

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

CLAIM PETITION NO. 33/NB/SB/2016

HC 134 CP Jitendra Kumar S/o Sri Dharamveer Singh, Presently posted as Head Constable, Civil Police, Police Station, Kotwali, Sitarganj, District Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Kumoun Range, Nainital.
4. Senior Superintendent of Police, District Udham Singh Nagar.

.....Respondents

Present: Sri Suman Nautiyal, holding brief of
Sri Vinay Kumar, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: NOVEMBER 13, 2018

1. The petitioner has filed this petition for the following reliefs:-

“(i) To quash the impugned Punishment Order dated 5th August 2015 passed by the Senior Superintendent of Police, Udham Singh Nagar; whereby an adverse/censure entry was awarded to the petitioner

on account of negligence, indifferent and idleness towards duties (Annexure: No. 1).

(ii) To quash the impugned Appellate Order dated 5th January 2016 passed by the Deputy Inspector General of Police, whereby the Departmental Appeal filed by the claimant has been rejected and thereby affirmed the Punishment Order dated 5th August 2015 passed by the Senior Superintendent of Police, Udham Singh Nagar (Annexure No. 2).

(iii) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case. "

2. Briefly, stated the facts are that the petitioner was posted as Head Constable at Police Station Sitarganj, District Udham Singh Nagar in the year 2013 and was given the charge of Malkhana Moharrir. The case property pertaining to FIR No. 3142 of 2007, and FIR No. 3042 of 2007, detained in Malkhana, having gas cylinders, were required to be sent to the Court, for recording of evidence on the same day i.e. 04.07.2013. The FIR No. 3142 of 2007 was registered under section 3/7 of the Essential Commodities Act and the matter was fixed for hearing before the Court of Chief Judicial Magistrate, Rudrapur. The case property, Gas Cylinder of H.P. Company was produced before the Court instead of Indane Gas Company, hence, trial court giving the benefit of doubt to the accused, acquitted him from the charges vide its judgment dated 07.12.2013 and recorded a finding that the Indane Gas Cylinder bearing no. 3490, recovered at the spot, was not produced before the court and the prosecution was held responsible for sending wrong case property. The copy of the judgment was sent to the S.S.P., Udham Singh Nagar, for taking note of the mistake, committed by the Police Station, Sitarganj and to do needful in the matter.

3. On the basis of the judgment dated 8.12.2013, the S.S.P., Udham Singh Nagar vide its communication dated 22.01.2014,

appointed Circle Officer (C.O.), Sitarganj as Inquiry Officer, to conduct a preliminary inquiry and to find out the person, responsible for committing the mistake in production of wrong case property.

4. The inquiry officer after recording the statement of the claimant (petitioner) and other Head Constables, submitted his report to the Disciplinary Authority on 06 April 2015 with the observation that Malkhana Mohrrir/Head Constable (petitioner) is guilty for negligence, mentioning that the Head Mohrrir was duty bound to send the correct case property before the Court. It was further concluded that if the correct case property had been sent to the Court by the Malkhana Moharrir then the accused would not have been acquitted.

5. On the basis of the preliminary inquiry report dated 06.04.2015, the Disciplinary Authority issued a show cause notice to the petitioner, to show cause as to why a censure entry be not recorded in his service record on account of serious negligence, indifference and idleness towards his duties. The petitioner replied to the show cause notice on 05.07.2015, with the submission that in the register the big gas cylinder did not contain the name of the Company and that the case property, which was sent to Khatima Court in FIR No. 3040 of 2007 was sent 45 minutes prior to the case property in question. The petitioner supported his reply with relevant papers, but the Disciplinary Authority finding his reply unsatisfactory, awarded impugned punishment of censure entry vide order dated 05.08.2015, which was served on the petitioner on 22.08.2015. The departmental appeal filed by the petitioner was also rejected by the Appellate Authority/DIG, Kumoun Region, Nainital vide order dated 05.01.2016. Hence, the petitioner by way of this petition, challenged the impugned order dated 05.08.2015 passed by the respondent no. 4, Appellate order dated 05.01.2016, passed by the respondent No. 3 on the following grounds:-

