

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

CLAIM PETITION NO. 60/SB/2019

Smt. Geeta Chaudhary, W/o Sri Narendra Chaudhary, aged about 37 years,
Sub Inspector in Uttarakhand Police, presently posted as Sub Inspector,
Thana Raiwala, Dehradun.

.....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 seeks, *inter alia*, the following principal reliefs:

- “(i) To quash and set aside the impugned order dated 06.06.2018 (Annexure-A1) by which censure entry has been awarded by the respondent no.3 in the service record of the petitioner.
- (ii) To quash and set aside the appellate order dated 17.01.2019, (Annexure- A-2) passed by the respondent no.2, with all consequential benefits.”

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

Petitioner was posted as Sub Inspector at P.S. Kankhal, District Haridwar in the year 2017. Investigation of Case Crime No. 278/2017 under Sections 498 A/323/504/506 IPC and 3/4 Dowry Prohibition Act, P.S. Kankhal, was entrusted to the petitioner on 29.10.2017. Allegedly, case diaries were sent late by the petitioner/investigating-officer to the supervisory officer, who brought such inaction on the part of the petitioner by letters dated 15.11.2017 and 05.12.2017. An explanation was called for by the supervisory officer from the petitioner on 30.01.2018, but despite the same, extracts of case diaries were not sent to such supervisory officer.

A show cause notice, enclosing draft censure entry was sent to the petitioner on 14.05.2018 under Rule 14(2) of the Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, Rules of 1991). The delinquent petitioner was directed to furnish explanation within seven days of receipt of the notice, which was served upon her on 19.05.2018. She furnished explanation on 20.05.2018. Disciplinary authority was not satisfied with such explanation. As a consequence thereof, 'censure entry' was awarded to her, which was to be placed in her character roll, *vide* order dated 14.05.2018 (Annexure: A 1).

Aggrieved against the same, the delinquent petitioner preferred an appeal to the appellate authority, who, *vide* order dated 17.01.2019 (copy Annexure: A 2) dismissed such appeal. Delinquent petitioner has challenged the aforesaid two orders in present claim petition.

4. C.A./W.S. has been filed on behalf of respondents. It is stated that the extracts of case diary were not submitted by the petitioner to her superior on time. She made entries in the case diary on 29.10.2017, 30.10.2017, 12.11.2017 and 29.12.2017, but did not send the same on time. As per her version, petitioner-investigating officer went to the house of the accused persons. One Smt. Shashi met the petitioner, who informed her that they have settled the dispute amicably. Her superior directed her to submit reports on 15.11.2017, 05.12.2017 and

30.01.2018, but to no avail. Inaction was writ large on the face of it and, therefore, minor penalty was awarded to the petitioner. Documents have been filed by the department in support of the averments contained in C.A./W.S.

5. 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.

6. Ld. Counsel for the petitioner drew the attention of this Tribunal on the statement of the petitioner, which was recorded by Assistant Superintendent of Police/ C.O. Sadar, Haridwar (copy Annexure: A 4), which inquiry report has been submitted to S.S.P., Haridwar in May, 2018. In this report, the statement of delinquent has been recorded, which, in brief, is as follows:

While she was posted in P.S. Pathri, District Haridwar, she deposed that she was posted at P.S. Kankhal on 28.10.2017. One Smt. Sheetal lodged an FIR, case crime No. 278/2017 under Sections 498 A/323/504/506 IPC and Section 3/4 of Dowry Prohibition Act against Gaurav and five others. The investigation was entrusted to her. She reproduced copy of such FIR, etc. in case diary on 20.10.2017. On 30.10.2017, she wrote about counseling in *Mahila Help Line*. On 12.11.2017, she recorded the statement of the complainant. Thereafter, she proceeded on child care leave for one month. After availing such leave, on 29.12.2017, she recorded the statement of the victim, the mother of victim and one Smt. Komal. She summoned the accused persons to give their statements in the Police Station, but they (accused persons) did not respond. The accused persons were also not found at their residence. In the meanwhile, the complainant was insisting, by repeatedly coming to the Police Station, that strict legal action should be taken against the accused persons. She also met SSP, Haridwar. On 07.02.2018, she along with another Sub Inspector Arjun Kumar went to the house of the accused persons, where, Smt. Shashi, Mother of the accused Gaurav, informed her that the dispute has been settled amicably. The investigation was, thereafter, transferred to Sub Inspector Arjun Kumar.

[The above is not the transliteration of the statement of the delinquent. It only conveys substance.]

