

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

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

----- Member (A)

Claim Petition No. 10/NB/SB/2022

Surendra Singh Kathayat, (Male), aged about 39 years, S/o Sh. Bhupendra Singh, Sub Inspector of Police, Presently posted as Station House Officer, P.S. – Rithasahib, District Champawat.

..... Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Kumaon Range, Nainital.
3. Superintendent of Police, District Champawat.

..... Respondents

Present : Sri Tarun Prakash Singh Takuli, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : 8th OCTOBER, 2026

By means of this petition, the petitioner seeks the following reliefs:

- “i. Be pleased to quash the impugned order dated 11-09-2018 passed by the respondent no. 2, Inspector General Police, Kumaon Region, Nainital whereby, the appeal preferred against the order dated 21-05-2018 passed by the respondent no. 3 has been rejected and further be pleased to quash the order dated 21-05-2018 passed by the respondent no. 3, whereby, the adverse entry has been awarded to the petitioner

for the year 2017, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means. (Annexure no. 1 to the petition).

- ii. To award the cost of the petition in favor of the petitioner.”

2. Brief facts of the case are as under:

2.1. By means of the present claim petition, the petitioner is challenging the impugned order dated 11-09-2018 passed by the respondent no. 2, Inspector General Police, Kumaon Region, Nainital whereby, the appeal preferred against the order dated 21-05-2018 passed by the respondent no. 3 has been rejected and further challenging the order dated 21-05-2018 passed by the respondent no. 3, whereby, the adverse entry has been awarded to the petitioner for the year 2017, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.

2.2. The petitioner further declares that the writ petition was filed within the prescribed period of one year and 7 days from the date of 11-09-2018 before the Hon’ble High Court i.e. on 18-09-2019 and withdrawn the writ petition with liberty to approach this Hon’ble Tribunal on 09-03-2022 and the Hon’ble High Court has given liberty to claim the benefit of Section 14 of the Limitation Act, as the matter was subjudice before the Hon’ble High Court from 18-09-2019 to 09-03-2022, however the delay condonation application is being filed alongwith the present claim petition.

2.3. The petitioner is a Sub-Inspector of Police and in the year 2017 at the relevant point of time was discharging the duties as In Charge of Reporting Police Check Post, Thuligard and on 24-05-2017 a missing report was registered at P.S. Tanakpur by the informant Shri Dharamveer Singh R/o Adarsh Colony, New Ghas Mandi, Ward no. 17, Rudrapur, District Udham Singh Nagar, wherein the information was provided regarding the missing of his son. The said information was reported at Police Station Tanakpur.

2.4. As per the orders passed by the Station House Officer, P.S. Tanakpur, the investigation of the said information which is recorded in the general diary as report no. 38, time 14:15 hours at 24-05-2017 was forwarded to the petitioner and the same was received by the petitioner on 25-05-2017.

2.5. At a subsequent stage a case has been set-up by the Department that there are internal instructions issued by the Director General of Police dated 27-01-2016 which provided that if a missing report is received at a Police Station with regard to person who is 0 to 18 years of age, then immediately after the lapse of 15 days, the said missing report is liable to be converted into a regular criminal case and a case crime number be registered. The very sin qua non for applicability of such orders issued by the Director General of Police dated 27-01-2016 was that the age of the missing person must be 0 to 18 years and in the absence of mention of the age in the report by the P.S. Tanakpur, it would not be possible for the petitioner to comply with the aforesaid instructions issued by the Director General of Police at the very first place.

2.6. No sooner the petitioner received the concrete information with regard to the age of the missing person, immediately a first information report as case crime number 30 of 2017 under section 365 of I.P.C. was registered. It is submitted that the petitioner has repeatedly made queries from the parents of the missing person. However, no concrete information was provided with regard to the age of the missing person and an impression was given by the parents of the missing person that they on their own are trying to figure out the missing person.

2.7. The Superintendent of Police, Champawat considering this to be inaction and omission on the part of the petitioner a grave one, that since the instructions/orders issued by the Director General of Police dated 27-01-2016 were not complied with and a missing report was not registered as a criminal case after the lapse of 15 days of receiving the information, has been pleased to issue a preliminary enquiry in the matter.

2.8. After the preliminary enquiry was completed, a show cause notice was issued to the petitioner on 09-10-2017 which was received by the petitioner on 11-10-2017.

2.9. The petitioner after receiving the aforesaid notice has submitted a detailed reply in which a categorical submission was made that since at the time of registering a report at P.S. Tanakpur, no details about the looks, built and the age of the missing person was mentioned, it was not, at the very first place, possible for the petitioner to act in accordance with the instructions issued on 27-01-2016 by the learned Director General of Police in as much as, to act

in accordance with the aforesaid orders, the age of the missing person must be between 0 to 18 years was the *sin qua non* and in the absence of any such information containing in the missing report, there was no reason available for the petitioner to act in accordance with the order dated 27-01-2016.

2.10. Further the petitioner has acted on every input made available by the family members of the missing person and it cannot be said that even if the regular criminal case was not registered by the petitioner, the efforts were not made at the level of the petitioner to trace out the missing person.

