

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

**CLAIM PETITION NO. 68/SB/2019**

WITH

**CLAIM PETITION NO. 69/SB/2019**

Neeraj Kumar, S/o Sri Dhujister Bhan, Sub Inspector, Uttarakhand Police,  
Presently posted at Police Lines, District 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. Superintendent of Police, Tehri Garhwal

.....Respondents.

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

**JUDGMENT**

**DATED: JULY 29, 2019**

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

Since the incident giving rise to 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 claim petition no. 68/SB/2019, petitioner seeks following reliefs:

“(i) To quash the impugned order dated 06.02.2015 (Annexure-A1) by which censure entry has been awarded by the respondent no.3 in the service record of the petitioner as well as appellate order dated

20.01.2016 (Annexure- A 2) by which appeals of the petitioner have also been rejected by the respondent no.2 along with its effect and operation.

(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.”

3. By means of claims petition no. 69/SB/2019, petitioner seeks following reliefs:

“(i) To quash the impugned order dated 06.02.2015 (Annexure-A1) by which censure entry has been awarded by the respondent no.3 in the service record of the petitioner as well as appellate order dated 15.01.2016 (Annexure- A 2) by which appeals of the petitioner have also been rejected by the respondent no.2 along with its effect and operation.

(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.”

4. Facts, giving rise to claim petition no. 68/SB/2019, are as follows:

When the petitioner was posted at P.S.Kotwali, District Dehradun, an FIR was lodged against him by private individual. A case Crime No.195/14 under Sections 420/406 IPC and Section 13(1) d read with 13(2) Prevention of Corruption Act was instituted against him. It was being investigated by C.O.City-1<sup>st</sup>, Dehradun. On 10.08.2014, petitioner was called for inquiry. He was also called on the following date for recording his evidence, but he did not. He submitted medical certificate showing that he was unable to be present for recording the evidence. He was again called for evidence on 30.08.2014, but again he submitted his medical certificate expressing inability to depose. Show cause notice (Copy: Annexure- A 3) was sent to him on 16.08.2014. Copy of preliminary inquiry report dated 26.09.2014 (Annexure-A 4) was sent to him along with such show cause notice. The insinuation against him was that he remained absent, on stated health ground, for recording his evidence. Petitioner submitted explanation to the show cause notice on 20.11.2014. The disciplinary authority was not satisfied with such explanation. As a consequence thereof, he was awarded ‘censure entry’ *vide* order dated 06.02.2015 (Copy: Annexure- A1). Aggrieved against the same, the petitioner preferred departmental appeal, without meeting

any success. Copy of appellate authority's order dated 20.01.2016 has been brought on record as Annexure- A 2. Feeling aggrieved against both the orders i.e., impugned punishment order as well as appellate order, claim petition no. 68/SB/2019 has been filed by the petitioner.

Basic facts, giving rise to claim petition no. 69/SB/2019, are the same as that of claim petition no. 68/SB/2019. The foundation is the same. Only the insinuations are different. Whereas insinuation against the petitioner in claim petition no. 68/SB/19 is that he remained absent, on stated health ground, for recording his evidence, the insinuation against the petitioner giving rise to claim petition no. 69/SB/19 is that he did not inform his S.O. or S.P. of the District while going for medical checkup, which was in violation of Para 382 of the Police Regulations. He proceeded to obtain medical certificate without appending his signatures in G.D. on 12.08.2014 and 16.06.2014. Neither did he inform his S.O. or S.P. of the District that he was going for medical checkup. He obtained medical certificates thereafter. Copy of show cause notice dated 28.10.2014 is Annexure: A 3, reply dated 20.11.2014 of the petitioner to such show cause notice is Annexure : A 4, disciplinary authority's order dated 06.02.2015 is Annexure: A 1 and appellate authority's order dated 15.01.2016 has been brought on record as Annexure: A 2.

