

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

CLAIM PETITION NO. 20/SB/2016

Gaurav Kumar S/o Sri Narendra Kumar, aged about 27 years, R/o Police Line,
Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun.
2. Inspector General of Police (Garhwal Zone), Uttarakhand, Dehradun.
3. Additional Director General of Police (Law & Order), Police Headquarters,
Dehradun.
4. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Dr. Aparna Singh, Advocate &
Sri L.K.Maithani in brief of
Sri M.C.Pant, Counsel
for the petitioner.

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

JUDGMENT

DATED: MARCH 14, 2018

Justice U.C.Dhyani(Oral)

Principal prayer, sought for by the petitioner, by means of
present claim petition, is as follows:

“To issue order or direction to quash the impugned order dated
19.03.2014 (Annexure: A 1) and appellate order dated
30.05.2015 (Annexure A-2) along with its effect and operation
also after calling the entire records from the respondents.”

2. Facts giving rise to the present claim petition are that, while petitioner was on patrol duty in Kolhupani area, in District Dehradun on 12.12.2013, he saw that some school going children were playing cards. Petitioner tried to chase them, but students ran away, leaving behind their bike, school bags and mobile phone on the spot. Instead of depositing these articles in the P.S. concerned, the petitioner kept the same with him for a day. The explanation offered by the petitioner is that the parents of school going children requested him not to take these articles to the P.S., otherwise career of the children will be ruined. The allegation against the petitioner is that, he ought to have deposited these items in P.S. concerned. The second allegation against the petitioner is that, he travelled beyond his beat while doing patrol duty.
3. After preliminary inquiry, show cause notice was given to the petitioner, to which he submitted his reply and pleaded not guilty. The inquiry officer found him guilty of (i) travelling beyond his beat; (ii) instead of depositing the articles in P.S. , Prem Nagar, he kept the same with him. The incident took place on 12.12.2013, and the articles were returned to the students/ their parents on 13.12.2013. He was, therefore, awarded 'censure entry'.
4. Aggrieved against the same, petitioner preferred the departmental appeal, without getting any success. The disciplinary authority's order dated 19.03.2014, appellate order dated 30.05.2015 are impugned in present claim petition.
5. Petitioner is a Constable, working in Uttarakhand Police. He had put in six years of service when the incident took place. He was on duty in Police patrol car in adjoining beat and allegation is that he travelled in Beat No.18, which was not his jurisdiction. Whether the petitioner was aware or ignorant about his duty in a particular beat, the fact remains that he was doing duty in a patrol car. The moment he saw that some students were playing cards, he travelled beyond his beat

consciously or unconsciously, tried to intercept the students, who defied the petitioner, and ran away.

6. This Tribunal finds that although, there is misconduct on the part of the petitioner, but such misconduct is not of that magnitude, so as to attract minor punishment of 'censure entry', which has far reaching civil consequences. Further, as has been projected by the petitioner, and as substantiated on the basis of evidence on record, that the petitioner did not deposit the articles recovered from school going students, on the request of their parents that career of the children will be ruined, and instead of depositing the articles in P.S. concerned, he returned those items to the students/ their parents the very next day. No Police case was registered. It was not a criminal case in which petitioner kept case property with him for a week or so. It is also not a case of misappropriation of those articles, which were returned to the students/ their family members on the very next day of incident. The allegations of harassment and demand of money were not substantiated by the inquiry officer herself. Otherwise also, there would have been no question of harassment inasmuch as, the school going children, who were playing cards, ran away merely on knowing that a Constable is approaching them. There would have been no question of demand of money, when there is no evidence of dialogue between petitioner and the students, who were not available on the spot the moment petitioner tried to chase them. The inquiry officer has clearly found that the demand of money and harassment to the children were not proved.

7. In other words, this Tribunal concurs with the findings of inquiry officer, disciplinary authority and also the appellate authority that there is misconduct on the part of the petitioner, which has been proved. Provision laid down in law, has been followed by all. There is no legal infirmity in the orders impugned holding the delinquent guilty of misconduct. Such finding of the authorities below is not intereferable.

8. However, considering the facts of the case, this Tribunal finds that the punishment awarded to the petitioner is disproportionate to his misconduct and, is therefore, interferable.
9. The record of the case suggests that the Beat No. 18 and the beat of patrolling duty are adjoining beats. There is common road which approaches both the beats one after another. The moment, petitioner saw that the school going children are playing cards, probably he was not aware that he is exceeding limit of his beat, in which he was supposed to do the patrol duty, and therefore, transgressed his movement in another beat unconsciously. The incident took place on 12.12.2013, and on the request of students/ their parents, the articles were returned to their family members. It was not case property. No FIR was registered. Probably, it was not an offence under the Public Gambling Act. It is the duty of Patrolling Police Personnel to see what is happening around them. No doubt, it was petitioner's bounden duty to deposit those articles in P.S. concerned, but as has been mentioned above, the magnitude of his misconduct is not so grave as to attract even minor punishment of 'censure entry'.
10. Considering the entire prospects of facts and also taking stock of peculiarity of the incident, this Tribunal is of the view that other minor penalty, instead of 'censure entry', should be awarded to the petitioner.
11. For the reasons stated herein above that, no doubt, the petitioner committed mistake, but, his 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 that mistake. It does not appear to be a lapse of such a nature so as to attract 'censure entry'.
12. 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.

13. Therefore, considering the peculiar facts of the case, as noted above, 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.

14. 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'

15. Order accordingly.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 14, 2018
DEHRADUN

VM