

**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. 07/NB/SB/2019**

Akram Ahmad, S/o Sri Mukhtar Ahmad, R/o Village Ghatibagar, P.S. Balua Kot, Distt. Pithoragarh.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary Home, Dehradun .
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaun Division, Nainital.
4. Superintendent of Police, Udham Singh Nagar.

.....Respondents

Present: Sri Nadim Uddin, Ld. Counsel  
for the petitioner  
Sri Kishore Kumar, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: NOVEMBER 06, 2019**

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

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

- "a) To issue an order or direction to quash the impugned orders dated 01.08.2018 and 07.09.2018 (Annexures No. A-1 and A-2 to the claim petition) and appellate orders dated 30.10.2018 (Annexure No. A-3 and A4)"*
- b) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- c) To award the cost of the petition to the petitioner."*

2. Briefly stated, the petitioner, while posted as Sub-Inspector, Police Station Kashipur, Udham Singh Nagar in January, 2018, was

served with two show cause notices (Annexures No. A-7 and A-8), with the allegation that he did not take any action against the persons conducting gambling (satta) and permitted them to do such an illegal activity. The notices were replied by the petitioner, denying the charges. After considering his reply, respondent No. 4, Superintendent of Police, Udham Singh Nagar, passed the impugned punishment order dated 01.08.2018 (Annexure No. A-1), placing the petitioner at the minimum pay scale of Sub-Inspector for one year, vide order dated 07.09.2018 (Annexure: A-2) his integrity for the year 2018, was also withheld.

3. The departmental appeals filed by the petitioner were also dismissed vide order dated 30.10.2018 (Annexure: A-3 and A-4). Hence, petitioner has challenged the punishment order as well as appellate orders, with the contention that the impugned orders passed by respondent No. 4 are in violation of Article 14, 16, 21 and 311 of the Constitution of India and are against the principles of natural justice. The impugned orders have been passed in violation of the Uttarakhand Police Act, 2007.

4. It is also contended that the petitioner was not at fault because he took very strong action against the gamblers. The punishment orders have been passed without properly considering the replies to the show cause notices, and without proper appreciation of the facts and circumstances. The respondent no. 4 was having no authority to award the punishment under Section 23 of the Uttarakhand Police Act, 2007, as he is not the Appointing Authority of the petitioner and under the law, he cannot award any punishment to a police personnel for which he is not Appointing Authority. The punishment of withholding integrity, is without jurisdiction, as it is neither provided in the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 nor in the Uttarakhand Police Act, 2007 and such entry cannot be given as punishment under the law. The order of punishment of demotion to a lowest scale, is without jurisdiction and a

dual punishment for single act was awarded. While imposing any penalty and punishment, the service record of the officer/person, was to be seen as per Rules, and without considering his good service record, the impugned punishment orders were passed, and accordingly, the petition deserves to be allowed.

5. The petition has been opposed by the respondents on the ground that the petitioner himself admitted the fact of dereliction of his duties and said conduct of the petitioner clearly comes in the category of serious misconduct, therefore, the inquiry under the aforesaid Rules of 1991 ( as adopted vide, modification order of 2002), was duly conducted. The petitioner was served with a proper show cause notice before imposing the punishment. The reply to the show cause notice was found unsatisfactory and against the facts, hence, punishment order dated 01.08.2018, was rightly passed by the competent authority and the petitioner was placed in the minimum pay scale for one year. His appeal was also rightly rejected by the respondent No. 3, I.G. Kumoun Region. There is no illegality or irregularity in passing the impugned punishment order as well as appellate order. There is no perversity or legal flaw in conducting the departmental inquiry. Hence, the claim petition having no legal force, deserves to be dismissed.

6. Petitioner has also filed R.A., reiterating the same facts as mentioned in the petition.

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

8. The record reveals that the preliminary inquiry was conducted against the petitioner; he was served with a show cause notice and after considering his reply, the impugned punishment order dated 01.08.2018 was passed by respondent No. 4. Petitioner has challenged this order on the ground, that S.S.P., Udham Singh Nagar was not his appointing authority because the petitioner is an officer of the rank of

Sub-inspector whose appointing authority is the Inspector General of Police, Kumoun Region.

9. Learned A.P.O. has raised an objection that petitioner did not raise this objection in his appeal. Petitioner has also submitted that the controlling officer of the Rank of S.S.P., can award only two types of punishment to the Sub-Inspectors i.e. (1) 'censure entry' and (2) punishment of 'fine' equal to one month's salary whereas, by way of this punishment, petitioner was placed on lowest scale for one year. Respondents have admitted that the appointing authority of the petitioner is not S.S.P.

