

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

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

----- Member (A)

Claim Petition No. 37/NB/SB/2025

Neeshu Gautam (Female) **Adhaar No. 501278967413**, aged about 33 years, W/o Sri Surya Prakash Singh, R/o Village Barkhera Pandey Kashipur, P.O. Kashipur, District Udham Singh Nagar Uttarakhand-244713, presently posted as Sub-Inspector, P.S. Chorgaliya, District Nainital.

..... Petitioner

Versus

1. State of Uttarakhand, through Principal Secretary, Home Department, Dehradun.
2. Inspector General of Police, Kumoun Region, Nainital.
3. Superintendent of Police, Champawat, District Champawat.

..... Respondents

Present : Sri Subhash Joshi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : 30th OCTOBER, 2025

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

- “(i). to quash the impugned order dated 28.01.2025
and 12.12.2023 alongwith its effect and

operation and direct the respondents to expunge the entry of censure from the service record of the petitioner after calling the entire record or pass any other order direction which this Hon' le Court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.

(ii) to issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. In brief, the facts of the case are that the petitioner was selected and appointed as S.I. on 07.07.2015 in the respondent department against substantive and permanent vacancy and also by due process of law. When the petitioner was posted at Police Station Tanakpur then on 26.08.2021 an FIR was lodged under Section 376 (2) (L) of I.P.C. bearing FIR No. 72 of 2021. The concerned S.H.O. appointed the petitioner as Investigating Officer of the aforesaid case. Thereafter, the petitioner started the investigation in the matter and collected the evidence and during investigation the petitioner found that one video clip of the incident is viral in the area and it was found that the incident was recorded in the CCTV of the Roadways. The petitioner collected the viral video from the mobile of witness Ajay Tamta from his mobile no. 7451080777 and also collected the CCTV footage of the Roadways Station Tanakpur and after collecting the same added Section 65 of I.T. Act in the FIR and after taking certificate under Section 65 of I.T. Act deposited the same in the Maalkhana. Since the Section 67 of I.T. Act was added in the crime, thus, as per the rules the investigation was transferred to

Inspector, who is authorized to investigate the matter under I.T. Act vide order dated 17.09.2021. The petitioner after transfer of the investigation submitted the case diary and informed the Inspector that she after taking certificate under Section 65 of I.T. Act deposited the Pen Drive in the Maalkhana. Thereafter, the Inspector Mr. Harpal Singh investigated the matter and submitted the charge-sheet against the accused. The Hon'ble District Judge during trial found that the Pen Drive recovered was not sent for FSL during investigation and observed in its daily order for enquiry in the matter. Thereafter, the respondent No. 3 directed for preliminary enquiry in the matter and appointed the Circle Officer Mr. Avinash Verma, who is the same officer, who during the investigation counter signed the case diary and passed the appropriate directions regarding the investigation. The Enquiry Officer after enquiry submitted its enquiry report on 16.09.2023 to the respondent No. 3. In the enquiry, the Enquiry Officer opined that the petitioner during investigation of 28 days has not sent the Pen Drive for FSL. In this regard, it is stated that the petitioner after recovering the Video Footage in Pen Drive deposited the same to the Maalkhana after obtaining the certificate under Section 65 of the I.T. Act and after adding section 67 of I.T. Act the investigation was transferred from the petitioner to the Inspector Mr. Harpal Singh and thereafter, the investigation under I.T. Act was conducted by the Inspector Harpal Singh and the investigation was monitored by the concerned C.O., i.e., the enquiry officer, the Superintendent of Police Champawat, the Deputy Inspector General Kumoun because the victim in the case was a

