

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

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

----- Member (A)

Claim Petition No. 82/NB/SB/2025

Harpal Singh (Male), aged about 46 years, S/o Late Sri Ram Chandra Singh, presently serving as Inspector (Civil Police)/Station House Officer, Police Station, Chorgaliya, Haldwani, District Nainital.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Kumaon Region, Nainital/Inspector General of Police, Kumaon Region, Nainital.
4. Superintendent of Police, Champawat, District Champawat.

..... Respondents

Present : Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : **MAY 07th, 2026**

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

- "I. To set-aside the impugned punishment order dated 12.12.2023 passed by the Respondent No. 4 (**Annexure No. 1** to Compilation No. 1).

- II. To set-aside the impugned appellate order dated 28.01.2025 passed by the Respondent No. 3 (**Annexure No. 2** to Compilation No. 1).
- III. To direct the Respondents, particularly Respondent No. 3 to grant the petitioner all consequential benefits.
- IV. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- V. To allow the claim petition with cost."

2. In brief, the facts of the case are that:-

2.1. The petitioner was posted as In-Charge, Cyber Cell in District Champawat. However, vide order dated 23.09.2021, the petitioner was transferred as Station House Officer, Police Station, Tanakpur, District Champawat, passed by the Respondent No. 4.

2.2. One FIR under Section-376(2) (L) IPC was lodged in P.S. Tanakpur, District Champawat in the year 2021, in the month of August, 2021, i.e., much before joining of the petitioner in the said Police Station. The said FIR was numbered as Criminal Case No. 72 of 2021. The investigation of the said Criminal Case was being done by Lady Sub-Inspector Smt. Nishu Gautam. The said Lady Sub-Inspector, namely, Smt. Nishu Gautam on 28.08.2021, took into custody the relevant video footages from roadways stand Tanakpur, District Champawat and also sealed the concerned pen-drive and she also prepared the certificate required under

Section-65 (B) of Indian Evidence Act. However, despite taking seizure of the aforesaid evidence, the concerned Lady Officer deposited the same in the secure house (Maalkhana) of the concerned Police Station, but, for the reasons best known to her, she did not mention any detail in the case diary about sending of the same to the FSL. It further appears that vide order dated 06.08.2021, she was directed by the Circle Officer, Tanakpur, District Champawat to send the aforesaid evidences for examination to the FSL. While vide order dated 06.10.2021, the petitioner was directed by the concerned authority to take action against the co-accused and complete the investigation within time.

2.3. However, during investigation conducted by the said Lady Sub-Inspector, offence of Section-67(A) of Information Technology Act was added. Due to which, the further investigation of the said case was assigned to the petitioner, who was posted as Inspector in the said Police Station. In this regard, it is submitted that since the aforesaid Criminal Case was related to an offence against women as such, the investigation should have been handed over to any Female Sub-Inspector/Inspector, however, for the reasons best known to the authorities, the same was assigned to him w.e.f. 27.09.2021, against the norms fixed by the Department itself. Since the period of 60 days was expiring and the accused, namely, Dinesh Chaudakoti was in judicial custody, as such, the petitioner after conducting the further

investigation in the matter submitted the charge-sheet on 23.10.2021.

2.4. In the meantime, the petitioner was transferred from District Champawat to District Nainital as Cyber Cell In-Charge, Haldwani, District-Nainital, where, he joined duties in June, 2022. Presently, the petitioner is posted as Station House Officer, Police Station Chorgaliya.

2.5. During the hearing of the aforesaid criminal case, the learned concerned Court found that the sealed evidences were not sent for FSL. In this regard, it is submitted that the concerned Lady Sub-Inspector also submitted her explanation before the Learned Court. As such, certain orders were passed in the said case.

2.6. It appears that by misinterpreting the aforesaid orders, the Respondent No. 4 directed the Circle Officer, Tanakpur, District Champawat to submit a preliminary enquiry report in the matter, vide order No. 20 of 2023. The concerned Circle Officer, Champawat recorded the statement of the petitioner as well and also the statement of the Lady Sub-Inspector Smt. Nishu Gautam. Thereafter, the concerned Circle Officer submitted a preliminary enquiry report in the matter on 16-09-2023 in which at Page No. 3 (Para No. 3), the concerned Enquiry Officer clearly held responsible the initial Investigating Officer for the alleged lapses and in the concluding part also, it has been held that the concerned Lady Sub-Inspector /initial Investigating Officer namely

Smt. Nishu Gautam despite lapse of 28 days, did not send the pen-drive under question to the FSL and entered the sealed evidences/material in the secured house of the Police Station without making any entry of the general diary. However, a sketchy and passing remark has also been made against the petitioner. A conjoint reading of the aforesaid enquiry report dated 16-09-2023 would reveal that no adverse finding was ever recorded against the petitioner.

