

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

**Claim Petition No. 11/NB/SB/2024**

Rajesh Kumar Mishra, S/o Sh. Prabhunarayan Mishra, aged about 54 years, presently posted as Sub-Inspector, Police Station Champawat.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Home Govt. of Uttarakhand.
2. Inspector General of Police, Kumaon Region, Nainital, State of Uttarakhand.
3. Superintendent of Police, Takana Road, District Pithoragarh.

..... Respondents

Present: Sri A. D. Chamoli, Advocate for the petitioner (Online)  
Sri Kishore Kumar, A.P.O. for the respondents

**JUDGMENT**

DATED : **MARCH 20, 2025**

This claim petition has been filed seeking the following relief:-

- “(i). to quash and set-aside impugned punishment order dated 28.03.2023 by which “*Censure Entry*” was awarded in the service record of the petitioner arbitrarily and illegally, had it been the impugned order was never being in existence, after calling entire record from the respondents, keeping in view of the facts highlighted in the body of the petition.

- (ii). to quash and set aside impugned appellate order dated 12.07.2023 by which departmental appeal of the petitioner was rejected by the respondent no. 2.
- (iii) to issue any other order or direction which this Court may deem fit and proper in the circumstances of this case in favour of the petitioner.
- (iv) to award the cost of the petition.”

2. In brief, the facts of the case are that the petitioner was appointed in Uttarakhand Police in the year 1995. Looking at the dedicated, honest and faithful services and aptitude of the petitioner, the petitioner was promoted on the post of Sub-Inspector in the year 2008. The petitioner is currently stationed in District-Champawat since December 23, 2023. Prior to this assignment, the petitioner was stationed in District-Pithoragarh from September 2022 until December 18, 2023. Vide its letter dated 18.10.2022, The District Magistrate, Pithoragarh wrote to the Secretary, Law Department regarding filing a Government appeal against the order of the Sessions Judge, Pithoragarh dated 30.06.2022 in Crime Case No. 04/2022, State vs. Man Singh Kholiya. Pursuant to the aforesaid order, on 01.11.2022 the petitioner was asked for his personal presence in the office regarding the appeal against the acquittal order dated 30.06.2022 and was further directed to contact District Magistrate, Pithoragarh and District Government Counsel, Pithoragarh regarding the case and after obtaining permission from the Government in the letter, it was directed to file an appeal before the Hon’ble High Court of Uttarakhand at Nainital. On 23.01.2023, a preliminary inquiry was initiated against the petitioner, in which, it was alleged that the petitioner delayed the matter instead of taking prompt action in complying with the order of the respondent No. 3 dated 01.11.2022, for which, he was accused of

being negligent towards his duty. Thereafter, on 02.03.2023 (**Annexure No. 6** to the claim petition) the petitioner was served with show-cause notice. Thereafter, on 20.03.2023 (**Annexure No. 7** to the claim petition) the petitioner has given a detailed reply to the show-cause notice stating that there was no laxity or negligence while complying with to the order of respondent No. 3. Without considering the reply of the petitioner, on 28.03.2023 (**Annexure No. 1** to the claim petition) the respondent No. 3 passed the impugned punishment order against the petitioner. Aggrieved from the punishment order dated 28.03.2023 of the respondent No. 3, on 24.04.2023 (**Annexure No. 8** to the claim petition) the petitioner filed a departmental appeal before the respondent No. 2, which was rejected by the respondent No. 2 on 12.07.2023 (**Annexure No. 2** to the claim petition). Hence, this claim petition has been filed by the petitioner before the Uttarakhand Public Services Tribunal, Nainital Bench, Nainital.

3. Counter affidavit has been filed by the respondent No. 3, who is also representing the respondents No. 1 & 2. According to the counter affidavit, the petitioner had been found guilty of irresponsibility and dereliction of duty in regard to non-compliance of the specific order, by which the petitioner was expected for a prompt action and the petitioner had delayed the compliance of the order of the respondent No. 3 dated 01.11.2022 and after that, giving sufficient opportunity to the petitioner in self-defence, he has been punished. Hence, this present claim petition filed by the petitioner is liable to be dismissed.

