

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 07/NB/SB/2017**

Bhupendra Singh Dhoni, S/o Shri P.S. Dhoni, presently posted as Inspector, CID, Haldwani, District Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Inspector General (Headquarters), Police Headquarters, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Garhwal Range, Dehradun.

.....Respondents

**AND**

**CLAIM PETITION NO. 06/NB/SB/2017**

Bhupendra Singh Dhoni, S/o Shri P.S. Dhoni, presently posted as Inspector, CID, Haldwani, District Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Inspector General (Headquarters), Police Headquarters, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Garhwal Range, Dehradun.

.....Respondents

Present: Sri K.K.Tiwari, Sri Vikek Shukla &  
Sri Shakti Singh, Ld. Counsels for the petitioner.  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT****DATED: SEPTEMBER 10, 2018****HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)**

1. Following orders are under challenge in these claim petitions:-

(A) *“Censure” awarded to the petitioner vide order dated 24.08.2014 (Annexure: A2) and rejection of appeal vide order dated 28.04.2016 (Annexure: A1) in Claim Petition No. 07/NB/SB/2017.*

(B) *“Withholding of integrity” of the petitioner for the year 2011 vide order dated 24.08.2014 (Annexure: A2) and rejection of appeal of this order on 28.04.2016 (Annexure: A1) in Claim petition No. 06/NB/SB/2017.*

2. The punishment of “Censure” to the petitioner and “withholding of integrity” of the petitioner are based on a common inquiry arising out of the same facts and, therefore, these claim petitions are being decided by a common judgment.

3. The petitioner is presently posted as Inspector, CID, Haldwani, District Nainital.

4. Petitioner was issued a show cause notice on 23.05.2012 for awarding a “Censure” to the petitioner by the Superintendent of Police, Tehri (Annexure: A5). The petitioner replied to the show cause notice and Superintendent of Police, Tehri after considering the reply, dropped the proceedings against the petitioner (Annexure: A6).

5.1 The Senior Officers of the Police Department were not satisfied by the exoneration of the petitioner by the Superintendent of Police, Tehri and they resorted to proviso to Rule 20 (1) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (Adaption & Modification issued on November 02, 2002), the same is reproduced below for convenience:-

**“20. Appeals-** (1) Every Police Officer, against whom an order of punishment mentioned in sub-clause(i) to (iii) of Clause (a) and sub-clauses (i) to (iv) of Clause (b) of rule 4 shall be entitled to prefer an appeal against the order of such punishment to the authority mentioned below:-

.....

**Provided that the appellate authority may on its own motion, call for and examine the records of any order passed in a departmental proceedings, against which no appeal has been preferred under this Rule, for the purpose of satisfying itself as to, the legality or propriety of such order or as to the regularity of such procedure and pass such order, as it may think fit;**

*Provided further that no order under the first proviso shall be made except after giving the person affected, a reasonable opportunity of being heard in the matter.”*

5.2 It would also be appropriate to quote Rule 4 of the said Rules below:-

**“4. Punishment.** – (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely—

**(a) Major Penalties—**

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

**(b) Minor Penalties—**

(i) Withholding of promotion.

(ii) Fine not exceeding one months’ pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure.”

5.3 It is clear from the Rule position that the provision under the Rules regarding appeals also provides that the Appellate Authority (Deputy Inspector General of Police in the present case) can call for and examine records of any order passed in a departmental proceeding against which no appeal has been preferred and after due consideration, pass such order as it may think fit after giving the person affected, reasonable opportunity of being heard in the matter. It is also clear from perusal of the above Rule that such power can be exercised by the Appellate Authority only in respect of the punishments mentioned in Rule 4(1)(a) (b) of

the said Rules of 1991 (adapted by the State of Uttarakhand in 2002.)

