

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 29/NB/SB/2016

Lalit Daweri S/o Sri Mohan Singh Daweri, presently posted as Platoon Commander, 31 Battalion, Provincial Armed Constabulary (P.A.C.), Rudrapur, District Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Kumaon Region, Nainital.
3. Superintendent of Police, Pithoragarh.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: APRIL 11, 2018

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

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

“A. To set aside the impugned punishment order dated 17.08.2013 passed by the Respondent No. 3 (Annexure No. 1 to Compilation-I) and also the impugned order dated 16.12.2013 passed by the Appellate Authority (Annexure No. 2 to Compilation-II).

B. To direct the Respondents not to take the “Censure” remark into account while making entries in the Service Book of the petitioner.

C. To issue an order or direction directing the Respondents to give all consequential benefits to the petitioner.

D. To issue any other order or direction, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

E. Award the cost of the Claim Petition in favour of the petitioner.”

2. The petitioner was initially appointed as Constable in 1995. He was promoted on the post of Head Constable in 2003. The petitioner was further promoted to the post of Platoon Commander in PAC in the year 2008. In 2013, when the petitioner was posted at Pithoragarh, a complaint was received from an Inspector rank Officer working in Uttar Pradesh that the petitioner Lalit Daweri has illicit relationship with one Lady Constable Smt. Deepa Samant who was also posted at Pithoragarh. The S.P., Pithoragarh conducted a preliminary inquiry and the allegation against the petitioner was found correct in the inquiry. Thereafter, a show cause notice was given to the petitioner by the S.P., Pithoragarh and after considering the reply to the show cause notice, the S.P., Pithoragarh vide order dated 17.08.2013 awarded a minor punishment of censure to the petitioner under Rule 14 (2) of the U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991. Aggrieved by the order of the punishment,

the petitioner filed an appeal before the DIG, Kumaon Region, Nainital. The departmental appeal was rejected vide order dated 16.12.2013 affirming the minor punishment of censure entry.

3. The petitioner filed a writ petition bearing No. 83 (S/B) of 2014, before the Hon'ble High Court at Nainital challenging the punishment of censure entry awarded to him. The Hon'ble High Court dismissed the writ petition on the ground of alternative remedy.

4. The censure entry awarded to the petitioner reads as under:

“2013

वर्ष 2013 में जब यह पुलिस लाईन पिथौरागढ़ में नियुक्त थे तो आवेदक श्री जगदीश सिंह पाटनी, शिविरपाल, आठवीं वाहिनी पीएसी बरेली द्वारा पुलिस उपमहानिरीक्षक, कुमायूँ परिक्षेत्र नैनीताल को सम्बोधित प्रार्थना पत्र जिसमें आवेदक द्वारा इस उ०नि० के महिला आरक्षी दीपा सामन्त के साथ अवैध सम्बन्ध होने तथा अपनी पत्नी के साथ उपेक्षापूर्ण व्यवहार होने आदि आरोप लगाये गये थे। आवेदक द्वारा लगाये गये आरोपों की जांच पुलिस अपाधीक्षक पिथौरागढ़ के माध्यम से सम्पादित करायी गयी है। जांच के दौरान लिये गये बयानों तथा इस उ०नि० व महिला आरक्षी दीपा सामन्त के मोबाइल नम्बरों की काल डिटेल् के आधार पर एवं इस उ०नि० द्वारा अपने सरकारी आवास जहां तत्समय इसकी पत्नी निवास कर रही थी, से रात-रात भर गायब रहकर सुबह अपने सरकारी आवास में आना एवं पत्नी को तलाक देने की धमकी देना तथा यह कहना कि मैंने महिला आरक्षी से शादी कर ली है तथा अपनी पत्नी को यह कहकर जाना कि मैं अपने दोस्त की शादी में जा रहा हूँ परन्तु यह उ०नि० महिला आरक्षी दीपा सामन्त के साथ अवकाश लेकर चमोली, कर्णप्रयाग आदि स्थानों पर जाना उत्तराखण्ड राज्य कर्मचारियों की आचरण नियमावली 2002 के नियम 3 में उल्लिखित दुराचरण के दोषी पाया गया है। इस प्रकार इस उ०नि० द्वारा पुलिस जैसे अनुशासित बल में नियुक्त रहकर पुलिस की छवि को धूमिल करता है तथा कर्तव्य के प्रति घोर लापरवाही एवं अनुशासनहीनता का परिचायक है जिसकी घोर निन्दा की जाती है।

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पुलिस अधीक्षक
पिथौरागढ़”

5. The petitioner has challenged the impugned orders mainly on the ground that the case of the petitioner is not covered under Rule 3 of the Uttarakhand Conduct Rules, 2002 as there is no finding in the inquiry that the act of the petitioner is related to official duty of the petitioner.

6. It would be appropriate to look at Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 which reads as under:-

“प्रत्येक सरकारी कर्मचारी को राज्य कर्मचारी रहते हुए उसके व्यवहार तथा आचरण को विनियमित करने वाले तत्समय प्रवृत्त (Specific) या विवक्षित (Implied) शासकीय आदेशों के अनुसार आचरण करना होगा।”

7. The contention of the petitioner is that the petitioner has not acted in violation of any specific or implied orders of the government regulating the behaviour and conduct.

8. Respondents No. 1 to 3 have opposed the claim petition mainly on the ground that the claim petition is time barred. The petitioner has also filed Rejoinder Affidavit and the same averments have been reiterated in it which were stated in the claim petition.