2.7. However, very surprisingly enough, the Respondent No. 4 by totally misinterpreting the said enquiry report dated 16-09-2023, issued show-cause notice dated 29-09-2023 to the petitioner as to why punishment of an adverse entry for the year 2023 be not awarded to the petitioner.

2.8. After receiving the said show-cause notice, the petitioner submitted his detailed reply in the matter to the Respondent No. 4 on 25-10-2023, in which all the allegations levelled in the show-cause notice were clearly refuted with strong and cogent reasons/documents. A further request was made to drop the said show-cause notice.

2.9. However, the Respondent No. 4 who prejudged the issue without any enquiry and was acting in the matter with pre-determination, passed the impugned punishment order dated 12-

12-2023, whereby, the adverse entry for the year 2023 was awarded to the petitioner.

2.10. A bare perusal of the said punishment order would reveal that in the first page and second page of the said impugned order, the Respondent No. 4 has only reproduced the contents of the show-cause notice dated 29-09-2023 and contents of the reply submitted by the petitioner. However, in the last para of Page No. 2 and in first para of Page No. 3 of the said impugned order, the Respondent No. 4 has merely observed that the explanation/reply submitted by the petitioner was not found satisfactory. In the entire order neither the reply of the petitioner has been considered at all, nor, the findings recorded by the Enquiry Officer in the preliminary enquiry report dated 16-09-2023 have been considered in an objective and fair manner. The impugned order is a sketchy and vague one and it appears that the same has been passed with pre-determination and in a prejudiced manner and without application of mind.

2.11. Feeling aggrieved, the petitioner submitted a departmental appeal before the appellate authority i.e. Deputy Inspector General of Police, Kumaon Range, Nainital on 12-12-2023 through proper channel.

2.12. However, the said departmental appeal of the petitioner has been cursorily rejected by the Inspector General of

Police, Kumaon Range, Nainital vide impugned order dated 28-01-2025.

2.13. It is submitted that the copy of the said impugned appellate order dated 28-01-2025 was served upon the petitioner only on 25-02-2025 through proper channel. Since copy of certain relevant documents were not available with the petitioner, as such, the petitioner made an application under RTI Act, on 22-08-2025 in the office of Respondent No. 4 and in reply to the same, the office of Respondent No. 4 vide reply dated 02-09-2025 furnished copies of certain information/documents to the petitioner. Copies of certain relevant documents as obtained under RTI Reply dated 02-09-2025 have already been annexed in the preceding paragraphs of this Claim Petition. Along with the said reply dated 02-09-2025, a copy of the report/comments dated 28-08-2025 submitted by the Deputy Superintendent of Police, Tanakpur have also been furnished to the petitioner and in Para No. 4, 5 and 6 of the same, it has been repeatedly held that the supervision of the concerned S.R. Case relating to Police Station Tanakpur was supervised by the Circle Officer, Tanakpur, District Champawat as well as by the Respondent No. 4 itself. Apart from the said officer, the same was also supervised by the District Magistrate, Champawat, Superintendent of Police Women Helpline Cell, Police Head Quarter, Uttarakhand as well as by the Inspector General of Police, Kumaon Region, Nainital.

2.14. As stated above, without considering the aforesaid reply in an objective manner, the Respondent No. 4 has passed the impugned punishment order without holding any enquiry in the matter and solely on the basis of the aforesaid preliminary enquiry report. In the said report also, the petitioner was never found guilty. Moreover, the said report cannot be pressed into disciplinary proceedings because only the statement of the petitioner were recorded in the same, but, no enquiry was ever held and whatever, alleged enquiry was held, was behind the back of the petitioner and thereby violating the principle of natural justice as well as Statutory Rules/Law on the point.

