

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

CLAIM PETITION NO. 01/SB/2018

Vikas Bhardwaj aged about 40 years s/o Shri Rajendra Prasad, Sub-Inspector, presently posted as In-charge Reporting Chowki Nilkanth, Police Station, Laxman Jhula, District Pauri Garhwal, Uttarakhand.

.....Petitioner

vs.

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

.....Respondents.

Present: Sri V.P.Sharma, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents.

JUDGMENT

DATED: APRIL 09, 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 order No. D-19/2016 dated 23.11.2016 (Annexure No. A-1) and appellate order No. COG-CA-Appeal-02 (Pauri)/16 dated 21.07.2017 (Annexure No. A-2) and expunge the adverse remark from the service record of the petitioner along with consequential benefits.

(ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstance of the case .

(iii) To award the cost of this petition to the petitioner.”

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

When the petitioner was posted at P.S. Kotdwar, district Pauri Garhwal, in the year 2016, an F.I.R. being Case Crime No. 167/2015 was lodged by one Vijay Singh against Mohit Kukreti and others, under Sections 147, 148, 323, 353, 506, 427, 153 A I.P.C. and 7th Criminal Law Amendment Act. The investigation was entrusted to one S.I. Anand Mehra, who investigated the case at some length. He mentioned the names of the accused persons and their parentages on the basis of footage of video recording. S.I. Anand Mehra also recorded the statement of one accused Gaurav Joshi showing him to be the son of one Sri Naresh Chandra. Thereafter, the investigation was handed over to present petitioner, who proceeded from the stage where his predecessor had left the investigation. Petitioner also conducted the investigation at some length. He submitted the charge sheet in C.O. office, against Gaurav Joshi s/o Shri Narendra Chandra. Before the charge sheet could be forwarded to the Magistrate having the jurisdiction, it was revealed that Gaurav Joshi s/o Narendra Chandra was a Commissioned Officer (Lieutenant) in the Army, who had passed away before such incident took place. The investigation was handed over to third Police Officer. The third investigating officer submitted the charge sheet against Gaurav Joshi s/o Shri Rajendra alias Rajan (correct parentage) and others. The trial is going on against the named accused persons, against whom such charge sheet was submitted, in the Court of Magistrate having jurisdiction. Show cause notice was given to the petitioner, who pleaded not guilty. After considering the facts of the case, the disciplinary authority awarded him 'censure entry'. Aggrieved against the same, the petitioner preferred departmental appeal before D.I.G., Garhwal, who dismissed

such appeal and maintained the order passed by the disciplinary authority. Hence, present petition.

3. Petitioner has admitted the facts of the case, as have been adverted to by this Court hereinabove, in preceding paragraph of this judgment. The Court has perused the explanation submitted by the petitioner. Annexure: A 5 would reveal that the petitioner himself is apologetic about the carelessness on his part. According to him, he proceeded on the basis of names and parentage already recorded by the earlier investigating officer Sri Anand Mehra, S.I.. According to petitioner, had his predecessor not recorded the parentage of accused Gaurav Joshi, he would have ascertained the same from the accused and would have mentioned his parentage correctly. He did not do so because he believed that whatever was recorded by his predecessor, the same must be correct. According to the petitioner, he did not do it deliberately, but feels apologetic about the mistake he has committed as investigating officer.
4. Ld. A.P.O. submitted that the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and the Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/disciplinary authority, which has been upheld by the appellate authority.
5. Ld. Counsel for the petitioner, at this stage of dictation, tendered apology on behalf of petitioner, on seeking instructions from his client. Ld. Counsel for the petitioner admitted that the petitioner should have been more careful in discharging his duties as investigating officer, but submits that there was no *mala fide* on his part while filing the charge sheet against the accused Gaurav Joshi s/o Shri Narendra Chandra and others [which was corrected by the third investigating officer, as Gaurav Joshi s/o Shri Rajendra alias Rajan]

6. On careful scrutiny of the facts of the case, which have been enumerated in the petition, it is revealed that there was carelessness on the part of the petitioner, who was handed over the investigation of the case, on transfer of his predecessor investigating officer S.I. Anand Mehra. Once he was handed over the investigation, it was his duty to have inquired the parentage of accused Gaurav Joshi, when his statement was being recorded by him. The very purpose of investigation is to elicit truth and verify the facts, which were alleged in the F.I.R. Although, the facts of the instant case were got verified by the petitioner, but it was also his duty to have verified whether actual wrong doers are being brought to book or not. Accused Gaurav Joshi s/o Shri Narendra Chandra was a man, who passed away before this incident in 2006. Somehow, erroneously, his name crept in during investigation and charge sheet was being proposed to be filed before the Magistrate having jurisdiction, by the present petitioner, through C.O. Good sense prevailed over the Police Officers, who directed further investigation of the case, and then only the charge sheet was submitted against the actual wrong doer Gaurav Joshi s/o Shri Rajendra alias Rajan, in the estimation of third investigating officer. It is true that there was no *mala fide* on the part of the petitioner while doing so, but it is indeed an act of carelessness on his part, which may be pardoned.
7. This Court is, therefore, of the opinion that the 'censure entry' should make way for 'warning' to the petitioner. In other words, censure entry should be diluted and the petitioner should be warned to be careful in future.
8. Order accordingly.
9. While finding of 'misconduct' arrived at by the disciplinary authority, as affirmed by the appellate authority, are maintained, this Court finds cogent reasons, in the peculiar facts of the case, to substitute the minor punishment of 'censure entry' awarded to the

petitioner, with 'warning'. 'Censure entry' is, accordingly, substituted with 'warned to be careful in future'.

10. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 09, 2018
DEHRADUN

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