9. We have heard both the parties and perused the record.

10. Learned A.P.O. has argued on behalf of the respondents that claim petition is time barred. The writ petition of the petitioner was dismissed by the Hon'ble High Court on the ground of alternative remedy on 08.05.2014 and the present claim petition has been filed on 05.08.2015. Learned A.P.O. submitted

that as per Section 5 of the U.P. Public Services Tribunal Act, 1976 (adopted by the State of Uttarakhand), the claim petition should have been filed within a period of one year after availing all available departmental remedies by the petitioner. Learned counsel for the petitioner has explained the delay and submitted that the certified copy of the order of the Hon'ble High Court was received by the petitioner in June, 2014. Thereafter, due to some personal problems as well health problems, the petitioner could not approach the Tribunal as directed by the Hon'ble High Court. Apart from this, the petitioner was selected by the respondents for training of City Patrolling Unit (CPU) and he had undergone the said training. After successful completion of training, the petitioner was posted as CPU, Haldwani to deal with the traffic system of Haldwani. It has further been submitted by the petitioner that on 19.09.2015, one FIR was lodged against the petitioner and other police personnel in P.S. Kathgodam (Nainital) under various Sections of IPC and petitioner alongwith other police personnel was sent in judicial custody from 19.09.2015. The petitioner could come out of jail on bail on 04.02.2016. The petitioner was suspended for the aforesaid case on 19.09.2015 and he was reinstated on 18.04.2016. The petitioner has also stated that the department has not initiated any departmental proceedings in respect of aforementioned matter. The contention of the petitioner is that due to these compelling circumstances, the petitioner could not approach the Tribunal. He filed the claim petition on 05.08.2016 immediately after he was in a position to get time for approaching the Tribunal. The respondents have not denied the above reasons mentioned by the petitioner. After hearing both the parties, on the issue of delay, we are of the

opinion that the petitioner has been able to explain the delay in a reasonably satisfactory manner and the circumstances under which he could not approach the Tribunal timely were more or less out of control of the petitioner and, therefore, we find it appropriate to condone the delay and decide the case on its merit.

11. Learned counsel for the petitioner has also argued that the claim petition (No. 13/NB/SB/2014) had also been filed by Smt. Deepa Samant on the same issue. Smt. Deepa Samant was also awarded censure entry by the respondents. After detail hearing, the said claim petition was allowed by the Tribunal vide judgment dated 26.02.2016 (Annexure: A-12). Learned A.P.O. has admitted that claim petition, which was allowed by the Tribunal is in respect of the same issue. Smt. Deepa Samant was also awarded censure entry for illicit relations with the petitioner under Rule 3 of the Conduct Rules, 2002. Admittedly, the claim petition was allowed and the punishment of censure entry awarded to Smt. Deepa Samant was quashed by the Hon'ble Tribunal as Rule 3 of the Conduct Rules, 2002 is not applicable in the matter.

12. It would be appropriate to quote para 12 and 13 of the judgment of this Tribunal dated 26.02.2016 in Claim Petition No. 13/NB/SB/2014:-

"12. Rule 3(2) of the Uttarakhand Government Servants Conduct Rules, 2002 only provides that every government should conduct himself in accordance with the specific or implied orders of Government regulating behavior and conduct which may be in force. As we have pointed out in the above judgment, the facts were similar but the provisions which were made applicable were different. In the above

judgment of Hon'ble High Court, personal immorality as provided in the U.P. Disciplinary (Administrative Tribunal) Rules, 1947 of a government servant, was held to be a misconduct. Whereas, in our rules only the behaviour is a misconduct and that behavior should also be notified by the Government. As we have pointed out that learned A.P.O. could not demonstrate any notification or rule or any Government letter which regulates the conduct of a government servant as provided under the Rule 3(2) of the said Rules. Learned A.P.O. could not demonstrate that only to keep a lady with illicit relationship with another government servant is a misconduct under rules. In these circumstances, merely to keep a woman or other government servant with him or have a sexual intercourse is not a misconduct. The more important question is as to whether this particular act of the petitioner had reduced her utility as a public servant so as to tarnish the image of the government official generally in public image. In the habit of the petitioner to have illicit relation with another government servant as a result of her addiction sometimes loses interest in the work and efficiency goes down. As we have pointed out above that there is no finding that the utility of the petitioner had been reduced in that sense and there is no finding that the petitioner's affair with another government servant became public scandal to damage the prestige of the Government or the petitioner did not discharge her duty properly. The word used 'behaviour' has a limited meaning that she should conduct her business properly if she misbehaves with others during the duty hours or her behavior obstructs her official duties, in that way it amounts to misconduct. In these circumstances, the case of the petitioner does not fall under Rule 3(2) of the Uttarakhand Government Servants Conduct Rules, 2002.

13. *In view of the above, we also hold that the punishing authority has failed to record any finding that the petitioner had affected the daily discharge of their duties by the conduct, which has been alleged against the petitioner and as such the impugned orders are liable to be set aside."*

13. The controversy which is the subject matter of the present claim petition has already been considered and decided by this Tribunal in Claim Petition of Smt. Deepa Samant and it has been held that the matter related to the petitioner and Smt. Deepa Samant is not covered under Rule 3 of the Conduct Rules, 2002.

14. In view of the above, the punishment of censure awarded to the petitioner cannot sustain in the eye of law.

15. For the reasons stated above, the claim petition deserves to be allowed.

ORDER

The claim petition is allowed. The impugned orders of punishment dated 17.8.2013 (Annexure: A-1) as well as Appellate Order dated 16.12.2013 (Annexure: A-2) are hereby set aside. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: APRIL 11, 2018
NAINITAL
KNP