

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

CLAIM PETITION NO. 29/SB/2017

Rajiv Prasad S/o Late Sri Sunder Lal Semwal, aged about 30 years, Fireman, Fire Station, Dakpatthar, Vikas Nagar, District Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Civil Secretariat, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttarakhand.
3. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri L.D.Dobhal, Counsel
for the petitioner.

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

JUDGMENT

DATED: MARCH 13, 2018

Justice U.C.Dhyani(Oral)

By means of present claim petition, petitioner seeks following reliefs:

- “(a) That an appropriate order or direction may kindly be issued to quash the order dated 29.08.2016 passed by the respondent no.3, order dated 6.4.2017 passed by the respondent no.2, imposing and confirming respectively the penalty of censure upon the petitioner and further making the entry of adverse remark in the ACR be also ordered to be cancelled.
- (b) That any other order or direction, which the Hon’ble Tribunal thinks fit, be also awarded .
- (c) Costs of the petition be also awarded.”

2. Briefly put, case of the petitioner is as follows:

Petitioner is a Fireman. When the incident took place, he was posted at Fire Station, Vikas Nagar, Dakpatthar. On 25.08.2015, Chief Fire Officer, Vikas Nagar served the petitioner with the questionnaire, containing question with regard to publication of "Operation Akrosh" regarding disparity in pay scales of employees of Police Force/ Fire Service, in social media. The same was posted on Face Book, Twitter and Whatsapp. The allegation is that the petitioner posted such a message on social media, which amounts to dereliction of duty. Explanation was sought from the petitioner, who denied ever posting such a message on social media (reply filed as Annexure: A 3).

3. Charge sheet was given to the petitioner. Inquiry was conducted by the inquiry officer. Inquiry officer recommended the punishment of minimum pay scale for one year to the petitioner, but the disciplinary authority disagreed and gave 'show cause notice' to the petitioner for 'censure entry'. Such show cause notice was replied by the petitioner, but said reply could not persuade the disciplinary authority to change his opinion. As a result thereof, 'censure entry' was awarded to the petitioner *vide* order dated 29.08.2016. Against the same, he preferred a departmental appeal, which was dismissed by the D.I.G. *vide* order dated 06.04.2017. Hence, present claim petition.

4. Ld. A.P.O. submitted that the procedure, laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and 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

5. Having heard learned counsel for the parties, this Tribunal is of the view that due procedure of law has been followed while holding the delinquent guilty of misconduct. No interference is called for in the same.

6. It is the submission of Ld. Counsel for the petitioner that question which was served upon the petitioner, did not contain the words, which were part of 'Operation Akrosh'. In the alternative, it has been submitted that, if petitioner liked the message, the same was an accidental act and was not done deliberately.
7. Ld. Counsel for the petitioner also submitted that the Chief Fire Officer of Fire Station, Vikas Nagar has himself recommended the case of the petitioner to D.I.G. /S.S.P. that the petitioner's case may be considered sympathetically.
8. Charges levelled against the petitioner were as follows:
- (i) That the petitioner showed his reaction by posting and liking the 'Mission Akrosh' message posted on social media like, Facebook, Twitter and Whatsapp, regarding disparity in pay scales, beginning from 16.08.2015 in Uttarakhand.
 - (i) That fireman Sandeep Rawat posted the message under 'Mission Akrosh' on his Facebook and the petitioner liked it on his Facebook.
 - (ii) Since the petitioner also participated in 'Mission Akrosh', hence his act amounts to indiscipline."
9. In a nutshell, the allegation against petitioner is that, he liked the message posted on his mobile phone under 'Operation Akrosh', regarding disparity of pay scales of the employees.
10. It is not a case in which it could be said that the message was never posted by the petitioner. The message reached in his mobile phone, petitioner 'liked' the same and, therefore, posted on social media as such. Whether the same was done accidentally or deliberately, is a matter deducible from the facts of the case. The facts, brought on record, in the instant case, suggest that the act, resulting in misconduct attributed, appears to be accidental one. The petitioner, received a message from some of his friends that since they are members of disciplined force, therefore, they should not be influenced or swayed away by some others' actions. The petitioner liked such a message and posted it on social media. Considering the fact that the

nature of misconduct on the part of the petitioner was not serious, Chief Fire Officer of the Station, Vikas Nagar recommended that the petitioner be exonerated.

