

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

CLAIM PETITION NO. 50/SB/2018

Rakesh Chand, S/o Sri Tara Chand, aged about 37, presently posted as Constable at Thana Cantt, Dehradun

WITH

CLAIM PETITION NO. 51/SB/2018

Mohan Ram, S/o Sri Takdir Ram, aged about 30 years, presently posted as Constable at Thana Cantt, District Dehradun.

.....Petitioners

vs.

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

.....Respondents.

Present: Sri V.P. Sharma, Counsel, for the petitioner.
Sri V.P.Devrani,A.P.O., for the Respondents.

JUDGMENT

DATED: DECEMBER 05, 2018

Justice U.C.Dhyani(Oral)

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, both the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience

2. Claim Petition No. 50/SB/2018 shall be the leading case.
3. By means of present claim petitions, the petitioners seeks following reliefs:

“(i) To quash the impugned order 16.06.2017(Annexure No. A-1) by which an adverse entry has been awarded by the respondent no.3 in the service record of the petitioners as well as appellate order dated 16.09.2017 (Annexure: A-2) by which appeal of the petitioner has also been rejected by respondent no.2.

(ii) To quash the order dated 03.04.2017, by which the petitioners were illegally kept under suspension by the respondents and further to quash the order dated 16.06.2017 by which the respondents have revoked the suspension order, but denied the full salary for the suspension period except the subsistence allowance to the petitioners hence, the respondents may kindly be directed to pay the petitioners full salary for the suspension period w.e.f. 03.04.2017 to 15.05.2017.

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

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

4. Facts necessary for adjudication of present claim petitions are as follows:

In the year 2017, when petitioners were posted in P.S. Doiwala, District Dehradun, they were deputed on picket duty on 2/3-04-2017 in Kasba Chowki within the jurisdiction of P.S. Doiwala. On 03.04.2017, between 5.10 to 5.15 AM, an incident of theft took place in a shop situated in Kasba Chowk, Railway road. The shop was situated at a distance of 100 meters from where the petitioners were doing picket duty. The insinuation against the petitioners is that they were negligent about their duties. An incident of theft took place in a shop situated within a distance of 100 meters from the place, where they were deputed on picket duty. When the same was inquired from the petitioners, they admitted to Assistant Superintendent of Police/ C.O. Sadar that they were not present at the place of picket duty when the incident of theft took place, and had gone to P.S.Doiwala.

A show cause notice was given to the petitioners. They submitted their replies. Not satisfied with the replies of delinquents-petitioners, they were given censure entry, *vide* impugned order dated 16.06.2017 (Annexure: A 1).

Aggrieved against the same, they preferred departmental appeals, which were dismissed by the appellate authority *vide* order dated 16.09.2017 (Annexure: A 2). Hence, present claim petitions.

2. In these petitions, petitioners have sought two reliefs, namely, expunction of censure entry and direction to pay full salary to them for the suspension period.
3. After arguing at some length, Ld. Counsel for the petitioners confined his prayer only to the extent that since 'censure entry' entails serious civil consequences, therefore, a lenient view should be taken against the petitioners. They are ready to forego relief no (ii). Considering the facts of the case, censure entry should be converted into other minor penalty, according to Ld. Counsel for the petitioners.
4. Ld. A.P.O., 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). Ld. A.P.O. is, however, not averse to the idea of converting 'censure entry' into 'other minor penalty' considering the fact that the petitioners are ready to forego relief no. (ii).
5. It is a case in which, when petitioners were on picket duty, an incident of theft took place in a shop situated at a distance of 100 meters from where the petitioners were doing their duty. The charge against the petitioners is that they were negligent about their duties, inasmuch as, an incident of theft took place within a distance of 100 meters from the place, where they were deputed on picket duty. When the same was inquired from the petitioners, they admitted to Assistant Superintendent of Police/ C.O. Sadar, that they were not present at the place of picket duty, when the incident took place, and had gone to P.S.Doiwala.

6. Having heard learned counsel for the parties, this Tribunal is of the view that 'due procedure of law' has been followed while holding the delinquents 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.
7. Considering the entire conspectus 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 impugned are interfered, only to this extent, in the peculiar facts of the case, especially when the petitioners have not pressed relief no.(ii), which has been reproduced in para no. 3 of this judgment.
8. 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.
9. 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 petitioners, with minor punishment of 'fatigue duty', as mentioned in sub rule (3) of Rule 4 of the Rules of 1991.
10. 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 petitioners, with 'fatigue duty'

11. Orders accordingly.
12. The claim petitions thus stand disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 05, 2018
DEHRADUN

VM