

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

**CLAIM PETITION NO. 13/SB/2019**

Sunil Kumar age 34 years s/o Sri Rajpal Singh, presently posted as Constable at Police Station Lamb Gaon District Tehri Garhwal.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Home, Civil Secretariat, Subhash Road, Dehradun.
2. Upper Police Mahanideshak, Prashasan, Uttarakhand.
3. Deputy Inspector General of Police, Uttarakhand, Dehradun.
4. Sr. Superintendent of Police, Dehradun.

.....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: FEBRUARY 06, 2019**

**Justice U.C.Dhyani(Oral)**

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

- “(i) To issue order or direction to quash the impugned order dated 24.07.2012 (Annexure No.A-2), appellate order dated 08.03.2013 (Annexure No. A-3) and revisional order dated 20.08.2013 (Annexure No. A-4) which are liable to quashed and set aside and expunge the censure entry from the service record of the petitioner along with consequential benefits.
- (ii) To quash and set aside order dated 03.07.2012, under which the full salary for the suspension period from 20.05.2012 to 01.06.2012 is payable to the petitioner but vide order dated 03.07.2012 only the subsistence allowance was paid to the petitioner (Annexure No. A-5, colly)

(iii) 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.”

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

In the year 2012, when the petitioner-Constable was posted at Police Station Rajpur, District Dehradun, he was deputed for picket duty in Kuthal Gate, P.S. Rajpur, District Dehradun on 20.05.2012 from 8:00 AM to 8:00 PM. He was found absent from his duty for a while. He was found doing obscene act with a woman in Aadat Bazar, near a tree, which is a public place. He was arrested by the Police officials of Police Chowki, Lakkhi Bagh and was brought to P.S. Kotwali, where an FIR being case crime no. 155/2, under Section 294 IPC was lodged against him.

A show cause notice was given to the petitioner with 'draft censure entry', which was replied to by him. His submission was that since a criminal case has also been instituted against him, therefore, departmental proceedings cannot be initiated on the basis of same allegations. The disciplinary authority was not satisfied with the explanation given by the petitioner. According to disciplinary authority/SSP, Dehradun, nature of proceedings in a criminal case and departmental proceedings are different, and, therefore, both can simultaneously go together. The petitioner was awarded 'censure entry' *vide* order dated 24.07.2012 (Copy: Annexure A-2) in terms of sub-rule (4) of Rule 4(1) (kh-a) of the Uttaranchal Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. Still aggrieved with the same, petitioner filed a revision before Additional Director General of Police, Administration, which also drew flak *vide* order dated 20.08.2013 (Copy: Annexure A-4).

Another order was passed to the effect that the petitioner was not entitled to additional wages, except the subsistence allowance etc., during suspension period (20.05.2012 to 01.06.2012), (Copy: Annexure A-5). Petitioner was reinstated on 02.06.2012 by SSP, Dehradun. The criminal trial, being criminal case no. 1381/2012 was decided in favour of the petitioner. He was exonerated of the allegations levelled against

him under Section 294 IPC by Ld. Chief Judicial Magistrate, Dehradun, *vide* order dated 08.02.2018, (Copy: Annexure A-1). Based on the aforesaid facts, the petitioner has filed present claim petition.

3. Ld. A.P.Os., at the very outset, defending the departmental action, 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.
4. A perusal of the order Annexure A-1 would indicate that since no evidence was offered against the accused-petitioner by the prosecution, therefore Trial Court was compelled to close the evidence, resulting in acquittal of the accused.
5. Ld. Counsel for the petitioner argued that the accused petitioner was exonerated of the allegations against him by the Ld. C.J.M. on 08.02.2018. A perusal of the order dated 08.02.2018 (Annexure: A-1) would indicate that Ld. C.J.M. arrived at such a conclusion on the basis of no evidence. Sufficient opportunities were given to the prosecution and Ld. C.J.M., after quoting a circular letter of Hon'ble High Court of Uttarakhand that cases which are more than five years old, should be decided quickly, closed prosecution evidence. The merits of the case were not touched. Even if the accused would have been acquitted, on merits, the same has no absolute bearing on disciplinary proceedings. The standard of proof in disciplinary proceedings and criminal case is different. Whereas it is preponderance of probability in departmental proceedings, it is proof beyond reasonable doubt in a criminal case.
6. So far as the position of law is concerned, it has been held by the Hon'ble Apex Court in **Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. and Another (1999)3 SCC 679**, that:

There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both

the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the kind of disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.

Conclusions which are deducible from various decisions of the Supreme Court (referred to in paras 14 to 22 of the judgment) on this point, are as follows: (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately; (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in criminal case against the delinquent employee is of a grave nature which involves complicated question of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case; (iii) Whether the nature of charge in a criminal case is grave and whether complicated question of fact and law are involved in that case, will depend upon the nature of the offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet; (iv) Factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay departmental proceedings but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed; (v) if the criminal case does not proceed or its disposal is being

unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with, so as to conclude them at an early date. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

7. Ld. Counsel for the petitioner also drew attention of this Court towards order dated 20.08.2013, passed by Addl. Director General of Police (Administration)(Annexure: A-4) to show that the delinquent-Police Constable was on night duty, whereas the alleged incident, under Section 294 IPC took place during day hours. Ld. Counsel for the petitioner reiterated the same argument that the petitioner was on night duty and the alleged incident took place during day hours, by pointing out the statement of the petitioner, during preliminary inquiry (inquiry report Annexure: A-7).
8. Ld. A.P.Os. replied that these are the statements of the petitioner and there is ample evidence to show that the petitioner-Constable was involved in an incident under Section 294 IPC, during day hours on 20.05.2005. The accused Constable was arrested on the spot. Ld. A.P.Os. have referred to the statements of Constable Naresh Chandra, Constable Pankaj Kumar, Constable Virendra Singh, HCP Sheesh Pal, S.I. Sushma Rawat, Constable Naveen Chandra, Constable Piyush Pant and HCP Jwala Prasad Gaur, during preliminary inquiry, to submit that the petitioner, while on duty hours, was involved in an incident under Section 294 IPC.. Ld. A.P.Os. further submitted that even if it be conceded, for the sake of arguments, that the petitioner- Constable was on duty in the night, even then it is impermissible for a public servant to do any obscene act in any public place, to the annoyance of others. This Court is inclined to accept such contention of Ld. A.P.Os. that it is not permissible for any public servant to do any obscene act in any public place, to the annoyance of others, even if he is not on duty. If he is on duty and does such an act, that aggravates the situation.
9. In the instant case, the petitioner has been held guilty, by giving cogent reasons, not only by the disciplinary authority, but by the

appellate as well as revisional authority, which does not call for any interference in the given set of the facts.

10. At this stage of dictation, Ld. Counsel for the petitioner submitted, on seeking instructions from his client, that petitioner is ready to forgo Relief No. ii, which relates to full salary of suspension period from 20.05.2012 to 01.06.2012 and prayed that petitioner's punishment may be converted in some minor punishment, in the interest of justice. Ld. A.P.Os. are not averse to the idea of converting 'censure entry' into 'other minor penalty' in the given facts of the case.
11. Considering 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 dated 24.07.2012 (Annexure No.A-2), appellate order dated 08.03.2013 (Annexure No. A-3) and revisional order dated 20.08.2013 (Annexure No. A-4) should be interfered, only to this extent, in the peculiar facts of the case.
12. 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.
13. 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.
14. 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'

15. Order accordingly.
16. The claim petition thus stands disposed of. No order as to costs

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: FEBRUARY 06, 2019*  
*DEHRADUN*

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