

**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. 13/NB/SB/2018

Constable 164 CP Vinod (Male), aged about 33 years, S/o Sri Dharmdev Yadav, Presently posted at Police Station Kotwali, Pithoragarh, District Pithoragarh.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Department of Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarkhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Garhwal Range, Tehri.
4. Senior Superintendent of Police, District Haridwar.
5. Superintendent of Police, District Pithoragarh.

.....Respondents

Present: Sri Vinay Kumar, Ld. Counsel
for the petitioner
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents.

JUDGMENT

DATED: JULY 09, 2019

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

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

“(i) To quash the impugned punishment order dated 2nd December 2015 passed by the Senior Superintendent of Police, Haridwar; whereby the petitioner has been awarded censure entry (Annexure No. 1).

- (ii) To quash the impugned Appellate Order dated 8th August 2016 passed by the Inspector General of Police, Garhwal Range, Pauri whereby the Departmental Appeal filed by the claimant has been rejected and thereby affirmed the Punishment Order dated 2nd December 2015 passed by the Senior Superintendent of Police, Haridwar (Annexure No. 2).*
- (iii) To issue directions in the nature of mandamus commanding the directing the respondents to grant all consequential benefits.*
- (iv) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. As per facts of the petition, petitioner was awarded a punishment of censure entry, on the allegation that he participated in 'Mission Akrosh' by actively forwarding the message in social media and thereby tarnished the image of the police in the public at large.

3. The petitioner has contended that he was not granted an opportunity to explain the show cause notice and when he sought documents from the respondents for submitting his reply, the same were not provided to him and the application of the petitioner for extension of time for submitting reply, was never decided by the disciplinary authority nor he was given extension of time. It is also contended that the disciplinary authority, who was required to discharge his quasi-judicial function, did not deal with the matter, as per the law; the appellate authority also dismissed the appeal in a cryptic manner and failed to discharge his obligation under the rules; the specific contention raised by the petitioner in the grounds of appeal, were not duly considered. The inquiry officer who never taken into possession of the mobile phone of the petitioner, has based his finding on the fact that the messages were sent by the mobile phone of the petitioner while the messages were not collected from the phone of the petitioner hence, there was no evidence available with the inquiry officer to come to this conclusion. Furthermore, the

proceedings were started against 27 police constables who were found involved in the 'Mission Akrosh', but most of them, were issued warning whereas, the petitioner has been treated discriminately and the punishment of censure entry was awarded to him hence, this petition.

4. The petition was opposed by the respondents with the contention that the petitioner while posted in District Haridwar, actively participated in the 'Mission Akrosh' campaign and forwarded the whatsapp messages in the social media against the department and lowered down the image of the department. An inquiry was conducted in this respect against the petitioner and some other police personnels, who were also found guilty. The petitioner was given an opportunity to show cause, but inspite of due opportunity given to him, he never submitted his reply. He was given sufficient time and all the documents were furnished to him under RTI Act, but he failed to submit his explanation. His appeal was also duly considered by the appellate authority and the same was dismissed as per law. No procedural irregularity was conducted, either in the inquiry or in the proceedings while awarding him the punishment. Consequently, he was punished as per law and the petition deserves to be dismissed

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

6. Considering the circumstances of the matter and the affidavit of the petitioner, the delay condonation application filed by the petitioner is allowed. The delay is condoned and the petition is treated as within time.

7. The charge against the petitioner was that he participated in 'Mission Akrosh' by actively forwarding the messages in the social media and thereby badly affected the image of the police in the public at large. About this allegation, an inquiry was conducted by the Deputy S.P., Laksar and along with some other Constables, i.e. Deepak Gaur and Krishna Kumar Bhardwaj, the petitioner was also held guilty of

such misconduct. A show cause notice was issued to the petitioner on 09.09.2015 which was served upon him during his posting at Pithoragarh. After taking permission from the S.S.P., Pithoragarh, petitioner, without submitting his reply to the notice, moved an application before the S.S.P., Haridwar on 11.10.2015 with the request that he be given 30 days additional time to submit his reply to the show cause notice and also requested for some records. Learned A.P.O. on behalf of the respondents has submitted that the records were made available to him in reply to his inquiry, under RTI Act on 15.10.2015, but reply was never submitted and there is no case of the petitioner that he ever submitted his reply to the show cause notice.