4. Rejoinder affidavit has also been filed reiterating the facts mentioned in the present claim petition.

5. I have heard the learned Counsels for the parties and perused the records. The learned Counsel for the petitioner has attracted the Tribunal's attention towards Annexure Nos. 3 & 6, wherein, the District Magistrate, Pithoragarh has apprised the Secretary, Justice Department and the Legal Remembrancer,

Government of Uttarakhand that Hon'ble Sessions Judge, Pithoragarh had erroneously acquitted the accused Maan Singh Kholiya, on 30.06.2022 in the S.S.T. No. 25/2022, Government Vs. Maan Singh Kholiya under Section 363, 366-A and 376 Indian Penal Code and Section 5/6 of Protection of Children from Sexual Offences Act, while it has come to the knowledge of the Prosecution Department that the victim girl was actually a minor, when the crime was committed. The District Magistrate, Pithoragarh has recommended for filing an appeal in this matter, by his letter No. 150/Bees-15/2021-22 dated October 18, 2022, a copy of which has been sent to the S. P., Pithoragarh also with a direction to send a well versed Officer to assist the prosecution in filing of the appeal in the Hon'ble High Court of Uttarakhand at Nainital. The Annexure No. 6 is the show-cause notice dated 2<sup>nd</sup> March, 2023 given to the Sub-Inspector, Civil Police Rajesh Kumar Mishra (Petitioner) through the Station In-charge Nachni, wherein, once again the date of Hon'ble Sessions Judge, Pithoragarh's acquittal order is clearly mentioned as dated 30.06.2022. As per the learned Counsel for the petitioner, there is a limitation period of 90 days stipulated by law for filing of an appeal against the order of the Trial Court, which had already lapsed on 28.09.2022, i. e., counting 90 days of limitation period from 30.06.2022 ends on 28.09.2022. Thus, the limitation period had already lapsed much before the 18<sup>th</sup> October, 2022, when the District Magistrate, Pithoragarh recommended for filing an appeal against the acquittal order dated 30.06.2022. Therefore, it would be wrong to allege that the procedure for filing of appeal got delayed due to the laxity on the part of the petitioner.

6. The petitioner's Counsel also drew the Tribunal's attention towards Annexure Nos. 4 & 5 to show that on 01.11.2022 when the respondent No. 3 ordered the petitioner to assist the prosecution in filing the said appeal the petitioner was posted at Police Station- Gunji, which is 162 Km. away from District Headquarters. On that said date he was closing-down the Police Station Campus for the oncoming

Monsoon Season, for which he had been ordered in writing earlier on 29.10.2022 by the Superintendent of Police's office. Therefore, he was not able to reach the Police Lines, Pithoragarh before 03.11.2022 where he received the order in question by the evening of 03.11.2022. Annexure No. 5 is the inquiry report dated 23.01.2023 submitted by the Police C.O., Pithoragarh before the respondent No. 3, S.P. Pithoragarh, which comprises of the recorded statements of various police personnels to find-out the factual position of the alleged indiscipline, including the petitioner's statement dated 26.11.2022. As per the learned Counsel for the petitioner, from the entries made on 07.11.2022 into the General Diary it is evident that the petitioner had reached Dehradun on 07.11.2022 in compliance of his superior's order; therefore, there was no delay whatsoever, on the part of the petitioner looking at the adverse circumstances and the difficult topography of District Pithoragarh. As per the petitioner's Counsel, the recorded statements of various Police Personnels in the inquiry report dated 23.01.2023 submitted by the Police C.O., Pithoragarh are not only an eye-opener regarding the difficult terrain and adverse circumstances existing in District Pithoragarh faced day-to-day by the Police Personnels posted there, but also corroborate the petitioner's claim that he did not commit delay voluntarily; rather it was circumstantial.

7. The learned A.P.O. well argued for the respondents No 1 to 3 and emphasized that the petitioner was not a mere Police Constable, but was a Police Officer of the Sub-Inspector Rank, who was expected to be obedient and responsible towards the orders of the Superior Officers. Therefore, it is a crystal clear case of disobedience and negligence towards duty. He further elaborated the factual position as mentioned in all the documentary evidences.

8. The perusal of records on file reveals that it was, prima facie, wrong on the part of the Police Department to conclude that the delay in filing the appeal in the instant matter was because of the

petitioner's deliberate procrastination. In fact, the office of the District Magistrate, Pithoragarh had already made an exorbitant delay in recommending for the filing of the said appeal in the instant matter. Truly speaking the District Magistrate's letter dated 18.10.2022 written to the Secretary, Justice Department and Legal Remembrancer itself appears to be an afterthought under the parochial public pressure for course correction, "उक्त दोषमुक्ति के आदेश के सम्बन्ध में जिला शासकीय अधिवक्ता द्वारा अवगत कराया गया कि उपरोक्त मामले में पीड़िता की आयु में विरोधाभास है। पीड़िता द्वारा अपने को घटना के समय अर्थात् अभियुक्त के साथ जाते समय वयस्क (19 वर्ष) होने का साक्ष्य, शपथ पर दिया तथा इस सम्बन्ध में दस्तावेजी साक्ष्य गांव प्रधान का प्रमाण-पत्र, जिसमें पीड़िता की जन्मतिथि अंकित है एवं पत्रिका प्रस्तुत की है। यह सही है कि पीड़िता के शैक्षिक प्रमाण-पत्रों में वर्णित जन्म-तिथि के अनुसार पीड़िता घटना के समय बालिग नहीं थी, किन्तु जो अन्य दस्तावेज व मौखिक साक्ष्य न्यायालय के समक्ष आये उससे पीड़िता की घटना के समय बालिग होने प्रश्नचिन्ह अवश्य लगता है, किन्तु मामले में अभियुक्त को दोषमुक्त किये जाने के पर्याप्त आधार विचारण न्यायालय के समक्ष नहीं थे, किन्तु न्यायालय द्वारा तथ्यों की अनदेखी कर निर्णय करने में महान भूल की है तथा इस मामले में अभियुक्त को उस पर लगाये आरोप के अन्तर्गत दण्डित किया जाना चाहिए।"

