

**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. 03/NB/SB/2018

Madan Mohan Joshi (Male), aged about 43 years, S/o Sri Datt Ram Joshi, Presently posted as Sub- Inspector (Ministerial), Office of the Deputy Inspector General of Police, Kumaon Range, Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Department of Home, Government of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Kumaon Range, Nainital.
4. Senior Superintendent of Police, District Nainital.

.....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. This claim petition has been filed by the petitioner for the following relief:-

“(i) To quash the impugned punishment order dated 23.07.2015 passed by the Senior Superintendent of Police, Nainital; whereby the petitioner has been awarded censure entry (Annexure No. 1).

- (ii) *To quash the impugned Appellate Order dated 29.03.2016 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 23.07.2015 passed by the Senior Superintendent of Police, Nainital (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. Briefly stated, the facts of the matter are that the petitioner S.I. (M) was posted as file clerk in the office of S.S.P., Nainital in the year 2014, and S.I. Jodh Singh Tomkiyal was head clerk in that office. In the month of November, 2014, S.I. Jodh Singh Tomkiyal was engaged for the recruitment process of the department, at Mahatma Gandhi Inter College, Haldwani, Nainital, hence, petitioner was assigned the duty to complete his daily routine work in the office of S.S.P., Nainital.

3. On 20.11.2014, a letter No. D.G.-7-6/2014 (22) was received in their office from the Police Headquarters, with a direction to the S.S.P., Naintial to send the file No. V-30/2014, relating to writ petition No. 1400(S/S) of 2014, Reena vs. State of Uttarakhand & others, pending before the Hon'ble High Court, and the concerned file was ordered to be sent immediately to the headquarters.

4. This letter was given to the petitioner for compliance, by the dispatcher of the S.S.P. office, but the petitioner did not send the required file to the headquarters as per the directions mentioned therein and the said file was sent belatedly in the month of December, 2014. Hence, on account of delay caused in sending the particular file to PHQ and disobeying the directions, a preliminary inquiry about dereliction of duty, was conducted under Rule 14(2) of

the Uttar Pradesh (Uttarakhand) Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 against the petitioner.

5. The inquiry conducting officer (The Dy. S.P.), C.O. City, Nainital after giving full opportunity of hearing and after recording the statements of concerned persons, found S.I., Jodh Singh Tomkiyal and the petitioner, guilty for the misconduct. Thereafter, a show cause notice was issued to the petitioner, and after considering his reply, the impugned punishment order dated 23.07.2015 of censure entry for the year 2015, was passed. The petitioner preferred an appeal against the punishment order, passed by the disciplinary authority, which was dismissed. Consequently, this petition was filed by the petitioner on the following grounds.

6. That the impugned punishment order, passed by the disciplinary authority and its appellate order, passed by the Appellate Authority are not sustainable for the reasons that the same are cryptic, unreasoned and were passed in a mechanical manner, without considering the explanation given by the petitioner; the authorities have not discharged their quasi-judicial function as per the law; the specific averments made in the inquiry proceedings were not considered by the inquiry officer; the required file was not about the matter, mentioned in the letter of PHQ; the communication was given to Sri Jodh Singh Tomkiyal by the petitioner, who was required to take necessary action and the petitioner was not guilty in this respect and the petitioner and Sri Jodh Singh Tomkiyal both were found guilty in the inquiry, but the punishment awarded to the petitioner is discriminatory, as Sri Jodh Singh Tomkiyal was simply warned, whereas, censure entry has been recorded against the petitioner and he has been treated differently.

7. It is also contended that the disciplinary authority has not considered the grounds taken by the petitioner in his reply; the petitioner was not provided any information by Sri Jodh Singh

Tomkiyal, who was responsible for maintaining the record in the office of the SSP, Nainital in head clerk branch. Hence, the punishment awarded to the petitioner needs to be set aside.

8. The petition was opposed by the respondents and contended that the petitioner himself admitted that he was assigned the duty to complete the daily routine work of the head clerk in the office of SSP, Nainital, as S.I. Jodh Singh Tomkiyal was busy in some other official duty. The letter was received by the petitioner on 20.11.2014, but he did not comply with the direction, to send the file No. V-30/2014, relating to the writ petition, pending before the Hon'ble High Court and timely compliance of the order of the police headquarters was not made, which clearly comes in the category of serious misconduct. Hence, for dereliction towards duties, the preliminary inquiry was duly conducted under Rule 14(2) of the concerned rules of 1991. The petitioner was given just, fair and sufficient opportunity to defend himself, but he totally failed to prove his defence against the charges and the charges were fully proved. There was no procedural irregularity in the inquiry proceedings; the show cause notice was legally served and his reply was duly considered, which was found unsatisfactory. The respondents have contended that the scope of judicial review before this Court is very limited and the punishment of censure entry for the year 2015 is legally correct, perfect and valid in the eyes of law and it requires no interference. Being a file clerk of the office of the SSP, Nainital, the petitioner was duty bound to send the file timely, as required by the PHQ, but he deliberately failed in his duty so, he was rightly punished. Non-sending the required file timely is a serious misconduct and the punishment is proportionate to the guilt of the petitioner, who was wholly responsible for not sending the file in time and he was rightly punished and the petition deserves to be dismissed.