i. That the punishment order dated 05.08.2015 was based only on the preliminary inquiry report of the Circle Officer and the Disciplinary Authority has rejected the contention of the petitioner without any reason and a cryptic and unreasoned order was passed in an arbitrary and erroneous manner ignoring the documents submitted in support of the petitioner. The Appellate Authority also overlooked the fact that in Malkhana Register there was no description of big Gas Cylinder along with 08 small gas cylinders, pertaining to the case crime No. 3142 and the claimant cannot be held guilty for not sending the correct case property before the court in the absence of the correct entry in the Police Thana Register/record which was maintained by his predecessor. The Disciplinary as well as Appellate Authority had not given any finding on the specific defense, raised by the petitioner that at the time of taking over charge of Malkhana, register nowhere indicate that the case property of Crime No. 3142 of 2007 was Indane Gas cylinder and the order was passed in a mechanical manner. If any person is guilty for the fault, it is the person, who occupied the seat of Malkhana Moharir at the time of recording the entry in the Malkhana register because he has not properly and clearly recorded the description of the property in the register and the petitioner has wrongly been punished. Hence, this petition.

6. The petition was opposed by the respondents with the averment that the punishment order of censure entry dated 05.08.2014 as well as appeal rejection order dated 05.01.2016 passed by the respondent No. 3, are legally perfect, correct and valid in the eye of law and require no interference by this Tribunal. The petitioner has committed serious negligence and carelessness and dereliction towards his duty as Malkhana Moharir because the case property of one big Gas Cylinder of Indane Company along with small gas cylinder

in State vs. Kishore Sharma, relating to FIR No. 3142 under section 3/7 Essential Commodities Act, was to be sent for evidence in the court of Chief Judicial Magistrate, Rudrapur and other case property relating to FIR No. 3024 of 2007 under section 406 IPC, State vs. Rizwan consisting of 5 cylinder of oxygen gas and one big Gas Cylinder of H.P. Company was to be sent for evidence in the court of Judicial Magistrate, Khatima. The petitioner wrongly sent the case property of H.P. Gas Cylinder before the Court of Chief Judicial Magistrate instead of Indane Gas Company, on account of which, the accused person, getting the benefit of doubt, was acquitted and the court also directed that the proper action should be taken against the person responsible for that. According to respondents, on that basis, a preliminary inquiry was conducted as per Rules by the Circle Officer, Sitarganj; the statement of petitioner as well as prosecution witnesses was recorded; he was afforded due opportunity of defense but he failed to file sufficient proof. After conducting a just, fair and impartial inquiry, the petitioner was found guilty for sending wrong case property. He was given due opportunity to show cause along with copy of the inquiry report and his reply to show cause notice was duly considered by the Disciplinary Authority and punishment order was passed. There is no impropriety and procedural lacuna in the same and the appeal was also decided by a detailed order. The punishment as well as appeal rejection order was rightly passed. There is no irregularity, illegality and impropriety in it and the claim petition deserves to be dismissed. Along with Counter Affidavit, certified copy of record register and copy of Malkhana register were also filed.

7. After giving sufficient opportunity, no Rejoinder Affidavit was filed by the petitioner.
8. I have heard both the sides and perused the record.

9. It is an admitted fact that the petitioner being Incharge of Malkhana, was duty bound to send correct case property before the court on the required date. According to the petitioner, in the Malkhana Register, the name of the company of Gas Cylinder was not mentioned, and on account of the fact that on the same date, other gas cylinder was also to be sent to Khatima court, mistake was committed. According to the petitioner, the same day, the case property of other matter, a big gas cylinder was sent to Khatima Court, 45 minutes before the case property was sent to the Court of Chief Judicial Magistrate, Rudrapur. It is also an admitted fact that the decision of the trial court was made by the court of Chief Judicial Magistrate on 07.12.2013 with the following orders:-