9. This is also noteworthy here that copy of the abovementioned letter of District Magistrate, Pithoragarh had been signed on 18.10.2022 for nominating/detailing a well versed Police employee by the Superintendent of Police, Pithoragarh, which was a Tuesday. So, this copy must have reached the Superintendent of Police's office latest by the 20<sup>th</sup> October, 2022, being situated at Pithoragarh itself. If not so, then the District Magistrate and Superintendent of Police, Pithoragarh must introspect and get concerned together regarding the delivery of important correspondence between the two offices which are at the helm of affairs for not only the District Administration, but also in the eyes of the Central, and State Governments. And if presumably the letter-copy in question was received at the Superintendent of Police's office latest by 20.10.2022, then it raises many questions about the avoidable delay as caused by the

Superintendent of Police's Office in following the District Magistrate's directions, as the letter/order nominating/detailing the petitioner has been signed by the Superintendent of Police, Pithoragarh not earlier than 01.11.2022. Thus, it is quite evident that initially the prosecution and the District Magistrate's office committed an exorbitant delay in reaching the conclusion that the acquittal in question was a fit case for Government appeal, and then a sufficient delay was caused by the Superintendent of Police's office, as compared to the alleged delay caused by the petitioner between 03.11.2022 upto 07.11.2022. Here, this fact cannot be neglected that the petitioner received the said order by 03.11.2022 evening while the next working day, i.e., 04.11.2022 was a Friday. The office of the Secretary Justice and Legal Remembrancer, being situated at the Government Secretariat remains closed on all the Saturdays generally, barring emergencies and urgencies at the Government level. So, quite obviously the petitioner would not have been able to coordinate with the office in question earlier. So, where is the delay or procrastination logically?

10. Section-378 of the Cr.P.C. stipulates a limitation period of sixty days in cases of acquittals. So, the matter of filing an appeal had already been much delayed beforehand by the prosecution, the District Magistrate's office, and the Superintendent of Police's office, undoubtedly.

11. Further, it is really difficult for a common man to fathom the difficulties faced by ground level police staff and field officers, who are posted in the difficult terrains of District Pithoragarh, specifically in the areas around the Police Station Gunji, from where, the petitioner had to travel to the District Headquarters after closing down the Police Station Campus at Gunji under the orders dated 29.10.2022. One cannot afford an oversight while judging the difficulties of District Pithoragarh, where, there are ample rural areas where the means of public conveyance, and communication are rarely available. Another fact that

cannot be overlooked in the instant matter is that the regular Reserve Inspector of the Pithoragarh Police Lines, Sri Narendra Kumar Arya was on leave for one week during that time, in whose absence Sub-Inspector Civil Police Mrs. Usha Dev was officiating as the Reserve Inspector. It is needless to say that in this instant matter much of the confusion seems to have been created by the absence of the regular Reserve Inspector Police Line Pithoragarh Sri Narendra Kumar Arya. In fact, while reading the inquiry report dated 23.01.2023 as submitted by the C.O Pithoragarh before the respondent No. 3 it is evident that many contradictory circumstances had arisen before the petitioner between 29.10.2022 to 03.11.2022 where even the Police Lines staff and the Camp Office staff of the respondent No. 3 could not help the petitioner much!

12. Therefore, in the opinion of the Tribunal the petitioner deserves a benefit of doubt as the Respondent Department has not been able to show that there have been any instances of adverse conducts earlier on the part of the petitioner, or, in the petitioner's service records.

### **ORDER**

The claim petition is allowed. The impugned punishment order dated 28.03.2023 by which "*Censure Entry*" was awarded in the service record of the petitioner and the appeal dismissal order dated 12.07.2023 are quashed, as null and void ab-initio. No orders as to costs.

**(Capt. Alok Shekhar Tiwari)**  
Member (A)

DATE: MARCH 20, 2025  
NAINITAL  
BK