6. As the Appellate Authority was not satisfied by the order of the Superintendent of Police, Tehri (Disciplinary Authority), the Director General of Police, Garhwal Region (Appellate Authority) issued a show cause notice to the petitioner under the proviso to Rule 20(1) of the above referred Rules as to why the punishment of "Censure" be not awarded to the petitioner. The proposed "Censure entry" to the petitioner reads as under:-

“वर्ष 2011

जब यह निरीक्षक वर्ष 2011 में कोतवाली रामनगर, जनपद नैनीताल में प्रभारी निरीक्षक के पद पर नियुक्त था, तब दिनांक 06.07.2011 को मा० उच्च न्यायालय, उत्तराखण्ड, नैनीताल गये थे तथा दिनांक 07.07.2011 को मा० उच्च न्यायालय, उत्तराखण्ड, नैनीताल से वापस रामनगर थाने में आकर र०न० 60 समय 18:05 पर वापसी की गयी है तथा इनके मोबाइल नम्बर 9456407999 की कॉल डिटेल् निकालने पर दिनांक 07.07.2011 को समय 16:45:15 बजे इनकी लोकेशन थाना रामनगर पर पायी गयी है। दिनांक 07.07.2011 को उ०नि० श्री विनोद कुमार यादव द्वारा जगतपाल सिंह व अवधेश कुमार को रामनगर बस अड्डे से धारा 107/116/151 सीआरपीसी में निरूद्ध कर एसडीएम रामनगर के समक्ष प्रस्तुत कर सब जेल हल्लानी भेजा गया । दिनांक 08.07.2011 को थाना बारादरी, जनपद बरेली, उ०प्र० में भगवानदास की हत्या किये जाने के सम्बन्ध में उसके पुत्र राजीव कुमार द्वारा अवधेश कुमार व जगतपाल सिंह के विरूद्ध मु०अ०सं० 2694/11 धारा 302/ 404 भादवि पंजीकृत कराया गया, जिसकी विवेचना नि० श्री आर० एस० सरोज द्वारा प्रारम्भ की गयी । विवेचना के मध्य आर० एस० सरोज द्वारा आख्या दी गयी कि अभियुक्तगण अवधेश कुमार व जगतपाल सिंह के निरीक्षक भूपेन्द्र सिंह धोनी एवं उ०नि० जगदीश सिंह ढकरियाल से अच्छे सम्बन्ध थे और इनके द्वारा दिनांक 07.07.2011 को अपने सम्बन्धों का लाभ उठाते हुए अपने नाम से अन्य व्यक्तियों को धारा 107/116/151 सी० आर० पी० सी० में थाना रामनगर में निरूद्ध कराया गया है। इस प्रकरण की जांच पुलिस महानिदेशक, उत्तराखण्ड देहरादून के आदेश से अपराध अनुसंधान विभाग, खण्ड हल्लानी द्वारा सम्पादित की गयी । जांच से पाया गया कि अवधेश कुमार व जगतपाल सिंह के नि० श्री भूपेन्द्र सिंह धौनी व उ०नि० जगदीश सिंह ढकरियाल से उनकी बरेली में नियुक्ति अवधि से ही अच्छे सम्बन्ध थे। इन दोनों अभियुक्तों के विरूद्ध मृतक भगवान दास द्वारा उसके पुत्र पर जानलेवा हमला करने के सम्बन्ध में थाना बारादरी, जनपद बरेली में मु०अ०सं० 2512/11/धारा 307 भादवि पंजीकृत कराया गया था, जिसे वापस लेने के लिए इन अभियुक्तों द्वारा भगवान दास को डराया-धमकाया व जान से मारने की धमकी दी गयी, जिसके क्रम में

