BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 19/SB/2018

Dinesh Prasad Chamoli, aged about 50 years, Sub Inspector, Rishikesh, District Dehradun.

…..…………Petitioner

vs.

1. State of Uttarakhand through Secretary (Law and Order)Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, District Rudraprayag.
4. Deputy Superintendent of Police/ Inquiry Officer, District Rudraprayag.

…….Respondents.

Present: Smt. Anupama Gautam & Sri A.S.Bisht, Counsel for the petitioner.
Sri U.C.Dhaundiyal, A.P.O., for the Respondents.

JUDGMENT

DATED: JUNE 20, 2018

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks following reliefs:

> " (a) That the petitioner seeks quashing of Censure Entry in his Service Book by the respondent no.3 which is upheld by the respondent no.2 after dismissing the departmental appeal.
>
> (b) Full cost of the petition.
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> (c) Any other relief to which the petitioner is found entitled, may very kindly be granted".

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

A complaint was lodged by one Gopal Singh against named accused on 19.08.2014, which was registered as Crime No. 25/2014 under Sections 452, 323, 504, 506 IPC. The complaint was directed against informant's real brother Prem Singh. Petitioner was handed over the investigation of the case. Petitioner investigated the case at some length. It was later on transferred to one Manmohan Singh Negi, S.I. and thereafter to one Subodh Kumar Mammgain, S.I., who filed the charge sheet against the wrong doer in the Court. Petitioner, while conducting investigation, entered copy of G.D. in Case Diary. He also recorded the statement of F.I.R. writer. The ingredients of medical report of complainant were also recorded in the Case Diary.

Petitioner issued a notice under Section 41 A Cr.P.C. against accused Prem Singh on 22.08.2014. He again issued notice to him on 28.08.2018 and directed the accused to cooperate in investigation. The statements of complainant Gopal Singh, his son Mahendra Singh, his daughter Ms. Sunita and his younger brother's wife Smt. Sulochana were recorded by the petitioner. The complainant gave his statement under Section 161 Cr.P.C. and supported the prosecution story. His son, daughter and Smt. Sulochana did not support the contents of FIR.

The statements of son and daughter of complainant were again recorded by the subsequent inquiry officer. When the same was done, these witnesses supported the incident and they told the subsequent inquiry officer that when their statements were previously recorded by the petitioner, they were scared of the accused and, therefore, could not speak the truth. The accused did not cooperate the petitioner in investigation. Contradictory statements of the witnesses came on record, only because the eye witnesses were scared of accused Prem Singh.

Eventually, the complainant gave his affidavit on 03.01.2015 in the Court that the matter was amicably settled between the parties. Complainant's wife did not support prosecution story in the Court and she was declared hostile. She also informed Ld. Magistrate that her

husband passed away on 13.02.2015. The accused was acquitted by Ld. Magistrate.

The inquiry officer gave a copy of his inquiry report to the petitioner on 19.12.2014, along with show cause notice, which was replied to by the petitioner. The inquiry officer, only after recording statements of complainant and accused, made certain observations against the petitioner, which, according to the petitioner, is in violation of principles of natural justice. Despite giving satisfactory explanation, petitioner was awarded censure entry by Respondent No.3 on 16.04.2015. A departmental appeal was preferred by the petitioner against the same, which was dismissed by D.I.G., Garhwal Range, (Respondent No.2), on 04.06.2016. It is stated in the petition that Respondent No.2 did not give any opportunity of hearing to the petitioner. Petitioner, thereafter preferred Revision to I.G., which was also dismissed *vide* order dated 27.10.2016. Hence, this petition.

Grounds of challenge have been mentioned by petitioner in Para 5 of present claim petition. This Court does not feel it necessary to reproduce the same, for the sake of brevity.

3. W.S./C.A. has been filed on behalf of respondents with the prayer to dismiss the claim petition. It has been mentioned in Para 3 of the C.A. that the claim petition is not maintainable, as the same is barred by limitation.

4. It is the submission of Ld. A.P.O. that the period of limitation for filing the claim petition is one year. Ld. A.P.O. drew the attention of this Court towards Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 to argue that although the provision of Limitation Act, 1963 shall *mutatis mutandis* apply to a Reference under Section 4 as if a reference were a suit filed in Civil Court so, however, that-

(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year.

Section 5(1)(b)(i) of U.P. Public Services (Tribunal) Act, 1976, therefore, stipulates that wherever there is reference of limitation, the same shall be read as one year in respect of a reference filed under the U.P. Act No. XVII of 1976. It, therefore, follows that Section 5 of the Limitation Act shall remain intact in it's application to a claim petition under the U.P. Public Services Tribunal Act, 1976 [Act No. XVII of 1976], although the period of limitation for filing claim petition is one year. Section 5 of The Limitation Act,1963 reads as follows:

> "**Extension of prescribed period in certain cases**.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
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> **Explanation**.—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."
>
> (*Emphasis supplied*)

5. In delay condonation application it has been mentioned that, the petitioner was wrongly advised by his Lawyer that the time limit for filing the claim petition is two years and the delay in filing the claim petition has arisen on account of wrong legal advice. The delay is not attributable to the petitioner.

