

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

CLAIM PETITION NO. 43/SB/2018

Jitendra Kumar S/o Late Sri Rajpal Singh, aged about 40 years, presently posted as Sub Inspector Incharge, Police Station Laxman Chowk, Kanwali Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home, Uttarakhand, Subhash Road, Dehradun.
2. Director General of Police, Garhwal Region, Dehradun.
3. Deputy Inspector General of Police, Garhwal Region, Dehradun.
4. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Counsel for the petitioner.

Sarvsri U.C.Dhaundiya & V.P.Devrani, A.P.Os., for the Respondents.

JUDGMENT

DATED: DECEMBER 17, 2018

Justice U.C.Dhyani(Oral)

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

- “(i) To quash and set aside the impugned order dated 02.05.2015 (Annexure No.A-1), by which an adverse entry has been awarded by the Respondent No.4 in the service record of the petitioner,.
- (ii) To quash and set aside the impugned order dated 23.07.2017(Annexure No. A-2), which was passed by the appellate authority without applying the mind and the adverse entry in the service record of the petitioner may please be expunged along with its effect and operation.

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

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

2. Facts, necessary for proper adjudication of present claim petition, are as follows:

Complainant-victim Smt. Pallavi Aggarwal lodged an F.I.R. being Case Crime No. 72/2013 against her husband Sri Arjit Aggarwal, father-in-law Sri Satya Prakash Aggarwal, mother-in-law Smt. Rekha Aggarwal and a friend of her father-in-law, namely, Dr. Arvind Kumar Nigam, at P.S. Vasant Vihar, Dehradun under Sections 323, 504, 506, 498A IPC and Section 3/4 of Dowry Prohibition Act. Whereas, victim's in-laws lived in Dehradun, the friend of her father-in-law, namely Dr. Arvind Nigam was a resident of Lucknow. The investigation was entrusted to the petitioner. Since Dr. Arvind Nigam lived in Lucknow, therefore, the investigating officer had to go to Lucknow for interrogation and investigation. S.H.O. of P.S. Vasant Vihar Shri Pradeep Rana and Constable Mukesh Puri also went to Lucknow under the oral direction of the then S.S.P., Dehradun. S.H.O. Pradeep Rana went from Lucknow to Delhi, and as per department's case, he travelled on an air ticket, expenses of which were borne by Dr. Arvind Nigam. The allegation is that the petitioner used his influence over Dr. Nigam to get an air ticket for SHO Sri Pradeep Rana for travelling from Lucknow to Delhi.

Another imputation against the petitioner is that he filed a charge sheet against Dr. Arvind Kumar Nigam, only on the basis of the statement of complainant/victim. Dr. Nigam was not the relative of the husband of the victim, and , therefore, Section 498 A IPC could not be fastened against Dr. Nigam.

3. After preliminary inquiry, SHO Pradeep Rana, S.I. Jitendra Kumar, (Petitioner) and Constable MukeshPuri were awarded 'censure entry' by S.S.P. Dehradun. Aggrieved against the same, SHO Pradeep Rana and Constable Mukesh Puri filed two separate departmental appeals

before I.G., Garhwal Range. Such departmental appeals were allowed. Censure entry awarded to SHO Pradeep Rana and Constable Mukesh Puri were set aside. Petitioner could not file departmental appeal in time. When he filed the appeal, the same was not entertained on the ground that it was time barred. Hence, his departmental appeal was dismissed, as time barred, *vide* order dated 23.03.2017. Aggrieved against the same, petitioner filed claim petition no. 31/SB/2017, in which this Tribunal, on 10.04.2018, issued the following directions:-

“This Court, therefore, in the peculiar facts of the case, deems it appropriate to relegate the matter to the appellate authority for deciding the departmental appeal of the petitioner, on merits, in accordance with law, purely in the interest of justice.

4. Order accordingly.

5. The impugned order dated 23.03.2017 (Annexure: A 2) is set aside. Appellate authority is directed to decide the departmental appeal of the petitioner on merits, in accordance with law, at an earliest, but not later than four weeks of presentation of certified copy of this order, in the light of observations made by this Court herein above.