11. At this stage of dictation, Ld. Counsel for the petitioner submitted that for the selfsame action, warning was given to many Fire Officials. Ld. Counsel for the petitioner drew attention of this Court towards Annexure: A-11, which contains various orders passed by S.S.P./D.I.G., Dehradun, giving a warning to several Firemen for the same misconduct, which is attributed to the petitioner. For instance, Fireman Sandeep Rawat, Constable Vijay Pal, Constable Lalit Mohan, Constable Hari Sawant, Constable Vineet Kumar, Constable Driver Vipin Rana were given warning for the selfsame act. Considering the peculiar facts of the case, this Tribunal is inclined to agree with the submission of Ld. Counsel for the petitioner that, in identical situation, petitioner should also be warned not to repeat such an act in future and the 'censure entry' awarded to the petitioner should be set aside.
12. It is a cardinal principle of law that like cases should be decided alike. Nobody should be subjected to discrimination on the same set of facts. If other Police Personnel/ Firemen have been warned for the similar act, why the petitioner be treated differently, with adverse entry?
13. In normal course, twitting of such message, would not have been met with a 'misconduct', for everybody has freedom of speech and expression, but a Government servant, moreover a Policeman, is an exception to the above noted fundamental right. The Government can always frame rules, in the form of Government Servants Conduct Rules, that a Government servant shall not air his grievance in public, against Government.
14. Rule 5(1) and Rule 7 of the Uttaranchal Government Servants' Conduct Rules, 2002 read as under:

“5. Taking part in politics and elections-(1) No government servant shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics, nor shall he take part in, subscribe in aid of, or assist in any other manner, any movement or organization which is, or tends directly or indirectly to be subversive of the Government as by law established.

Illustration- XYZ are political parties in the State.

X is the party in power and forms the Government of the day.

X is a government servant.

The prohibitions of the sub-rule apply to A in respect of all parties, including X, which is the party in power.

7. Criticism of Government- No government servant shall, in any radio broadcast or in any document published anonymously or in his own name, or in the name of any other person, or in any communication to the press, or in any public utterance, make any statement of fact or opinion-

- (i) Which has the effect of any adverse criticism of any decision of his supervisor officer or of any current or recent policy or action of the Uttaranchal Government or the Central Government or the Government of any other State or a local authority; or
- (ii) Which is capable of embarrassing the relation between the Uttaranchal Government and Central Government or the Government of any other States, or
- (iii)

Provided that nothing in this rule shall apply to any statement made or view expressed by a government servant in his official capacity or in the due performance of the duties assigned to him
Illustration-(1).....

(2)....

(3) It is not permissible for a government servant to criticize publicly the policy of government on such matters as the price of sugarcane fixed in any year, nationalization or transport, etc.

(4) A government servant cannot express any opinion on the rate of duty imposed by the Central Government on specified imported goods.

(5)....

(6).....”

15. As a member of disciplined Police Force, it was the duty of the petitioner to have observed restraint against such activities. He ought not to have responded to the message in ‘social media’ which amounts to indiscipline. He liked the message and twitted the same to many of his friends, which was rightly found to be an act of indiscipline.

16. This Tribunal is, therefore, of the opinion that, although, the petitioner is guilty of misconduct, but the 'censure entry' awarded to him, should be set aside in the given facts of the case. He should be given a warning, instead, which is not a punishment. It is not necessary for a disciplinary authority to impose even minor penalty, if someone is found guilty of misconduct. Present petitioner may, in such circumstances, should be let off with a warning on parity.
17. Order accordingly.
18. The 'censure entry' awarded to the petitioner is set aside. The findings arrived at by the disciplinary authority, as also by the appellate authority, are interfered only to this extent. The petitioner is warned to be careful in future.
19. The claim petition, thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 13, 2018
DEHRADUN

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