

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

Claim Petition No. 85/SB/2021

Sri Suresh Kumar Singh, s/o Sri Kanthu Singh, aged about 43 years, presently posted as Sub Inspector, Thana Sonprayag, District Rudraprayag.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Subhash Road, Dehradun.
2. Police Up-Mahanirikshak, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun.

..... Respondents

Present: Sri Abhishek Chamoli and Sri V.P. Sharma (online),
Advocates, for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondents

Judgement

Dated: 25th February, 2023

Justice U.C. Dhyani (Oral)

By means of present claim petition, the petitioner seeks following reliefs:

“(i) To quash and set aside the impugned punishment order dated 19-12.2020 (Annexure No. A-1) passed by Respondent No. 3.

(ii) To quash and set aside the appellate order dated 22-06-2021 (Annexure No. A-2) passed by Respondent No. 2.

(iii) To issue any other order or direction which this Court may think fit and proper in the circumstances of case in favour of the petitioner.”

2. When the petitioner was posted in PS Kotwali, Patel Nagar, District Dehradun, a ‘censure entry’ was awarded to him *vide* order dated 19.12.2020 (copy Annexure: A1) by the disciplinary authority for laxity in investigation of case crime no. 127/2020 under Section 365 I.P.C. The petitioner filed departmental appeal against the same, which appeal was dismissed by the appellate authority *vide* order dated 22.06.2021 (copy Annexure: A2). Aggrieved against the same, present claim petition has been filed.

2.1 Facts of the case, in brief, are that when the petitioner was posted as Sub Inspector in PS Patel Nagar, an FIR was lodged by the informant/ complainant Sanjay (r/o Jhabreda, Haridwar) on 01.04.2020 that his elder brother Rajkumar, who had gone somewhere on 12.03.2020 in his vehicle, did not return home. A missing report was lodged. Investigation was done by HCP Dalendra on 14.04.2020. Missing report was converted into Section 365 I.P.C. by registering case crime no. 127/2020. S.P. City, on 01.06.2020, found that Rajkumar was in talking terms and friendly with S/Sri Monu Tyagi, Navneet and Jitender alias Jitta. Their statements were recorded. Call details and EMI were analyzed. Rajkumar was last seen at the place where his purse and mobile were found. He was last seen on 17.03.2020 near Raja Ram Mohan Roy School.

2.2 Certain directions were given by S.P. City to the petitioner including the one to obtain CCTV footage of the place

where Rajkumar was last seen on 17.03.2020 near Raja Ram Mohan Roy School. Directions were also given for collecting VDS data and analyze the same. It was found, on the basis of G.D.s, that the petitioner has not done anything to carry out the directions of S.P. City.

2.3 When an explanation was sought as to why he has not done meaningful efforts to trace out missing person, on 19.06.2020 and 14.07.2020, he did not explain the same and thereby the petitioner defied the orders of the seniors, which act of the petitioner was 'censured' by the disciplinary authority.

2.4 After the petitioner was given 'censure entry' on 19.12.2020 for the above noted imputation by the disciplinary authority, he filed departmental appeal, which was dismissed *vide* order dated 22.06.2021 (copy Annexure: A2). Whereas 'censure entry' was awarded by S.S.P. Dehradun, respondent no. 3, departmental appeal was dismissed by D.I.G., Garhwal, respondent no. 2.

3. Learned A.P.O., during the course of arguments, justified departmental action. He submitted that carelessness in investigation should not be tolerated. Learned A.P.O. drew the attention of the Tribunal towards Sub-Section (1) of Section 173 Cr.P.C. to bring home the said point. Section 173(1) Cr.P.C. is quoted herein below for convenience:

173. Report of police officer on completion of investigation

(1) Every investigation under this chapter shall be completed without unnecessary delay.

.....”

4. Sri Abhishek Chamoli, learned Counsel for the petitioner, replied that there is no quarrel regarding speedy investigation. He, however submitted that the words used in the

Sub-Section (1) of Section 173 of Cr.P.C. are “.....shall be completed without unnecessary delay”.

5. Learned Counsel for the petitioner further submitted that the missing report was filed on 12.03.2020. Investigation was done by HCP Dalendra. On 14.04.2020, missing report was converted into case crime no. 127/2020 under Section 365 I.P.C. and the investigation was handed over to the petitioner. Pandemic Covid-19 started on 23.03.2020. There was complete lockdown since 25.03.2020 and therefore, speedy investigation was hampered in exceptional circumstances.

6. The Tribunal finds that the petitioner has stated so in his application dated 03.07.2020, which was addressed to S.P. City, Dehradun (copy Annexure: A10). In such letter (Annexure: A10), the petitioner apprised S.P. City, Dehradun, with the progress of the investigation, including the fact that the efforts are on to telecast information regarding the missing person on Doordarshan through District Crime Record Bureau. It was also mentioned in the letter dated 03.07.2020 that further investigation shall be carried out only after interrogation of S/Sri Monu Tyagi and Navneet. Difficulty in investigation was expressed due to lockdown on account of pandemic Covid-19.

