

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

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 33/DB/2018

Mukesh Thaleri , Sub Inspector Civil Police, presently posted at Thana Augustmuni, Distt. Rudra Prayag, Uttarakhand

.....Petitioner

vs.

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

.....Respondents.

Present: Sri B.B.Naithani, Counsel for the petitioner.

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

JUDGMENT

DATED: SEPTEMBER 26, 2018

Justice U.C.Dhyani (Oral)

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

- “ (i) (a) This Hon'ble Tribunal may be pleased to quash the impugned orders No. D-110/16 dated 23.01.2017 by which censure entry has been made; and
(b) The order No. C.A.-Appeal-21(Dehradun)/17 dated 23.12.2017 by which the appeal made by the petitioner has been rejected.
(ii) This Hon'ble Tribunal may further be pleased to pass suitable direction to the respondents to delete the entries made in service records with respect to the above said punishment order and appellate order..

- (iii) This Hon'ble Tribunal may further be pleased to issue any order or direction which this Hon'ble Tribunal may deem fit and proper under circumstances of the case.
- (iv) This Hon'ble Tribunal may kindly be further pleased to award cost to the petitioner."

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

The petitioner was posted as Chowki Incharge, Police Post Luxman Chowk, Dehradun on 10.05.2016. He started functioning as such and made an endeavour to stop illegal activities of all kinds. A history sheeter Anil was arrested by the petitioner on 12.06.2016 and was challaned under Section 13 of the Public Gambling Act, 1867. A criminal case under U.P. Goonda Act had already been initiated against the selfsame accused at the instance of P.S. Kotwali (City), Dehradun. After five months, the petitioner was transferred to Police Line, Dehradun on 13.10.2016. It has been pleaded in the claim petition that the gambling activities were going on in the area for the last 13 years. Purely on the basis of vague allegations with regard to supervision, petitioner has been awarded censure entry.

Before that, a preliminary inquiry was ordered by respondent No.3, *vide* order dated 13.10.2016. C.O., Kotwali was appointed inquiry officer to submit preliminary inquiry report within 7 days. No definite imputation was alleged against the petitioner during his tenure as Chowki Incharge, P.S. Luxman Chowk. No explanation was ever called from him. It has further been pleaded, in the claim petition, that there is no provision under which a preliminary inquiry could be instituted. Section 23 of Uttarakhand Police Act, 2007 prescribes that disciplinary proceedings shall be conducted as per rules and regulations, made under the Act of 2007. As per Regulation 490 of Police Regulations, after preliminary inquiry, substance of accusation must be reduced to form a charge which must be as precise as possible, but in the instant case, no charge sheet was ever served upon the petitioner, after preliminary inquiry report was submitted to SSP, Dehradun. A reference of Regulation 486 (iii) of Police Regulations and Section 7 of the Police Act, 1861 has also been given. Legal submissions have also been

advanced in the pleadings, but the Court does not feel it necessary to reproduce those arguments here, for, the same will be discussed, if and when so required, in the body of the judgment.

Aggrieved against the order of respondent No.3, petitioner preferred departmental appeal, which was dismissed. In other words, petitioner filed departmental appeal against the impugned order dated 23.01.2017, but the appellate authority, *i.e.*, I.G. Garhwal Range (respondent No.2), *vide* order dated 23.12.2017, dismissed the said appeal. Aggrieved with both the orders, present claim petition has been filed.