भगवान दास द्वारा प्रथम सूचना रिपोर्ट संख्या 270/11 धारा 352/504/506 भादवि का थाना बारादरी में पंजीकृत कराया गया। इस प्रकार उपरोक्त दोनों अभियुक्तों की रंजिश भगवान दास से होने की पुष्टि होती है। इसी रंजिश के तहत इन दोनों अभियुक्तों ने एक सोची-समझी रणनीति के तहत निरीक्षक भूपेन्द्र सिंह धौनी व उ०नि० जगदीश सिंह ढकरियाल से निजी सम्बन्धों का लाभ उठाते हुए अपने आपको भगवान दास की हत्या से एक दिन पहले हत्या जैसे संगीन अपराध से बचने के लिए दिनांक 07.07.2011 को धारा 107/116/151 सीआरपीसी में थाना रामनगर जाकर निरूद्ध किया गया। यह जमानतीय अपराध था। अभियुक्त तुरन्त ही एसडीएम कोर्ट से ही मुचलके पर छूट सकते थे, परन्तु इनके द्वारा अपनी जमानत नहीं करायी गयी और दिनांक 11.07.2011 को जमानत पर सब जेल हल्लानी से रिहा हुये। यह निरीक्षक दिनांक 07.07.2011 को थाना रामनगर पर वापस आ गये थे। इनके द्वारा इन दोनों अभियुक्तों के निरूद्ध होने के सम्बन्ध में थाना बारादरी, जनपद बरेली व उसके परिजनों को कोई सूचना नहीं दी गयी, जबकि थानाध्यक्ष जैसे महत्वपूर्ण पद पर रहते हुए इनका यह पदेन कर्तव्य था कि थाने पर हुयी प्रत्येक घटना की जानकारी कर उसके सम्बन्ध में वैधानिक कार्यवाही कराते। अपने कथनों में इस निरीक्षक द्वारा इस घटना से अनभिज्ञता प्रकट की गयी, जबकि अवधेश कुमार व जगतपाल सिंह द्वारा इस निरीक्षक से जनपद बरेली में नियुक्ति अवधि से ही अपनी जान-पहचान होना बताया गया है। तथा यह दोनों अभियुक्त आपस में गहरे दोस्त व प्रोपर्टी डीलर का संयुक्त रूप से कार्य करते हैं। इनका रामनगर में आकर उपरोक्त धाराओं में निरूद्ध होना संदिग्ध पाया गया तथा यह पूरा प्रकरण इस निरीक्षक के संज्ञान में होना परिस्थितिजन्य साक्ष्य से पाया गया है तथा इनके द्वारा यह कृत्य अभियुक्तगणों को संगीन अपराध में लाभ पहुंचाने के उद्देश्य से कराया गया है। इस प्रकार इस निरीक्षक द्वारा अपने पदेन कर्तव्यों के निर्वहन में घोर लापरवाही और उदासीनता बरती गयी है। इनके इस कृत्य की घोर भर्त्सना की जाती है।”

7. The petitioner submitted reply to the show cause notice and denied the charges levelled against him. The D.I.G., Garhwal Region considered the reply to the show cause notice and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of “Censure” on 24.08.2014 (Annexure: A2 to the claim petition No. 07/NB/SB/2017). The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Police Headquarters, Dehradun on 28.04.2016 (Annexure: A1 to the said claim petition).

8. The petitioner has challenged the punishment of censure entry mainly on the grounds that he was present at Nainital in the office of Government Advocate on 06.07.2011 and 07.07.2011; the

petitioner was not present at Ram Nagar during arrest of two accused persons; the petitioner came to know about the incident only when CID started investigating the matter; Superintendent of Police, Tehri had rightly exonerated the petitioner; the CID in its investigation had also not found the petitioner guilty and after reinvestigation by the CID, the Director General of Police ordered the proceedings of minor punishment under Rule 14(2) be initiated against the petitioner; DIG, Garhwal Region has not considered the reply to the show cause notice properly; the Inspector General of Police has also not duly examined the appeal of the petitioner; there is no evidence on record which indicates petitioner's involvement in any matter whatsoever; the arrest of two accused was not made with the permission of the petitioner and he was also not informed about such arrest; and the petitioner has been punished on account of subjective opinion of the respondents No. 2 and 3.

9. The claim petition has been opposed by the respondents and in their joint written statement, it has been stated that the petitioner has been rightly punished by awarding a censure entry for the misconduct on his part. The CID had conducted a detailed inquiry and found the petitioner guilty (Annexure: R2 to the written statement). As many as 21 documentary evidences were considered by the CID while investigating the matter. The CID has also recorded the statements of 24 persons who were related to the incident. After detailed investigation and analysis, the CID in its conclusion, recommended the following in respect of the petitioner:-