6. in *P.K.Ramachandran v. State of Kerala and others*, *(1997)7 SCC 556,* Hon'ble Apex Court has observed as below:

> "Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds."

But, in *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai, (2012) 5SCC 157*, Hon'ble Apex Court in Paragraphs 14,15, 20, 23 & 24 has observed as follows:

"14. We have considered the respective arguments / submissions and carefully scrutinized the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the Court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the Legislature. At the same time, the Courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

15. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

20. In Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106, the Court observed that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises.

23. What needs to be emphasized is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause"would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

7. Delay condonation application is supported by an affidavit. Although, there is reply to the same in C.A., but no counter affidavit has been filed to rebut the same. Contents of affidavit, therefore, remain

un-rebutted. Considering peculiar facts of the case, and in view of the decisions rendered by Hon'ble Apex Court in P.K.Ramachandran v. State of Kerala and others (*supra*)and in Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (*supra*), this Tribunal is inclined to condone the delay in filing the claim petition. The delay condonation application, thus, stands allowed.

8. The charges levelled against the petitioner, in a nutshell, are that when he was posted as S.I. In-Charge at Gholteer, Kotwali, Rudraprayag in the year 2014, then he was found careless in conducting inquiry in a case, which was registered as Crime No. 25/2014 under Sections 452, 323, 504, 506 IPC, State vs. Prem Singh. The allegation is that, when preliminary inquiry was conducted by the C.O. against petitioner's misconduct, he found that the inquiry officer asked the complainant and accused to enter into amicable settlement, as a consequence of which, the parties settled their dispute amicably. Another allegation is that the inquiry officer (petitioner) recorded the statements of Smt. Sulochana Devi, Ms. Sunita and Mahendra Singh in such a contradictory way, so as to leave a room for granting benefit of doubt to the accused. He was, therefore, awarded censure entry.

9. Now, let us first deal with the rationale behind compounding of offences, plea bargaining and withdrawal of cases. The concept of Plea Bargaining was introduced in the Criminal Procedure Code, 1973 which came into force *w.e.f.* 05.07.2006 in the form of Chapter-XXI A (Section 265 A to 265 L) which means pre-trial negotiations between defendants and prosecution during which the accused agrees to plead guilty in exchange for certain concession by the prosecutor. The benefit of plea bargaining is however not available to habitual offenders.

10. Section 320 Cr.P.C. permits compounding of certain offences. Compounding is in the nature of a bilateral agreement between accused and the person injured who consents to abstain from

prosecution in consideration of some gratification or inducement, subject to the following conditions:

(i) The offence is compoundable according to Section 320 Cr.P.C. or is an abetment or an attempt to commit such offence.
(ii) The accused has no previous conviction for which he would be liable to enhanced punishment or punishment of a different kind.
(iii) The Court has given its permission in cases where Sub Sections (2), (4), (6) are attracted. The broad principle is that the person who is injured by an offence, may abstain from continuing with the prosecution on receiving some gratification from accused. It is settled that if any person other than the person so specified in the 3rd Column Compounds the Offence, it will not have the effect of acquittal of the accused. In other words, if the offence is compoundable, only the person mentioned in the 3rd Column of the table appearing in Section 320 Cr.P.C. can compound the offence. The composition may also take place during pendency in the trial court. In certain cases, even no permission of Court is necessary. In such cases, on receipt of a petition of compromise, if the court has specified that the offence is compoundable and the person specified in 3rd Column has compounded the offence, the court is bound to record the composition and to acquit the accused. The composition being in the nature of an agreement, the usual form for affecting a composition is a written agreement. Where such composition takes place in Court, a unilateral petition to the court by the person who has the right to compound under Column 3 of Section 320 Cr.P.C. would suffice, even though it does not bear the signatures of the accused. Granting of consent under Sub Section (2) or leave under Sub Section (5), being a matter of judicial discretion, it should be exercised on settled judicial principles. Compounding of an offence differs from withdrawal, which cannot be valid without the permission of the court. While withdrawal is a unilateral act of the complainant or other prosecuting agency, compounding is in nature of bilateral agreement between the accused

and the victim, who consents to abstain from prosecution. This is subject to certain conditions as enumerated in Section 320 Cr.P.C.