The insinuation, in a nutshell, against the petitioner is that he was called for his statement by the investigating officer on 10.08.2014 in case Crime No.195/14 under Sections 420/406 IPC and Section 13(1) d read with 13(2) Prevention of Corruption Act, at P.S. Kotwali, Dehradun, but he did not appear on the said date. He was again called for statement on 11.08.2014. He appeared, but did not complete his statement expressing inability to depose before investigating officer citing health ground. He was again called for giving his statement before C.O. City, Dehradun, on 20.08.2014, but again the petitioner expressed his inability to give statement under Section 161 Cr.P.C., citing health reasons. Another insinuation against the petitioner is that despite having got the medical certificate prepared from the district of his posting, i.e., District Theri Garhwal, no such information was given to his S.O. or Police Chief of that district which is in violation of Para

382 of Police Regulations. When he did not cooperate in the investigation, matter was reported to higher Police Officers. When the inquiry of such matter was entrusted to C.O., Tehri, then also the delinquent petitioner did not cooperate in the investigation, by again citing health reasons. The petitioner did not behave in the manner a member of disciplined Police force ought to have conducted himself. He was, therefore, awarded with 'censure entry' on each one of two counts.

5. The averments contained in claim petitions have been largely, contradicted in C.As./W.Ss., filed on behalf of respondents. In Para 3 of the C.A. filed by Dr. Yogendra Singh Rawat, S.S.P., Tehri Garhwal, the facts, justifying departmental action, have been reiterated. A reference of Para 382 of the Police Regulations has been given in the C.A. which will be discussed at an appropriate stage in the judgment.
6. The details of defiance committed by the delinquent- petitioner have been given in Para 3 of the C.A... The sum and substance of C.A. filed by S.S.P., Tehri Garhwal, is that when Constable went to the petitioner to affect the notice for giving statement on 07.08.2014, he refused to accept such notice. He did not appear before the investigating officer either. He was informed, on telephone, to record his statement before Superintendent of Police, Rural, but he did not appear. The application of the petitioner for seeking casual leave of 12.08.2014 was rejected. He returned to P.S. Chamba on 12.08.2014, got his health checked up at P.H.C. Chamba at 10:30 AM and returned to P.S. Chamba on the selfsame day at 12:30 PM. He did not append his signature in G.D. Again, he went to Boradi for his health check up on 16.08.2014 at 11:40 AM and returned at 4:30 PM. Although, he submitted his certificate for medical rest for two days, but neither informed to S.O. Chamba nor his senior Police Officers that he was going for medical checkup, which is in violation of Para 382 of the Police Regulations.
7. After the show cause notice was served along with draft censure entry under Rule 14(2) of the Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 and considering reply of the

petitioner, he was awarded ‘censure entry’ on both the counts, which are under challenge in present claim petitions.

8. 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.
9. 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.
10. 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.”

11. 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.*

12. 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.”**

13. 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.

14. 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.

15. 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.
16. The petitioner has challenged in claim petition No.68/SB/2019 and claim petition no. 69/SB/2019 two different orders dated 06.02.2015 (Annexure-A1 in both the claim petitions) and appellate orders of January, 2015 ((Annexure-A2 in both the claim petitions). Punishment order relating to claim petition No. 68/SB/2019 relates to the insinuation against the delinquent petitioner that he did not cooperate in the investigation of case Crime No.195/14 under Sections 420/406 IPC and Section 13(1) d read with 13(2) Prevention of Corruption Act and punishment order relating to claim petition No. 69/SB/2019 is with regard to violation of Para 382 of the Police Regulations. Both the petitions are intrinsically connected with each other and, therefore, both the claim petitions are being discussed and taken up together. In other words, there are two offshoots of misconduct committed by the delinquent Constable. One relates to non cooperation in the investigation of a corruption case instituted against him. The allegation in the FIR was that he took mobile phone from a shopkeeper, but did not pay it's price. On repeated request of the shopkeeper, the accused petitioner paid Rs.20,000/- but still did not pay balance of Rs.12,000/-, and therefore, the shopkeeper of the same locality of which the petitioner was Chowki