7. The allegation against the petitioner is that she was negligent in conducting investigation and also that she did not furnish requisite documents to her superior officer on time, despite reminders. Her superior officer sought explanation from her, without yielding any result.
8. A prudent reasonable person cannot defend the inaction on the part of the petitioner, in not sending information to the superior Police Officer regarding progress of the investigation of the case on time. It is culled out, on the basis of the facts brought on record, that although the petitioner conducted the investigation at some length, in piecemeal, but it was her duty to have sent the information to her senior Police Officer, well in time, which was not done. Even if she scribed extracts of certain number of case diary, but , she should have apprised the superior Police Officer with the progress of the case from time to time, which was not done, despite explanation sought for by her superior officer. When show cause notice was given to her, the disciplinary authority was not satisfied with the reply furnished by the delinquent. She preferred departmental appeal, which was dismissed citing cogent reasons. The disciplinary authority as well as appellate authority were right in taking their respective decisions. Now she has filed present claim petition, which is devoid of merits. No one can infer, in the given facts of the case, that she was not negligent in informing progress of the investigation to her superior.
9. The petitioner was awarded 'censure entry' in her character roll, which comes under the category of minor penalty. The Rules provide that such punishment may be imposed after informing the Police Officer in writing of the action proposed to be taken against her and reasonable opportunity of making a representation to the charged officer, against such proposal of punishment. In the case in hand, a show cause notice was issued to the petitioner, pursuant to which, she furnished explanation on 20.05.2018, as her reply in defence. There is no perversity and illegality in the orders impugned.

10. Ld. Counsel for the petitioner, at this stage of dictation, tendered apology on behalf of petitioner and referred to G.O. No. 4235/XX(3)-37/Police-04/2000, dated 15.09.2006, which stipulates that the job of higher officers is not only to give punishment but also to make sincere efforts to improve the working of their subordinates. Since, future of an employee, largely depends upon entries made in the character roll, therefore, the punishment should be awarded only after giving a careful thought.
- 11.. Ld. Counsel for the petitioner further submitted that there was no *mala fide* on the part of the petitioner in not sending the information, regarding progress of the investigation, to the superior Police Officer. It is submitted that the petitioner although conducted the investigation in all sincerity, but could not dispatch such information to such Police Officer.
12. This Tribunal is of the view that once she was handed over the investigation, it was her duty to send periodic reports to her superior Police Officer regarding progress of the investigation. She was legally duty bound to do so. At the same time, taking cognizance of the ‘regret’ expressed on her behalf by Ld. counsel , the Court feels that the ability to say ‘sorry’ is an attribute of the strong, it is the weak that tend to be defensive
13. Although the petitioner did not report the progress of the investigation to her superior Police Officer, which appears to be unpardonable, but, at the same time, the fact remains that this is the first mistake committed by her. Her explanation has been recorded in Annexure A 4, a brief reference of which has been given by this Tribunal in one of the foregoing paragraphs (Para 6) of this judgment. The investigation was handed over to her on 29.10.2017. She scribed progress of the investigation in three extracts of case diary and, thereafter, proceeded on one month’s child care leave. After returning from child care leave, she conducted the investigation at some length. She should have been punctual, not only in conducting the investigation but also submitting the desired information to her superior police

officer, which she did not do. It is on this account only that she has rightly been found negligent in her duties.

14. There is difference between 'technical justice' and 'substantial justice'. The primary function of the Court is to adjudicate dispute between the parties and to advance substantial justice. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of non deliberate act. It has been observed by Hon'ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others*, AIR 1987 SCC 107, although in different context, that "it must be grasped that judiciary is respected not on account of its' power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so." Again, in *State of Nagaland vs. Lipok Ao and others*, (2005) 3 SCC 752, albeit in a different backdrop, the Hon'ble Apex Court was pleased to observe that "a pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other, the former has to be preferred."
15. **The magnitude of her negligence is not so grave, as to deprive her of her valuable rights, which are the civil consequences of 'censure entry'. The minimum minor penalty, which has been awarded to the petitioner, should, therefore, be mitigated further by the Court, in the ends of justice.**
16. Although Ld. A.P.O. argued that 'warning' is not punishment, but the question which arises for consideration is- is it necessary to impose the punishment prescribed in the rules in each and every case? In normal circumstances, the Court should strictly adhere to the rules, unless it feels necessary, in special circumstances, to mellow down the rigour of the rule. This is one of those cases, in which, the Court feels that, instead of maintaining "Censure Entry", warning should suffice to the petitioner. This Tribunal is of the opinion that 'warning' should be sufficient to meet the ends of justice, in the peculiar facts of the case.

17. This Court is, therefore, of the opinion that the ‘censure entry’ should make way for ‘warning’ to the petitioner. In other words, censure entry should be diluted and the petitioner should be ‘warned to be careful in future’.
18. Order accordingly.
19. While finding of ‘misconduct’ arrived at by the disciplinary authority, as affirmed by the appellate authority, is maintained, this Court finds cogent reasons, in the peculiar facts of the case, to substitute the minor punishment of ‘censure entry’ awarded to the petitioner, with ‘warning’. ‘Censure entry’ is, accordingly, substituted with ‘warned to be careful in future’.
20. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 24, 2019
DEHRADUN

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