

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

CLAIM PETITION NO. 76/SB/2018

Sachin Kumar aged about 30 years s/o Shri Ram Kumar, Constable presently posted at Police Line, Dehradun

WITH

CLAIM PETITION NO. 77/SB/2018

Ankul Kumar aged about 36 years s/o Shri Raj Pal Singh, Constable presently posted at Thana Kotwali Garhi Cantt., Dehradun

.....Petitioners

vs.

1. State of Uttarakhand through Principal Secretary (Home), Civil Secretariat, Subhash Road, Dehradun.
2. Dy. Inspector General of Police, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun..

.....Respondents.

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

JUDGMENT

DATED: FEBRUARY 11 , 2019

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. By means of above noted claim petitions, petitioners seek following reliefs:

“(i) To issue an order or direction to quash the impugned orders dated 15.04.2010 (Annexures No. A-1, A-2 & A-3 to the claim petition) and appellate orders dated 22.08.2018 & 13.09.2018 (in both the files Annexure No. A-4).

(ii) To issue the order and direction to pay full salary for the suspension period from 14.12.2009 to 09.02.2010 and to quash and set aside the order passed in Annexure: A -3 about the effect of the suspension in salary increments, promotion, pension and leave etc.

(iii) To quash and set aside the order dated 15.04.2010 of annexure A-2 about the withholding of integrity.

(iv) Any other relief which this Hon’ble Court may deem fit and proper in the circumstances of the case.

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

3. Facts, which appear to be necessary, for proper adjudication of present claim petitions, are as follows.

On 21.11.2009, both the petitioners were posted as Constables in P.S. Vikas Nagar, District Dehradun. One Manjeet Singh Chawla applied for issuance of character certificate before the Magistrate concerned, who requested P.S. concerned to verify the antecedents of said Manjeet Chawla. Whereas, two criminal cases, one Criminal case No. 70/2002 under Section 60/72 of Excise Act and another Criminal Case No. 10/2008 under Section 34 of Police Act were registered against Manjeet Chawla, petitioner Constable Ankul Kumar gave a wrong report that no criminal case was pending against him. Constable Ankul Kumar handed over the report to co-petitioner Constable Sachin Kumar, who forwarded the same to Police Office, after appending forged signatures of Inspector, Kotwali, Vikas Nagar, without making an entry in the *Dak Register*. When Inspector, Kotwali, Vikas Nagar came to know of the same, he requested Police Office to return the same. Inspector, Kotwali, Vikas Nagar, thereafter, submitted correct report to the Police Office.

Show cause notices were given to the petitioners. They replied to the same. Inquiry officer was not satisfied with these replies and, therefore, he recommended three ‘punishments’ to the appointing

authority, holding them guilty of misconduct. The appointing authority/ SSP, Dehradun awarded three ‘punishments’ to the petitioners, *vide* order dated 15.04.2010. Petitioners preferred departmental appeals against the orders of appointing authority/ SSP, Dehradun in the year 2017. The appellate authority was not satisfied with the delay in filing the departmental appeals, and therefore, he, *vide* order dated 09.10.2017, dismissed those appeals, as time barred.

4. Petitioners, noted above, preferred claim petitions no. 11/SB/2018 & 12/SB/2018 before this Tribunal. Both the above noted claim petitions were decided *vide* order dated 10.05.2018 (copy: Annexure A-5), as under:

“13. As far as possible, nobody should be left remediless, unless he or she sleeps over his/ her rights. Peculiar fact of this case is that the Govt. itself has withdrawn from prosecution. The Govt. has expressed its’ disinclination to proceed further with the criminal case. Departmental appeal has not been decided on merits. It has been dislodged only on the ground of delay, which, in the peculiar facts of this case, seems to be pardonable. Withdrawal of criminal case gave a ray of hope to the petitioners and only then, it appears, they filed departmental appeals, although, high belatedly. This Court, considering the entire conspectus of facts, briefly narrated in the foregoing paragraphs of this judgment, deems it appropriate to relegate the matter to the appellate authority for deciding the departmental appeal of the petitioners, on merits, in accordance with law, purely in the interest of justice.

14. Order accordingly.

15. The impugned appellate order dated 12.10.2017 (Annexure: A 4) is set aside. Appellate authority is directed to decide the departmental appeals of the petitioners on merits, in accordance with law, at an earliest possible, but not later than ten weeks of presentation of certified copy of this order.”

5. Consequent upon such directions, petitioners filed departmental appeals, which were dismissed by the appellate authority, on merits, *vide* order dated 22.08.2018 and 13.09.2018 (Copies: Annexure A-4 in both

the files). Aggrieved against the same, the above noted claim petitions have been filed by the petitioners.

