

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

CLAIM PETITION NO. 24/SB/2018

Smt. Darshan Kaur, w/o Sri Sahib Singh, presently posted as Constable at Bahadrabad Rail Chowki, Jwalapur, Haridwar.

.....Petitioner

VS.

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

.....Respondents.

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

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

JUDGMENT

DATED: AUGUST 10, 2018

Justice U.C.Dhyani(Oral)

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

“(i) To quash the impugned order 01.11.2017 (Annexure>: A-1) by which an adverse entry has been awarded by respondent No.3 in the service record of the petitioner as well as appellate order dated 26.04.2017 (Annexure: A -2) by which appeal of the petitioner has also been rejected by the respondent No.2, with all consequential benefits.

(ii) To quash and set aside the order dated 14.11.2017 (Annexure: A-3) by which the salary of the petitioner was forfeited for the suspension period from 16.03.2017 to 21.03.2017 and the petitioner be granted full salary for the said period.

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

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

2. Brief facts giving rise to present claim petition are that, while petitioner was posted in Rail Chowki, P.S. Jwalapur, Haridwar, she, allegedly, demanded illegal gratification of Rs.2000/- from one Shyam Lal, who had gone to the Police Chowki for verification of bail bonds of his son, who was an accused under Sections 332 and 353 IPC, relating to P.S.Jwalapur. Complainant Shyam Lal made a complaint to SSP, Haridwar to this effect. On his direction, C.O., Sadar, Haridwar conducted preliminary inquiry, who, in his report (Annexure: A 6), mentioned rival contentions and stated that although the petitioner denied the allegations against her, but on confidential inquiry, he found that the petitioner demanded illegal gratification. On the basis of such preliminary inquiry, SSP, Haridwar issued show cause notice to the petitioner, who did not furnish her explanation despite a lapse of two months. SSP, therefore, directed 'censure entry' in her character roll, against which departmental appeal was preferred, without meeting any success. Appellate authority's order has been brought on record as Annexure: A 2. Aggrieved with the same, present claim petition has been filed.

3. Whereas, 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, it is the submission of Ld. Counsel for the petitioner that a lenient view should be taken against the petitioner for the lapse, if any, committed by her. Ld. Counsel for the petitioner argued that the order impugned, which finds place on record as Annexure: A 1, was passed without giving opportunity of hearing (explanation) to the petitioner. Ld. A.P.O., in reply, submitted that

seven days' notice was given to the petitioner to submit her reply, but she did not file the same despite S.S.P. having waited for two months for the same.

4. Ld. Counsel for the petitioner, thereafter, submitted that since, facts in the backdrop of the case, were not considered by the S.S.P., Haridwar, therefore, it is a case of interference by this Court. Ld. A.P.O., in reply, submitted that it was the duty of the petitioner to have filed her explanation and S.S.P. is not expected to wait for her reply for the period *indefinitum*.
5. The Court finds substance in the submission of Ld. A.P.O., but considering overall facts of the case, this Court is of the opinion that the petitioner Constable should be given a lenient punishment, notwithstanding the fact that the allegation of demand of money has been levelled against her.
6. The quality of evidence collected against the petitioner is not sufficient to inspire the confidence of the Court. It is true that standard of proof, in departmental proceedings and criminal cases is different. Whereas, standard of proof in criminal case is, proof beyond reasonable doubt, such standard in departmental proceedings is preponderance of probability. When preliminary inquiry was conducted, not many witnesses supported the departmental story. The inquiry officer based his finding on the basis of confidential inquiry. Who were those witnesses, who supplied the information confidentially, has not been disclosed in preliminary inquiry. Rival versions have been narrated in the report of the inquiry officer, and suddenly, the inference has been drawn against the petitioner, on the basis of facts gathered in oral confidential inquiry from some persons. Quality of evidence, thus rendered, is very weak. Head Constable Pradeep Malik, who was posted in P.S. concerned, when alleged incident of demand of money took place, has not supported the departmental case. The oral testimony of the In-Charge of Police Chowki has not been taken by the inquiry officer. It is not a case of

trap. Mere allegations of the complainant are there, which might be true or might not be true. Considering the above backdrop of the case, this Court concurs with the submission of Ld. Counsel for the petitioner that, a lenient view should be taken against the erring Police Constable.

7. Having heard learned counsel for the parties, this Tribunal is of the view that due procedure of law has been followed while holding the delinquent guilty of misconduct. No infirmity has been pointed out in the same. The Tribunal is unable to take a view contrary to what was taken by two authorities below. No interference is called for in the same
8. The facts which have emerged from the record of the case, clearly indicate that, although misconduct was committed by the petitioner, but, interference is called for in the quantum of punishment awarded to her in the background of circumstances involving the petitioner, and the quality of evidence collected against her during preliminary inquiry.
9. It has been provided in the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991 that, the Head Constables and Constables may be punished with 'fatigue duty', which shall be restricted for the following tasks:
 - (i) Tent pitching;
 - (ii) Drain digging;
 - (iii) Cutting grass, cleaning jungle and picking stones from parade grounds;
 - (iv) Repairing huts and butts and similar work in the lines; and
 - (v) Cleaning Arms.
10. Therefore, considering the peculiar facts of the case, as noted above, this Tribunal deems it appropriate to substitute the minor punishment of 'censure entry' awarded to the petitioner with minor punishment of 'fatigue duty' as mentioned in sub rule (3) of Rule 4 of the Rules of 1991.

11. The net result would, therefore be, that, whereas, this Tribunal does not find any reason to interfere with the findings arrived at by the inquiry officer, appointing/ disciplinary authority and appellate authority, this Tribunal finds cogent reasons to substitute the minor punishment of 'censure entry' awarded to the petitioner, with 'fatigue duty'
12. Order accordingly.
13. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 10, 2018
DEHRADUN

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