

**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. 08/NB/SB/2019

Surendra Kumar Shukla, S/o Late Sri Ram Shankar Shukla, R/o Tehsil
Gadarpur, District Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary (Revenue), Civil Secretariat, Dehradun.
2. Commissioner, Kumaun Division, Uttarakhand.
3. District Magistrate, District Udham Singh Nagar.

.....Respondents

Present: Dr. Udyog Shukla, 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. Petitioner has filed this petition for the following reliefs:

“(i) To quash the impugned order dated 31.03.2018 passed by respondent No. 3 annexed as Annexure No. 1 to the petition; the order dated 04.05.2018 passed by respondent No. 3 annexed as Annexure No. 2 to the petition on the review application referred by the petitioner; and the appellate order dated 22.12.2018 passed by the respondent No. 2 annexed as Annexure No. 3 to the petition.

(ii) To direct the respondents to remove censure and adverse entry from the service record of the petitioner.

(iii) To pass any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of the petition to the petitioner. ”

2. The petitioner is presently working as Junior Assistant in the office of Sub-Divisional Magistrate, Bazpur. Previously, he was employed in the Collectorate Transit Office, Udham Singh Nagar, from where, his transfer order was made on 20.12.2017 with immediate effect. He was relieved from the transit office of Collectorate vide order dated 27.12.2017 and was directed to hand over his charge to other employee, Pratap Singh Mehra.

3. It is the allegation against the petitioner that he did not join his duties immediately, in compliance of his transfer order, and joined his new assignment only on 29.12.2017. He did not even hand over the keys and other files to Sri Pratap Singh Mehra on 27.12.2017 and kept the office locked unauthorizedly till 29.12.2017, on account of which, the other home guard staff attached with the office, was unable to discharge the official work and they were unable to perform their duties.

4. There is also another allegation against the petitioner that he temporarily embezzled remaining amount of Rs. 4780.00, out of Rs. 35000, entrusted to him for training programme and it was neither entered in the prescribed office register nor it was deposited in the government account. After calling his explanation, the amount was deposited by him only on 22.03.2018.

5. The show cause notice was issued to the petitioner and reply submitted by him was not found sufficient by the Disciplinary Authority, respondent No. 3, who issued a further show cause notice in February, 2018 and after considering his reply, the impugned punishment order of censure entry was passed on 31.03.2018. His review application was also dismissed by respondent No. 3 vide order dated 04.05.2018 and departmental appeal filed by him was also decided and dismissed by the respondent No. 2 vide order dated 22.12.2018. Thereafter, this petition has been filed for the relief as mentioned above on the following grounds:

That the respondents did not follow the provisions of Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, before imposing minor punishment and respondent No. 3 passed a cryptic and non-speaking order. The petitioner has been punished with the censure entry, without giving him an opportunity of hearing and he has been punished twice for one fault; the show cause notice issued to him, was in violation of principles of natural justice; no charge sheet was issued by the Disciplinary Authority to the petitioner and the contentions raised by the petitioner, were not considered at all. The appellate order was not passed after considering the points raised by him, hence, this petition.

6. Petition was opposed by the respondents with the contention that due procedure was followed; opportunity of hearing was given and the punishment order passed, is as per the provisions of the rules and law; Petitioner was rightly held guilty for non-complying the order of his transfer and for not handing over the complete charge along with files and the other government security, available with him. After his transfer order dated 20.12.2017, petitioner was further directed by another order dated 27.12.2017 to hand over the files of his office to another employee and for his assistance, three home guards were deputed to complete the work, but the petitioner unauthorizedly kept the transit office lock on 28 & 29.12.2017 and on account of that, the files were not actually handed over by him and the staff deputed for his assistance was also unable to do their work and there was a loss of government money.

7. According to the respondents, the petitioner was also found guilty of withholding the remaining amount of training Head with him, neither it was entered in the register nor deposited in any Government account and this fact was also admitted by the petitioner in his reply to the notice of the fact given to him; his reply was properly considered; proper show cause notice was also served upon the petitioner and thereafter, the impugned punishment order was passed, following the due procedure set under the rules. There is no illegality or irregularity in the proceedings hence, this petition deserves to be dismissed.

8. Heard learned counsel for the parties and perused the record.

9. It is an admitted fact that the petitioner was posted as Junior Clerk in the transit office of the Collectorate, Udham Singh Nagar, from where, he was transferred to Sub- Divisional Magistrate, Bazpur. His transfer order (Annexure-9), makes it clear that the transfer was made effective with immediate effect and petitioner was directed to hand over the complete charge and the files to another employee, Pratap Singh Mehra. For next seven days, upto i.e. 27.12.2017, petitioner did not hand over his charge and vide order dated 27.12.2017, he was relieved from his charge and was directed to hand over the record and files to another person and to take over the charge at his new place of posting. The order to this effect is Annexure-4. In compliance of the said order, the certificate of leaving charge was signed by the petitioner (Annexure:5), but he reported his duty at new place only on 29.12.2017 and it is the allegation against him that he neither handed over the files nor deposited the remaining amount in Government account.

10. Record reveals that the petitioner moved an application on 08.3.2018 (Annexure: 11), before the Additional District Magistrate, clarifying about the remaining amount of Rs. 4780/- and admitted that he was unable to enter this remaining amount in the register of Nazarat and it was simply placed in the almirah, so it can be said that till 08.03.2018, this amount was not a part of government record. It was finally deposited by him vide receipt dated 22.03.2018 (Annexure-11), and it is his admission about this remaining amount with him, which was neither entered in the appropriate register nor deposited in the bank and on that basis, after giving him an opportunity of hearing and show cause notice, the respondent No. 3 found him guilty of said charges and a minor punishment of censure entry was passed.

11. We find that the due procedure was followed; proper opportunity of hearing was given and the principles of natural justice were not violated. The punishment order is very clear and speaking.

There is no procedural irregularity or illegality in the disciplinary proceedings.

12. The petitioner also raised the point that no charge sheet was issued to him. We hold that the procedure for minor punishment was adopted and there was no need for issuing a formal charge sheet. We find no illegality in the proceedings as the reply to the notice, submitted by the petitioner, was duly considered. This court cannot go into the subjective satisfaction of the Disciplinary Authority. The Disciplinary Authority recorded his finding on the basis of the facts on record and admission by the petitioner about the fact that remaining amount was not entered in any government record, which can be said to be the temporary embezzlement and the punishment passed by the Disciplinary Authority is not very harsh.

13. Accordingly, the review application was rightly decided. We also find that the appellate authority broadly discussed the points raised by the petitioner in the appeal and a very detailed and speaking order was passed in appeal and we find no point to interfere therein. Considering all the record, we hold that there is no point to interfere in the punishment order as well as appellate order. The petition has no merit and deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 06, 2019
NAINITAL
KNP