The claim petition thus stands disposed of. No order as to costs”.

4. The appellate authority (DIG, Garhwal Range-Respondent No.3), after considering the facts and legal issues involved in the case, dismissed the departmental appeal *vide* order dated 23.07.2018 and affirmed ‘censure entry’ awarded to the delinquent petitioner, *vide* order dated 02.05.2015. Hence, present claim petition.

5. Ld. A.P.Os., at the very outset, submitted that the orders impugned do not warrant any interference. The Court should not interfere with the punishment of ‘censure entry’ awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.

6. The allegations against the delinquent petitioner are two fold: One, he used his influence over Dr. Nigam to get an air ticket for SHO Sri Pradeep Rana, for travelling from Lucknow to Delhi. Two, he was found careless in conducting investigation , inasmuch as he filed the charge sheet against Dr. Nigam under Section 498 A IPC and other Penal Sections, despite the fact that Dr. Nigam was not the relative of the husband of the victim.
7. It will not be out of place to mention here that the person who reaped fruits of the alleged act of gratification, has been exonerated, as also the Constable, who went to Lucknow along with, allegedly, the main culprit and the investigating officer (petitioner). In other words, SHO and Constable, who were also awarded 'censure entry' by the disciplinary authority, have been exonerated of the charges levelled against them, while allowing their departmental appeals, by I.G., Garhwal Range. In other words, the Police Officer, who allegedly obtained gratification from the accused, living in Lucknow, in the form of Air Ticket for travelling from Lucknow to Delhi, has been exonerated of the allegation levelled against him, as also the Constable accompanying the Police Officer. The petitioner has, however, been held guilty of 'misconduct' and has been awarded 'censure entry' for his carelessness in the investigation of the case.
8. A look at the order dated 15.01.2016 (Copy: Annexure A 7), passed by the appellate authority (I.G., Garhwal Range) in respect of Sri Pradeep Rana, In-Charge, Police Station, will reveal that the appellate authority, while giving finding at Para 3/4, as also Para 5-6, has inferred that 'due process of law' and 'principles of natural justice' have not been followed while conducting the inquiry. The appellate authority, therefore, allowed the appeal of Officer In-Charge, P.S. Vasant Vihar, *vide* order dated 15.01.2016 (Annexure: A 7) thereby leaving the petitioner at lurch. Now he has to plough lone furrow. The other two have heaved sigh of relief, leaving the petitioner to face indignation.

9. Charge sheet was submitted against Sri Arjit Agarwal, Dr. Satya Prakash Agarwal, Smt. Rekha Agarwal and Dr. Arvind Kumar Nigam by the investigating officer (present petitioner) for the offences punishable under Sections 498 A, 294, 323, 406, 504, 506 IPC and Section 3/4 of Dowry Prohibition Act. This was done by the inquiry officer on the strength of statements of complainant/ victim, Sri Kumud Kumar Agarwal, Smt. Shaila Agarwal, Dr. Arvind Nigam, Dr. Satya Prakash Agarwal, Sri Arjit Agarwal, Smt. Rekha Agarwal, Smt. Sushila Devi, Smt. Madhuri Mishra, Dr. Bhaskar Upadhyay and Dr. S.K.Bhasin. Petitioner confronted, almost all the witnesses, as to whether Dr. Nigam is a relative of the husband of the victim or not. In the statements recorded under Section 161 CrPC, the witnesses levelled different allegations against all the accused, including Dr. Nigam. Only future can tell whether the allegations will be substantiated against Dr. Nigam or not, as the matter is *sub-judice* before the Trial Court. No finding can be given, at this stage, as to whether allegations were, *prima facie*, made out against Dr. Nigam or not? The basic reason for saying so is that Dr. Nigam is facing trial under different penal provisions, in the Criminal Court having jurisdiction. This fact is under no dispute that charge sheet has been submitted against all the accused persons and the matter is under adjudication before the Trial Court.
10. When the charge sheet was submitted and the criminal trial was in progress, a direction was issued by SSP, Dehradun-Respondent No.4, on 01.08.2014 to Sri Kamlesh Namburi, SIS to further investigate the case. This was done under Section 173(8) CrPC. C.O. City (I) was directed to seek permission of the Court concerned for further investigation and do the needful. Investigation was completed on 31.12.2013. Charge sheet was submitted before the Magistrate concerned on 26.05.2014. Order directing the subsequent investigating officer to seek permission of the Court concerned for further investigation was issued on 01.08.2014 (copy Annexure: R 3). Sri Kamlesh Namburi, SIS moved an application on 07.08.2014 before the Magistrate concerned to this effect (copy Annexure: R 4). On the same