8. The petitioner has raised the objection that he was not given sufficient opportunity to submit his reply to the show cause notice and his application for extension of time was not decided and disposed of. Learned A.P.O. on behalf of the respondents has contended that the disciplinary authority, was awaiting for his reply, not only for 30 days additional time asked by the petitioner, but he was given more than 50 days time for this purpose and the punishment order was passed on 02.12.2015, hence, he was given sufficient time and opportunity for submitting his reply.

9. This court finds that even if any specific order was not passed by the disciplinary authority on the application of the petitioner for requesting additional time for submitting reply, even then, the disciplinary authority deferred any order against the petitioner for a period of more than 50 days. By his application dated 12.10.2015, the petitioner sought only 30 days time whereas, he was allowed more than 50 days time and disciplinary authority awaiting for his reply till 02.12.2015, ultimately passed the order of punishment after recording this finding that till the date of the order of punishment, no reply to the show cause notice has been submitted. None prohibited the petitioner to submit his reply in between. Even if, the order, to grant

additional time, was not passed, but the petitioner was having sufficient opportunity to submit his reply before the authority in that time. Hence, the court finds that the disciplinary authority, awaiting for his reply for more than 50 days, had given sufficient opportunity of hearing to the petitioner. The petitioner cannot take this plea that, as by a specific order, he was not allowed such time so he was not given opportunity. He could have filed his reply within the additional 50 days time allowed to him, before passing the order of punishment and if any such reply had not been considered, then he might be allowed to put such argument, but in the circumstances of the case, the petitioner's contention cannot be accepted and this court finds that sufficient opportunity was given to him to file reply, to which he did not avail and there is no procedural lacuna in disposing the matter.

10. On merits of the conclusion drawn by the inquiry officer, this court cannot go into the subjective satisfaction of the disciplinary authority. We are of the view that there was no procedural irregularity or lapse on the part of the respondents. The statements of the petitioner as well as other concerned persons were recorded and considering the evidence on record, the conclusion drawn by the inquiry officer and concurred by the disciplinary authority, cannot be looked into by this Court on facts now. Hence, petitioner's contention cannot be accepted in this respect.

11. The petitioner has raised a plea of discrimination in awarding the punishment. It has been argued that 27 persons were held guilty for the same misconduct, but most of them, were awarded a simple warning, whereas, petitioner was treated differently and a censure entry was awarded to him. Learned A.P.O. on behalf of the respondents argued that other persons submitted their reply to the show cause notice and asked for pardon on their part, whereas, petitioner had not submitted any reply so he was awarded this

punishment. Learned counsel for the petitioner has submitted that he cannot be punished severely on this count.

12. We are of the view that while the conduct of all the persons was same; they were charged with the same conduct; their fault was almost same, then in the matter of punishment, the petitioner should not have been treated differently. While, the other persons were simply warned, the petitioner deserves to be treated equally on the basis of the principles of natural justice and the Article 14 of the Constitution of India. The petitioner should have been punished with the same punishment as was awarded to other persons, charged for the same misconduct. Hence, in this respect, the petition deserves to be allowed partly and the punishment of censure entry awarded to the petitioner, needs to be set aside and he should be treated similarly like other police personnel, charged for the same misconduct, hence, following order is hereby passed.

ORDER

The claim petition is partly allowed. Setting aside the punishment order dated 02.12.2015 of censure entry, the respondents are directed to treat the petitioner alike other persons, in the matter of punishment and the punishment of censure entry be substituted with the punishment of warning accordingly. The necessary action to give effect to this judgment in his record, be taken within a period of two months from today.

No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JULY 09, 2019
NAINITAL

KNP