mentally retarded female. Thus, the petitioner, who was initially investigating the matter pertaining to Section 376 (2) (L) investigated the matter properly and collected the evidence and on the evidence collected by the petitioner the trial court convicted the accused, but after the addition of the Section 67 of I.T. Act the investigation was transferred from the petitioner to the Inspector Mr. Harpal Singh and thereafter he conducted the investigation under I.T. Act and had the information of the Pen Drive, which was deposited in the Maalkhana, and submitted the charge-sheet and made the Pen Drive a part of investigation and submitted the same to the concerned court and during trial the pen drive was sent for FSL and found genuine. Thus to comply with the directions of the Hon'ble Sessions Judge the petitioner, who is lowest employee has been implicated by the Enquiry Officer for negligence and found her guilty. The observation of the Enquiry Officer is against the principle of law ***Nemo Judex in Sua Causa*** "No one can be judged in his own case" because the Enquiry Officer being Circle Officer is also a party in the investigation. Thus, the enquiry as well as the impugned orders are liable to be set-aside. Pursuant to the enquiry report the respondent No. 3 issued a show-cause notice to the petitioner on 29.09.2023 and directed her to submit her reply within 15 days. The respondent No. 3 in its show-cause notice mentioned the punishment. The aforesaid act of the respondent No. 3 shows his pre-mind set condition. Thus seeking the reply of the petitioner is a futile exercise. The aforesaid act of the disciplinary authority is against the provisions of law laid down by the Hon'ble Apex Court in case of

M.D. ECIL vs. B. Karunakaran and also its violation of the judgment and order of the Hon'ble High Court of Uttarakhand passed in WPSS No. 192 of 2017 Constable 51 AP Jogender Kumar vs. State of Uttarakhand. After receiving the show-cause notice, the petitioner submitted her reply to the show-cause notice on 30.10.2023 and denied the allegations and requested to cancel the show-cause notice. Surprisingly, the disciplinary authority in utter hot haste passed the impugned order on 12.12.2023 without examining the submission made by the petitioner and maintained the punishment as mentioned in the show-cause notice, thus, the impugned order dated 12.12.2023 is not tenable in the eyes of law. Feeling aggrieved by the impugned order dated 12.12.2023, the petitioner preferred a statutory appeal before the respondent No. 2 through proper channel on 21.02.2024 and requested the respondent No. 2 to quash the order of censure entry. Thereafter, the appellate authority without applying his mind on the legal issue raised by the petitioner rejected the appeal on 28.01.2025 in a cursory and stereo type manner. Hence this claim petition. The appellate authority is duty bound to pass reasoned orders dealing with contentions of the employees, but in the instant case the appellate authority not exercised his powers conferred to him and only in a stereo type manner rejected the appeal in cursory manner on the ground of delay. The Hon'ble Apex Court in the case of "Deokinandan Sharma vs. Union of India & others" reported in 2001 (5) SCC 340, has held the appellate authority is duty bound to pass reasoned order dealing with the appellant's contentions. Thus, the appellate authority not complied

with the aforesaid directions of the Hon'ble Apex Court and thus kind indulgence of this Hon'ble Court is required. In the case of "State of Uttaranchal & others vs. Kharak Singh" reported in 2008 (8) SCC the Hon'ble Apex Court has held that the appellate authority is required to support his decision with reference to enquiry records.

3. प्रतिवादी संख्या-1, 2 एवं 3 की ओर से श्री किशोर कुमार, सहायक प्रस्तुतकर्ता अधिकारी द्वारा लिखित विवेचन-पत्र दाखिल किया गया, जो इस प्रकार है:-

3.1. यह कि याचिका के प्रस्तर संख्या- 1 में वर्णित कथन अभिलेखीय है परन्तु याची के कथन वास्तविक तथ्यों से विपरीत होने के कारण अस्वीकार है। इसके अतिरिक्त यह कहना 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 कुमौंऊ परिक्षेत्र, नैनीताल के समक्ष प्रस्तुत अपील में पुलिस महानिरीक्षक, कुमौंऊ परिक्षेत्र नैनीताल द्वारा पारित आदेश दिनांक 28.01.2025 नियमानुसार हैं, जिन्हें पारित होने पर किसी भी प्रकार से प्राकृतिक न्याय मा0 सर्वोच्च न्यायालय के द्वारा पारित आदेशों का उल्लंघन नहीं हुआ है, इस कारण पारित आदेश दिनांक 12.12.2023 तथा दिनांक 28.01.2025 यथावत् रखे जाने योग्य नहीं है।

