

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

CLAIM PETITION NO. 46/SB/2017

Zeeshan Ali, S/o Sri Kala, presently posted as Constable at Police Line,
Chamba, District Tehri.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Uttarakhand, Subhash Road,
Dehradun.
2. Inspector General of Police, Training, Police Headquarters, Dehradun.
3. Commandant, Armed Training Centre, Haridwar.

.....Respondents.

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

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

JUDGMENT

DATED: MARCH 16, 2018

Justice U.C.Dhyani(Oral)

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

“(i) To quash the impugned order No. Ja-3/2015 dated
07.05.2016 (Annexure No. A-1) by which an adverse entry has
been awarded by the respondent no.3 in the service record of
the petitioner as well as appellate order no. GD-1/A-149-2016
dated 19.11.2016 (Annexure No. A-2) by which appeal of the
petitioner has also been rejected by the respondent no.2, 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 present claim petition are that, when petitioner was in Armed Training Center (ATC) at Haridwar, a dispute arose between two groups of Trainee Constables, who were undergoing 15 days' Traffic Training there. The trainees hurled abuses at each other. Altercation also took place between them, which resulted in assault, as a consequence of which fellow Constables sustained injuries. The injuries of trainee Constables were medically examined. Explanation was sought from the petitioner, as also from others. Petitioner admitted his mistake. He submitted that it is his first mistake and he will not repeat the same in future.
3. Preliminary inquiry was conducted by the Assistant Commandant, ATC, Haridwar. Show cause notice was given to the petitioner, in which, as has been mentioned above, he pleaded guilty. According to Commandant, ATC (Disciplinary/ Appointing Authority), image of Police Force was tarnished in the estimation of public, and, therefore, after giving show cause notice to the petitioner, as to why 'censure entry' be not awarded to him, 'censure entry' was awarded to the petitioner *vide* order dated 07.05.2016 .
4. Departmental appeal was preferred against the order of disciplinary authority. Such an appeal was dismissed *vide* order dated 19.11.2016. Hence, present claim petition.
5. Whereas, Ld. A.P.O. submitted that the procedure, as laid down in the Rules has been followed by the disciplinary as well as by the appellate authority, it is the submission of Ld. Counsel for the petitioner that a lenient view should be taken against the petitioner, keeping in view the facts that he was a Trainee Constable, it was a dispute between two sets of Constables, in which members of both

groups sustained injuries, it is not a case of intoxication, the incident took place in a spur of moment on sudden and grave provocation, the petitioner had put in only three years of service when he was sent for training in ATC, and, moreover, he has not contested the case and has pleaded guilty before the disciplinary authority.

6. 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 infirmity has been pointed out in the same. The Tribunal is unable to take a view contrary to what was taken by two authorities below. No interference is called for in the same.
7. Before the appellate authority, two decisions have been referred by the petitioner and , therefore, this Tribunal deems it fit to refer those two decisions in this judgment. In **Roop Singh Negi vs. Punjab National Bank (2009)2 SCC 570**, it was held that nature of departmental inquiry is quasi judicial. The appellant, in the aforesaid decision, confessed that he was involved in stealing of Bank Draft book. Hon'ble Apex Court held that the confessional statement alone was not sufficient. Some evidence ought to have been brought on record to show that the appellant Roop Singh Negi was involved in stealing. The facts of present claim petition are on different pedestal. Roop Singh Negi was a Bank employee, whereas, petitioner is a Police Constable. He has confessed his guilt before the inquiry officer, who is his superior and coincidentally, belongs to Police Department. Moreover, there is ample evidence against him. Roop Singh Negi's decision is, therefore, of no use to the present petitioner.
8. In **Nand Kishore vs. State of Bihar, (1978) 2SLR 46** , it was observed by the Hon'ble Apex Court that the evidentiary material, which has been brought against the petitioner, should be of some degree of definiteness pointing to the guilt of the petitioner in respect of charge against him. The nature of disciplinary proceedings before a

domestic Tribunal are of quasi judicial character, therefore, minimum requirement is adherence to the Rules of natural justice. The corollary to the first principle is that the disciplinary inquiry should have been conducted fairly, without bias or predilection, in accordance with relevant disciplinary Rules. This Tribunal is of the view that the aforesaid principles have been followed in the instant case, and, therefore, there is no reason to interfere with the finding of holding present petitioner guilty of misconduct.

9. The facts which have emerged from the record of the case, clearly indicate that, it was first misconduct committed by the petitioner. He was a Trainee Constable. Altercation, resulting in assault, took place between two groups of Police Constables. Members of rival groups sustained injuries. Others have also been held guilty and punished. The incident, as it appears to be, was the result of sudden and grave provocation which occurred in a spur of moment over trivial issue, between two sets of trainees. It is not a case of intoxication. It is not the case of the department that petitioner consumed liquor. Medical examination in this respect was also not conducted. The most important mitigating factor in favour of the petitioner is that he has admitted his guilt, when his explanation was sought. Interference is, therefore, called for in the quantum of punishment awarded to the petitioner.
10. 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 was not a lapse of such a nature, so as to attract 'censure entry'.
11. 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.

12. 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.

13. 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'

14. Order accordingly.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 16, 2018
DEHRADUN

VM