

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO.144/SB/2019

Sarita Bisht, D/o Late Sri Vikram Singh Bisht, aged about 43 years' R/o House No. 16, Old Police Line, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary (Home) Civil Secretariat, Dehradun.
2. Deputy Inspector General of Police, Intelligence, Uttarakhand, Dehradun.
3. Superintendent of Police (Regional), Intelligence Department, Dehradun.

.....Respondents

Present: Petitioner along with Sri Shashank Pandey, Advocate for the petitioner.
Sri V.P.Devrani, A.P.O. for the respondents.

JUDGMENT

DATED: JULY 17, 2020

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

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

a. To issue order or direction quashing the order dated 28.02.2017 vide which the petitioner is awarded a censure entry (Annexure A1).

b. To issue order or direction quashing the order dated 23.03.2019 vide which the appeal of the petitioner is rejected.

c. To issue order or direction to the respondents no. 2 & 3 to pay to the petitioner the balance amount of salary

for the period 03.09.2016 to 26.10.2016 when the petitioner remained suspended.

d. To give any other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.

e. To give cost to the petitioner."

2. Briefly stated, the petitioner is working as Sub-Inspector in the Police Department. She put her two years' old child in a Day Care Centre (Crèche) provided by the department. According to the petitioner, in the absence of proper care of her child and due to some other reasons, she had an altercation with the attendant/matron of the Crèche. The complaints were filed by the attendant and the petitioner. On the basis of the complaint of the attendant, the petitioner was suspended. Subsequently, she was awarded punishment of censure entry. The departmental appeal, filed by the petitioner, was also rejected. Petitioner was not paid the difference of salary and of subsistence allowance for the suspension period. Hence, this petition was filed by the petitioner on the ground that the inquiry against the petitioner was conducted in a very cursory manner; punishment awarded to her was without any evidence and only on the statement of the complainant; the punishment awarded to the petitioner comes under the definition of double jeopardy, as the petitioner was also suspended on the same complaint. Petitioner was debarred from the payment of salary for the suspension period without any proper reason. Hence, this petition.

3. The petition was opposed by the respondents through Counter Affidavit with the allegation that on 26.08.2016, a woman constable namely Sharmila Sajwan (Attendant of Creche') made a complaint against the petitioner, alleging misbehavior with her. On such complaint, Sri Laxman Singh Negi was appointed as an inquiry officer. The petitioner was supplied with the show cause notice; her reply to the show cause notice levelling charges, was rightly considered; inquiry officer submitted his report wherein the charge of misbehaving with lady constable Sharmila Sajwan and using un-parliamentary language

were found proved against the petitioner and in view of the charges proved against petitioner, the impugned punishment order dated 28.02.2017 was passed with one censure entry in her service record. The departmental appeal was rightly heard and decided with detailed reasons. The petitioner also levelled some allegations against lady constable, discharging the duties at day care centre but in the inquiry such allegations were found to be incorrect, hence, disciplinary proceedings were initiated against the petitioner. She was issued show cause notice and after considering her reply, the punishment order was passed. She was given full opportunity of hearing. The suspension order is not a punishment. The punishment order was passed after considering the entire facts available on record. The issue of pay during suspension period was rightly decided vide order dated 30.01.2020. A fair and impartial inquiry was conducted wherein she was found guilty of misconduct and a minor punishment was awarded to the petitioner. The claim petition has no merit and the same deserves to be dismissed.

4. Petitioner in her R.A. reiterated the facts of the petition. She has also stated that the order about suspension allowance passed, is an afterthought. The petitioner was suspended as well as awarded censure entry for the same incident, which amounts to double jeopardy. Her complaint against the Matron was not rightly considered. The petition deserves to be allowed.

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

6. The petitioner, who put her child in a day care centre, provided by the department, made a complaint that the lady constable of the centre, Sharmila Sajwan was not taking due care of the child and she had some altercation with her. On the complaint of lady constable, the disciplinary proceedings were started. The record reveals that the inquiry was conducted. During inquiry, it was also pointed out by the petitioner that lady constable demanded and received some money for taking care of her child and also received some goods without making

any payment. Hence, there was also a complaint of bribery by the petitioner, against lady constable, looking after the Child Care Centre. That lady constable filed a complaint against the petitioner to the senior officer, and to inquire into the matter, an inquiry officer was appointed. The record reveals that the inquiry officer only inquired about the allegation of lady constable, Sharmila Sajwan, but the allegations of the petitioner against the Matron (attendant of Crèche) were not inquired into. The inquiry report and punishment itself clarify that the complaint of the petitioner was put to be separately inquired.

7. On the basis of the altercation between petitioner and the lady constable, taking care of the Day Care Centre, and on the basis of same incident, there were cross-allegations of the petitioner as well as of the complainant. But, the department did not consider the complaint of petitioner and there was no finding of the inquiry officer about the complaint of the petitioner against lady constable. The admitted incident of altercation and complaint of petitioner about bribery was of the same time and were cross-matters and it was in the interest of justice that both the complaints must have been inquired into simultaneously. Petitioner has contended that her complaint has not been decided till date. Learned A.P.O. on behalf of the respondents was unable to clarify whether the complaint of the petitioner was inquired into or decided by the respondents as yet.

8. We find that both the complaints were out of same and one incident. It was necessary to inquire into the complaints of both the sides simultaneously, by the inquiry officer and a decision about both should have been made simultaneously and thereafter, the punishment should have been awarded to the delinquent. Hence, we are of the view that the principles of equality and natural justice have not been followed and it will be in the fitness of the things, that setting aside the order, respondents should be directed to inquire into and decide the complaint of both the parties simultaneously, in accordance with the

law and thereafter, respondents are free to award appropriate punishment to the delinquent. Following order is hereby passed.

ORDER

The claim petition is allowed. The impugned punishment orders dated 28.02.2017 (*Annexure A1*) and 23.03.2019 (*Annexure: A2*) are hereby set aside.

The matter is remanded back to the respondent department, to inquire into the allegations of the petitioner as well as of the complaint of Sharmila Sajwan simultaneously through a proper inquiry and respondent department is free to award appropriate punishment to the erring officials. The issue of payment of salary for the suspension period, may also be decided again, as per the rules.

No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JULY 17, 2020

DEHRADUN.

KNP