

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 32/NB/DB/2015**

H.C. 65 Civil Police Rajiv Kumar S/o Shri Dheer Singh, R/o Kasba oon District Shamli, presently posted at P.S. Kichha, District Udham Singh Nagar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. D.I.G., Kumaon Range, Nainital.
3. S.S.P., Udham Singh Nagar.

.....Respondents

Present: Mrs. Monika Pant, Ld. Counsel  
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: MARCH 13, 2018**

**HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)**

1. The petitioner has filed the present claim petition for seeking following relief:

*“ (i) To quash enquiry report dated 21/03/2014 (AX 1) and the Impugned order dated 08/12/2014 (AX 2) passed SSP U.S. Nagar and Impugned order dated 27/05/2015 (AX 3) passed by the departmental appellate authority.*

*(ii) Issue directions to the respondents to consider the future promotions of the petitioner without being prejudiced by the Impugned orders herein.*

*(iii) To pass any appropriate order as learned Tribunal may please think fit and proper accordingly to facts, reasons and circumstances of the case.*

*(iv) To allow the petition with cost.”*

2. The petitioner is a Head Constable in Uttarakhand Police.

3.1 The Uttarakhand Police promotes Constables/Head Constables to the post of Sub-Inspector (Rankers) through a departmental written examination. One such written examination was conducted on 23.01.2011 in District Tehri Garhwal. On complaint of some irregularities committed in the said examination, the Director General of Police ordered a CBCID inquiry on 14.02.2011. The CBCID after conducting the inquiry submitted its report dated 16.06.2011 (Annexure: A-4). The CBCID found that 7 candidates who appeared in the written examination (one of them is the petitioner) did not sit on their allotted seat in the examination hall and they wrote their examination by sitting somewhere else outside the examination hall.

3.2 Apart from the 7 Constables/Head Constables, it was also found by the CBCID that other officers including the Superintendent of Police have committed irregularities in the conducting of the written examination.

3.3 The 7 Constables who were found guilty by the CBCID belong to Districts Udham Singh Nagar (3 constables), Nainital (2 constables) and Bageshwar (2 constables).

3.4 It was decided by the Police Department that apart from supervisory officers, the departmental action be taken against 7 constables under Rule 14(1) of the U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991.

3.5 Departmental proceedings for major punishment were initiated in Udham Singh Nagar district against 3 constables including the petitioner.

3.6 The petitioner was given the charge sheet on 27.04.2012 (Annexure-A-5). The gist of charges level against the petitioner reads as under:-

“ वर्ष 2011 में जब आप जनपद टिहरी गढ़वाल में नियुक्त थे, तो उत्तराखण्ड में रैंकर उपनिरीक्षक ना0पु0 प्रशिक्षण सत्र 2010-11 के लिये विभागीय अभ्यर्थियों के चयन हेतु दिनांक 23.01.2011 को परीक्षा सम्पन्न हुई। जिसमें आप सम्मिलित हुए तथा लिखित परीक्षा के दौरान परीक्षा केन्द्र जनपद टिहरी गढ़वाल में आपके द्वारा अनुचित साधनों को प्रयोग किये जाने के सम्बन्ध में शिकायती प्रार्थना पत्र की जाँच पुलिस महानिदेशक मुख्यालय के आदेश संख्या: डीजी-एक-210-2010 दिनांक 14.02.2011 के द्वारा अपराध अनुसंधान विभाग से कराये जाने के उपरान्त सम्बन्धित आरोपों की जाँच अपराध अनुसंधान विभाग खण्ड देहरादून द्वारा संपन्न की गयी। अपराध अनुसंधान विभाग के जाँच के मध्य अभिलेखीय व मौखिक साक्ष्य विश्लेषण के बाद पाया कि आप दिनांक 23.01.2011 को रैंकर उपनिरीक्षक ना0पु0 की परीक्षा में सम्मिलित हुए लेकिन आपने अपनी निर्धारित सीट पर बैठकर परीक्षा नहीं दी, बल्कि आपके द्वारा अन्यत्र स्थान पर बैठकर परीक्षा दी गयी तथा अपने बयानों में स्वयं को निर्धारित सीट पर बैठना बताया। उपस्थिति सीट व कक्ष निरीक्षक एवं आपके निर्धारित सीट के आगे पीछे बैठे अभ्यर्थियों द्वारा आपको निर्धारित सीट पर न बैठने की पुष्टि की है तथा लिखित परीक्षा के परीणाम घोषित होने के पश्चात् भी आप बिना किसी समुचित कारण के शारीरिक दक्षता में

सम्मिलित नहीं हुए। जॉच के मध्य अभिलेखीय व मौखिक साक्ष्य से स्पष्ट है कि आप अपनी निर्धारित सीट पर न बैठकर अन्यत्र किसी गोपनीय स्थान पर बैठकर परीक्षा में सम्मिलित हुए तथा आपके द्वारा अनुचित साधनों का प्रयोग किया गया, जिस कारण पुलिस विभाग की छवि धूमिल हुई, जो आपकी घोर लापरवाही, अनुशासनहीनता का द्योतक है।”

3.7 The charges were denied by the petitioner and he filed reply to the charge sheet on 26.05.2012. On completion of the enquiry, the inquiry officer submitted its report on 21.03.2014 to the Senior Superintendent of Police, Udham Singh Nagar. The inquiry officer reached the conclusion that the written examination was given by the petitioner by sitting at some other place and not at the seat allotted to him in the examination hall.