2.15. A bare perusal of the impugned order would reveal that neither the points raised by the petitioner in his reply were ever considered by the Respondent No. 4, nor the Respondent No. 4 has even cared to deal with the same and by simply writing a sentence that the reply submitted by the petitioner is not satisfactory, he has passed the punishment order straight away in the matter. It is settled position in law that the disciplinary authority/punishing authority/appointing authority in disciplinary proceedings acts as a quasi-judicial authority and every order, which has civil and legal consequences to anyone, cannot be passed in a routine and casual manner as by such order, the rights of an individual are being determined. Such action of authorities of a welfare state is unheard of and is in fact against the sovereign duties even to the quasi-judicial authority in such

matters. Every higher post comes with a great responsibility and every authority vested upon any authority by the law, also fastens great responsibility and application of mind, before passing any quasi-judicial order. The action of the Respondent No. 4 for passing the impugned punishment order solely on the basis of preliminary enquiry report (although in the said report also, the petitioner was not found guilty), is against the settled legal position on the point and against the true spirit and object of the fairness and impartialness in actions and the impugned order appears to be an outcome of purely non application of mind and passing quasi-judicial order in a routine and casual manner, without application of mind and without visualizing the effect/impact/implication/repercussion of such action.

2.16. It is also submitted that the aforesaid action of the Respondent No. 4 in solely relying upon/misinterpreting the preliminary enquiry report, for the purpose of passing the impugned order, is against the settled legal position, as has been held by the Hon'ble Supreme Court in various judicial verdicts passed from time to time and one such judgment on the point is the case of *Nirmala J. Jhala*. This Hon'ble Tribunal has also considered the said judgment in various judgments and one of such judgment was passed in the case of *Ravindra Kumar Vs. State of Uttarakhand and others*, Claim Petition No. 08/NB/DB/2015. True copy of the said relevant documents shall be produced during the course of hearing, if needed.

2.17. The petitioner craves leave of this Hon'ble Court to bring on record one such judgment dated 16-10-1992 passed by Division Bench of Hon'ble Allahabad High Court considering a similar controversy.

3. CA/WS has been filed on behalf of the respondents No. 1 to 4 by Sri Kishore Kumar, learned Assistant Presenting Officer, Uttarakhand Public Services Tribunal, Nainital Bench, Nainital, in which, it has been stated that:-

3.1. यह कि याचिका में याची द्वारा लिखे गये समस्त प्रस्तर अस्वीकार है एवं केवल वहीं प्रस्तर जो अभिलेखों पर आधारित है स्वीकार है।

3.2. यह कि याचिका के प्रस्तर संख्या-1 में वर्णित कथन अभिलेखीय है परन्तु इस सम्बन्ध में कथन है कि याची के विरुद्ध पुलिस अधीक्षक, चम्पावत के द्वारा पारित प्रतिकूल प्रविष्टि का आदेश दिनांक 12.12.2023 तथा इस आदेश के विरुद्ध याची के द्वारा पुलिस महानिरीक्षक, कुमौऊ परिक्षेत्र, नैनीताल के समक्ष प्रस्तुत अपील में पुलिस महानिरीक्षक, कुमौऊ परिक्षेत्र, नैनीताल द्वारा पारित आदेश दिनांक 28.01.2025 नियमानुसार हैं, इस कारण पारित आदेश दिनांक 12.12.2023 तथा दिनांक 28.01.2025 यथावत् रखे जाने योग्य है।

3.3. यह कि याचिका के प्रस्तर संख्या-4.4 में किये गये कथनों में याची द्वारा तथ्यों को छिपाया गया है। इस सम्बन्ध में अवगत कराना है कि थाना-टनकपुर में पंजीकृत अभियोग एफ0आई0आर0 नं0-72/2021

की विवेचना उ०नि०ना०पु० निशु गौतम के द्वारा सम्पादित की जा रही थी, दौरान विवेचना उक्त उ०नि० के द्वारा अजय टम्टा नाम के व्यक्ति के मोबाईल से घटना के सम्बन्धित वाईरल वीडियो की फुटेज तथा उत्तराखण्ड परिवहन निगम के सी.सी.टी.वी. से घटना की सी.सी.टी.वी. फुटेज दिनांक 28.08.2021 को संग्रहित कर ली गयी थी और फुटेज की पेन-ड्राईव, धारा 65बी, भारतीय साक्ष्य अधिनियम का प्रमाण-पत्र लेकर कोतवाली टनकपुर के मालखाना में रख दी गयी, मुकदमे में धारा 67 आई०टी०एक्ट की बढ़ोत्तरी होने के उपरान्त 67 आई०टी० एक्ट की विवेचना याची/निरीक्षक ना०पु० हरपाल सिंह को दिनांक 27.09.2021 को सौंपी गयी, याची ने पूर्व विवेचक निशू गौतम के द्वारा संरक्षित अभियोग से सम्बन्धित पेन-ड्राईव को परीक्षण हेतु विधि विज्ञान प्रयोगशाला नहीं भेजा गया जो कि याची के पुलिस विभाग में निरीक्षक ना०पु० जैसे महत्वपूर्ण एवं जिम्मेदार पद पर नियुक्त रहते हुए अपने कर्तव्य के प्रति घोर लापरवाही एवं स्वेच्छाचारिता थी, शेष तथ्यों से सम्बन्धित है।