3.2. यह कि याचिका के प्रस्तर संख्या-4.3 में किये गये कथन के सम्बन्ध में अवगत कराना है कि याची के द्वारा तथ्यों को छिपाया गया है, थाना-टनकपुर में पंजीकृत अभियोग एफ0आई0आर0 नं0 72/2021 में याची के द्वारा बतौर विवेचक, 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 घटना दिनांक 24.08.2021 को संग्रहित कर ली गयी है और फुटेज की पैन डाईव, धारा 65बी. भारतीय साक्ष्य अधिनियम का प्रमाण-पत्र लेकर कोतवाली टनकपुर के मालखाना में बिना जी०डी० में दर्ज किये रख दी गयी, जबकि मुकदमे में धारा 67 आई०टी० एक्ट की बढ़ोत्तरी होने के उपरान्त 67 आई०टी० एक्ट की विवेचना निरीक्षक ना०पु० हरपाल सिंह के द्वारा घटना के 33 दिन बाद दिनांक 27.09.2021 को ग्रहण की गयी, याची के द्वारा अभियोग से सम्बन्धित पैन डाईव को संरक्षित करने के उपरान्त परीक्षण हेतु विधि विज्ञान प्रयोगशाला नहीं भेजा गया जो कि याची के पुलिस विभाग में उपनिरीक्षक जैसे महत्वपूर्ण एवं जिम्मेदार पद पर नियुक्त रहते हुए अपने कर्तव्य के प्रति घोर लापरवाही एवं स्वेच्छाचारिता थी, शेष तथ्यों से सम्बन्धित है।

3.3. यह कि याचिका के प्रस्तर संख्या-4.4 में किये गये कथन जिस प्रकार से वर्णित किया गया है स्वीकार नहीं है, पुलिस क्षेत्राधिकारी, निरीक्षक एवं उप-निरीक्षक के वरिष्ठ अधिकारी हैं, इस कारण पुलिस क्षेत्राधिकारी, सुपरवीजन/पर्यवेक्षण अधिकारी होने के बाद भी अपने अधीन कार्यरत् किसी कर्मचारी के विरुद्ध जाँच करने हेतु सक्षम अधिकारी है, 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 भी याची के द्वारा संग्रहित घटना की फुटेज का पैन डाईव धारा 376 एल. भा०दं०सं० का एक महत्वपूर्ण साक्ष्य था अर्थात् वाईरल वीडियो एवं रोडवेज के सी०सी०टी०वी० से लिये गये फुटेज में अभियुक्त के द्वारा 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 भा०दं०सं० का अपराध

कारित किया गया था वह विक्षिप्त महिला थी, इस कारण भी मामले में साक्ष्य के रूप में संकलित उक्त पैन ड्राईव एक महत्वपूर्ण साक्ष्य होने के कारण पैन ड्राईव का एफ0एस0एल0 से तुरन्त परीक्षण कराने का दायित्व विवेचक अर्थात् याची का था, याची के द्वारा पैन ड्राईव को एफ0एस0एल0 न भेजकर अपने कर्तव्य के प्रति घार लापरवाही व उदासीनता 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 उप-निरीक्षक 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।

3.4. यह कि याचिका के प्रस्तर संख्या-4.5 में किये गये कथन के सम्बन्ध में अवगत कराना है कि कारण बताओ नोटिस दिनांक 29.09.2023 में स्पष्ट रूप से जॉच अधिकारी के द्वारा दिये गये निष्कर्ष को वर्णित कर प्रस्तावित कार्यवाही के सम्बन्ध में कारण बताने को कहा गया था, इस प्रकार कारण बताओ नोटिस में प्रस्तावित कार्यवाही के सम्बन्ध में कारण बनाने को कहना किसी भी प्रकार से प्रक्रिया को दूषित नहीं करता है। प्रस्तावित कार्यवाही के सम्बन्ध में कारण बताने का कहना न तो नियमों के विरुद्ध है और न मा0 न्यायालयों के द्वारा पारित आदेशों के विरुद्ध है, शेष तथ्यों पर आधारित होने के कारण कोई टिप्पणी नहीं करनी है।

3.5. यह कि याचिका के प्रस्तर संख्या-4.6 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 30.10.2023 के पैरा नं0-2 में याची उ0नि0 ना0पु0 नीशू गौतम के द्वारा स्वीकार किया गया है कि "यह कि उक्त वीडियो

