

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

Through audio conferencing

Present: Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.06/NB/SB /2021

Amit Devrani s/o Sri Ramesh Chander Devrani, r/o Village Badkhet Talla, Patti
Paino P.O. Badiyer Gaou, District Pauri Garhwal.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Division, Nainital.
4. Superintendent of Police, Udham Singh Nagar.

.....Respondents.

Present: Sri Nadim Uddin, Advocate, for the petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 12, 2021

This claim petition has been filed by the petitioner seeking the following reliefs:

- “a) To issue an order or direction to quash the impugned orders dated 23.04.2019 (Annexure No. A-1, A-2 to the claim petition) and appellate orders dated 03.10.2019 (Annexure No. A-3 & A-4).*
- b) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- c) To award the cost of the petition to the petitioner.”*

2. Brief facts of the claim petition are as below:

The petitioner was appointed as Constable in Uttarakhand Police Department in 2005 by the order of Commandant Indian Reserve Battalion (IRB), Belparao, Ramnagar. In 2018, he was posted as Constable at Police Chowki, Sultanpur Patti of Police station Bazpur of Udham Singh Nagar district. On the alleged information of role of petitioner in suspected activities received by S.O., Sri Ayush Agarwal (I.P.S. under training), respondent no. 4 suspended the petitioner. Preliminary inquiry has been conducted in the case. Though in the inquiry report, the inquiry officer did not find evidence of illegal activities of the petitioner, two show cause notices, both dated 17.11.2018, were issued to the petitioner-one for withholding of integrity and the other for censure entry. Without considering the petitioner's replies, order dated 23.04.2019 (Annexure: A-1) was issued by the respondent no. 4 withholding the integrity certificate of 2018 of the petitioner and vide another order dated 23.04.2019 (Annexure: A-2), respondent No. 4 ordered for censure entry to be recorded in the Character Roll of the petitioner.

According to the petitioner, he received the orders in the afternoon of 07.05.2019 and on 07.08.2019, the petitioner filed two appeals against these impugned orders to the appellate authority (DIG, Kumaon, Nainital) who rejected the appeals of the petitioner on the ground that they were time barred vide order dated 03.10.2019. *(It is observed that the appellate order is a single order annexed as Annexure No. A-3 and not two orders annexed as Annexure No. A-3 and A-4 as stated in the relief clause of the petition. Annexure No. A-4 is the copy of preliminary inquiry report).*

3. Petition was opposed by learned A.P.O. on the ground of limitation as the appellate order was passed on 03.10.2019 and the petition has been filed on 15.02.2021. Along with the petition, delay condonation application was also filed. It is observed that the delay is condonable in view of the orders of the Hon'ble Supreme Court in SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020, in which Hon'ble Supreme Court, while taking *suo motu*

cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that might be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State), has passed an order that period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended *w.e.f.* 15th March 2020 till further order/s to be passed by Hon'ble Supreme Court.

4. Counter Affidavit has been filed on behalf of the respondents and Rejoinder affidavit has been filed on behalf of the petitioner.

5. I have heard learned Counsel for the petitioner and learned A.P.O. and perused the record.

6. Learned Counsel for the petitioner has inter-alia argued that the impugned orders have been passed in violation of the provisions of Uttarkhand Police Act, 2007 (hereinafter referred to as 'the Act of 2007') inasmuch as they have been passed under the provisions of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as 'the Rules of 1991') which were repealed by section 86 of the Act of 2007. Learned A.P.O. has argued on this point that Section 86 of the Act of 2007 states that earlier Rules or Regulations shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made under the corresponding provisions of this Act, and shall continue to be in force unless and until superseded by anything done and action taken under this Act. The Tribunal finds force in such contention of learned A.P.O.

7. Learned Counsel for the petitioner has further argued that Respondent no. 4 could not award the punishment under Section 23(2) of the Act of 2007 as at the time of awarding punishment, the petitioner had been transferred out of district Udham Singh Nagar and the respondent no.

4 is also not the Appointing Authority of the petitioner while under Section 23(1) of the Act of 2007, S.P. may award punishments to a police officer of a rank for which he is the Appointing Authority and the Appointing Authority of the petitioner is Commandant, IRB, Belparao. Learned A.P.O. has argued that the incident for which petitioner has been punished relates to the posting of the petitioner in District Udham Singh Nagar and therefore, Respondent no. 4 had the authority to award him the punishment prescribed under Section 23(2) of the Act of 2007, which reads as under:

“23 (2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely-

(a) fine not exceeding one month’s salary,

(b) reprimand or censure.”

The Court agrees to argument of learned A.P.O. and holds that the Respondent no. 4 had the authority to award the punishment of censure to the petitioner.

8. Learned Counsel for the petitioner has also argued that dual punishment of censure and withholding of integrity cannot be given for the same case and the punishment for withholding the integrity certificate is neither provided under the Rules of 1991 nor in the Act of 2007.

9. It is observed that integrity of a person can although, be withheld for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be withheld as a punishment. Learned counsel for the petitioner has referred to the law laid down by the Hon’ble Apex Court in Vijay Singh vs. State of U.P. and others, (2012)5SCC, 242. Para 11, 14 and 15 of which are important in the context of elucidating present controversy and are reproduced herein below for convenience:-

“11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules, 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However,

if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

14. *The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010)10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors vs. Ananta Saha & Ors., (2011)5SCC 142.).*

15. *Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant. "*

10. The court holds that the integrity of the petitioner can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report, but the same cannot be awarded by way of punishment because this kind of punishment is neither prescribed in the Rules of 1991 nor in the Act of 2007. Therefore, Annexure-A1 according to which integrity certificate of the petitioner is withheld, is liable to be quashed. Though this order states that notice for withholding of integrity was issued according to the provisions of the Govt. order No. 1712/Karmik-2/2003 dated 18.12.2003, the same has not been done at the time of filling of the Annual Confidential Report and has actually been done as an adjunct to the proceedings vide which punishment of censure has been awarded to the petitioner. Even the

dates of the show cause notices and dates of orders of censure and withholding of integrity are the same. Therefore, the Court holds that withholding of integrity has been done by way of punishment and Annexure: A-1 is, therefore quashed.

11. Annexure: A-3 is the order of Appellate Authority which states that the punishment order has been received by the petitioner on 07.05.2019 and the appeal has been preferred on 07.08.2019, which has been done after prescribed time period of three months and no proper reason has been shown for the delay. This order also quotes the rule according to which the appellate authority can extend the period of filing appeal upto 6 months. The appellate authority *vide* this order has not taken cognizance of the appeal as the same has not been filed within the prescribed time limit of three months.

12. The Court observes that the period from 07.05.2019 to 07.08.2019, is more than 90 days but it can be assumed to be three months as well. Moreover, this time period could have been extended to 6 months by the appellate authority himself. Therefore, in the interest of justice, the delay in filing the appeal, if any, is hereby condoned. Annexure: A-3 is hereby set aside and the appellate authority, Respondent no. 3 is directed to decide the appeal of the petitioner against the punishment order of censure (Annexure No. 2) by a speaking and reasoned order.

13. It is clarified that this Court has not expressed any opinion on merits of the case as far as punishment of censure is concerned. The claim petition is, accordingly, disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: NOVEMBER 12, 2021
DEHRADUN.
KNP