3.8 Thereafter, a show cause notice was issued to the petitioner by the Senior Superintendent of Police, Udham Singh Nagar on 29.03.2014 (Annexure-A 7). The petitioner filed his reply to the show cause notice on 17.04.2014. After due consideration to the reply to the show cause notice, the Senior Superintendent of Police, Udham Singh Nagar passed a reasoned order and awarded a punishment of reduction to a lower scale for one year on 8.12.2014 (Annexure-A-2). The petitioner preferred an appeal to the Deputy Inspector General of Police, Kumoun Region against the punishment order and after considering the same, it was rejected by the Appellate Authority on 27.05.2015 (Annexure-A 3).

4.1 The main ground of the petitioner for challenging the punishment order is that out of 7 constables who were charged identically in relation to one and the same incident and the departmental proceedings were conducted against all of them but they have been treated differently in the award of punishment.

While, the petitioner and 2 other constables of Udham Singh Nagar district were awarded the punishment by the Senior Superintendent of Police, Udham Singh Nagar, the 2 constables of Bageshwar district were exonerated by the Senior Superintendent of Police, Bageshwar on 7.04.2015 (Annexure: SA-3 and SA-3). The remaining 2 constables who belong to Nainital district have also been recommended to be exonerated by the inquiry officer, though for final decision on the inquiry report, the matter has been referred to the CBCID for its views (Annexure: SA-4). The contention of learned counsel for the petitioner is that it was not open for the disciplinary authorities to impose punishment upon the petitioner (and 2 others) and to exonerate other constables when the charges against all of them are same and identical pertaining to one and the same incident and, therefore, it is highly discriminatory, arbitrary and in violation of Article 14 of the Constitution of India.

4.2 Learned counsel for the petitioner has also submitted that the senior officials who were engaged in the conduct of the examination like Invigilators, Centre Incharge and other Supervisory Officers, who have also been either exonerated or only a simple warning was given to them, though their negligence was more serious than that of the constables. Thus, different yardsticks were adopted by the respondents against different sets of delinquents and even amongst same sets of delinquents (constables), different yardsticks were applied. The respondents have given punishment to some constables and exonerated others for identical charges for the same incident which took place on the same day.

4.3 Learned counsel for the petitioner has also referred following 3 case laws of the Hon'ble Supreme Court:

- i. Director General of Police and others vs. G.Dasayan (1998)2 SCC, 407
- ii. Tata Engineering and Locomotive Co. Limited vs. Jitendra Prasad Singh [2001]10 SCC, 530
- iii. State of Uttar Pradesh and others vs. Raj Pal Singh (2010)5 SCC, 783

5. Learned A.P.O. has opposed the claim petition and a joint written statement has been filed on behalf of respondents No. 1 to 3. The main contention of learned A.P.O. is that though the charges against the constables who appeared in the written examination are the same and all 7 constables appeared in the written examination but the departmental proceedings have been conducted by different disciplinary authorities of 3 districts—Udham Singh Nagar, Bageshwar and Nainital. The argument of learned A.P.O. is that the petitioner cannot claim parity on the basis of the exoneration by disciplinary authorities belonging to some other districts and, therefore, the argument of learned counsel for the petitioner cannot sustain.

6. No other issue was pressed by the parties.

7. Perusal of the record reveals that during the whole process of conducting the inquiry and the award of punishment and in deciding the appeal, the issue of different treatment in respect of different constables working in different districts has not been deliberated upon. This aspect of the case was neither raised by the petitioner nor looked into by the appellate authority. It is pertinent to mention that the 7 constables against whom the departmental inquiry was conducted belong to 3 districts and all

of these 3 districts (Udham Singh Nagar, Bageshwar and Nainital) are under the jurisdiction of DIG, Kumaon Region who is the appellate authority. As the matter of parity or discrimination was not raised by the petitioner in his appeal, there was no occasion to address the issue by the appellate authority at the time of deciding the appeal of the petitioner.

8. As the matter of discriminative treatment as raised by the petitioner in this claim petition has not been examined by the departmental authorities, we do not find it appropriate and justified to adjudicate upon the controversy in question unless it is first considered in true perspective at the departmental forum. **The adequate material and relevant documents in respect of constables of all the districts are also not on record before this Tribunal to decide the issue.**

9. Under these circumstances, it would be just and fair that the petitioner may be allowed to make a representation to the appellate authority for deciding the issue of different treatment to different constables belonging to different districts as all constables and their districts fall under the jurisdiction of the appellate authority.

10. The claim petition is accordingly remanded to the appellate authority by granting two weeks time to the petitioner to move a representation to the appellate authority only in respect of the issue of parity/discrimination with respect to constables of districts Udham Singh Nagar, Nainital and Bageshwar as a part of Appeal against the punishment order. Thereafter, the appellate authority is directed to decide such representation as a part of Appeal by a reasoned order as per

rules and law at the earliest but not later than eight weeks of presentation of the representation before the appellate authority with a copy of this order. It is also made clear that the Tribunal has not gone into merits of the claim petition on the issue of parity/discrimination. No order as to costs.

**(RAM SINGH)**  
VICE CHAIRMAN (J)

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

*DATE: MARCH 13, 2018*  
*NAINITAL*

*KNP*