धारा-376 आई0पी0सी0 से सम्बन्धित था उसके उपरान्त यह कहना कि वीडियो वायरल करने वाले के विरुद्ध धारा 67 आई0टी0 एक्ट का मामला बन रहा था इसलिये वह मामले की विवेचना हेतु सक्षम नहीं थी, जबकि उक्त पैन डाईव धारा 376 भा0दं0सं0 के अपराध का पीड़िता के विक्षिप्त होने के कारण महत्वपूर्ण साक्ष्य थी और उ0नि0 नीशू गौतम/याची के द्वारा बिना जी0डी0 में दाखिल किये उक्त पैन डाईव को मालखाने में रख दिया गया और परीक्षण हेतु एफ0एस0एल0 नहीं भेजा गया इस कारण याची के द्वारा कारण बताओ नोटिस के उत्तर में किया गया कथन और स्पष्टीकरण संतोषजनक नहीं था।”

3.6. यह कि याचिका के प्रस्तर संख्या-4.7 में किये गये कथन अस्वीकार है इस सम्बन्ध में कथन है कि अनुशासनिक प्राधिकारी के द्वारा याची के विरुद्ध दिनांक 12.12.2023 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 है, जो याची के द्वारा उप-निरीक्षक नागरिक पुलिस जैसे जिम्मेदार एवं महत्वपूर्ण पद पर रहते हुए धारा 376 भा0दं0सं0 जैसे गम्भीर अपराध की विवेचना के दौरान घटना के महत्वपूर्ण साक्ष्य घटनास्थल के वीडियो फुटेज की पैन डाईव को एफ0एस0एल0 न भेजकर एक विवेचक के रूप में अपने कर्तव्य के प्रति धार लापरवाही एवं स्वेच्छाचारिता पाये जाने के दृष्टिगत सर्वथा उचित है।

3.7. यह कि याचिका के पैरा नं0-8 अस्वीकार है, याची को जॉच अधिकारी की आख्या तथा याची को दिये गये कारण बताओं नोटिस के उत्तर में याची के द्वारा दिया गया स्पष्टीकरण संतोषजनक न पाये जाने के फलस्वरूप मामले के समस्त तथ्यों व परिस्थितियों पर विचार करते हुए याची

द्वारा संग्रहित घटना की फुटेज का पैन डाईव धारा 376 (2) एल. भा०दं०सं० का एक महत्वपूर्ण साक्ष्य था अर्थात् वाईरल वीडियो एवं रोडवेज के सी०सी०टी०वी० से लिये गये फुटेज में अभियुक्त के द्वारा 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 भा०दं०सं० का अपराध कारित किया गया था वह विक्षिप्त महिला थी, इस कारण. भी मामले में साक्ष्य के रूप में संकलित उक्त पैन डाईव एक महत्वपूर्ण साक्ष्य होने के कारण पैन डाईव का एफ०एस०एल० को तुरन्त परीक्षण कराने का दायित्व विवेचक अर्थात् याची का था, याची के द्वारा पैन डाईव का एफ०एस०एल० न भेजकर अपने कर्तव्य के प्रति घोर लापरवाही व उदासीनता की गयी, जिसके आधार पर याची के पुलिस विभाग में उप-निरीक्षक जैसे महत्वपूर्ण एवं जिम्मेदार पद पर नियुक्त रहते हुए अपने कर्तव्य के प्रति घोर लापरवाही एवं स्वेच्छाचारिता परिलक्षित होने पर उसकी चरित्र पंजिका में प्रतिकूल प्रविष्टि अंकित करने का आदेश पारित किया गया है, इस कारण. याची कोई अनुतोष पाने की अधिकारी न होने के कारण भी याचिका निरस्त किये जाने योग्य है।

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. At the outset itself, the following facts appear significantly in this instant matter :-

(a). The petitioner was deputed as Investigating Officer by the then S.H.O., Police Station-Tanakpur for investigating

the F.I.R. No. 72 of 2021 dated 26.08.2021 u/s 376 (2) (L) of I.P.C. Till that moment it was not there in the light that the instant crime under investigation also involved Section 67 of I.T. Act. Therefore, the petitioner being a Sub-Inspector was eligible to investigate the alleged crime.

