

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

CLAIM PETITION NO. 75/SB/2023

Shri Hasan Abbas Zaidi, aged about 43 years, s/o Shri Talilb Ali, presently residing at Police Line, Rudraprayag, District-Rudraprayag.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary (Home), Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Mandal, Dehradun, Uttarakhand, the Appellate Authority.
3. Senior Superintendent of Police, Rudraprayag.

.....Respondents.

Present: Ms. Anupama Gautam (online) & Sri A.S. Bisht, Advocates,
for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 20, 2022

Justice U.C.Dhyani (Oral)

Petitioner Constable was posted at Police Line, Rudraprayag. On 04.07.2022, he was transferred to P.S. Sonprayag. Instead of giving joining immediately at P.S. Sonprayag, as directed, he joined there late on 05/06.07.2023 and went to Roorkee(Haridwar) without taking station leave

2. The imputation is that he remained absent for a day and went to Roorkee, Haridwar, without taking prior permission of the authority concerned. Petitioner was given notice along with 'draft censure entry'. He did not reply to such notice. He was, therefore, given 'censure entry' for the year 2022, *vide* order dated 17.10.2022, passed by the S.P., Rudraprayag (Respondent No.3)
3. Petitioner filed departmental appeal, which was dismissed by the Inspector General of Police, Garhwal Range, the appellate authority, *vide* order dated 01.02.2023. The order passed by the disciplinary authority was affirmed.
4. Aggrieved with the aforesaid orders, petitioner has filed present claim petition. Necessary documents have been filed along with the claim petition.
5. W.S. has been filed on behalf of the respondents. Sri Prabodh Kumar Ghildiyal, Dy. S.P., Rudraprayag, has filed C.A. on behalf of all the respondents, along with documents in support thereof. No R.A. has been filed by the petitioner.
6. 'Censure entry' has been awarded to the petitioner for being absent from duty for a day. As has been mentioned above, the petitioner was posted in P.S. Rudraprayag. He was transferred to P.S. Sonprayag. Instead of joining immediately, he, allegedly, went to Haridwar and was involved in a criminal case and gave joining at P.S. Sonprayag on 05/ 06.07.2022. He was suspended, but subsequently his suspension was revoked. This fact is under no dispute that the petitioner joined at P.S. Sonprayag late. Neither any application for casual leave was given, nor prior permission of the competent authority was taken for leaving Rudraprayag and going to Roorkee, Haridwar. The appellate authority has dismissed the departmental appeal by a reasoned and speaking order.
7. So far as the 'censure entry' is concerned, it has been ruled by Division Bench of Hon'ble High Court of Judicature at Allahabad, in *Bhupendra Singh and others vs. State of U.P. and others, (2007)(4) ESC 2360 (ALL)(DB)*, that the provisions of Rule 4(1)(b)(iv) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules,

1991(for short, Rules of 1991) are valid and *intra vires*. Censure entry, therefore, can be awarded to a delinquent employee.

8. 'Misconduct' is a very wide term. It encompasses within its ambit, everything which is indisciplinary in nature. Any Government servant, who is holding a civil post in the State, is bound by the Uttaranchal Government Servants' Conduct Rules, 2002. There is ample evidence to show that the petitioner joined at P.S. Sonprayag late, went to Roorkee, where an FIR was lodged against him, he went there without taking station leave. Both P.S. Rudraprayag and P.S. Sonprayag are within the same district Rudraprayag.
9. An explanation was given by the petitioner that he did not join the new place of posting immediately, because his daughter was seriously ill at Roorkee. Ld. Counsel for the petitioner submitted that petitioner's wife was a working woman and no one was there to look after their ailing daughter. Therefore, instead of joining at P.S. Sonprayag immediately, he went to Roorkee to see his ailing daughter first and only thereafter could join his new place of posting.
10. In any case, the petitioner was expected to take prior permission from his superior officer to leave the station to see his ailing daughter. He did not do it. There is no quarrel about it. If the petitioner got late in joining by a day, he should have taken casual leave for that day, which was also not done. 'Misconduct' is writ large on the face of it. Scope of interference in judicial review is very limited. No interference is called for in the order of disciplinary authority, which has been affirmed by the appellate authority, in holding the petitioner guilty.
11. 'Censure entry' entails serious civil and evil consequences. The competent authority could have asked the petitioner to give an application for casual leave. Neither the petitioner moved the application for grant of casual leave nor the competent authority directed the petitioner to do so.
12. In the peculiar facts of the case, this Tribunal is of the view that severe punishment has been given to the petitioner, which appears to be disproportionate. Rigours of the 'censure entry' should be mellowed down.

Criminal case pending against the petitioner shall be brought to its logical conclusion by the Court of competent jurisdiction

13. If 'censure entry' is given to any employee for casual absence of one day, it will set bad precedent inasmuch as 'censure entry' is not only kept in the Annual Confidential Report of the delinquent employee, it also entails civil and evil consequences. The punishment awarded to the petitioner is disproportionate to the wrong committed by him. Yes, there cannot be any excuse by the petitioner, as to why he went to Roorkee without taking station leave from his superior.

14. But this Tribunal is afraid, it cannot substitute the punishment awarded to the petitioner by the disciplinary authority as affirmed by the appellate authority on its own. It cannot direct 'other minor penalties', such as:

- (i) *Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty.)*
- (ii) *Punishment Drill not exceeding fifteen days.*
- (iii) *Extra guard duty not exceeding seven days.*
- (iv) *Deprivation of good-conduct pay.*

or

- (i) *Tent pitching;*
- (ii) *Drain digging;*
- (iii) *Cutting grass, cleaning jungle and picking stones from parade grounds;*
- (iv) *Repairing huts and butts and similar work in the lines; and*
- (v) *Cleaning Arms.*

15. The disciplinary authority may, in its own wisdom, substitute the minor penalty of 'censure entry' with any of the other minor penalties, which have been referred to above.

16. In the decision rendered in *Rajasthan Tourism Development Corporation Limited and Another vs. Jai Raj Singh Chauhan, (2011)13 SCC 541*, Hon'ble Supreme Court has observed, as below:

"22. We have no doubt that if the learned Single Judge and the Division Bench were apprised of the law laid down by this Court, the former may have instead of substituting the punishment of dismissal from service with that of stoppage of two increments with cumulative effect remitted the matter to the disciplinary authority with a direction to pass fresh order keeping in view the fact that the writ petitioner had already suffered by remaining out of employment for a period of about seven years.

23. At this juncture, we may note that learned counsel for the appellants fairly agreed that ends of justice will be served by remitting the matter to the disciplinary authority with a direction that the respondent be awarded a minor punishment provided an undertaking is given by him not to claim

wages for the period between the dates of dismissal and reinstatement. Learned counsel for the respondent that his client will not claim pay and allowances for the period during which he remained out of employment.

[Emphasis supplied]

17. In view of the above discussion, the Tribunal is of the view that the petitioner has although committed 'misconduct', but the 'censure entry', which has been awarded to him, requires to be reconsidered by the disciplinary authority. The matter should, therefore, be remitted to the disciplinary authority for reconsidering the punishment, which has been awarded to the petitioner, in the peculiar facts of the case.

18 The claim petition is thus disposed of by directing the disciplinary authority to reconsider its decision of awarding 'censure entry' to the petitioner and substitute the 'censure entry' by any one of 'other minor penalties'. The same should be revisited, as per rules, without unreasonable delay. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 20, 2022
DEHRADUN

VM