

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 06/DB/2017**

Satish Rana S/o Late Sri Shyam Singh aged about 30 years, R/o Village and Post Muda Kirani (Sikal Patti) Tehsil Kalima District Nainital at present posted as Constable No. 871 Civil Police, Roorkee District Haridwar, Uttarakhand.

.....Petitioner

**VS.**

1. State of Uttarakhand through Secretary (Home), Government of Uttarakhand, Civil Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, H.Q. Uttarakhand Police Head Quarter, Dehradun.
3. Deputy Inspector General of Police Garhwal Region, Dehradun, Uttarakhand.
4. Senior Superintendent of Police, Haridwar.

.....Respondents.

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

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

**JUDGMENT**

**DATED: MARCH 08, 2018**

**Justice U.C.Dhyani (Oral)**

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

“ (i) To issue an order or direction to set aside the impugned order dated 2.11.2012 (Annexure No. A-1) and appellate order dated 22.07.2014 (Annexure No. A-2) passed by respondents No. 4 and 3 declaring the same as against the rules and law.

(ii) To issue an order or direction to the respondents to pay the salary of the absent period to the petitioner and also fixed the pay of the petitioner to the pay scale of Constable which he received before punishment.

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

(iv) Award the cost of the petition to the petitioner.”

2. Briefly put, the case of the petitioner is that, while posted as Constable at P.S. Roorkee, he was charge sheeted with the allegation that he availed ten days’ casual leave twice, within a period of six months, in connection with ‘delivery’ of his wife. Firstly, he sought C.L. from 15.10.2011 and on 28.04.2012, he again applied for ten days’ casual leave. Ground on both the occasions was the same, i.e., delivery of his wife.

3. The allegation was that he uttered wrong facts, at least on previous occasion. Charge sheet was given to him. The petitioner denied the charges levelled against him. Inquiry was conducted against him. Inquiry officer submitted his report to Respondent No.4, in which, he recommended punishment of reversion of the petitioner to minimum pay scale and also recommended leave without pay for the period 07.09.2012 to 10.09.2012. Respondent No.4 issued show cause notice to the petitioner, who submitted his reply to such notice. Respondent No.4 awarded the aforementioned punishment to the petitioner. Aggrieved against the same, he preferred departmental appeal, which was rejected by Respondent No.3. Thereafter, he preferred revision to Respondent No.2, without yielding any result. Hence, present claim petition.

4. The charge levelled against the petitioner is that he availed of casual leave twice, in connection with 'delivery' of his wife. Firstly, it was done on 15.10.2011 and second time it was applied on 28.04.2012. Explanation offered by the petitioner, in Para 5 of his reply dated 10.11.2012, was that he was availing casual leave in connection with the treatment of his wife during pregnancy. Petitioner also explained that he admitted his mistake before inquiry officer and also apprised him the object of seeking C.L., which was treatment of his wife when she was pregnant. The C.L. was sought in connection with the treatment of his wife and therefore, the petitioner used the word 'delivery' of his wife.
5. Ld. Counsel for the petitioner, at the very outset fairly conceded that since the petitioner had admitted his mistake before the inquiry officer, therefore, there is no legal infirmity in the orders impugned, holding him guilty of misconduct. In Para 5 of the Rejoinder Affidavit, petitioner has clearly indicated that there was no negligence on the part of the petitioner. Due to pregnancy, his wife was unwell, and therefore, he applied for C.L. for the treatment of his wife, for which he mistakenly used the word 'delivery' in place of treatment. Since there was sufficient leave in the account of the petitioner, there was no question for making any false statement.
6. No other factual or legal issue is pressed on behalf of the petitioner except the fact that punishment awarded to the petitioner is disproportionate to his misconduct.
7. We, therefore, hold that procedure as laid down in law, has been followed by the inquiry officer while conducting inquiry and awarding punishment to the petitioner by the disciplinary authority. No interference, therefore, is called for in the orders impugned whereby the petitioner has been held guilty of availing C.L. on two occasions for the same cause.

8. Ld. Counsel for the petitioner reiterated that the punishment awarded to the petitioner is disproportionate. Only allegation against him, to which he pleaded guilty before the inquiry officer, is that he sought C.L. on two occasions for 'delivery' of his wife, which was in fact treatment of his wife during pregnancy. Petitioner has said so in specific terms in Para 5 of his rejoinder affidavit.
9. Considering the facts of the case, we are inclined to agree with the submission of Ld. Counsel for the petitioner that punishment awarded to the petitioner, is disproportionate to his alleged misconduct. It is not a lapse of serious nature. In common parlance, in rural area, the word 'delivery' is used even in connection with the treatment of wife during pregnancy. The mistake committed by the petitioner is, therefore pardonable, inasmuch as he himself has admitted his mistake earlier before inquiry officer and before this Tribunal, while filing rejoinder affidavit. No doubt, the petitioner committed mistake, but his mistake was not that serious as it is projected on behalf of respondents' department. This Tribunal does not see error of such magnitude on the part of petitioner, so as to warrant major penalty for a minor and innocent mistake which is usually committed by all and sundry. Moreover, the factum of delivery of petitioner's wife was not wrong. It is not a case in which petitioner misguided his department. Ld. Counsel for the petitioner has informed the Court that petitioner's wife has passed away recently, to warrant sympathetic consideration.
10. Punishment awarded to the petitioner, therefore, calls for interference.
11. Ld. Counsel for the petitioner, at this stage of dictation, submitted that, the Court may consider granting any one of the minor penalty to the petitioner.
12. In reply, Ld. A.P.O. submitted that, the Court should not interfere with the punishment of 'reversion to minimum pay scale of

Constable' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.

13. 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.

14. Therefore, considering the peculiar facts of the case, this Court deems it appropriate to substitute the minor punishment of 'reversion to minimum pay scale' 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. So far as punishment No. 3 is concerned, it was neither part of show cause notice, nor charge sheet and is also not a punishment, therefore, the disciplinary authority could not have passed such an order in law. It may be stated that by such order, on the basis of principle of 'no work no pay', the period between 07.09.2012 to 10.09.2012 was sanctioned as leave without pay, which cannot sustain and is, therefore, liable to be set aside. It is accordingly set aside.

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 (with the exception of punishment No.3), this Court finds cogent reasons to substitute the minor punishment of 'reversion to minimum pay scale' awarded to the petitioner, with 'fatigue duty'

17. Order accordingly.

18. The claim petition is disposed of. No order as to costs.

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

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MARCH 08, 2018*  
*DEHRADUN*

VM