

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

**CLAIM PETITION NO. 56/SB/2019**

Jawahar Lal, S/o Late Sri Dariyav Singh, aged about 56 years, S.H.O. in Uttarakhand Police, presently posted as S.H.O., Kirti Nagar, District Tehri Garhwal (Uttarakhand).

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Home , Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Inspector General of Police, (Garhwal Region) Uttarakhand, Dehradun..
3. Senior Superintendent of Police, Haridwar.

.....Respondents.

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

**JUDGMENT**

**DATED: JULY 24, 2019**

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

By means of present claim petition, petitioner seek following reliefs:

To quash and set aside order dated 13.08.2018 (Annexure: A-1) by which censure entry has been awarded by Respondent No.3 in the service record of the petitioner as well as appellate order dated 12.03.2019 (Annexure: A-2) by which appeal of the petitioner has been rejected by Respondent No.2, along with its effect and operation also.

- (i) To quash and set aside the suspension order dated 16.09.2017 (Annexure-A3).
- (ii) Any other relief, which the Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iii) To award cost of this petition to the petitioner.

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

On 16.09.2017, the petitioner was posted as Inspector In-Charge, Kotwali Manglore (District Haridwar). S.S.P., Haridwar did surprise inspection of P.S. Kotwali, Manglore in the night of 16.09.2017. One Mr. Shamim, S/o Nasim was named accused in case crime no. 411/2017 under Sections 147,148,342,504,506 IPC, at P.S. Kotwali Manglore. Allegedly, accused Shamim was kept in police lockup without making any entry in General Diary (G.D.). Another allegation against the petitioner was that a minor woman was permitted to sit inside the Police Station desk camera, in the midnight. The fact that the minor woman was present in P.S. concerned, was not recorded in any document.

A show cause notice with draft censure entry under Rule 14(2) of the Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 was sent to the petitioner on 31.05.2018. He was directed to submit his explanation within 7 days of receipt of the notice. The delinquent petitioner did not furnish any explanation to such show cause notice despite lapse of sufficient time. Disciplinary authority, therefore, thought it appropriate to proceed further and pass an order on 13.08.2018 directing 'censure entry' in the character roll of the delinquent petitioner. The order dated 13.08.2018, passed by SSP, Haridwar has been brought on record as Annexure: A 1.

Aggrieved against such order, the delinquent petitioner preferred an appeal to the appellate authority, who, *vide* order dated 12.03.2019 (Annexure: A 2) dismissed the appeal. Aggrieved against the same, present claim petition has been filed by the petitioner.

3. Ld. A.P.O., defending the action of the department, at the very outset, submitted that, the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and 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. Ld. Counsel for the petitioner drew attention of this Tribunal towards the report dated 05.05.2018 of Sri Swapn Kishore Singh ,

Dy.S.P., Roorkee, District Haridwar (Annexure: A 6 colly), showing that the inquiry officer did not find substance in the second allegation regarding minor woman, sitting inside the Police Station in the midnight, without entry in G.D. and submitted that the petitioner should be absolved of second allegation levelled against him. As has been stated above, it was also one of the insinuations against the delinquent petitioner that minor woman, who was victim in the criminal case, was found sitting inside Police Station desk camera, without any entry in G.D. or endorsement in any other Police record. The Tribunal finds substance in such argument of Ld. Counsel for the petitioner that since the delinquent has been exonerated of the second insinuation in P.E. and disciplinary authority has not recorded any reason for taking a contrary view, therefore, the second allegation against the delinquent is not found substantiated. Such portion of the 'censure entry' dated 13.08.2018 (Annexure: A 1), therefore, requires to be expunged. The prayer of the petitioner deserves to be allowed in respect of second insinuation.

5. First allegation against the delinquent petitioner is that the accused of case crime no. 411/2017 was kept in Police lockup without making any entry in G.D., which act of the delinquent is against law.
6. Petitioner was Inspector In-Charge, Kotwali Manglore, when SSP, Haridwar did surprise inspection of the P.S. concerned. Inspection was conducted on 16.09.2017 in the night. It is settled law of the land that if any accused is detained in Police lockup, such fact should be recorded in the G.D. of the P.S. concerned. Whereas G.D. is maintained for recording overall activities of a Police Station, case Diary is maintained in relation to a particular case. G.D. is maintained for the activities of entire P.S. It is obligatory on the Officer In-Charge of a P.S. to make entry of such fact in the G.D., before keeping any accused in the Police lockup. The delinquent petitioner, who was the Officer In-Charge of the P.S. concerned, did not do so. The other employees in the P.S., under the subordination of Officer In-Charge, are meant to assist such Officer In-Charge and abide by his instructions. If the Officer In-Charge himself could not do so, he ought to have caused the same to be done by any other Police officer subordinate to him. G.D. is usually scribed by an

