

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

**CLAIM PETITION NO. 18/NB/SB/2018**

Rajendra Prasad S/o Late Sri Dev Ram, R/o Isai Nagar No. 1, Near Church,  
Lama Chaur, Haldwani, District Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumoun Division, Nainital.
4. Superintendent of Police, Almora.
5. Superintendent of Police, Udham Singh Nagar.

.....Respondents

Present: Sri Nadimuddin & Sri Asif Ali, Ld. Counsel  
for the petitioner.  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents.

**JUDGMENT**

**DATED: FEBRUARY 13, 2019**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. The petitioner has filed this petition for the following reliefs:

*"a) To issue an order or direction to quash the impugned orders dated 01.12.2017 and 28.05.2018 (Annexures no. A-1, A-2 and A-3 to the claim petition) and appellate orders dated 11.05.2018 (Annexure No. A-4 and A-5).*

- b) To quash and set aside the order dated 01.12.2017 of Annexure A-2 about the withholding of integrity.*
- c) Any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- d) To award the cost of the petition to the petitioner."*

2. Briefly stated, while working as Station Officer of Police Station, Lamgada district Almora, three show cause notices were issued to the petitioner as follows:-

- (i) Show cause notice stating that petitioner did not make deposit of mobile of the accused arrested in the midnight of 13/14 of August 2017.
- (ii) Show cause notice stating that the petitioner demanded money to release the vehicle and made conversation on phone with the relatives of accused person so arrested (in relation to this charge punishment of withholding of integrity was given) and,
- (iii) Show cause notice stating that the petitioner made effort to make inappropriate pressure through the public on his superiors for his posting.

3. The show cause notices (Annexures- 8, 9 and 10) were replied by the petitioner vide Annexures No. 11, 12, and 13. As per the petition, without considering the reply, to the show cause notice and without appreciating the real facts and circumstances and legal provisions, the respondents no. 4 passed the impugned punishment order dated 01.12.2017, recording censure entry in his character roll of 2017 and also withheld his integrity for the year 2017 (Annexures: 1 & 2) and, also passed the impugned punishment order dated 28.05.2018, recording censure entry in his Character Roll for the year 2018, for the charges of putting inappropriate pressure through public on his superior officer (Annexure: 3).

4. Two departmental appeals were also filed by the petitioner before the appellate authority, but his appeals were also dismissed.

5. By way of this petition, the petitioner challenged the punishment orders on the ground that the respondent authorities have violated the provisions of Article 14, 16, 19, 21 and 311 of the Constitution of India as well as principles of natural justice and also violated the provisions of Uttarakhand Police Act, 2007. Respondent No. 4 was having no jurisdiction to pass such punishment and withholding of integrity of a police officer of the rank of the petitioner, cannot be recorded by the officer of SSP Rank and also it is without jurisdiction, as this punishment is neither provided in the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 nor in Uttarakhand Police Act, 2007 and triple punishments for single cause of action was wrongly passed.

6. The petition has been opposed by the respondents on the ground that the order of censure entry and withholding of integrity were rightly passed by the respondent No. 4, after following due process of law. The petitioner was posted as SHO, Lamgada in district Almora and he was found negligent towards his duty. The petitioner has challenged the censure entry for the year 2017 and for the year 2018, which were based on different sets of facts and circumstances, arising out of the finding of the different inquiry and hence, claim petition has been moved in violation of the Rules of the Tribunal. The petitioner was posted in Almora and the inquiry was also conducted in district Almora and the S.S.P., Almora is the competent authority to punish the petitioner, as per the rules. The lawful show cause notices were issued to the petitioner, after completion of the inquiry; his reply was also duly considered and punishments were passed as per law. The petition has no merit and deserves to be dismissed.

7. The petitioner has also filed rejoinder affidavit, reiterating the same facts as have been mentioned in the petition.

8. We have heard both the sides and perused the record.

9. Against the petitioner, basically there were two sets of allegation; first is about the incident of the midnight of 13/14 August 2017 when as SHO, Lamgada, district Almora, during patrolling, he arrested some accused, transporting some illegal product in a truck. After the arrest, the accused made telephonic call with his relatives on his mobile phone and the petitioner was found guilty of the fact that as per Rules, after arrest of the accused, he was required to seize the mobile of the accused and after its seizure, deposition must be noted in the police record, failing which, he was found guilty of dereliction of duty, during the preliminary inquiry. Show cause notice was issued; his reply was considered and a censure entry was awarded in his character roll for the year 2017.

10. The court cannot go into the factual aspect of the matter and finds that in conducting the disciplinary proceeding, no procedural lapse was made. The petitioner was given proper opportunity of hearing after preliminary inquiry; his reply was duly considered and the punishment of censure entry was duly passed.