7. *Vide* letter dated 23.12.2020 (copy Annexure: A8), the petitioner sought permission of S.S.P., Dehradun, to appear before him apprising him with the facts that the investigation was handed over to him during complete lockdown. He was in-charge of the containment zone also. During this period, he made efforts to trace the missing person not only in Uttarakhand, but also in Rajasthan, Haryana, Punjab, Himachal Pradesh and Uttar Pradesh. The petitioner learnt through newspapers that he was under transfer to a distant place and departmental enquiry has also been ordered against him.

8. The petitioner has brought on record his report dated 28.04.2020 (copy Annexure: A9) on the file. He has also filed extracts of G.D. No. 23 with the record (copy Annexure: A7). Letter dated 01.06.2020 (copy Annexure: A4) written by S.P. City, Dehradun, to the petitioner is the basis of initiating departmental proceedings against the petitioner. Certain directions were given by S.P. City, Dehradun, to him. Allegedly, the petitioner did not do so. As has been stated above, he wrote a letter, on 03.07.2020, to S.P. City, Dehradun, (copy Annexure: A10) apprising the said authority about the progress of the investigation. A show cause notice was issued to him *vide* order dated 10.10.2020, reply to which was given by the petitioner on 20.10.2020 (copy Annexure: A13). The disciplinary authority was not satisfied with the same and therefore, censure entry was awarded to the petitioner.

9. In his reply dated 20.10.2020 (Annexure: A13), the petitioner submitted that there was no carelessness on his part in conducting investigation of case crime no. 127/2020 under Section 365 I.P.C. Pandemic Covid-19 was at its peak from 25.03.2020 to August, 2020. His area, Azad Colony, was in the containment zone. He not only carried out the investigation of the case but also maintained law and order. Regarding non-furnishing of explanation to the letters dated 19.06.2020 and 14.07.2020, the petitioner wrote that S.P. City, Dehradun, herself was monitoring the investigation. He furnished explanation to her either by appearing personally or through whatsapp messages. Case diaries no. 9 to 18 (after 19.06.2020 and 14.07.2020) were perused by the enquiry officer. The extract of case diary dated 14.07.2020 was placed before S.P. City, Dehradun.

In para 5 of the letter, the petitioner has mentioned that pamphlets were pasted and efforts were made to find out the missing person and his car in Haryana, Yamuna Nagar,

Ambala, Kurukshetra, Bharatpur, Ratangarh, Churu, Punjab, Deoband etc. under the orders of S.P. City, Dehradun.

10. Inaction on the part of the petitioner incurred the wrath of D.I.G., Crime/ Law and Order, who *vide* order dated 22.12.2020, on the basis of a complaint made on behalf of the victim that the I.O. was not cooperating in the investigation and on the basis of preliminary enquiry conducted by S.P. City, Dehradun, directed transfer of the petitioner from Dehradun to a distant place in any hill district. D.I.G., Crime/ Law and Order also directed D.I.G., Garhwal and S.S.P., Dehradun to conduct departmental proceedings and submit report to the headquarters within a month. The petitioner was thus transferred to a remote hill district, as punishment.

11. Although transfer simpliciter is not a punishment, but the Court can lift the veil and peep through to find out whether it is stigmatic order or non-stigmatic order. The facts thus discussed indicate that it is a stigmatic order. Transfer is by way of punishment.

12. The explanation furnished by the petitioner on 20.10.2020, in view of the facts narrated above, requires to be re-considered. Although the law enjoins upon the investigating officer to complete the investigation without unnecessary delay, as argued by learned A.P.O. drawing attention of the Tribunal towards Sub-Section (1) of Section 173 of Cr.P.C., but it is also enjoined upon the quasi-judicial authority to consider the fact that everything happened during the peak of pandemic Covid-19 and therefore, the situation needs to be reassessed. Petitioner, on the one hand, was required to save his life and on the other hand, he was required to perform his duties of a police officer. He had a tough time to strike a balance between the two. The disciplinary authority had onerous duty to strike a

balance between these two extremes while visiting the petitioner with penalty, which requires reassessment.

13. Petitioner, who is present in person, made responsible statement before the Tribunal that quality of investigation was so good that the accused persons of case crime case 127/2020 under Section 365 I.P.C are still languishing in jail and the trial is underway in Sessions Court.

14. Matter is, accordingly, remitted back to the authority below to re-consider and pass a fresh order after hearing the petitioner, in accordance with law. Till such decision is taken, impugned orders shall be kept in abeyance.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 25th February, 2023
DEHRADUN
RS