

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

CLAIM PETITION NO. 37/DB/2016

Ashish Aswal, aged about 30 years, S/o Sri Rajendra Singh Aswal, presently posted as Constable in the Reserved Police Line, Race Course, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary (Home), Civil Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Garhwal Region, Dehradun.
4. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma &
Sri S.C.S.Bhandari, Counsel
for the petitioner.

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

JUDGMENT

DATED: MARCH 05, 2018

Justice U.C.Dhyani(Oral)

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

“i) To issue order or direction to quash the impugned orders dated 26.12.2013 (Annexure No. A-1), appellate order dated 22.08.2015 (Annexure No. A-2) and the revisional order dated 14.12.2015 (Annexure No. A-3) and expunge the adverse remark from the service record of the petitioner along with all consequential benefits.

(ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case. .

(iii) To award cost of this petition to the petitioner".

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

On 28.08.2013, the petitioner Constable was posted at Police Line, Dehradun. He, along with fellow Constable and Head Constable, was directed to produce accused Laxman Thapa, who was detained at Sudhowala Jail, before Session Judge, Nainital on 29.08.2013. The petitioner, along with fellow Police personnel, proceeded from Dehradun on 28.08.2013 at 5.30 p.m.. Accused Laxman Thapa was produced before the Session Judge, Nainital on 29.08.2013, as directed. The same accused was to be presented before the Court at Haldwani. Accordingly, on 29.08.2013, the accused was taken to Haldwani by Prison vehicle, after Court proceedings relating to accused Laxman Thapa were over. Petitioner was at P.S. Kotwali, Haldwani when Guard Commander DeewanSingh reached there on 29.08.2013 at 8.30 p.m. He told the Police personnel that the accused is required to be detained in Nainital Jail and not in Haldwani sub-jail. Petitioner, along with other Police personnel, went to bus stand for taking the accused to Nainital Jail, but since, no transport facility was available for taking them to Nainital, therefore, keeping in view the security and safety of accused, he was kept in Police lockup of P.S., Kotwali, Haldwani. The next day, i.e., on 30.08.2013, the accused was to be presented before Haldwani Court. Petitioner/ Constable, along with fellow Police personnel, also did Police Guard duty of the accused the whole night. The accused was produced before the Court at Haldwani. After his production before the Court at Haldwani, he was taken back to Dehradun and was handed over to the In-charge of District Jail of Sudhowala on 30.08.2013.

Since the accused was not retained at Nainital, therefore, a departmental inquiry was conducted. After inquiry, 'censure entry' was

awarded to the petitioner and others by S.S.P., Dehradun, vide order dated 26.12.2013 (copy Annexure: A 1). A departmental appeal was preferred against the same, without getting any success. Appellate authority's order dated 22.08.2015 has been brought on record as Annexure: A 2. Hence, present claim petition.

3. The facts, which have been brought on record, a brief reference of which has been given in Para No.2 herein above, indicate that, being a member of disciplined Police force, petitioner was expected to bring back the accused from Haldwani to Nainital as per the direction of Guard Commander, who has also been given censure entry for lacking control over subordinates. The movement order, which was given to the petitioner, was for producing the accused Laxman Thapa before the Session Court at Nainital, and thereafter at Haldwani. As has been indicated above, the accused was to be produced both at Nainital as well as at Haldwani on different dates. On first date, he was to be produced at Nainital and on the following date, he was to be produced before the Court at Haldwani. When the accused along with Police personnel proceeded from Nainital on 29.08.2013, there was no order that he was to be retained at Nainital. The order was that, the petitioner along with fellow Police personnel should take the accused to Haldwani, where he was to be produced before the Court on the following date. The petitioner, along with his colleagues, took the accused from Nainital to Haldwani. They reached there, and only when they arrived at Haldwani, the Guard Commander came and told them that the accused was required to be detained in Nainital Jail. It was 8.30 p.m. and since there was no transport facility available at Haldwani to take the accused to Nainital in the night, therefore, as an abundant caution and keeping in view the safety and security of the accused, he was kept in Police Lockup at P.S. Kotwali, Haldwani. The Police personnel also did their guard duty and produced the accused before the Court at Haldwani as scheduled. As a member of disciplined Police force, the requirement was that the accused ought to

have been taken back to Nainital even if the Police personnel were finding it difficult to procure transport facility. The petitioner, along with Police personnel ought to have communicated their difficulty to the higher Police Officers and if they were unable to provide transport from Haldwani to Nainital, only then, the petitioner and others ought to have given up. But, no effort was made on behalf of petitioner and others to inform their seniors in the Police Department expressing their inability to take the accused back from Haldwani to Nainital. No doubt, the petitioner, along with other fellow Police personnel, committed mistake, but, their mistake was not that serious as it is projected on behalf of respondent department. This Tribunal does not see error of such magnitude on the part of petitioner, so as to warrant 'censure entry' for the mistake, which was, apparently, beyond their control. *Res ipsa loquitor*. The facts speak for themselves.

4. Ld. A.P.O. made an effort to project a case that, since hardened criminal P.P. was detained in Haldwani Jail and accused Laxman Thapa was interested in remaining in his company at Haldwani Jail, therefore, the accused was brought back to Haldwani deliberately. Ld. A.P.O. also submitted that P.P. as well as Laxman Thapa, both gave their separate applications in the Court for their habitation at Haldwani. Even if this fact is taken to be true for the sake of arguments, this Tribunal does not see any connection between the application filed by Laxman Thapa and application filed by P.P. There is no evidence on record to suggest that, there was any nexus between Laxman Thapa and P.P., although, it is a different fact that every accused wants his stay at Haldwani Jail, as a preference over Nainital Jail.
5. 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.

6. 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.
7. It has been observed in Para 3 of judgment herein above that, no doubt, the petitioner, along with other fellow Police personnel, committed mistake, but, their mistake was not that serious as it is projected on behalf of respondent department. This Tribunal does not see error of such magnitude on the part of petitioner, so as to warrant 'censure entry' for the mistake, which was, apparently, beyond their control.
8. It has been provided in the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 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.
9. Therefore, considering the peculiar facts of the case, this Tribunal 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.
10. The net result would, therefore be, that, whereas, this Tribunal does not find any reason to interfere with the findings arrived at by the inquiry officer, appointing/ disciplinary authority and appellate authority, this Tribunal finds cogent reasons to substitute the minor punishment of 'censure entry' awarded to the petitioner, with 'fatigue duty'

11. Order accordingly.
12. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 05, 2018
DEHRADUN

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