

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice-Chairman (J)

CLAIM PETITION NO. 31/NB/SB/2016

Mahesh Dangwal aged about 38 years, S/o Ghanshyam Dangwal, R/o Village Bhatt Kholra, P.O. Chani, P.S. Jhiroli, District Bageshwar, Constable 728, Civil Police, Police Station-Bhowali, District Nainital, presently posted as Constable 93, Civil Police, Police Station-Didihat, District-Pithoragarh.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Home and Civil Police, State Government of Uttarakhand, Dehradun.
2. Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, Nainital.

.....Respondents

Present: Sri Mahesh C. Pant, Ld. Counsel
for the petitioner
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATE: APRIL 10, 2018

1. The petitioner has filed this claim petition for the following reliefs:

*“(I) That by an order, the orders dated 12th July 2016
and 24th May 2016 be set aside.*

(II) That the respondents be directed to consider the case of the petitioner for promotion ignoring the censure enroll on the character roll of the petitioner.

(III) Any other relief deems just and proper in the facts and circumstances of the case be allowed to the petitioner.

(IV) Cost of the petition be allowed in favour of the petitioner.”

2. Briefly stated facts of the case are that on 01.02.2016, while posted as Constable at Police Station, Bhowali, district Nainital, allegation was imputed against the petitioner that he did not attend his duty and was found in the state of intoxication in public place at Bhowali Chauraha, from where he was caught by Senior Sub-Inspector of the concerned Police Station. The petitioner was brought to C.S.C., Bhowali for medical examination, where doctor conducted his medical examination. Thereafter, on 18.04.2016, a show cause notice was issued to him by respondent No. 3 and the same was replied by the petitioner on 11.05.2016, but without considering his reply, respondent No. 3/Disciplinary Authority passed impugned punishment order and awarded a censure entry in his character roll. Petitioner preferred an appeal on 01.06.2016, but his appeal was rejected by Respondent No. 2 vide order dated 12.07.2016, the information of the same was received by the petitioner on 19.07.2016. Thereafter, this petition was filed, for the relief sought above, on the following grounds.

3. That on 01.02.2016, in the morning, he suffered with acute abdomen pain due to dysentery and after consulting a private doctor and taking medicine, he requested G.D. Munshi Constable Dham Singh to change his duty and on his refusal, the petitioner entered Rawangi in General Diary and went for traffic duty at Bhowali Chauraha. He performed his duty along with other

Constable of Traffic, Manoj Nath and Home Guard Jitendra Kumar with full discipline, but without any complaint from any public person about his conduct, he was falsely implicated in the matter. In the inquiry, adequate opportunity of hearing was not given to the petitioner nor the statements of his companion Constable Manoj Nath and Home Guard Jitendra Kumar were recorded, neither the statement of doctor of C.S.C. was taken in his presence. No blood or urine test was conducted neither the statement of any independent witness of public person was recorded. He was wrongly charged for being under intoxication whereas, due to acute pain in his abdomen, he had taken some medicine, smelling like alcohol. No opportunity to cross-examine of any witnesses was given and the order was passed without considering the facts narrated by him in the reply. Hence, this petition.

4. The petition was opposed by the respondents by filing Counter Affidavit stating that the punishment orders are legally correct, perfect and valid in the eyes of law, which have been passed after full-fledged inquiry, in which, the petitioner was found guilty of charges levelled against him. The petitioner being a public servant, was deputed to do traffic duty at Bhowali Chauraha, but he was wandering elsewhere and was found in the state of intoxication by Senior Sub-Inspector during his checking. With the help of another employee, petitioner was brought for medical checkup in the Community Health Centre, Bhowali wherein doctor found him in the state of intoxication. Being a member of disciplined force, the petitioner should maintain discipline and should not resort to drink on duty at public place. According to respondents, petitioner was guilty of serious misconduct, hence, disciplinary proceedings were started in which after recording the statement of the witnesses and after giving him opportunity to explain, the impugned order and appellate order were passed. The statements of relevant witnesses

were recorded during the course of inquiry as per rules. Respondents have also pleaded that petitioner got prepared a fictitious medical prescription and was also found sleeping in the barrack and did not attend his duty. His defence was found baseless and petition deserves to be dismissed.

5. I have heard both the parties and perused the record.

6. The petitioner has based his petition on the basis that due process of law was not followed and in medical examination no blood and urine test was conducted. The doctor's report was prepared only on the basis of smelling and the petitioner was not given any opportunity to cross-examine the doctor, who conducted his medical examination. The main witness, his companion on duty, Manoj Nath and Home Guard, Jitendra Kumar were not examined. The petitioner was not given any opportunity to cross-examine the other witnesses and disciplinary authority had totally overlooked his reply, wherein he mentioned that due to stomach pain, he took medicine smelling like alcohol. Hence, all the proceedings are vitiated.