3.4. यह कि याचिका के प्रस्तर संख्या-4.8 में किये गये कथन तथ्यों पर कोई टिप्पणी नहीं करनी है तथापि प्रकरण में धारा 67 आई०टी० एक्ट की बढ़ोत्तरी होने व आई०टी० एक्ट के मामले में विवेचक निरीक्षक रैंक से नीचे रैंक का अधिकारी प्रावधानिक न होने की स्थिति में ना०पु० निशु गौतम के द्वारा संग्रहित घटना की फुटेज का पेन-ड्राईव धारा 376 (2) एल, भा०दं०सं० का एक महत्वपूर्ण साक्ष्य होना तथा धारा 67 आई०टी० एक्ट का भी महत्वपूर्ण साक्ष्य था जिससे अभियुक्त के द्वारा धारा 376 (2) एल, भा०दं०सं० की घटना को अन्जाम दिया जाना स्पष्ट हो रहा था, यहाँ यह भी उल्लेखनीय है कि मामले की पीड़िता जिसके साथ अभियुक्त के द्वारा धारा 376 (2) एल, भा०दं०सं० का अपराध कारित किया गया था वह

विक्षिप्त महिला थी, धारा 67 आई0टी0 एक्ट की बढ़ोत्तरी के उपरान्त मामले में साक्ष्य के रूप में संकलित उक्त पेन-ड्राईव एक महत्वपूर्ण साक्ष्य होने के कारण पेन-ड्राईव का एफ0एस0एल0 से परीक्षण कराने का दायित्व पूर्व विवेचक उ0नि0 निशू गौतम के साथ ही धारा 67 आई0टी0 एक्ट के विवेचक अर्थात् याची का भी था, याची के द्वारा माल मुकदमाती (पेन-ड्राईव व मोबाईल फोन) को एफ0एस0एल0 न भेजकर अपने कर्तव्य के प्रति घोर लापरवाही व उदासीनता करने का पुष्ट साक्ष्य है, जॉच अधिकारी की रिपोर्ट में सभी तथ्यों और साक्ष्यों का स्पष्ट उल्लेख है जिसके आधार पर याची के पुलिस विभाग में निरीक्षक ना0पु0 जैसे महत्वपूर्ण एवं जिम्मेदार पद पर नियुक्त रहते हुए अपने कर्तव्य के प्रति घोर लापरवाही एवं स्वेच्छाचारिता करने का स्पष्ट मामला बनता था, शेष तथ्यों पर आधारित है। पुलिस क्षेत्राधिकारी, टनकपुर (चम्पावत) की प्रारम्भिक जॉच आख्या दिनांक 16 सितम्बर, 2023 में स्पष्ट उल्लेख किया गया है कि “अतः मु0अ0सं0 72/21, धारा 376 (2) (एल) भादवि की विवेचना में विवेचक उ0नि0 निशू गौतम द्वारा अभियोग से सम्बन्धित वायरल वीडियो की रिकार्डिंग का साक्ष्य पेन-ड्राईव में संरक्षित करने पश्चात् भी परीक्षण हेतु एफ0एस0एल0 न भेजने व अभियोग में धारा 67 क आईटी एक्ट की बढ़ोत्तरी होने पर निरीक्षक श्री हरपाल सिंह द्वारा अजय टम्टा से बराम मोबाईल व पेन-ड्राईव जिनमें उक्त वाईरल वीडियो संरक्षित था परीक्षण हेतु एफ0एस0एल0 नहीं भेजा गया, जिसके लिये म0 उ0नि0 निशू गौतम व निरीक्षण श्री हरपाल सिंह दोषी पाये गये।”

3.5. यह कि याचिका के प्रस्तर संख्या-4.10 में किये गये कथन तथ्यों पर आधारित है परन्तु इस सम्बन्ध में कथन है कि पुलिस अधीक्षक, चम्पावत के द्वारा प्रेषित कारण बताओ नोटिस दिनांक 29.09.2023 के