“श्री भूपेन्द्र सिंह धौनी तत्कालीन निरीक्षक कोतवाली रामनगर, जनपद नैनीताल द्वारा दि० 7.7.2011 को मान० उच्च न्यायालय नैनीताल से वापस रामनगर थाने में आकर २०न० 60 समय 18.05 पर वापसी की गयी है तथा उनके मोबाइल न० 9456407999 की कॉल डिटेल् निकालने पर दिनांक 7.7.2011 को समय 16.45:15 में लोकेशन थाना रामनगर पाया गया है। यद्यपि नि० श्री भूपेन्द्र सिंह

धौनी के जगतपाल सिंह व अवधेश कुमार की गिरफ्तारी एवं एसडीएम कोर्ट में पेश करते समय थाने पर उपस्थिति के प्रमाण नहीं हैं, परन्तु इन दोनों अभियुक्तों की गिरफ्तारी के लगभग 08 घण्टे बाद इनके थाने पर वापसी के बाद थाना प्रभारी होने के नाते थाने की दैनिक घटनाओं एवं क्रिया-कलापों की जानकारी इन्हें अवश्य रही होगी, किन्तु इनके द्वारा अपने कथन में अभियुक्त अवधेश कुमार व जगतपाल सिंह की गिरफ्तारी से अनभिज्ञता प्रकट की गयी है। जबकि प्रभारी निरीक्षक जैसे महत्वपूर्ण जिम्मेदारी के पद पर रहते हुए इनका दायित्व भी बनता था कि थाना पर हुई कार्यवाही के संबंध में जानकारी करते। इससे स्पष्ट है कि अभियुक्तगण जगतपाल व अवधेश कुमार ने इनसे अपनी पूर्व जान पहचान का फायदा लेते हुए अपने आपको धारा 107/116/151 सीआरपीसी में बंद करवाया गया। परिस्थितिजन्य साक्ष्य से यह कृत्य निरीक्षक श्री भूपेन्द्र सिंह धौनी की जानकारी से होना परिलक्षित होता है तथा अभियुक्तगण को लाभ पहुंचाने के लिए किया गया है। इनका यह कृत्य घोर निन्दनीय है। अतः इनके इस कृत्य के लिए इनके विरुद्ध उत्तर प्रदेश/उत्तराखण्ड अधीनस्थ श्रेणी कर्मचारी दण्ड एवं अपील नियमावली 1991 की धारा 14(2) अनुकूलन एवं उपान्तरण आदेश 2002 के अन्तर्गत विभागीय कार्यवाही किये जाने की संस्तुति की जाती है।”

10.1 After hearing both the parties and going through the entire record of inquiry and also the claim petition/written statement/rejoinder, we find that the inquiry against the petitioner was conducted in fair and just manner. The petitioner participated in the inquiry by the CID. The CID has taken statements of all the relevant witnesses including the petitioner. The report of the CID is based on statements and documents related to the allegations. On the basis of sufficient evidence, the CID inquiry has reached the conclusion that the petitioner was guilty. Petitioner was also provided required opportunity to defend himself.

10.2 It is well settled principle of law that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. The Tribunal does not sit as a court of appeal as the scope of judicial review is limited to the process of making the

decision and not against the decision itself. Power of judicial review is meant to ensure that the delinquent receives fair treatment. The Tribunal is concerned to determine that the enquiry was held by a competent officer, that relevant rules and the principles of natural justice are complied with and the findings or conclusions are based on some evidence. The authority entrusted to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. The Disciplinary Authority is the sole judge of facts. In case of disciplinary enquiry, the technical rules of evidence and the doctrine of "Proof beyond doubt" have no application. "Preponderance of probabilities" and some material on record would be enough to reach a conclusion whether or not the delinquent has committed misconduct. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Tribunal.

10.3 In the case in hand, after careful examination of the whole process of awarding minor punishment of censure to the petitioner, we find that the minor punishment was awarded to the petitioner after an enquiry. The enquiry was based on evidence and there is no malafide and perversity. The petitioner was given reasonable opportunity to defend himself. There is no violation of any rule, law or principles of natural justice in the enquiry proceedings conducted against the petitioner.

11. In view of the description in paragraph 10.1 to 10.3 above, we are of the view that minor punishment regarding "censure" has rightly been awarded and, therefore, the Claim Petition No. 07/NB/SB/2017 does not require for any interference by us and the same is liable to be dismissed.

