

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

CLAIM PETITION NO. 55/DB/2017

Virendra Kumar S/o Shri Bhoun Ram, Constable, presently posted at Kotwali
Nagar, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Civil Secretariat,
Subhash Road, Dehradun.
2. Inspector General of Police, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun..

.....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 following
reliefs:

“(i) To issue order or direction to quash the impugned orders
dated 30.07.2016 (Annexure No. A-1) , appellate order dated
June, 2017 (Annexure No. A-2) and expunge the adverse remark
from the service record of the petitioner along with all
consequential benefits.

(ii) -----

(iii) 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, the petitioner along with his fellow Constable were deputed to do patrolling duty in Miyanwala which falls within the jurisdiction of Police Chowki Harrawala, P.S. Doiwala on 10.06.2015, with specific instructions to keep vigil on anti-social elements in the communally sensitive area. In the intervening night of 10.06.2015/ 11.06.2015, at around 2 a.m., 40-50 people of a particular religious community assembled there. They *gheraoed* these two Police Constables and misbehaved with them. Mischief was committed by the hooligans by putting a hutment on fire, which was extinguished by these two Constables. They informed the Police. The Police force came from Police Chowki, Harrawala. They rescued the petitioner and his colleague.
3. Preliminary inquiry was conducted. Petitioner along with his colleague were found guilty. Show cause notice was given to the petitioner and fellow Constable along with copy of the preliminary inquiry report. In reply to the show cause notice, petitioner submitted that he performed patrolling duty in disputed area up to 12.30 p.m. and thereafter, started keeping vigil over adjoining lanes and main road.
4. Petitioner also stated, in the reply to the show cause notice, that copy of preliminary inquiry was not supplied to him; no statement of any member of that particular religious community was taken; petitioner was not instructed to keep vigil over the disputed area in Miyanwala; patrolling was necessary in other areas also and senior Police Officials were given information, not only by the petitioner and his fellow Constable, but also by the members of the public.

5. S.S.P. Dehradun/ Disciplinary authority, *vide* order dated 30.07.2016 (copy Annexure A-1), holding the petitioner guilty of dereliction of duty, awarded him with 'censure entry'. Aggrieved against the same, petitioner preferred departmental appeal, which was dismissed by D.I.G., Garhwal Range, *vide* order dated June, 2017 (Copy Annexure: A 2). Hence, present claim petition.
6. In between, petitioner's services were put under suspension w.e.f. 11.06.2015 to 05.08.2015. Subsistence allowance was given to the petitioner and his colleague for the suspension period. While revoking the suspension order, *vide* order dated 06.08.2015 (Annexure: A 3), no decision was taken on pay and allowances during the suspension period and the issue was left open to be decided on a later date. It is the submission of Ld. Counsel for the petitioner that a direction be given to Respondent No.3 S.S.P./ D.I.G. to take decision on the salary and allowances, payable to the petitioner, during his suspension period.
7. A direction is, therefore, given to Respondent No.3 to take a decision on the pay and allowances, payable to the petitioner, during his suspension period, within such time as is being delineated in Para 7 of the judgment (below).
8. Petitioner is directed to furnish a copy of this judgment along with his representation enclosing a copy of order dated 06.08.2015 (Annexure: A 3), requesting Respondent No.3 to pass an order on his salary and allowances, payable during suspension period, within a period of six weeks from the date of presentation of certified copy of this order along with copy of representation.
9. So far as the merits of the claim petition are concerned, it is submitted by Id. A.P.O. that due procedure, as laid down in law, has been adopted by the inquiry officer/ disciplinary authority and appellate authority while passing the orders impugned and therefore, these orders may be kept intact and claim petition may be dismissed.

10. In reply, Ld. Counsel for the petitioner submitted that although, the department has no case on merits, but considering the fact that the petitioner had hardly put in six years of service and it was his first case of misconduct, therefore, minor penalty of 'censure entry' should be substituted by another minor penalty of 'fatigue duty'.
11. It is also pointed out that in the impugned order, there is discussion on the role of present petitioner, but the disciplinary/ appointing authority has taken into consideration the explanation offered by Constable Harendra Singh and has awarded punishment to the latter and not to the former. No punishment has been awarded to the petitioner. According to Ld. Counsel for the petitioner, there is total non application of mind on behalf of Respondent No.3 while passing the order impugned (Annexure: A 1). In other words, whereas, there is discussion on the role played by a Constable, explanation offered by another Constable was taken into consideration and 'censure entry' was awarded to latter and not to the former. Law desires that if some allegations have been levelled against a particular delinquent, his explanation only should be considered while passing an order holding him guilty of misconduct. There is breach of such law while passing the order impugned, although Ld. A.P.O. has tried to convince the Court that it is a typing mistake and the intention of Respondent No.3 should be gathered while passing the order impugned.
12. Be that as it may, the fact remains that the petitioner was posted in an area, which was communally sensitive. Special vigil was required on his part when he was specifically deputed for the purpose. He should have informed nearest Police Chowki if there was apprehension of breach of peace. Although, petitioner remained there up to 12.30 p.m., but somehow, in order to keep vigil in other areas, he started patrolling duty in adjoining lane and main road, as a consequence thereof, 45-50 people of a particular religious community committed mischief by putting a hutment on fire, misbehaved with the petitioner and his fellow Constable, *gheraoed* them and only when

the Police force came from adjoining Chowki, petitioner along with his colleague, could be rescued.

13. Misconduct is, therefore, writ large, on the face of it. No interference is called for in the order holding the petitioner guilty of misconduct. However, considering the fact that the petitioner was a new comer; did duty, but failed to control the mob; whereas special vigil was required on his part, he failed to do the same, although informed nearest Police Chowki as soon as the incident took place; petitioner observed restraint in not opening fire on the errant mob; it is not a case that the petitioner was absent from the area where he was deputed; and two Police Constables could not have controlled the inevitable, this Tribunal deems it proper to substitute the punishment of 'censure entry' with 'fatigue duty'.
14. 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'.
15. 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.
16. 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.

17. 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'
18. Order accordingly.
19. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 16, 2018
DEHRADUN

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