

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

CLAIM PETITION NO. 02/SB/2018

Pravesh Singh aged about 28 years s/o Shri Dilwan Singh, Police Constable, presently posted at Reserve Police Line, Chamba, Distt. Tehri Garhwal.

WITH

CLAIM PETITION NO. 60/SB/2017

Sanjay Kumar s/o Shri Karan Singh, Police Constable, presently posted at Reserve Police Line, Chamba, Distt. Tehri Garhwal .

.....Petitioners

vs.

1. State of Uttarakhand through Principal Secretary, Home, Civil Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Uttarakhand, Dehradun.
3. Superintendent of Police, Tehri 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)

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, both the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience.

2. By means of present claim petitions, petitioners seek following reliefs:

- “(i) To issue order or direction to quash the impugned orders dated 14.03.2016 (Annexure No. A-1), appellate order dated 28.06.2016 (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.”

3. Briefly put, case of the petitioners is as follows:

Both the petitioners were posted as Constables A.P. in Police Line, Chamba in the year 2015. Resentment was brewing among the members of Constabulary regarding disparity in pay scales. They wanted salary, instead of stipend, for the period undergone by them in training. This agitation was termed as ‘Mission Akrosh’. The allegation is that Constable Pravesh Singh, Petitioner No.1, sent a video of 23 agitating Police personnel, wearing black bands, to fellow Constable Sanjay Kumar, Petitioner No.2, on mobile. Petitioner No.2 transmitted the same to social media.

Preliminary inquiry was conducted by C.O., Narendra Nagar, who found that Constable Pravesh Singh, Petitioner No.1, sent a video of 23 agitating Police personnel, wearing black bands, to fellow Constable Sanjay Kumar, Petitioner No.2, on mobile, who transmitted the message to social media. Explanation was sought from the petitioners, who pleaded not guilty and denied the charges levelled against them.

Show cause notices were given to the petitioners under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules 1991. Disciplinary authority was not satisfied with their explanations and hence, both of them were awarded ‘censure entry’. Aggrieved against the same, they preferred departmental appeals before the Inspector General of Police, Garhwal

Zone, who refused to interfere in the punishment order given by the disciplinary authority. Hence, present claim petitions.

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 petitioners by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.
5. Having heard learned counsel for the parties, this Tribunal is of the view that due procedure of law has been followed while holding the delinquents guilty of misconduct. No interference is called for in the same.
6. The explanation offered by petitioner No. 1 Pravesh Singh is that, one S.I. Shyam Lal directed him to take photograph of 23 agitating Police personnel, wearing black bands, and in compliance thereof, he took the photograph and sent the same to fellow Constable Sanjay Kumar, Petitioner No.2, on mobile, so that the same may be preserved in case, it is deleted from his mobile. According to Constable Sanjay Kumar, he never sent the message to any member of the social media and any allegation against him to the contrary, is wrong.
7. In a nutshell, the allegation against petitioner No.1 Constable Pravesh Singh is that he took the photograph of a few members of Constabulary and sent the message to fellow Constable Sanjay Kumar, Petitioner No.2, on mobile, who transmitted the same to social media. Whereas the submission of Constable Pravesh Singh is that he did the same on the instructions of S.I. Shyam Lal, the contention of petitioner No.2 Constable Sanjay Kumar is that he never transmitted the message to any member of the social media, as alleged. It is not a case in which it could be said that the photograph was never taken by

petitioner No.1. Petitioner No.1 did the same, although at the instance of S.I. Shyam Lal. The message reached in the mobile of petitioner No.2, who transmitted the same to the social media. Whether the same was done accidentally or deliberately, is a matter deducible from the facts of the case. The facts brought on record, in the instant cases, suggest that the act resulting in misconduct attributed, may not be serious one, but as the Government servants/petitioners were not entitled to send the message to social media and their duty was to put their grievances, if any, before their superiors, and they should not have been influenced or swayed away by some others' actions, therefore, it is a case of misconduct on their part.

8. The petitioners are members of disciplined force. The Government can always frame rules, in the form of Government Servants Conduct Rules, that a Government servant shall not air his grievance in public, against Government.

9. Rule 5(1) and Rule 7 of the Uttaranchal Government Servants' Conduct Rules, 2002 read as under:

“5. Taking part in politics and elections-(1) No government servant shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics, nor shall he take part in, subscribe in aid of, or assist in any other manner, any movement or organization which is, or tends directly or indirectly to be subversive of the Government as by law established.

Illustration- XYZ are political parties in the State.

X is the party in power and forms the Government of the day.

X is a government servant.

The prohibitions of the sub-rule apply to A in respect of all parties, including X, which is the party in power.

7. Criticism of Government- No government servant shall, in any radio broadcast or in any document published anonymously or in his own name, or in the name of any other person, or in any communication to the press, or in any public utterance, make any statement of fact or opinion-

(i) Which has the effect of any adverse criticism of any decision of his supervisor officer or of

- any current or recent policy or action of the Uttaranchal Government or the Central Government or the Government of any other State or a local authority; or
- (ii) Which is capable of embarrassing the relation between the Uttaranchal Government and Central Government or the Government of any other States, or
- (iii)
- Provided that nothing in this rule shall apply to any statement made or view expressed by a government servant in his official capacity or in the due performance of the duties assigned to him
- Illustration-(1).....
- (2)....
- (3) It is not permissible for a government servant to criticize publicly the policy of government on such matters as the price of sugarcane fixed in any year, nationalization or transport, etc.
- (4) A government servant cannot express any opinion on the rate of duty imposed by the Central Government on specified imported goods.
- (5)....
- (6).....”

10. As a member of disciplined Police Force, it was the duty of the petitioners to have observed restraint against such activities. They ought not to have taken photographs and sent the same to social media. Doing the same, amounts to indiscipline. They were, accordingly, rightly found to be guilty of misconduct by the disciplinary authority as well as by the appellate authority.
11. At this stage of dictation, Ld. Counsel for the petitioners submitted that these claim petitions could be decided in terms of Claim Petition No. 29/SB/2017 Rajiv Prasad vs. State and others. Ld. A.P.O. does not dispute that the facts of the present claim petitions and facts of claim petition No. 29/SB/2017, which was decided on March 13, 2018, are similar and since like cases should be decided alike, therefore, petitioners may also be warned to be careful in future.

12. This Tribunal is, therefore, of the opinion that, although, the petitioners are guilty of misconduct, but the 'censure entry' awarded to them, should be set aside in the given facts of the case. They should be given a 'warning', instead, which is not a punishment. It is not necessary for a disciplinary authority to impose even minor penalty, if someone is found guilty of misconduct. Present petitioners may, in such circumstances, should be let off with a warning on parity.
13. Order accordingly.
14. The 'censure entry' awarded to the petitioners is set aside. The findings arrived at by the disciplinary authority, as also by the appellate authority, are interfered only to this extent. The petitioners are warned to be careful in future.
15. The claim petition, thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 09, 2018
DEHRADUN

VM