प्रतिउत्तर एवं स्पष्टीकरण दिनांकित 25.10.2023 में उल्लेख किया गया है कि अजय टम्टा से बरामद मोबाईल फोन व उ०नि० निशू गौतम के द्वारा संरक्षित वाईरल वीडियो व रोडवेज के सी०सी०टी०वी० फुटेज की पेन-ड्राईव को थाने के मालखाने में रखा गया था जिसमें छेड़छाड़ की सम्भावना न होने के कारण उसे एफ०एस०एल० नहीं भेजा गया और बिना एफ०एस०एल० से जॉच कराये आरोप-पत्र प्रस्तुत किया गया और न्यायालय हस्तक्षेप के उपरान्त माल मुकदमाती को एफ०एस०एल० भेजा गया, जबकि उक्त पेन-ड्राईव व अभियुक्त अजय टम्टा से बरामद किया गया मोबाईल फोन धारा 67ए आई०टी०एक्ट के मामले के साथ ही धारा 376 भा०दं०सं० के अपराध का महत्वपूर्ण साक्ष्य था, उ०नि० निशू गौतम/याची के द्वारा उक्त पेन-ड्राईव को मालखाने में रख दिया गया और निरीक्षक हरपाल सिंह के द्वारा भी वीडियो वाईरल करने वाले अभियुक्त अजय टम्टा से बरामद मोबाईल फोन को थाने के मालखाने में रख दिया और दोनों की माल को परीक्षण हेतु एफ०एस०एल० नहीं भेजा गया, इस कारण याची के द्वारा कारण बताओ नोटिस के उत्तर में किया गया कथन और स्पष्टीकरण सन्तोषजनक नहीं था।

3.6. यह कि याचिका के प्रस्तर संख्या-4.11 में किये गये कथन अस्वीकार है इस सम्बन्ध में कथन है कि अनुशासनिक प्राधिकारी के द्वारा याची के विरुद्ध दिनांक 12.12.2025 को "परिनिन्दा प्रविष्टि" उसकी चरित्र-पंजिका में करने का आदेश पारित करने से पूर्व आदेश में सभी तथ्यों का समावेश करते हुए नियमानुसार कारण सहित विस्तृत आदेश पारित किया गया, जो याची के द्वारा निरीक्षक नागरिक पुलिस जैसे जिम्मेदार एवं महत्वपूर्ण पद पर रहते हुए एक विक्षिप्त महिला के साथ घटित धारा 376 भा०दं०सं० के साथ धारा 67ए आई०टी०एक्ट जैसे गम्भीर

अपराध की विवेचना के दौरान घटना के महत्वपूर्ण साक्ष्य घटनास्थल के वीडियो फुटेज की पेन-ड्राईव व वीडियो वाईरल करने वाले अभियुक्त अजय टम्टा की पेन-ड्राईव को एफ0एस0एल0 न भेजकर एक विवेचक के रूप में अपने कर्तव्य के प्रति घोर लापरवाही एवं स्वेच्छाचारिता पाये जाने के दृष्टिगत सर्वथा उचित है।

3.7. यह कि याचिका के प्रस्तर संख्या-4.12 में किये गये कथन जिस प्रकार से वर्णित किया है अस्वीकार है। इस सम्बन्ध में कथन है कि अनुशासनिक प्राधिकारी के द्वारा याची के विरुद्ध दिनांक 12.12.2025 को “परिनिन्दा प्रविष्टि” उसकी चरित्र-पंजिका में करने का आदेश पारित करने से पूर्व आदेश में सभी तथ्यों तथा याची के द्वारा दिये गये प्रतिउत्तर पर विचार करते हुए व समावेश कर नियमानुसार कारण सहित विस्तृत आदेश पारित किया गया है, जो याची के द्वारा निरीक्षक नागरिक पुलिस जैसे जिम्मेदार एवं महत्वपूर्ण पद पर रहते हुए एक विक्षिप्त महिला के साथ घटित धारा 376 भा0दं0सं0 के साथ धारा 67ए आई0टी0एक्ट जैसे गम्भीर अपराध की विवेचना के दौरान घटना के महत्वपूर्ण साक्ष्य घटनास्थल के वीडियो फुटेज की पेन-ड्राईव व वीडियो वाईरल करने वाले अभियुक्त अजय टम्टा की पेन-ड्राईव को एफ0एस0एल0 न भेजकर एक विवेचक के रूप में अपने कर्तव्य के प्रति घोर लापरवाही एवं स्वेच्छाचारिता पाये जाने के दृष्टिगत अनुचित नहीं है।