In-Charge, was compelled to lodge an FIR of corruption against the petitioner. The petitioner approached Hon'ble High Court in criminal writ petition. The documentary evidence suggest that out-of-Court settlement took place between the complainant and the accused. The offences punishable under Sections 420/406 IPC were although compounded, but the offence punishable under Section 13(1) d read with 13(2) Prevention of Corruption Act was not. Since the complainant of the FIR was not interested in pursuing the matter, therefore, the investigating officer submitted final report and that is how the petitioner got rid of that private corruption case. It appears that he was interested in ensuring that out-of-Court settlement takes place first and only then he will give his statement under Section 161 Cr.P.C. Therefore, the first insinuation that the delinquent petitioner did not cooperate in the investigation of the criminal case, stood proved. Repeatedly he was called for giving his statement under Section 161 Cr.P.C., and on every occasion he defied such instructions. The investigating officer had, although, another option before him to affect arrest of the accused-petitioner, but he did not do so. Every citizen of India, much less an accused of a criminal case, owes a duty to cooperate in the investigation. The petitioner, a Police official himself, who was an accused in a corruption case, owed a duty to go before investigating officer and give his statement under Section 161 Cr.P.C. He did not do so. Further, on every occasion, when he went for medical checkup to obtain medical certificate, neither did he inform his S.O. nor the Police Chief of the District, where he was serving. Such defiance was in violation of Para 382 of the Police Regulations. It will be appropriate to quote Paras 380, 381 and 382 of the Police Regulations herein below for convenience:

“380- The hospital establishment is under control of the Medical Department and the Superintendent of Police has no powers in connection with the appointment, leave, promotion, punishment and dismissal of the hospital staff. He may, however, make representation in these matters to the Civil Surgeon or through the Inspector-General of Police to the Inspector-General of Civil Hospitals.

The pay of the establishment, except that of the medical officer-in-charge, is drawn and disbursed through the Police accountant.

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The Superintendent of Police must purchase out of the separate contract head and bazaar medicines required by the Civil Surgeon.



While under treatment, no police officer may leave hospital on any pretext except by express permission of the Civil Surgeon or officer in medical charge of the police. Absence from hospital without leave should be dealt with as a breach of discipline. Form Nos. 73, 74, 77, 82 and 302 should be used for patients under treatment.

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A hospital admittance register must be maintained in three sections, each numbered serially for-

- (1) All armed police, with a sub-section for mounted police;
- (2) All civil police of the district treated at the headquarters police hospital;
- (3) Government railway police, men of other districts, orderly, peons, and any others not included in (1) and (2).

**381- It is incumbent on all applicants for medical leave or extension of leave on medical certificates to apprise the Superintendent of Police in writing of their intention to apply for a medical certificate. Any failure to do so may result in a decision that the medical certificate has been obtained by misrepresentation and may thereby entail serious consequences.**

**382- Under-officers and constables who fall ill when on duty or who are ill when due to return to duty, must apply for admission to the district police hospital or for treatment at the nearest dispensary, if the police hospital is out of easy reach. The fact of their admission or treatment must be reported to the local Superintendent of Police who unless they are his own subordinates will take immediate steps to communicate the fact to the Superintendent of Police whose subordinates they are. Officers of higher rank are not compelled to apply for admission to police hospitals, but are not relieved of the responsibility, while on leave of intimating their intention of the obtaining medical certificate to the Superintendent of Police as prescribed above."**

17. There was clear violation of Paras 381 and 382 of the Police Regulations by the delinquent-petitioner. The facts speak for themselves (Res ipsa loquitur).
18. When everything was evident on record, this Tribunal feels that an appropriate decision was taken by the disciplinary authority, which decision has been affirmed by the appellate authority. For every inaction/disobedience/ misconduct, petitioner alone is responsible. Only he could have saved himself from embarrassment, which he faced leading to such consequences, which have been unsuccessfully put to challenge in present claim petitions.
19. 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, 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.”

20. Sub-rules ( 1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 are important in the context of present claim petitions. The said provisions read 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.

21. 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.
22. 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.
23. 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.
24. 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 the same.
25. The claim petitions, are accordingly, dismissed. No order as to costs.

(JUSTICE U.C.DHYANI)  
CHAIRMAN

DATE: JULY 29, 2019  
DEHRADUN

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