“24. अभियुक्त किशोर शर्मा को धारा 7 सपटित धारा 3 आवश्यक वस्तु अधिनियम 1955 के आरोपित अपराध से दोषमुक्त किया जाता है। अभियुक्त इस प्रकरण में जमानत पर है, उसके जमानत पत्र एवं बन्ध पत्र निरस्त कर जमानतियों को जमानत के दायित्व से उन्माचित किया जाता है।

25. इस मामले में बरामब माल एच0पी0 का सिलेण्डर वस्तु प्रदर्श-1 राज्य सरकार के पक्ष में राजसात किया जाता है तथा छोटे सिलेण्डर वस्तु प्रदर्श-2 लगायत वस्तु प्रदर्श- 9 को अपील अवधि पश्चात् तथा अपील होने की दशा में माननीय अपीलीय न्यायालय के निर्णय के अधीन रहते हुए नष्ट किया जाए।

26. थाना सितारगंज द्वारा मामले में बरामद सिलेण्डर प्रस्तुत करने में की गयी त्रुटि को अवगत कराने के लिए नियम-53, सामान्य नियमावली (दण्डिक) के तहत आदेश की एक प्रति वरिष्ठ पुलिस अधीक्षक, ऊधम सिंह नगर को प्रेषित की जाए।

27. मामले में भारसाधक लोक अभियोजक द्वारा कथित बरामद सिलेण्डर प्रस्तुत करने एवं अभियोजन साक्षियों से उसकी पहचान करने में बरती गयी त्रुटि को संज्ञान में लाने बावत निर्णय की एक-एक प्रति प्रमुख सचिव (गृह), उत्तराखण्ड शासन, अभियोजन निदेशक, उत्तराखण्ड शासन एवं जिलाधिकारी, ऊधम सिंह नगर को प्रेषित की जाए।”

10. Hence, the court recorded the negligence of the prosecutor as well as employee of the concerned Police Station in sending the wrong case property. According to the respondents, the petitioner,

who was Incharge of Malkhana, was responsible for sending the wrong case property and respondent no. 4 after acquittal of the accused, initiated an inquiry to find out the guilt of the person responsible for that.

11. It is also an admitted fact that the Circle Officer, Sitarganj while conducting the inquiry, afforded every opportunity to the petitioner and after recording his statement, the statements of other witnesses were also recorded and after inquiry, recorded his finding, in which the petitioner was held responsible for the negligence.

12. The report of the inquiry officer dated 06.04.2015 (Annexure: 4) was sent to the petitioner along with show cause notice. The reply to the show cause notice (Annexure: 6) was submitted by the petitioner annexing the copy of extract of Malkhana register and other papers. There is no procedural lacuna in the proceeding.

13. The Disciplinary Authority after considering his reply to the show cause notice, passed impugned order dated 05.08.2015 (Annexure: 1) which clearly shows that the petitioner was given every opportunity of hearing. The Disciplinary Authority in his order, also considered the defense raised by the petitioner and after recording his view point, it was specifically mentioned in the order that the explanation submitted by the petitioner is not satisfactory and petitioner was held guilty for the negligence, dereliction of duties and accordingly, as per the relevant Rules, the order of censure entry was passed.

14. This court cannot go into the subjective satisfaction of the Disciplinary Authority and in the view of that the impugned punishment order was passed after following the due procedure of law and after giving reasonable opportunity of hearing to the petitioner.

15. The court is also of the view that the punishment is not too harsh. The negligence of the petitioner and also of the prosecutor benefitted the accused and he was acquitted from the punishment. Being a member of a police force, petitioner was under duty to ensure the production of correct proof before the court and to ensure that case of the accused should be decided on merit but the negligence on his part, resulted to benefit to the accused and it was specifically recorded by the judicial court. On the basis of the finding of the court, the preliminary inquiry was duly instituted, conducted and considering all the circumstances of the matter, the punishment was passed.

16. This Court is of the opinion that the impugned punishment order suffers from no infirmity, neither findings are perverse to the record nor there is any procedural lacuna, and the principles of natural justice were also followed. Accordingly, the petition devoid of merit, deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 13, 2018

NAINITAL

KNP