3.8. यह कि याचिका के प्रस्तर संख्या-4.17 में किये गये कथन अस्वीकार है, विभागीय कार्यवाही के दौरान याची के द्वारा प्रश्नगत प्रकरण में अपने कर्तव्य के प्रति की गयी घोर लापरवाही एवं स्वेच्छाचारिता के फलस्वरूप याची को “परिनिन्दा प्रविष्टि” के लेख से दण्डित किया गया,

ऐसा कोई प्रावधान नहीं है कि पुरानी सेवा को दृष्टिगत् पारित किया जाय। प्रश्नगत् प्रकरण के तथ्यों व परिस्थितियों के दृष्टिगत् याची के विरुद्ध पारित आदेश विधिसम्मत होने के कारण आपास्त योग्य नहीं है।

3.9. यह कि याचिका के प्रस्तर संख्या-4.18 में किये गये कथन अस्वीकार है, अपीलीय प्राधिकारी के द्वारा कारण सहित आदेश पारित कर याची की अपील को निरस्त कर अनुशासनिक प्राधिकारी के द्वारा याची को “प्रतिकूल प्रविष्टि” के लेख से दण्डित करने के आदेश की पुष्टि की है जो कि विधिक है उक्त आदेश को पारित करने में अपीलीय अधिकारी के द्वारा मा0 सर्वोच्च न्यायालय के किसी निर्णय अथवा विधिक व्यवस्था का कोई भंग नहीं किया है।

3.10. यह कि प्रतिवाद-पत्र के उपरोक्त कथनों के आधार पर याची की याचिका सब्यय अस्वीकार होने योग्य है। मा0 अधिकरण स प्रार्थना है, कि याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जिस कारण उक्त याचिका खारिज होने योग्य है। अतः मा0 न्यायाधिकरण से अनुरोध है, कि उक्त याचिका को शासन/विभाग के पक्ष में खारिज/निरस्त करने का कष्ट करें।

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.

6. Learned Counsel for the petitioner reiterated the entire facts and legal issues as averred in the claim petition,

but emphasized specifically upon the following facts and legalities which, as per the learned Counsel for the petitioner had ironically been overlooked, belittled or ignored by the Punishing Authority and the Appellate Authority, as well:-

- (A). The impugned crime against the victim woman in the instant matter under Section 376 (2) (L) IPC took place on 24.08.2021 at Police Station Tanakpur, District Champawat when the petitioner was not posted at that Police Station.
- (B). The petitioner got posted as S.H.O. of P.S. Tanakpur, District Champawat by the order of respondent No. 4, Superintendent of Police Champawat order No. ST-14/2021 dated 23.09.2021 (Annexure No. 4)
- (C). Initially, the investigation was given to the woman Sub-Inspector Nishu Gautam as I.O., who was already posted at P.S. Tanakpur at that time, due to the fact that since in the cases of crime against women the investigation was legally bound to be done by a woman Police Officer.
- (D). Later on, this fact came to light through social media that there was a video clip of the crime in circulating on the social media amongst the local

population which has been uploaded from the C.C.T.V. footage recorded at the local Roadways Bus Station, which was the place of crime. On getting this information the then woman I.O./S.I. Nishu Gautam received the pen-drive depicting the entire episode of the crime from the Station In-Charge of Roadways Bus Station on 28.08.2021.

- (E). Since the existence of such a C.C.T.V. footage of the crime and the pen-drive/video recording of the same came to light, the investigation became a subject to the I.T. Act also, alongwith the impugned crime against woman.
- (F). This gave rise to a peculiar situation in the investigation of the instant crime that a crime against woman was mandatorily investigated by a Woman Police Officer, while the crime investigation under IT Act was compulsorily to be a investigated by a Police Officer not below the rank of an Inspector.
- (G). Perhaps this was the reason that the I.O./Woman S.I. Nishu Gautam did not take cognizance of the pen-drive and did not make any mention of the same in the I.O.'s case dairy. Instead, she

deposited the pen-drive in the Police Maalkhana, despite the fact that the Circle Officer, Tanakpur had directed her to dispatch all the evidences to the Forensic Science Laboratory (FSL) for forensic examinations.