7. The record reveals that the inquiry officer, Circle Officer, Bhowali prepared his report on 18.04.2016 wherein he also recorded the statement of petitioner in which he specifically mentioned that on 01.02.2016, due to stomach pain, he took a medicine "Pudin Hara" and he never takes any liquor. The other witness is Constable Dham Singh, who was the Munsif at P.S. Bhowali. He confirmed this fact that the petitioner also told him about his stomach disorder and made a request to change his duty on that day but he was told that this is not possible and was directed to do his duty at Bhowali Chowk, from where he can take his medicine. According to this witness, S.I., D.L. Verma and Constable Lalit Mohan Pandey brought the petitioner to the police

station at 20:35 P.M. after conducting his medical examination. Some of the witnesses have stated that the petitioner was sleeping in his barrack and Constable 412 C.P. Lalit Mohan Pandey has stated that after receiving information that petitioner is sleeping in his barrack, then S.S.I. along with Constable Balveer Singh and Driver Narendra Chufal brought the petitioner for medical examination. According to this witness petitioner was in full conscious and was speaking and walking normally. Witness further stated that petitioner was complaining about his stomach pain and told that he has taken "Pudin Hara". Other witness, Constable Balveer Singh also stated that after getting this information that petitioner is sleeping in his barrack, he alongwith S.S.I. and Constable Lalit Mohan Pandey went to the barrack from where, petitioner, Mahesh Dangwal was taken in the government vehicle to CSC, Bhowali for medical checking.

8. The statement of these witnesses is contradictory to the story of the respondents that the petitioner was caught from Bhowali Chauraha. Some of the witnesses were examined during the inquiry has stated that petitioner was sleeping in his barrack, whereas, some other witnesses has stated that he was caught in the state of intoxication from public place i.e. Bhowali Chauraha. This is very contradictory statement.

9. None of the witnesses has stated that petitioner was found in such state of intoxication, which disentitles him to do his duty. There was no complaint from a public person about his misconduct.

10. The basic charge levelled against the petitioner is that without doing his duty properly, he was found in the public place i.e. (Bhowali Chauraha) in the state of intoxication and it could only be confirmed by his medical examination. None of the witnesses

examined by the inquiry officer has specifically stated that the petitioner was in the state of such intoxication so as to disable him to do his duty.

11. The petitioner was medically examined at about 20:35 p.m. and medical examination report prepared by the doctor is based only on smell test and no blood or urine test, was conducted. Learned counsel for the petitioner has submitted that the petitioner in his reply clarified the fact of smelling like alcohol because of a medicine 'Pudin Hara', which smells like alcohol.

12. The Court is of the view that in the above conditions, only smell test was not sufficient to prove this fact that the petitioner was in the state of intoxication. Learned counsel for the petitioner has referred to the judgment of the Hon'ble High Court of Uttarakhand passed in **Hem Chandra Chaunal vs State of Uttarakhand, 2007 Lab I.C., 2434**, wherein it was held that only physical observation cannot be sufficient to ascertain that a person has consumed liquor. To ascertain consumption of alcohol, blood test and urine test are necessary, and if the doctor, who conducted medical examination, has not been examined during the inquiry and the delinquent was not given opportunity to cross-examine the doctor, that amounts to substantial non-compliance of rules of procedure and it is violation of the rules of natural justice.

13. The court is of the view that in this case, neither the doctor had conducted his blood or urine test and the petitioner already submitted sufficient explanation about smelling of alcohol like substance from his mouth as he had taken 'Pudin Hara' which also smells like alcohol. There was no complaint from any public person; no public witness was examined, neither the police personnel who were companying with the petitioner on duty, were examined to prove the guilt of the petitioner. The fact of this case is

similar to the law cited by the petitioner. There is no definite opinion about the consumption of liquor by the petitioner at the relevant time and only recording the alcohol smell from mouth is not sufficient to prove that the petitioner was in the state of intoxication during his duty at public place.

14. Keeping in view of the explanation of the petitioner of taking medicine of stomach ache, the medical examination conducted by the doctor by smelling, was not sufficient to prove the charges against the petitioner. None of the companion witnesses has stated that the petitioner had taken any liquor on duty. The court is of the view that on the basis of evidence on record, the order of disciplinary authority is very perverse. The disciplinary authority has not considered the reply, to the show cause notice, submitted by the petitioner and in the absence of urine and blood test, records were not insufficient to uphold the punishment and such medical report without corroboration is not permissible in the law and infirmity was committed in the departmental proceedings and petitioner was denied due protection of law and the medical report cannot be read against the petitioner in the absence of any evidence of direct witness. Furthermore, the story of the respondents is contradictory, on the point that the petitioner was caught from the Chauraha, or he was caught from Barrack where he was sleeping before his medical examination. The conclusion drawn by the Disciplinary Authority is perverse and is against the record and the punishment passed is against the principles of natural justice.

15. Accordingly, the petition deserves to be allowed. This censure entry is of the nature which can affect the career of the petitioner and as the procedural laches on the part of the

respondents is material, accordingly allowing the petition, the impugned orders deserve to be set aside.

ORDER

The claim petition is allowed. The impugned punishment order dated 24.05.2016 (Annexure: 2) passed by the respondent No. 3 and appellate order dated 12.07.2016 (Annexure: 1) passed by the respondent No. 2 are hereby set aside. The respondents are directed to expunge the censure entry recorded in the character roll of the petitioner within a period of two months from today. The petitioner will not be denied the other benefits of service on the basis of above mentioned censure entry. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: APRIL 10, 2018
NAINITAL

KNP