official of the rank of Head Constable, normally known as Head Moherrir. When SSP, Haridwar inspected the P.S. concerned, he found that there was no such entry in G.D. and still, the accused Shamim was kept in Police lockup. The SSP recorded such fact and brought such shortcoming to the notice of the Officer In-Charge. Such an act of the Inspector In-Charge is inexcusable and unpardonable. A great sanctity is attached to the documents maintained by the Police Stations. G.D. is the most important document of any Police Station. By not recording the presence of accused Shamim in P.S. Kotwali, Manglore, the delinquent employee, who was Officer In-Charge of such P.S., has certainly committed misconduct.

7. Ld. Counsel for the petitioner submitted that presence of accused Shamim, S/o Naseem was recorded in the G.D. of Chowki Kasba, Manglore at Report No. 22 at 20:35 PM. Ld. Counsel for the petitioner drew the attention of this Court towards the statement of the petitioner recorded by Dy.S.P., Roorkee, District Haridwar to show that the accused was brought to Police lockup of Kotwali Manglore because he had security concerns. This Tribunal is unable to agree to such excuse of the petitioner, for the reason that when the SSP did the surprise inspection, accused Shamim was present in P.S. Kotwali Manglore. The observation of the SSP cannot be disbelieved. It appears that the delinquent Inspector In-Charge, directed his subordinate at Chowki Kasba, Manglore to make an entry in G.D. (of Chowki Kasba) regarding the presence of accused Shamim, who was arrested from Landhore Tiraha, Manglore. Even if there is an entry in G.D. of Chowki Kasba, the moot question is why the petitioner did not cause the presence of accused Shamim entered in the G.D. before sending him to lockup?
8. There cannot be any excuse that a Head Moherrir would not record shamim's presence at P.S. Kotwali Manglore in G.D. because of heavy rush of work.
9. There are two entries of item no. 52 of G.D. dated 16.09.2017. Both the extracts of G.D. have been brought on record along with C.A./W.S. as Annexure: R 1. Original entry of item no. 52 at 24:00 hrs shows change of *Gard*. Entry no. 51 relates to direction of the

investigating officer of Case Crime No. 413/17, at 23:58 hrs. In between there is another entry at Sl.No. 52, 23:59 hrs, showing arrival of accused Shamim of Case Crime No. 411/17. This G.D. entry appears to be in different handwriting and hurriedly scribed. It has been placed between Sl. No.51 and original Sl. No. 52. Since original item no. 52, 24:00 hrs, which is on different page, could not have been removed, therefore, the same serial number was injected in between, to repair the damage caused by the observation of SSP, Haridwar that accused Shamim was sent to Police lockup without making an entry in the G.D., which is the charge against the delinquent-petitioner. In such controversial G.D., accused Shamim was shown to be escorted by Constable Amit and Constable Dhvajveer Singh. When Sri Swapn Kishore Singh , Dy.S.P., Roorkee, District Haridwar, recorded their statements on 05.05.2018 (Annexure: A 6 *colly*), both of them denied having escorted accused Shamim from Kasba Chowki to P.S. Kotwali Manglore. The Tribunal has, therefore, no hesitation in coming to the conclusion that entry no. 52, 23:59 hrs is an afterthought. Even HCP Babu Khan, who was Head Moherrir at P.S. Kotwali and Constable Sabal Chand, gave the statement to Dy.S.P. Swapn Kishore Singh, that although accused Shamim was present on 16.09.2017 at P.S. Kotwali, Manglore, when SSP, Haridwar took surprise round of the P.S. concerned, but there was no entry of such accused in G.D. Head Moherrir, Babu Khan also informed the Dy.S.P., Roorkee that G.D. entry no. 52, 23:59 hrs was scribed subsequently. Constable Darshan of Chowki Kasba gave the statement that accused Shamim's presence was recorded at Chowki Kasba on the following day at the behest of petitioner and Head Moherrir Babu Khan. Constable Darshan did not see the accused at Chowki Kasba. Such statements revealed that the documents were subsequently cooked up in a bid to thwart the allegation against the petitioner that accused Shamim was sent to Police lockup without his presence being entered in G.D. This anomaly came to light when SSP, Haridwar conducted surprise inspection of P.S. concerned.

10. Para 295 of the Uttar Pradesh Police Regulations (as applicable to State of Uttarakhand) reads thus,

“the following matters must be recorded in G.D.