- (H). By the time the petitioner took charge of P.S. Tanakpur in the capacity of Station House Officer it had already been more than a month from the beginning of investigation of the impugned crime.
- (I). The petitioner was nominated as I.O. on 06.10.2021 by Circle Officer Tanakpur by an explicit order. Till that time the petitioner was not in picture at all about the existence of the pen-drive under question.
- (J) Later on, the petitioner, assuming that the Woman I.O./S.I. Nishu Gautam only was authorized legally and mandatorily to investigate the main crime under Section 376 (2) (L) I.PC., he concluded the investigation and submitted the case diary and charge-sheet etc. before the Court.
- (K). No doubt that the petitioner made a blunder of oversight regarding the forensic examination of the pen-drive under question, nevertheless, it would be

wrong to assume that his actions were deliberate or of negligence considering the circumstances existing at that time, which had very explicitly been explained by the petitioner in connection with the show-cause notice served upon him by the respondent No. 4. The petitioner has categorically mentioned that immediately before this period of investigation the entire State had suffered severely under the COVID-19 Epidemic from year 2020 to 2021 due to which the famous religious fair at Poornagiri Devi Temple within the jurisdiction of P.S. Tanakpur had not been held for last two years and during his tenure at present the religious fair was going to be conducted at a very high level. Further, the preparations had already begun at the Police station for upcoming Legislative Assembly Election in early 2022. Also at that time the jurisdictional area of P.S. Tanakpur had been suffering badly due to flooding of nearby Sharda river, therefore, the petitioner was heavily overloaded by sensitive works of policing, law and order and flood relief etc.

- (L). In his explanation towards the show-cause notice the petitioner had specifically mentioned that

during the pendency of the trial in the Criminal Court when the petitioner came to know that the pen-drive under question had not been forensically examined earlier he contacted the District Government Counsel dealing with the matter telephonically and requested him to send the pen-drive under question to the FSL. It was because of the petitioner's initiative that the matter was brought to the knowledge of Presiding Officer of the Trial Court and the FSL examination was got conducted upon the aforesaid pen-drive and consequently the accused was convicted as per the law.

- (M). This is also important to note that the Trial Court had not directed the respondent No. 4 to punish the petitioner, rather it had directed the respondents simply to take cognizance of the matter and issue appropriate directions to the District Police Personnels of Champawat District regarding the investigation of such nature in future.
- (N). Ironically, the petitioner seems to have been punished by the respondent No. 4 in his pro-active overzeal.

7. Learned A.P.O. during his arguments drew the attention of the Tribunal that firstly, the petitioner was not a simple S.I. but S.H.O. Tanakpur and was quite an experienced Senior Officer, secondly, when the investigation was already going-on by the earlier I.O. the petitioner should have enquired her about the progress in the investigation and the evidences having been collected under her custody, since the I.O/Woman S.I., Nishu Gautam was his direct subordinate within the same police station, and finally, the petitioner had been posted earlier (before P.S. Tanakpur) as Officer In-Charge of the Cyber Cell itself and knew very well that he had been appointed as I.O. in the instant crime compulsorily because of the IT Act Sections added for investigation of the impugned crime due to the existence of pen-drive.

8. Therefore, as per the learned A.P.O. the act of negligence on the part of the petitioner was grave and his claim petition lacks substance and deserves to be dismissed.

9. On the perusal of the record, the entire pleadings of the learned Counsel for the petitioner hold water, as they all get corroborated by the documentary evidences kept on record. There is not an iota of doubt that intermingling of two crimes of separate nature, the first being a crime against women and the second being a crime under the IT Act,

mandatorily to be investigated separately by a Women Officer and another Officer not below the rank of an Inspector have given to this peculiar oversight in relation to the pen-drive under question. Another fact that has been conveniently overlooked by the Punishing Officer and the Appellate Authority as well is that the Supervisory Authority over both the Investigating Officers was the Police Circle Officer, Tanakapur himself, who ought to have coordinated both the investigations of the different nature together prior to permitting the case diary to be submitted before the Trial Court. Ironically in the instant matter, the Police Circle Officer Tanakpur himself had been made the Enquiry Officer in this Departmental Enquiry, which was not appropriate prima facie.

