

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

**CLAIM PETITION NO. 03/DB/2017**

S.I. Rajeev Semwal, S/o Sri Rameshwar Prasad, presently posted as  
Sub Inspector, Cyber Crime, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Home,  
Dehradun.
2. Inspector General of Police, Garhwal Range, Uttarakhand.
3. Senior Superintendent of Police, District Dehradun.

.....Respondents

Present: Sri Devesh Ghildiyal, Ld. Counsel  
for the petitioner  
  
Sri U.C. Dhaundiyal, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: MARCH 26, 2018**

**Justice U.C.Dhyani (Oral)**

By means of instant petition, the petitioner seeks following  
reliefs:

*“a) To issue order or direction quashing the  
order dated 20.10.2014 (Annexure No. 1) and  
quashing the rejection order dated 03.08.2016  
(Annexure No. 2).*

b) *To grant any relief that the Hon'ble Tribunal may deem fit and proper in the circumstances of the case."*

2. Brief facts, giving rise to the petition, are as follows:

An FIR, relating to the Case Crime No. 23/2014, U/S 457, 380 IPC, was lodged at P.S. Vikas Nagar, Dehradun. The same was being investigated by Sub-Inspector Keshwanand Purohit. S.I. Purohit was transferred from that Police Station. The petitioner was handed over the investigation of Case Crime No. 23/2014, who investigated the case and submitted charge sheet against accused/Juvenile in conflict with law, before the Juvenile Justice Board, Dehradun.

3. On preliminary inquiry, it was found that petitioner is guilty of dereliction of duty. The accusation was that he did not start the investigation on 31.03.2014. Petitioner's explanation is that he was not aware of the transfer of investigation. He came to know of it subsequently, when he went to C.O. Office, in connection with some other official work.

4. Show cause notice was given to the petitioner along with a copy of the preliminary inquiry report. The petitioner submitted his reply. Not satisfied with the same, S.S.P., Dehradun awarded the petitioner with a 'censure entry' *vide* order dated 20.10.2014. Aggrieved with the same, petitioner preferred a departmental appeal before D.I.G., Garhwal Region, who dismissed the appeal *vide* order dated 03.08.2016. Hence, present claim petition.

5. It is the submission of learned Assistant Presenting Officer that prescribed procedure has been followed by the inquiry officer, disciplinary authority and appellate authority, while passing the

orders impugned and, therefore, no interference is called for in the same.

6. Very short question, which arises for consideration of this Court is, when was the petitioner informed about the investigation of the case?

7. The contention of the petitioner is that he came to know about the investigation being entrusted to him only on 24.05.2014, when he went to C.O. Office, in connection with an official work. It is the allegation of the department that the petitioner was informed on 31.03.2014 that he has to investigate the case. Let us see, what is the evidence against the petitioner?

8. There is oral evidence of Head Constable 67 C.P, Manoj that Constable Prakash Singh came to Police Station, Vikas Nagar and handed over a *dak* to him on 31.03.2014. There is oral evidence of Constable Prakash Singh that he handed over the *dak* to Head Constable Manoj, who stated that the information was immediately given to the petitioner, who was sitting in the Police Station concerned. The version of the petitioner is that he was not, at all, informed about the investigation of the case. In other words, he was not aware that the investigation of the Case Crime No. 23/2014, U/S 457, 380 IPC has been assigned to him. He came to know of the same, only on 31.03.2014, when he went to the C.O. Office, in connection with an official work and it was only there, he was apprised that further investigation of the Case Crime No. 23/2014 has been entrusted to him, which investigation, earlier, was conducted by S.I, Keshwanand Purohit.

9. There is oral evidence of Head Constable, Manoj vs. oral evidence of the petitioner. Constable Prakash Singh has only stated that he handed over the *dak* to Head Constable Manoj. Constable

Prakash Singh did not say that the petitioner was informed about the investigation of the case, in his presence. There is no entry in the G.D. According to Annexure: A1, there is no entry in the *dakbahi* either.

10. Oral evidence is no substitute for the documentary evidence. There are certain facts which could be proved only by filing documentary evidence. The same has not been done in the instant case. The principle is that the best evidence should be produced. The rule does not demand greatest amount of evidence which can possibly be given of any fact. When better evidence is withheld, it only fair to presume that party has some motive for not producing it. **There is oral evidence of Head Constable Manoj vs. oral evidence of the petitioner. Constable Prakash Singh has only stated that he handed over the *dak* to Head Constable Manoj. Constable Prakash Singh did not say that the petitioner was informed about the investigation of the case, in his presence. There is no entry in the G.D. According to Annexure: A1, there was no entry in the *dakbahi* either.** Perversity is writ large and, therefore, interference is called for in the orders impugned.

11. It is not a case, in which, the Investigating Officer (petitioner) did not investigate the case. He investigated the case and promptly submitted charge sheet against the accused before the Juvenile Justice Board, Dehradun. Investigation was not adversely affected, even if the Investigating Officer started it late.

12. There appears no *malafide* on the part of the petitioner. Had there been any intention on his part, to delay the investigation, he would not have done it promptly. Even if it be assumed for the sake of argument that Head Constable Manoj handed over the *dak*, brought by Constable Prakash Singh, to the petitioner, the fact

remains that the same, first ought to have been received in the *dakbahi* and only then, it should have been given to petitioner, may be *dasti*. What to talk of receiving of that *dak* by the petitioner, there is no entry of the same in the *dakbahi*, in the Police Chowki or Police Station, which register is meant for receipt and dispatch of the *dak*. It has not been done in the instant case. In the backdrop of above, this court has ample reason to interfere in the orders impugned and allow claim petition.

13. Claim petition is allowed. Orders impugned are set aside.  
No order as to costs.

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MARCH 26, 2018*  
*DEHRADUN*

*KNP*