10. We hold that the respondent No. 4, S.S.P. cannot be termed as Disciplinary Authority for passing such sentence under the rules. The S.S.P., can only award a 'censure entry' or can impose a 'fine' equal to the amount of one month's salary, whereas, this punishment is of different kind. We hold that the respondent No. 4 was not a proper authority to pass such punishment against the petitioner. Accordingly, the orders cannot be allowed to stand, in view of the incompetency of the authority who passed this punishment. Accordingly, the punishment order (Annexure: A-1) deserves to be set aside.

11. By way of other punishment order dated 07.09.2018 (Annexure: A-2) passed by the respondent No. 4, integrity of the petitioner was withheld for the year 2018. It has been argued that integrity cannot be withheld by way of punishment, because such punishment is nowhere prescribed in the Punishment and Appeal Rules, 1991 or in the Uttarakhand Police Act, 2007.

12. It is submitted by the learned counsel for the petitioner that the integrity of a person can although, be withheld for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be withheld as a punishment. We agree with this argument and the same also was held by the Hon'ble Apex Court in

Vijay Singh vs. State of U.P and others, (2012)5SCC, 242;.para 11, 14 and 15 of the judgment are important in the context of elucidating present controversy and are reproduced herein below for convenience:-

*“11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules, 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose “any other” major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.*

*“14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010)10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors vs. Ananta Saha & Ors., (2011)5SCC 142.).*

*15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant. ”*

13. Hence, this court finds substance in the argument of learned counsel for the petitioner that the integrity of the petitioner can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report, but the same cannot be awarded by way of punishment because this kinds of punishment is neither prescribed in the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment

and Appeal) Rules, 1991, nor in the new Uttarakhand Police Act, 2007.

The relevant provisions of which are quoted below:-

**Rule 4 of the Rules of 1991**

*"4. Punishment- (1) The following punishments may, for good and sufficient reasons and as hereafter provided, be imposed upon a Police Officer, namely—*

***(a) Major Penalties—***

- (i) Dismissal from service.*
- (ii) Removal from service.*
- (iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.*

***(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.*

**Section 23 of the Uttarakhand Police Act, 2007**

*"23(1) Disciplinary Penalties- An officer of the rank of Superintendent of Police or above may award any of the following punishments to a police officer or a rank for which he is the Appointing Authority-*

- (a) Reduction in Rank,*
- (b) Compulsory retirement,*
- (c) Removal from service,*
- (d) Dismissal,*
- (e) Reduction in salary,*
- (f) Withholding of increment, and*
- (g) Withholding of promotion.*

*(2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely-*

- (a) fine not exceeding one month's salary.*
- (b) reprimand or censure.*

*(3) A Deputy Superintendent of Police or any officer of equivalent rank may award the punishment of reprimand or censure to a Police Inspector or Sub-Inspector of Police or an officer below its rank.*

*(4) Any officer of and above the rank of Inspector may award minor punishments to Constables and Head Constables.*

*(5) Any punishment, mentioned in sub-section (1), (2) (3) or (4) above, awarded to an officer, will not affect his liability for prosecution for any criminal offence, committed by him in the same transaction, for which departmental action has led to the award of punishment to him for any transgression of departmental rules. ”*

14. Hence, we hold that the impugned punishment order dated 07.09.2018 (Annexure: A-2) passed by the respondents and dismissal of its appeal, are not as per law and need to be corrected. Learned A.P.O. has raised an objection against the contention of the petitioner that this objection was not raised by the petitioner either before the disciplinary authority or before the appellate authority hence, he cannot be permitted to raise this fact now. We do not agree with the argument of learned A.P.O. because of the reasons that if the punishment is not provided in the law, it cannot be awarded, neither he was empowered to award such punishment. Hence, we find that the petition deserves to be allowed and the following order is hereby passed.

**ORDER**

The claim petition is hereby allowed. The order dated 01.08.2018 and 07.09.2018 (Annexure No. A-1 and A-2), its appellate orders dated 30.10.2018 (Annexure No. A-3 and A-4) are hereby set aside. The respondents are directed to correct the personal record of the petitioner and to remove any such entry from his service record immediately.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

DATE: NOVEMBER 06, 2019

NAINITAL

KNP