10. It would be quite relevant here to quote the paras 77, 81 and 110 of the Trial Court's judgment dated 04.02.2025 in the Criminal Trial concerned in the instant matter:-

“77. प्रस्तुत प्रकरण में दौराने विवेचना प्रश्नगत् वीडियो अजय टम्टा के मोबाईल से एक पेन-ड्राईव (DGNET) में ली जाती है तथा अजय टम्टा से धारा-65 बी का प्रमाण-पत्र प्रदर्श पी-8 भी लिया जाता है। रोडवेज बस स्टैंड पर लगे सी0सी0टी0वी0 कैमरों की दिनांक 24.08.2021 की घटना से संबंधित रिकार्डिंग पेन-ड्राईव (Sandisk) में ली जाती है

तथा कनिष्ठ केन्द्र प्रभारी शान्ति स्याल से धारा-65बी का प्रमाण-पत्र प्रदर्श पी-10 भी लिया जाता है। विवेचना के दौरान, उक्त इलेक्ट्रॉनिक साक्ष्य की authenticity जांचने हेतु उक्त साक्ष्य को विधि-विज्ञान प्रयोगशाला नहीं भेजा जाता है, जो विचारण के दौरान न्यायालय के आदेश दिनांकित 05.06. 2023 के अनुक्रम में Central Forensic Science Laboratory, Shimla, Himachal Pradesh भेजा जाता है।

81. यद्यपि प्रस्तुत प्रकरण में दौरान विवेचना, उक्त इलेक्ट्रॉनिक साक्ष्य को उचित रूप से सील सर्वे मोहर कर हस्ताक्षरित कर, न्यायालय में प्रस्तुत करने एवं एफ0एस0एल0 भेजने हेतु, दोनों विवेचकों द्वारा घोर लापरवाही बरती गई है, जो उनके साक्ष्य के दौरान न्यायालय द्वारा उनसे किये गये प्रश्नों से स्वयं ही परिलक्षित होती है, तथापि पूर्व विद्वान पीठासीन अधिकारी द्वारा समय पर किये गये intervention से यह महत्वपूर्ण साक्ष्य, इस साक्ष्य की authenticity की जांच हेतु सी0एफ0एस0एल0 भेजा सका है तथा सी0एफ0एस0एल0 की रिपोर्ट में इन वीडियो की इंटीग्रीटी पुष्ट हुई है तथा इन वीडियो का अवलोकन प्रस्तुत प्रकरण में घटना को 'Res Ipsa Loquitur' (things speaks for itself) के सिद्धान्त की भांति बिना किसी संदेह के, युक्तियुक्त रूप से साबित कर देता है।

110. इस निर्णय/आदेश की एक प्रति जिलाधिकारी, चम्पावत को व एक प्रति जिला शासकीय अधिवक्ता को प्रेषित

की जाये। निर्णय की एक प्रति पुलिस अधीक्षक, चम्पावत को भी इस प्रकरण में विवेचना में की गई लापरवाही के संबंध में संज्ञानार्थ व भविष्य में पुनरावृत्ति न हो, के लिये आवश्यक दिशा-निर्देश जारी किये जाने हेतु प्रेषित की जाये।”

A simple reading of the court directions reveal that the intention of the Sessions Court was not to get the petitioner punished, rather it was meant to get necessary instructions issued by the respondent No. 4, to the Police Personnels of District Champawat for future investigations of this nature. Though it is true that the Trial Court has used the word “Carelessness” on the part of the petitioner/I.O. in the matter, nevertheless, the respondent No. 4, having taken cognizance of the Trial Court’s directions, could have complied by issuing stern warnings for the future to both the I.Os., instead of going-in for adverse entries.

11. Though, the learned A.P.O. has pleaded perfectly well that given the seniority and experience of the petitioner in the police service this matter should be taken as a grave carelessness on the part of the petitioner, nevertheless, in this Tribunal’s opinion the existing situations at that time should have been kept in mind, particularly those circumstances which stood before the petitioner as a Station House Officer post COVID-19 Epidemic, of which serious notice had earlier

been taken by the Hon'ble Apex Court, the Government of India and the State Government and elaborate instructions issued in this regard. The adverse effect of such existing circumstances cannot be undermined simply because the petitioner was a Police Officer in uniform. The act of the petitioner, therefore, should well be taken as an act of oversight rather than carelessness or arbitrariness.

12. In the light of above conclusion, the petition succeeds.

ORDER

Accordingly, the claim petition is, hereby, allowed. The impugned punishment order dated 12.12.2023 passed by the Respondent No. 4 (**Annexure No. 1** to Compilation No. 1) and the impugned appellate order dated 28.01.2025 passed by the Respondent No. 3 (**Annexure No. 2** to Compilation No. 1) are hereby quashed. Therefore, respondent No. 3 is directed to grant the petitioner all consequential benefits within a period of 90 days beginning from the date of service of a certified copy of this judgment upon the respondents. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: **MAY 07th, 2026**
NAINITAL
BK