12.1 The "integrity" of the petitioner has also been withheld vide order dated 24.08.2014 (Annexure: A2) in Claim Petition No.



06/NB/SB/2017 and the appeal against this has also been rejected vide order dated 28.04.2016(Annexure: A1). Learned counsel for the petitioner has contended that under the Discipline and Appeal Rules, 1991, withholding of integrity is not a punishment and, therefore, order regarding “withholding of integrity” dated 24.08.2014 which has been passed under the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (Adaption & Modification order-2002) is illegal and cannot sustain in the eye of law. We tend to agree with the contention of learned counsel for the petitioner in this regard. The perusal of order regarding “withholding of integrity” reveals that the order regarding withholding of integrity of the petitioner has been passed on 24.08.2014 by the DIG, Garhwal Region resorting to proviso to Rule 20(1) of the said Rules. We have already seen this Rule in paragraph 5.1 of this order. Perusal of Rule 20(1) and its proviso makes it clear that the proviso can be used by the authorities in respect of the punishments enumerated under Rule 4(1)(a)(b) of the said Rules only . The list of punishments has also been reproduced in paragraph 5.2 of this order. It is very clear that “withholding of integrity” is not a punishment under Rule 4(1)(a)(b). In view of this, the order dated 24.08.2014 passed by the DIG, Garhwal Range and by the IG, Police Headquarters for “withholding of integrity” under the Rules of 1991 (as adapted by the State of Uttarakhand in 2002) is bad in the eye of law and cannot sustain.

12.2 In the case of **Vijay Singh vs. State of U.P. and Ors, Civil Appeal No. 3550 of 2012**, the Hon’ble Supreme Court dealt with the same Rules of 1991 related to the Police Department and has held as under:-

*“7. The only question involved in this appeal is as to whether the disciplinary authority can impose punishment not prescribed under statutory rules after holding disciplinary proceedings. The appellant is*

*employed in the U.P. Police and his service so far as disciplinary matters are concerned, is governed by the Rules, 1991. Rule 4 thereof, provides the major penalties and minor penalties and it reads as under:-*

*“1. Punishment (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-*

***a. Major Penalties***

- i. Dismissal from service.*
- ii. Removal from service.*
- iii. Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.*

***b. Minor Penalties***

- i. Withholding of promotion.*
- ii. Fine not exceeding one month’s pay.*
- iii. Withholding of increment, including stoppage at an efficiency bar.*
- iv. Censure.*

.....

***8. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose “any other” major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.”***

12.3 For the reasons stated in paragraph 12.1 and 12.2 of this order, we are of the view that the order of “withholding of integrity” of the petitioner for the year 2011 under the aforementioned Rules of 1991, is without jurisdiction as the same is not punishment under the said Rules. The respondents have taken a wrong path to “withhold the integrity” of the petitioner, as the integrity could not be withheld under the Rules of 1991 and,

therefore, withholding the integrity of the petitioner for the year 2011 is liable to be quashed.

13. In view of the above, the claim petition No. 06/NB/SB/2017 in which the order of “withholding of integrity” has been challenged, deserves to be allowed and the claim petition No. 07/NB/SB/2017 in which the order of awarding ‘censure entry’ has been passed, is liable to be dismissed.

### **ORDER**

The claim petition No. 06/NB/SB/2017, is hereby allowed and the impugned orders dated 24.08.2014 (Annexure: A2) and appellate order dated 28.04.2016 (Annexure: A1) in this claim petition “withholding of integrity” of the petitioner for the year 2011 are hereby set aside. The respondents are directed to expunge the remarks regarding “withholding of integrity” of the petitioner for the year 2011 from Character Roll of the petitioner within two months from today.

Claim petition No. 07/NB/SB/2017, in which “censure entry” has been challenged is hereby dismissed.

No order as to costs.

Copy of this order be placed on files of Claim petitions No. 06/NB/SB/2017 and 07/NB/SB/2017.

Sd/-

**(RAM SINGH)**  
VICE CHAIRMAN (J)

Sd/-

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

*DATE: SEPTEMBER 10, 2018*  
*NAINITAL*

KNP