- (b). Later on, during the investigation it became evident that the matter also involves Section 67 of the I.T. Act, for which, an officer below the rank of Inspector was not eligible to be an Investigating Officer as per the law. Therefore, on 17.09.2021 the investigation was transferred to Inspector Harpal Singh, who completed the investigation and submitted the charge-sheet against the accused and the concerned Trial Court passed the conviction order against the accused.
- (c). Nevertheless, the Trial Court, during the course of trial found-out that the Pen-drive concerned, which was recovered by the petitioner during her initial investigation was not sent to the FSL for further forensic analysis and the Hon'ble District Judge mentioned this observation in the Trial Court's daily order for inquiry into the matter.
- (d) This is undisputed that the petitioner was Investigating Officer of this crime between 26-08-2021 upto 17.09.2021, during which she completed the preliminary investigation and she came across one video clip of the

crime, which was viral in the neighbouring areas, and also found-out that the crime was recorded in the CCTV of roadways station

- (e) The petitioner/IO collected the viral video clip from the mobile of witness Ajay Tamta Mobile No. 7451080777, and also collected the CCTV footage of the roadways station Tanakpur, and after collecting the same added Section-67 of the I.T. Act in the F.I.R. and after taking certificate u/s 65 of the I.T. Act deposited the same in the Police Maalkhana.
- (f) As per the record, the petitioner remained IO in this instant matter only for about 3-1/2 weeks, during which she almost investigated the crime to its full scope. Subsequently, Inspector Harpal Singh, the new IO, completed the investigation after 17-09-2021 onwards.
- (g) The respondent No. 3, Superintendent of Police, District Champawat, in compliance of the Trial Court's order deputed the Circle Officer Mr. Avinash Verma for a preliminary inquiry in the matter as to why the Pen-drive under question was not sent to the FSL, and who was accountable for this lapse in the investigation.
- (h) Incidentally, the Inquiry Officer/Circle Officer Mr. Avinash Verma had been the Supervisory Officer also of this investigation under question, who during the course of investigation of the instant matter had countersigned the

case diary and passed the appropriate directions regarding the investigation. Therefore, it would be legally presumed that either the Circle Officer Mr. Avinash Verma failed in his supervisory duties to tick off the petitioner/IO about this investigative lapse under question, or he was in full agreement with the IO to deposit the pen-drive under question into the Police Maalkhana, presuming that the petitioner Sub-Inspector/IO was not eligible legally to take any further step of investigation concerning the pen-drive under question, so obviously, as per the supervisory presumptions of the Circle Officer it was Inspector Harpal Singh, who was legally eligible and was supposed to take any further action in connection with the pen-drive under question since the pen-drive itself is an instrument related to I.T. Act.

- (i) However, the newly appointed Investigating Officer Inspector Harpal Singh failed to act in relation to the concerned pen-drive.
- (j) In the inquiry report dated 16.09.2023 the Enquiry Officer/Circle Officer Tanakpur Mr. Avinash Verma concluded that both the IOs., i.e., the petitioner/lady Sub-Inspector Neeshu Gautam and the subsequent IO/Inspector Harpal Singh were accountable for this lapse of investigation.

7. An intense reading of the show-cause notice dated 29.09.2023 issued against the petitioner by the respondent No. 3 manifests that the petitioner conducted a satisfactory investigation covering all the aspects and dimensions of the investigation, except for having failed to send the pen-drive under question to the FSL for forensic analysis, for which, she was found guilty, prima facie. No other short-coming has been indicated in the show-cause notice.

8. Evidently, it was imperative on the part of the respondent No. 3 to comply with the directions of the Trial Court and to make an in depth enquiry of the alleged investigative lapse. However, the Enquiry Officer apparently could not decide objectively as to who really was responsible for the lapse. At this juncture, it would be prudent to follow the law, which says that an Officer below the rank of a full Inspector cannot investigate a matter u/s 67 of the I.T. Act. An extrapolation of this rule, between the lines, would mean that the petitioner/initial IO lady Sub-Inspector could not have gone ahead with any action pertaining to the pen-drive under question. Therefore, if one follows the natural justice, the petitioner should not have been held responsible for this investigative lapse under question in the inquiry report dated 16.09.2023. On this account the inquiry officer has made an error of judgment on the basis of which, a benefit of doubt goes in favour of the petitioner.

9. Therefore, on the basis of the aforesaid observation, the impugned orders dated 28.01.2025 and 12.12.2023 deserve to be set-aside.

ORDER

Accordingly, the claim petition is allowed. The impugned orders dated 28.01.2025 and 12.12.2023 are, hereby, set-aside. The respondents are directed to expunge the entry of censure from the service record of the petitioner within a period of 30 days from the date of receipt of the certified copy of this judgment. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: 30th **OCTOBER, 2025**
NAINITAL
BK