11. The second censure entry for the year 2018 was recorded vide order dated 28.05.2018 for the next year, regarding the allegation of putting inappropriate pressure through public agitation on his superior officers for reinstating him and giving him the charge of police station, Lamgada and such conduct of a public servant is not warranted in law. Although it was denied by the petitioner but during the inquiry, evidences were collected and after considering the same, show cause notice was issued. Reply of the petitioner was also considered and the order of punishment of censure entry for the year 2018 was passed. The court finds that this too was also done after following the due

procedure of law and no procedural lapse was made. Hence, this court finds no ground to interfere in this part.

12. The punishment order (Annexure: 2) was also passed for the first incident of 13/14 August 2017 (midnight), with the allegation that from the mobile of the accused, the petitioner made conversation with his relatives and there was some complaint against the petitioner that he demanded some money to release the seized vehicle. This allegation was upheld by the inquiry officer and the disciplinary authority also agrees with it, on the basis of the circumstantial evidence. Although show cause notice about this fact was replied by the petitioner, but disagreeing with the same and finding it insufficient, the petitioner was punished by withholding his integrity for the year 2017 vide order dated 01.12.2017 (Annexure: 2).

13. This has been challenged by the petitioner on the ground of double jeopardy, as well as on the ground that by way of punishment, **withholding of integrity in this manner**, is not warranted in law, because of the reasons that such punishment is nowhere prescribed in the Rules and the Uttarakhand Police Act, 2007

14. It is submitted by learned 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. Learned counsel for the petitioner has referred to the law laid down by the Hon'ble Apex Court in Vijay Singh vs. State of U.P. and others, (2012)5SCC, 242. Para 11, 14 and 15 of which are important in the context of elucidating present controversy and are reproduced herein below for convenience:-

*"11. 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.*

*"14. 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 (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010)10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors vs. Ananta Saha & Ors., (2011)5SCC 142.).*

*15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."*

15. The court finds substance in the argument of learned counsel for the petitioner that the integrity of the petitioner can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report, but the same cannot be awarded by way of punishment because this kinds of punishment is neither prescribed in the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, nor in the new Uttarakhand Police Act, 2007. The relevant provisions of which are quoted below:-

**Rule 4 of the Rules of 1991**

*"4. Punishment- (1) The following punishments may, for good and sufficient reasons and as hereafter provided, be imposed upon a Police Officer, namely—*

***(a) Major Penalties—***

- (i) Dismissal from service.*
- (ii) Removal from service.*
- (iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.*

**(b) Minor Penalties—**

- (i) Withholding of promotion.*
- (ii) Fine not exceeding one month's pay.*
- (iii) Withholding of increment, including stoppage at an efficiency bar.*
- (iv) Censure.*

**Section 23 of the Uttarakhand Police Act, 2007**

*“23(1) Disciplinary Penalties- An officer of the rank of Superintendent of Police or above may award any of the following punishments to a police officer or a rank for which he is the Appointing Authority-*

- (a) Reduction in Rank,*
- (b) Compulsory retirement,*
- (c) Removal from service,*
- (d) Dismissal,*
- (e) Reduction in salary,*
- (f) Withholding of increment, and*
- (g) Withholding of promotion.*

*(2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely-*

- (a) fine not exceeding one month's salary.*
- (b) reprimand or censure.*

*(3) A Deputy Superintendent of Police or any officer of equivalent rank may award the punishment of reprimand or censure to a Police Inspector or Sub-Inspector of Police or an officer below its rank.*

*(4) Any officer of and above the rank of Inspector may award minor punishments to Constables and Head Constables.*

*(5) Any punishment, mentioned in sub-section (1), (2) (3) or (4) above, awarded to an officer, will not affect his liability for prosecution for any criminal offence, committed by him in the same transaction, for which departmental action has led to the award of punishment to him for any transgression of departmental rules. ”*

16. Hence, the court is of the view that the impugned punishment order (Annexure: 2) passed by the respondents and dismissal of its appeal, are not as per law and needs to be corrected. Accordingly, the

petition deserves to be partly allowed to this extent and deserves to be dismissed for other reliefs.

**ORDER**

The claim petition is partly allowed. The impugned punishment order dated 01.12.2017 regarding withholding of integrity (Annexure: 2) and dismissal of its appeal (to the extent of this charge), are hereby set aside. The respondents are directed to make necessary correction in the service record of the petitioner, in this regard, within a period of four months from today.

For rest of the reliefs, regarding Annexures: 1 and 3, the petition is hereby dismissed.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: FEBRUARY 13, 2019*  
*NAINITAL*

KNP