.....

.....

10. Arrests made at the P.S.

.....

.....

Likewise, it will also be appropriate to quote Para 296 of the Police Regulations herein below for convenience:

“Till the day, reports of all kinds must be entered immediately on the occurrence of events to which they refer. During the night reports of the following events must also be entered immediately.

(A) all offences and all events which require immediate action on the part of the Officer In-Charge.

(B) Arrival or Dispatch of prisoners, money and property.

(C) Testing and relief of Sentries when carried out by an officer under Paragraph 59.

11. Since it was a serious lapse on the part of the petitioner, therefore, his services were suspended on 16.09.2017 (Annexure: A3), which suspension order was revoked on 18.09.2017. He was also transferred to Anti Human Trafficking Cell, *vide* order dated 18.09.2017, (Annexure: A 5). It is settled law of the land that only on serious charges, a delinquent should be suspended and since the allegations against the petitioner were grave, therefore, S.S.P., Haridwar, committed no mistake in suspending services of the petitioner. This Tribunal, therefore, does not think fit to interfere in the suspension order, which is one of the prayers of the petitioner.
12. There is yet another aspect of the case. No reply to the show cause notice was given by the petitioner, which indirectly shows his admission. When this Tribunal inquired from Ld. Counsel for the petitioner as to whether the petitioner has taken such a plea before the inquiry officer, Ld. Counsel for the petitioner replied in the negative. Ironically such a plea is conspicuous by its absence in the memo of appeal before the appellate authority. Such plea, as expected, has come for the first time in the ‘grounds’ of present claim petition. It is true that a legal plea can be taken by anybody at any time, but such plea, in the present claim petition, seems to be an afterthought.
13. A Division Bench of Hon’ble High Court of Judicature at Allahabad held, in *Bhupendra Singh and others vs. State of U.P. and others*, (2007)(4) ESC 2360 (ALL)(DB), held that the provisions of Rule

4(1)(b)(iv) of the Rules of 1991 are valid and *intra vires*. Censure entry, therefore, can be awarded.

14. Here the petitioner has been awarded minor penalty in which the procedure prescribed, is as follows;

**Sub- rules (2 & 3 ) of Rule 5 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991**

“**Sub-rule (2)**— The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14.

**Sub-rule (3)**— the cases in which minor penalties mentioned in sub-rule (2) & (3) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in Rule 15.”

15. The next question would be, what are the minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4? The reply is as follows:

**(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.*

16. Most relevant question, from the point of view of present petitioner, would be— what is the procedure laid down in sub-rule (2) of Rule 14?

“**14(2)**- Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.”

17. The petitioner, in the instant case, has been awarded ‘censure entry’. A perusal of the files reveals that the procedure laid down in sub-rule (2) of Rule 14 has been adopted. Sub-rule has already been quoted

above. This Tribunal need not repeat the same. The petitioner was informed in writing of the action proposed to be taken against him and of the imputations of act of omission on which it was proposed to be taken, reasonable opportunity of making such representation, as he wished to make against the proposal, was given. What else was required to be done by the department, in such case? Due procedure has been followed.

18. The inquiry contemplated under the Police Regulations is in the nature of preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice, he or she should be in a position to see whether there is any truth in such imputation. The inquiry, is therefore, meant only for personal satisfaction of the Superintendent of Police to enable him or her to come to a decision as to whether the matter is to be dropped or whether any action is necessary. No punishment can be imposed as a result of inquiry itself. In the instant case, the appointing authority has not awarded punishment to the petitioner on the result of preliminary inquiries. On the basis of such preliminary investigation, the appointing authority, foreseeing that it is a case of minor punishment, followed the procedure laid down in sub-rule (2) of Rule 14, which has been quoted above.

19. The appointing authority, after informing the delinquent of the action proposed to be taken against him and of the imputations of acts or omission on which it is proposed to be taken and after giving him a reasonable opportunity of making such representation, as he wished to make against the proposal, passed the impugned order (Annexure: A 1). Thereafter, the appellate authority, after considering the contents of appeal, affirmed the view taken by the disciplinary authority and dismissed the appeal *vide* order Annexure: A2. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. There is no reference of preliminary inquiry in the same. There is, however, reference of the explanation furnished by the delinquent. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the orders directing



‘censure entry’ against the petitioner. The impugned orders, therefore, do not suffer from any infirmity.

