

**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. 52/SB/2018

Constable 458 (CP) Kushala Nand, s/o Sri Sant Ram, presently posted at P.S. Shyampur, District Haridwar.

.....Petitioner

vs.

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

.....Respondents.

Present: Sri V.P. Sharma, Counsel, for the petitioner.
Sri U.C.Dhaundiyal & Sri V.P.Devrani,A.P.Os.for the Respondents.

JUDGMENT

DATED: DECEMBER 04, 2018

Justice U.C.Dhyani (Oral)

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

“(i) To issue an order or direction to set aside the impugned punishment order dated 26.11.2016(Annexure No. A-1) and appellate order dated 31.07.2017 (Annexure: A-2) passed by the respondents nos. 3 & 2 respectively declaring the same as null and void along with all consequential benefits.

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

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

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

In the year 2016, when present petitioner was posted at Chowki Tilwara, P.S. Agastyamuni, on 11.08.2016, at 2.45 p.m., an altercation took place between the delinquent (present petitioner) and a local journalist-camera man. The petitioner was doing traffic duty. The dispute arose on parking of vehicle by the journalist-camera man. The delinquent-Constable, allegedly, took the journalist to Chowki Tilwara and assaulted him. The intimation was given to the higher Police Officers.

On 13.08.2016, a report (Annexure: A 3), in respect of above incident was submitted by Local Inspector to Superintendent of Police, respondent no.3, who, *vide* order dated 29.08.2016(Annexure: A 4), directed to conduct preliminary inquiry in the matter and submit the report of the same within seven days. Preliminary inquiry was submitted on 06.09.2016 (Annexure: A 5).

Thereafter, on 13.09.2016, show cause notice ((Annexure: A 6) was given to the petitioner, who, *vide*, Annexure: A 6(colly), replied the same, explaining all the facts.

Not satisfied with the explanation furnished by the petitioner, respondent no.3, awarded 'censure entry' to the petitioner in his character roll, on 26.11.2016 (Annexure: A 1).

Aggrieved with the same, the petitioner preferred the departmental appeal (Annexure: A 7). The appellate authority concurred with the version of the appointing authority and dismissed the departmental appeal *vide* order dated 31.07.2017 (Annexure: A 2). Hence, present claim petition.

2. After arguing the claim petition at some length, Ld. Counsel for the petitioner confined his prayer only to the extent that since censure entry entails serious civil consequences, therefore, a lenient view should be taken against the petitioner. Considering the facts of the case, 'censure entry' should be converted into 'other minor penalty', according to Ld. Counsel for the petitioner.
3. Ld. A.P.Os., in reply, submitted that, there is no ground warranting this Court to interfere in the orders passed by the two authorities below (Disciplinary Authority and Appellate Authority), but were, however, not averse to the idea of converting 'censure entry' into 'other minor penalty' in the given facts of the case.
4. In this case, an altercation took place between the delinquent (present petitioner) and a local journalist-camera man. The petitioner was doing traffic duty. The dispute arose on parking of vehicle by the journalist-camera man. The delinquent-Constable took the journalist to Chowki Tilwara and, allegedly, assaulted him. The intimation was given to the higher Police Officers. Petitioner has been awarded 'censure entry' in his character roll on the ground that wrong information has been provided by him to his higher authorities.
5. 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.
6. Considering entire prospects of facts, this Court is of the opinion that the ends of justice will be met, if 'censure entry' is converted into 'other minor penalty', viz- fatigue duty and orders dated 26.11.2016 (Annexure: A-1) & 31.07.17(Annexure: A-2) should be interfered, only to this extent, in the peculiar facts of the case.

7. 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.
8. 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.
9. 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'
10. Order accordingly.
11. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 04, 2018
DEHRADUN

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