6. Police Constables, who were required to submit their reports, were supposed to go through the registers No. 4 and 8 before forwarding the same to Inspector, Kotwali, Vikas Nagar. Whereas, the explanation furnished by Constable Ankul Kumar is that, fellow Constable Sachin Kumar told him that Head Constable of P.S. concerned has seen the registers and no criminal case is pending against Manjeet Chawla, therefore, relying upon fellow Constable Sachin Kumar's statement, he appended a note that no criminal case is pending against Manjeet Chawla. According to petitioner Constable Ankul Kumar, he could not visualize that his fellow Constable Sachin Kumar was telling a lie. Fellow Constable Sachin Kumar, on the other hand, submitted that he was informed by Head Constable Sohan Veer that he has perused the registers No. 4 and 8 and no Criminal case was pending against Manjeet Chawla. Fellow Constable Sachin Kumar transmitted the same to petitioner Constable Ankul Kumar. In any way, the report was submitted to Police Office under the forged signature of Inspector, Kotwali, Vikas Nagar, without making an entry in the *Dak Register*.
7. Three 'punishments' were awarded by SSP/ appointing authority to the petitioners. These are- (i) censure entry (ii) withholding of integrity for the year 2009, and (iii) payment of only subsistence allowance during the period of suspension, which does not amount to 'break in service'.
8. It is submitted by Ld. Counsel for the petitioner that integrity of a person can, although, be withheld for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be withheld as a punishment. Ld. Counsel for the petitioner has placed reliance upon the decision rendered by Hon'ble Apex Court in Vijay Singh vs. State of U.P. and others 2012 (3) (RSJ) 620, para 8 and 11 of which are important in the context of elucidating present controversy and are reproduced herein below for convenience:-

“8. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose “any other” major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

11. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one.”

9. This Court finds substance in the aforesaid submission of Ld. Counsel for the petitioners. Integrity of a person can be withheld for sufficient reasons, at the time of filling up the Annual Confidential Report, but the statutory Rules do not provide that the same can be withheld as a punishment.
10. In so far as Annexure: A 3 is concerned, apprehension of Ld. Counsel for petitioners is that it may amount to ‘break in service’. But, on a closer scrutiny of the selfsame order, this Court finds that the order dated 15.04.2010 (Annexure: A 3) does not tantamount to ‘break in service’ to allay the apprehension of Ld. Counsel for the petitioners.
11. The interesting aspect of the claim petitions in hand is that, the Government has withdrawn from prosecution, *vide* G.O. dated 14.12.2016 (Annexure: A 6). This was done on the reports of Assistant Prosecuting Officer, District Magistrate and SSP, Dehradun. Not only that, Ld. C.J.M., Dehradun, was pleased to give consent for withdrawal from prosecution under Section 321 Cr.P.C. It may be noted here that when the report was forwarded by fellow Constable Sachin Kumar to

SSP Office, under the forged signature of Inspector In-charge, Kotwali, Vikas Nagar, an FIR was lodged against him being Case Crime No. 348/2009, State vs. Constable Sachin Kumar, under Sections 420, 468 and 181 IPC. The Government, then, *vide* order dated 14.12.2016 decided to withdraw from prosecution, which was permitted by Ld. C.J.M., Dehradun *vide* order dated 06.01.2017 (Annexure: A 5). When the Government itself has decided to withdraw from prosecution and Ld. Magistrate, having jurisdiction, has concurred with the same, it is the submission of Ld. Counsel for the petitioners that all the criminal charges against them have vanished. Ld. counsel for the petitioner drew analogy from a decision rendered by Hon'ble Apex Court in *Ayyub etc. vs. State of U.P.*, AIR 2002 SC 1192, to bring home the point that, withdrawal from prosecution, in the instant case was *bonafide*, there was no *malafide* in the same and the move, which was (initiated by the Government), was not based upon any ulterior motive to save the petitioners. Therefore, the orders passed in departmental proceedings, against the petitioners, are open to question. Ld. A.P.Os., on the other hand, submitted that 'standard of proof' in departmental proceedings and criminal cases is different. Whereas, it is 'preponderance of probability' in departmental proceedings, in criminal cases, it is 'proof beyond reasonable doubt'.

12. The question is – when the Government itself has withdrawn from prosecution, should departmental proceeding initiated against the petitioner, on this count, should be set aside or not ?
13. Ld. A.P.Os. submitted that the Government has decided to withdraw from prosecution only with respect to offences punishable under Sections 420, 468 and 181 IPC and not against the charges that petitioners have submitted false report without perusing registers No. 4 & 8.
14. At this stage , 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 petitioner. Considering the facts of the case, 'censure entry' should be

converted into 'other minor penalty', according to Ld. Counsel for the petitioners.

15. Ld. Counsel for the petitioners submitted that the petitioners do not wish to press relief no. ii, which is for seeking full salary for the suspension period (14.12.2009-09.02.2010) and ancillary relief. Ld. Counsel for the petitioners further submitted that liberty may be granted to the petitioners to file representation against withholding of integrity, which was done *vide* order dated 15.04.2010 (Annexure: A-2 in both the files).
16. 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, but were, however, not averse to the idea of converting 'censure entry' into 'other minor penalty' in the given facts of the case .
17. 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 15.04.2010 (Annexure No.A-1 in both the files), appellate orders dated 22.08.2018 & 13.09.2018 (Annexure No. A-4 in both the files) should be interfered, only to this extent, in the peculiar facts of the case.
18. 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.
19. 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.

20. 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'
21. The claim petitions are, accordingly, disposed of by granting liberty to the petitioners to seek appropriate remedy before appropriate forum, against withholding of their integrity, *vide* orders dated 15.04.2010 (Annexure: A-2), in accordance with law. Since the petitioners have been pursuing wrong remedy of departmental appeal, therefore, it is also provided that the delay in seeking remedy before appropriate forum shall not come in the way of appropriate authority in deciding the case of petitioners, on merits.
22. The claim petitions thus stand disposed of. No order as to costs

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: FEBRUARY 11 , 2019
DEHRADUN

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