3. W.S./C.A. has been filed on behalf of respondents. Respondent No.3, in her C.A. has defended action taken by the department. Material averments, contained in the C.A., shall be referred to, as and when required. R.A. thereto has been filed on behalf of petitioner.
4. Petitioner was posted as Chowki Incharge, Luxman Chowk on 10.5.2016. After a brief stint of five months, he was transferred to another place. During the course of his brief tenure as Chowki Incharge, Luxman Chowk [which falls within the jurisdiction of P.S. Kotwali (City), Dehradun], he arrested the accused, who was involved in gambling, twice. Petitioner lodged his first FIR against the accused under Section 13 of Public Gambling Act, 1867, on 12.06.2016. When the offence was repeated, he lodged another FIR on 04.07.2016. Petitioner came to know of gambling in his area when a complaint to this effect was received by him. The insinuation against the petitioner is that he did not do anything between 10.05.2016 and 12.06.2016. Adverse entry is confined only to this extent. There is a clear-cut indication in the record that the gambling was going on in the area since 2004, *i.e.*, for the last 10 to 12 years. On 06.06.2016, petitioner received a complaint about the activity of gambling in his area. On 23.1.2017, he was given an adverse entry. He was already transferred to another place on 15.12.2016.
5. The question which arises for consideration to this Court is— having arrested and lodged F.I.Rs. under penal section of The Public

Gambling Act, 1867, twice, one on 12.06.2016 and another, on 04.07.2016, in his brief stint of five months in the Chowki concerned, what else the petitioner could have done? What a reasonable prudent person would expect from an ordinary Police Officer? What was expected of him? What was the expectation of the Police Department from a Chowki In charge? Care should be taken to see that we are not deciding the case of an extraordinary Police Officer. We have the picture of an ordinary Police Officer in our mind, when we say that having arrested accused persons and lodged F.I.Rs. twice for the same offence, what else a Chowki Incharge could have done. An extraordinary Police Officer/ an outstanding Police Officer would have, certainly, curbed the crime. Here, even if the petitioner could not stop these illegal activities of gambling in his area. The question is- whether he is liable to be awarded with an adverse entry?

6. The reply is in the negative from the point of prevailing outlook of a reasonable prudent person about an ordinary Police Sub Inspector. It was not within his domain to have eliminated the person, although well within his competence to have eliminated the crime, but, care should also be taken to see that the petitioner was there, in the concerned Police Chowki, only from 10.05.2016 to 15.12.2016, for barely five months. A bare look at the provisions of Public Gambling Act, 1867 would reveal that a senior Police Officer has powers to enter and search any house, walled enclosure, room or place, which is used as a common gaming house. Such Police Officer has also power to seize all the instruments of gaming and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein; may seize and take possession of instruments of gaming found upon such search. Senior Police Officer has also power to seize registers, record or writing of any kind which contains digits of figures or signs or symbols or pictures or combination of such digits of figures etc. It appears that while arresting and lodging FIRs the under Public Gambling Act, 1867, the petitioner exercised his powers. Section 13 of the Public Gambling Act, 1867 provides that whoever is found gaming in any public street, place or thoroughfare or setting any bird or any animal to fight in any such street,

place or thoroughfare shall be punishable with fine not exceeding Rs.250 but not less than Rs.50 or with rigorous imprisonment for a term not exceeding one month.

7. In the preliminary inquiry also, the misconduct was, *prima facie*, indicated on the part of two Police Constables and not against the present petitioner, who was posted as Sub Inspector on the date of insinuation.
8. Perversity can always be seen by the Tribunal in claim petition. Perversity is writ large on the face of it. Judging the case from this point of view, this Court is of the opinion that the orders impugned call for interference on these points alone.
9. Although Ld. Counsel for the petitioner also made an attempt to bring home the point that Rule 14(2) of the Discipline and Appeal Rules does not stipulate preliminary inquiry and S.P., Dehradun had no jurisdiction to pass the first order impugned, which submissions were vehemently opposed by Ld. A.P.O., but since this Court is convinced that the orders under challenge, should be set aside only on the ground of perversity, therefore, we do not think it proper to deal with other aspects of the submissions of Ld. Counsel for the parties. The orders impugned, therefore, call for interference. They are liable to be set aside.
10. Order accordingly.
11. The claim petition is allowed. Impugned punishment order dated 23.01.2017, as affirmed by the appellate authority on 23.12.2017, are hereby set aside. No order as to costs.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 26, 2018
DEHRADUN