11. In the instant case, nobody has complained that the investigating officer (petitioner) forced the complainant-victim- injured-person affected to enter into compromise. Nobody has complained that the inquiry officer (petitioner) took illegal gratification for indirectly securing acquittal of accused on the basis of amicable settlement. The table appended to Section 320 Cr.P.C. (compounding of offences) indicates that Section 323 IPC may be compounded by the person to whom the hurt is caused; Section 504 IPC can be compounded by the person insulted; and Section 506 IPC can be compounded by the person intimidated. In a nutshell, offences punishable under Sections 323, 504, 506 IPC are compoundable offences. Section 452 IPC is although non compoundable offence, but there is thin line of difference between this Section and Section 451 IPC, which is compoundable one. Section 451 deals with house trespass in order to commit offence, punishable with imprisonment. Section 45d2 IPC deals with house trespass after preparation for hurt, assault or wrongful restraint. Considering the facts of the criminal case, which were being investigated by the petitioner, it is open to question whether the offence complained of against the accused, would have fallen under Section 452 IPC or Section 451 IPC ?

12. It is largely experienced that the Magistrates record a judgment of acquittal in such cases in which the parties settle their disputes amicably, if all the offences complained of against the accused are compoundable offences, within the scheme of 320 Cr.P.C.. In non serious offences, if compromise takes place between the parties and one or two offences are non compoundable offences, the complainant-victim- injured-person affected does not support the prosecution story, they are declared hostile and a judgment of acquittal is recorded on the basis of out-of-court settlement between the parties. When Prem Singh, accused in Criminal case No. 30/15 faced trial on the basis of

charge sheet submitted against him under Sections 323, 504, 506, 452 IPC, victim's wife-PW-1, stated before the Trial Court that her husband, who has passed away, settled the dispute with accused amicably. PW-1 did not support the prosecution story. Other witnesses were got discharged on the basis of application moved on behalf of prosecution. Ld. Magistrate, therefore, held that prosecution was unable to prove the case against accused and, accordingly, recorded an order of acquittal in favour of accused Prem Singh. The fact that Gopal Singh (informant-victim-injured) settled the dispute with accused amicably, has been endorsed by PW-1. Ld. Magistrate has not recorded any finding in respect of the fact that Gopal Singh (informant-victim-injured) was compelled by anybody to enter into compromise with the accused, which justifies the plea taken by the petitioner that the informant-victim-injured had settled dispute with the accused amicably.

13. Approx 50 percent. criminal cases pending in Court of Magistrates are under Sections 323, 504, 506 IPC. Out-of-Court settlement takes place in a large number of cases and if the charge sheet has been filed under Section 452 IPC also, the same is not proved on the ground of hostility. When compromise takes place between parties in such cases, neither the prosecution, nor the complainant, see any reason to press conviction against the accused. This is applicable to non serious offences and not to heinous crimes.

14. Accused and complainant, in the instant case, are real brothers. Criminal case, it appears, has arisen because of 'domestic feud'. This Court has gathered such impression on the basis of judgment dated 01.04.2015, recorded by Ld. Chief Judicial Magistrate, Rudraprayag.

15. The investigating officer has not committed any misconduct, if, at all, he asked the accused and complainant to settle the 'domestic feud' amicably. Further, what is 'misconduct' in it? Is it a misconduct, if an investigating officer asks the accused and complainant to settle the dispute amicably, especially when they are real brothers and it is a

simple criminal case of Section 323, 504, 506 IPC(besides being one under Section 452 IPC).

16. This Court is reminded of the prophetic words used by Hon'ble Chief Justice Barin Ghosh (as His Lordship then was), on 23.11.2010, in W.P. (SB) 88/2004 *Sukh Chand Tyagi vs. State of Uttaranchal and others*, as below:

> "It is now settled law that a Government Employee can be disciplined by initiating a disciplinary proceeding in relation to an act on his part, which is a misconduct. It is also settled law that action complained of against such an employee should arise from ill motive to bring the action within the scope of misconduct. It is also settled that mere acts of negligence or mistake do not constitute misconduct . At the same time, it is settled law that in certain cases carelessness can often produce more harm than deliberate wickedness or malevolence."

17. This Court does not find an act of negligence or misconduct or carelessness on the part of the petitioner, in the instant case, even if, he asked the complainant to settle minor dispute amicably with his real brother [although there is no evidence to suggest the same].

18. So far as the second allegation is concerned, which relates to incorrect recording of statements of family members of the victim, they (family members) themselves have stated in their statements under Section 161 Cr.P.C. that they were scared of accused Prem Singh and, therefore, they did not support the prosecution story when their statements were earlier recorded by first inquiry officer, i.e., petitioner.

19. This Tribunal does not see any 'misconduct' on the part of inquiry officer-petitioner. It may be reiterated, at the cost of repetition, that offences punishable under Sections 323, 504, 506 IPC are compoundable offences and it is open to question whether offence punishable under Section 452 was really made out against the accused,

even *prima facie*, which is non compoundable offence. It has already been observed above that there is a thin line of difference between Section 451 IPC, which is compoundable one and Section 452, which is technically non compoundable one. .

20. Interference is, therefore , called for in the orders impugned in the backdrop of facts, narrated hereinabove.

21. The claim petition is allowed. Orders impugned are set aside. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 20, 2018
DEHRADUN

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