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

10. 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.

11. It is admitted to the petitioner that being posted as clerk in the head clerk office of SSP, Nainital, he was discharging the duty of that office, in the absence of head clerk, S.I. Jodh Singh Tomkiyal. As per the situation, he was duty bound to comply with the direction/communication received in the office of the SSP, Nainital from the police headquarters. It is also an admitted fact that on 20.11.2014, a requisition/ communication was received from the PHQ for sending a particular file No. V-30/2014, pertaining to writ petition No. 1400 /2014, Reena vs. State of Uttarakhand & others, pending before the Hon'ble High Court. The petitioner has contended that he took a plea before the inquiry officer that file for requisition in the communication was not pertaining to that subject and that file was relating to destruction of some documents. Learned A.P.O. on behalf of respondents has submitted that if the particular file was requisite, then the petitioner was duty bound to send the same. The petitioner was not justified to sit ideal and for this purpose, a preliminary inquiry was conducted. He was given due opportunity of hearing and after completing the inquiry, he was found guilty in this respect.

12. This court finds that there is no procedural lacuna in the procedure of inquiry. The preliminary inquiry was lawfully conducted, proper opportunity of hearing was given to the petitioner and the inquiry officer based his findings on the basis of the evidence and the disciplinary authority concurring with the findings, issued a show cause notice and the petitioner was given opportunity of hearing and his reply to the show cause notice was duly considered.

13. The court finds that there is no procedural lacuna in the process, arriving at the conclusion of the guilt. The court cannot go

into the subjective satisfaction of the disciplinary authority. We find that the petitioner was not justified to disobey the direction of the higher authority on the pretext that the file requisitioned for the purpose, was not exactly relating to the subject matter. If there was any confusion, he must have sent the record to the headquarters, narrating with all facts but sitting ideal on the letter, and non-compliance of the direction, was not justified on his part. Hence, he was rightly held guilty. We find no lacuna in the process and the disciplinary proceedings.

14. The petitioner has raised the question of discriminatory attitude of the disciplinary authority while awarding the sentence. It is an admitted fact that the petitioner and the head clerk, S.I. Jodh Singh Tomkiyal both were found guilty of dereliction of duty for the same charge, but another person was simply warned and the petitioner was awarded punishment of censure entry. Learned A.P.O. tried to justify the stand of the respondents and argued the matter that the petitioner was duty bound to comply with the direction at that time and his conduct is more serious. The petitioner in his reply to the show cause notice and all the occasions, submitted that he immediately informed about the requisition to head clerk, S.I. Jodh Singh Tomkiyal for necessary instruction to him, but S.I. Jodh Singh Tomkiyal did not take any action, whereas, he was basically occupying the responsibility of the seat at that time.

15. We are of the view that even if the other person S.I., Jodh Singh Tomkiyal was deputed for some other work, but he was sharing the responsibility of the office of the head clerk about the compliance of the order of the superior and specifically when he was informed by the petitioner about such communication, then, S.I., Jodh Singh Tomkiyal was also duty bound to help him for complying the direction, but he himself was sitting ideal. In our opinion, the responsibilities of both the persons were of same degree and it

cannot be said that Sri Jodh Singh Tomkiyal was relieved from his responsibility even after getting information of such communication. When other person S.I., Jodh Singh Tomkiyal was softly treated by giving a simple warning for the same guilt, then awarding censure entry to the petitioner, cannot be justified and he deserves to be treated similarly. In our opinion, in the matter of punishment, both the persons held guilty for dereliction of duty, were treated differently.

16. In these circumstances, the court finds that the petitioner deserves to be treated alike his other companion for the same guilt. Hence, in our view, the punishment of censure entry needs to be set aside and be substituted with similar punishment of warning like S.I., Jodh Singh Tomkiyal and to this extent, the petition deserves to be allowed.

ORDER

The claim petition is partly allowed. Setting aside the impugned punishment order dated 23.07.2015 of censure entry, the respondents are directed to treat the petitioner alike other person, Sri Jodh Singh Tomkiyal in the matter of punishment and to substitute his 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