day, the application was allowed by Ld. Judicial Magistrate (II), Dehradun. When the charge sheet was submitted, accused persons were summoned and consequently, they appeared, then, it is open to question, whether the accused were also heard on such application or not? It appears that the accused persons were not heard by Ld. Judicial Magistrate, Dehradun, before passing such an order, which was certainly prejudicial to their interest. Had the charge sheet not been filed, and accused persons not been summoned, the situation would have been different.

11. Be that as it may, on the strength of order dated 07.08.2014 of Ld. Judicial Magistrate (II), Dehradun, Sri Kamlesh Namburi, SIS further investigated the case. Legal question is, whether it was permissible for him to do so?
12. Sub-section (8) of Section 173 CrPC reads as below:-

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections 92) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section(2).”
13. No doubt, further investigation is permissible even after a report under sub-section (2) of Section 173 CrPC (read: charge sheet) has been forwarded to the Magistrate, yet the fact remains that the Officer In-Charge of the Police Station ought to have obtained further evidence, oral or documentary, (and only then) he should have forwarded to the Magistrate a further report regarding such evidence in the form prescribed. In the instant case, no further evidence was obtained before filing an application under Section 173 (8) CrPC. The application was moved first, which followed further investigation by

subsequent investigating officer, who, in a way, reviewed the evidence, collected by earlier investigating officer. This is not permissible in law.

14. There is yet another aspect of the matter. When the investigation was completed by present petitioner and report was submitted to his supervisor, which was to be forwarded to the Magistrate concerned, his supervisory officer was legally bound to pinpoint the lacuna in the investigation and amend the mistake, which had occurred during investigation. Sub section (3) of Section 173 CrPC reads as below:-

“(3) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.”

15. The Supervisory Police Officer has power to direct Officer In-Charge of the Police Station to make further investigation . This was not done when petitioner submitted charge sheet to his Supervisory Officer. Had the mistake, if any, been pointed out and corrected at that stage, present situation would not have arisen. This does not mean that any investigating officer cannot be punished for carelessness on his part during investigation. Petitioner, in the instant case, could also be subjected to ‘misconduct’, for the carelessness, if any, on his part for his role as investigating officer, but, what is the material against him? The material against him is that when the subsequent investigating officer conducted further investigation on the strength of Section 173(8) CrPC, he found no evidence against Dr. Nigam in relation to offences complained of against him. The subsequent investigating officer recorded the statements of Dr. Arvind Nigam(who, being indisposed, could not give his statement to earlier I.O., by appearing in person), Dr. Satya Prakash Agarwal, Sri Arjit Agarwal, Smt. Rekha Agarwal, Smt. Sushila Devi, Smt. Madhuri Mishra, Dr. Bhaskar Upadhyay and Dr.

S.K.Bhasin and found that no allegations are substantiated against Dr. Nigam. He has submitted a report to the Court concerned to this effect.

