscipline in presence of his superior officer. One should not lose sight of the fact that the petitioner is a member of disciplined Fire Service. Comparatively, higher degree of discipline is expected from the personnel of such forces.

11. Ld. Counsel for the petitioner, at this stage of dictation, submitted that, censure entry entails serious civil consequences and, therefore, the Court may consider granting any one of other minor penalty to the petitioner.
12. 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.
13. This Court is inclined to agree with the submission of Ld. Counsel for the petitioner for various reasons. Firstly, it was the first incident committed by the petitioner, and, he has never committed such incident in the past. He has never been found guilty of 'misconduct' earlier. Secondly, it was a group clash between two sets of Firemen, in which ten Firemen have been found guilty of committing indiscipline. Thirdly, according to inquiry officer's report, both, F.M. Prem Singh as well as present claim petitioner, sustained injuries. Fourthly, indication is that, the present petitioner also sustained injury at the hand of complainant F.M. Prem Singh on a previous occasion on 06.03.2014. Fifthly, the inquiry officer has himself submitted, in his inquiry report, that, allegations of intoxication were not substantiated against the petitioner.
14. The Rules of 1991 also apply to the personnel of Fire Service and a Fireman is equivalent to a Constable. It has been provided in the aforesaid Rules 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.

15. 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.
16. 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'.
17. Order accordingly.
18. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 22, 2018
DEHRADUN

VM