20. There is no reference of ‘preliminary inquiry’ in sub-rule (2) of Rule 14 of the Rules of 1991. Such sub-rule only prescribes that minor punishments may be imposed after informing the Police Officer in writing, of the action proposed to be taken against him, and of the imputations of acts or omission, on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation, as he may wish to make against the proposal. Such preliminary inquiry is merely a fact finding inquiry. It is only meant for the satisfaction of the appointing authority, notwithstanding the fact that the delinquents were also involved in it. Preliminary inquiry, in the instant cases, has been used by the appointing authority only to derive satisfaction for giving show cause notices, which are in the nature of informing the delinquents of the action proposed to be taken, imputations of the acts or omission and giving them a reasonable opportunity of making representation. Preliminary inquiry has not been used in arriving at a finding. It is only a precursor to the action proposed to be taken.
21. The next question would be— what is the extent of Court’s power of judicial review on administrative action? This question has been replied in Para 24 of the decision of *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, which is, as follows:

“24.The decisions referred to hereinabove highlights clearly, the parameter of the Court’s power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are

sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.”

22. Sub-rules ( 1 & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 is important in the context of present claim petition. The said provision reads as below:

**“3(1) Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;**

**3(2) Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behavior and conduct which may be in force.”**

The word ‘devotion’, may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

23. This Tribunal, therefore does not find it to be a case of judicial review, in the absence of any material on record, to hold that formation of belief/ opinion by the appointing authority, as upheld by the appellate authority, suffers from *malafide* or there is anything, on record, to hold that there was procedural error resulting in manifest miscarriage of justice and violation of principles of natural justice. There were reasonable grounds before the authorities below to have arrived at such conclusion.
24. This Tribunal is of the view that due process of law has been followed while holding the delinquent guilty of misconduct. No legal infirmity has successfully been pointed in the same.
25. Any allegation against the delinquent Police official, may not be treated as true, but when such insinuation is fortified by some substance, on record, the court may draw an adverse inference against the

delinquent. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present case is adjudged from the aforesaid yardstick, this Tribunal finds no reason to interfere in the inference drawn by the Disciplinary Authority, as upheld by the Appellate Authority, in so far as the first insinuation is concerned. Misconduct on the second insinuation has not been found proved by the department itself (Copy: Annexure- A 6 *colly*).

26. This Tribunal, therefore, is unable to take a view different from what was taken by the appointing authority as upheld by the appellate authority. No interference is, therefore, called for in holding the petitioner guilty of misconduct on account of first charge.

27. In Para 4.31 of the claim petition, a plea has been taken that Respondent No.3 (SSP, Haridwar) was biased and prejudiced on the ground of his posting as In-Charge Anti Human Trafficking Cell. It has also been stated in Para 4.31 of the petition that Respondent No.3 was annoyed that the petitioner managed the posting without taking Respondent No.3 into confidence. The said allegation falls to the ground on the very pretext that the office order directing transfer of the petitioner to Anti Human Trafficking Cell was issued by none other than the Respondent No.3 himself (copy: Annexure-A5). When such an order of transfer was issued by Respondent No.3 himself, how can it be presumed that he was annoyed with the petitioner on the ground that he managed the posting without taking into confidence Respondent No.3?

28. Further, when SSP did surprise inspection of P.S. Kotwali Manglore, he was not informed by the petitioner or any other Police personnel that presence of accused Shamim has been recorded in the G.D. of Chowki Kasba. SSP, conducted surprise inspection on 16.09.2017 at 23:45 hrs.

29. The net result would be that whereas the first insinuation against the delinquent petitioner is substantiated and does not warrant any interference, the second insinuation relating to the presence of minor

woman in 1090 desk room of P.S. concerned, without entering the said fact in G.D., is itself disproved by the inquiry officer in his preliminary inquiry report dated 05.05.2018. Preliminary inquiry is used by the disciplinary authority to satisfy himself/ or herself whether to proceed against the delinquent with departmental action or not? Otherwise, said P.E. has no relevance. In the instant case, the disciplinary authority, while passing the impugned order, which became the foundation for the appellate authority in appeal, has although used P.E. for initiating departmental action against the delinquent, but has not said a word on the second insinuation, expressing his disagreement which stood disapproved in preliminary inquiry. Such part of the 'censure entry' would, therefore, require expunction from the character roll of the petitioner.

30. The Claim Petition is partly dismissed and partly allowed. Whereas first part of the 'censure entry' in petitioner's character roll is affirmed, the second part, which relates to presence of a minor woman in 1090 desk room of the P.S. concerned without recording the said fact, is set aside. No order as to costs.

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

*DATE: JULY 24, 2019*  
*DEHRADUN*

*VM*