16. The next legal question which arises is, what could be done by the Magistrate concerned on such report? There is a charge sheet in which the accused persons are facing trial and thereafter a final report, with reference to one accused has been filed. The cognizance has already been taken by the Magistrate concerned on the basis of charge sheet submitted against four accused persons. Now what will the Court do with respect to final report against fourth accused? At the most, the fourth accused may be discharged (at the time of framing of charge) when a plea is put forward on his behalf that , on further investigation, no criminal case was found against him. Such kind of further investigation is neither in practice, nor permissible under the scheme of the Code.
17. Can a subsequent investigating officer review the investigation conducted by his predecessor? The reply is, probably, in negative. Such a situation is never foreseen by the framers of the Code. As has been mentioned earlier, the investigating officer is not precluded from further investigation in respect of an offence, after a report under sub section (2) of Section 173 CrPC has been forwarded to the Magistrate, but this is possible only when the officer in-charge of the P.S. obtains further evidence and forwards the same to Magistrate a report regarding such evidence. Such further evidence is conspicuous by its absence in the instant case. **So, should departmental action be initiated against the first investigating officer (petitioner), on the basis of investigation conducted by subsequent investigating officer, which investigation has no legal basis?** The petitioner has been found guilty of negligence in his duty as investigating officer on the basis of further investigation by subsequent investigating officer, who has 'reviewed' and reproduced the evidence collected by his predecessor and has 'not collected' further evidence.

18. The Tribunal can always interfere in 'judicial review', if there is perversity writ large on the face of it. The orders impugned, therefore, cannot sustain and call for interference in the peculiar facts of the case.
19. This Tribunal would like to add a few more things. The charge sheet has already been submitted against four accused persons. Subsequent version of the Police Department, in the instant case, is that no case is made out against fourth accused. This view was taken by the Police Department only when the subsequent investigating officer conducted further investigation, for which the affected persons (accused persons) were not heard before securing the order of Ld. Judicial Magistrate. Cognizance has already been taken by Ld. Judicial Magistrate on the charge sheet. The trial is going on. Charges are yet to be framed. What will the Trial Court do of such a report of subsequent investigating officer, who found that no allegations are substantiated against the fourth accused? How the Trial court will deal with the same? What this Tribunal wants to say is that, when the matter is *sub-judice* before the Magistrate concerned, he is the best person to adjudge as to whether the investigation was properly conducted by the investigating officer (i.e. present petitioner) or not. Much will depend upon the decision of the Court concerned, which is seized with the criminal case pending against the accused persons. If Ld. Trial Court comes to the conclusion that there was gross negligence on the part of the petitioner in conducting the investigation, Ld. Court can always direct Police authorities to initiate departmental action against him. It is just possible that the Trial Court might be satisfied with the working of the investigating officer. In that case, Ld. Trial Court might not say anything adverse against the investigating officer. Therefore, this Tribunal leaves it to the wisdom of the Trial Court to adjudge the action of the petitioner in filing the charge sheet against Dr. Nigam. This Tribunal refrains from saying anything on the conduct of the investigating officer (present petitioner), precisely because the criminal case is pending adjudication before a Criminal Court. Judicial propriety demands that this Court should not comment upon the 'misconduct' or

otherwise of present petitioner, on his role as investigating officer, which is under scrutiny before a Competent Court having jurisdiction. The issue is much larger than it is portrayed to be.

20. The orders impugned dated 02.05.2015 (Annexure No.A-1), and appellate order dated 23.03.2017(Annexure No.A-2), therefore, call for interference, leaving it open to the Trial Court to adjudge the role of the petitioner, as Investigating Officer, while adjudicating the criminal case pending before it. If Ld. Trial Court comes to the conclusion that the petitioner was negligent in conducting the investigation, the same will not preclude the Court Concerned from recommending suitable departmental action against the petitioner, to the senior Police Officer(s).
21. Orders impugned dated 02.05.2015 (Annexure No.A-1) and appellate order dated 23.07.2017(Annexure No.A-2) are, accordingly, set aside with the observations as above.
22. The claim petition thus stands disposed of. No order as to costs.
23. Let a copy of this judgment be sent to the Court concerned for information.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 17, 2018
DEHRADUN

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