2.11. After the missing person's information was first conveyed to the petitioner only four to five days after that the petitioner had received a phone call from the family of the missing person that the missing person Shri Sanjeev Kumar was seen in a hotel in Tanakpur.

2.12. The petitioner promptly acted and on the same night undertook a search operation in the hotel. The hotel officials and the people present over there who told the petitioner that the missing person whose photograph was shown was seen in that area. Alongwith other police officials the petitioner searched the area but could not find the person. This strange instance was raising question mark on whether the person in question was even missing or not coupled with the lack of clarity of his age and no cogent evidence on record that he was in 0-18 years age group available to the petitioner at that time, the factual matrix explains why the offence was not registered by the petitioner within 15 days window operating from 24-05-2017. However, it is to be noted that within 20 days of the

information being shared with the petitioner, the offence was registered and as soon as the age documents was shared with the petitioner on the very same day the petitioner registered the offence under section 365 as per the guidelines promulgated by the Director General of Police, Uttarakhand.

2.13. The respondent no. 3 i.e. Superintendent of Police, Champawat vide order dated 21-05-2018 has been pleased to pass a final order in which the adverse entry was awarded to the petitioner for the year 2017.

2.14. A perusal of the aforesaid order dated 21-05-2018 clearly reveals that the respondent no. 3 not even cared to consider the reply submitted by the petitioner and in an absolutely mechanical manner a finding has been recorded that since the explanation was not found satisfactory, the adverse entry be awarded to the petitioner for the year 2017.

2.15. The order passed by the Superintendent of Police is absolutely a mechanical exercise and nowhere suggest that any application of mind was made over the reply submitted by the petitioner in the peculiar facts and circumstances of the case.

2.16. Aggrieved by the aforesaid order dated 21-05-2018, the petitioner before this Hon'ble Tribunal has preferred an appeal before the respondent no. 2 and the said respondent no. 2 has submitted the appeal through Superintendent of Police on 29-07-2018.

2.17. The learned Appellate Authority has been pleased to pass an order dated 11-09-2018, whereby, the appeal preferred by the petitioner has been rejected.

2.18. A perusal of the order passed by the Appellate Authority itself reveals that in the appellate stage though the reply of the petitioner has been considered but it has not been considered in the right prospective in as much as, it is the case of the petitioner right from the day one that whatever steps he was required to undertake was undertaken and further since in the initial report no mention to the age of the missing person was there and hence there was no occasion available with the petitioner to comply the order dated 27-01-2016 issued by the Director General of Police.

2.19. It was clear cut submission of the petitioner before the disciplinary authority as well as the appellate authority that the parents of the missing have not co-operated with the investigation and not provided the requisite details with regards to the age of the missing person and no sooner such information was provided to the petitioner i.e. on 13-06-2017 immediately the requisite steps were taken and the regular criminal case as case crime no. 30 of 2017 under section 365 of I.P.C. was registered.

2.20. It is humbly submitted by the petitioner that merely on procedural and hyper technical grounds the petitioner is being targeted for absolutely no fault of his. It is pertinent to note that when the complaint was received about the possible kidnapping of the son of Shri Dharamveer, the complaint did not carry any details of the age of the kidnapped person and despite repeated questioning by the

petitioner, the family members of the kidnapped person were unable to share even the basic details, the age and look of the person kidnapped. Since, these details were not available to the petitioner on 24-05-2017, the complaint was not registered by him in the prescribed format as provided in the guidelines framed by the Director General of Police, Uttarakhand.

2.21. If the petitioner had framed the age of the person on his own, he could not have been sure of whether to act under said guidelines, the guidelines that have been provided by the Police to register kidnapped are to the age group between 0-18 years. Since, despite the query made by the petitioner, the relatives of the person kidnapped have not brought on record any age number, nay specific assertion to support the age of the kidnapped person and since absolutely no information was available with the petitioner of the age of the kidnapped person, the petitioner could not have acted on the guidelines framed by the Director General of Police to register such offence of kidnapping under Section 365 of I.P.C. for persons aged between 0-18 years. Since, the very age of the person was in question, the relatives had conveyed to the petitioner that they would share the school documents of the kidnapped person with the petitioner so that the age of the person kidnapped could be determined. It is most important to mention herein that when the school documents were shared and it was made clear to the petitioner that the age of the kidnapped person is 16 years, the petitioner proceeded as per the guidelines provided by the Director General of Police of the very same day i.e. 13-06-2017. By acting on

the same day as soon as cogent information was available, the petitioner has infect acted within 15 days time period and right from when he first got vague information in only twenty days time necessary action has been taken by the petitioner.

2.22. Since the photograph of the missing person Sanjeev Kumar was made available to the petitioner, the petitioner started making search operations as per standing operating procedures. All the police chowkis in District Udham Singh Nagar as well as the border districts with U.P. such as Pilibhit, Sahajahanpur, Bareilly, Moradabad, Hapur, Ghaziabaad, Rampur, Bijnore, Haridwar, had been notified even New Delhi, Mumbai, DCRB missing cell crime branch, Mumbai Police Commissioner, Delhi missing persons wing etc had been contacted by the petitioner's efforts through newspapers and radio channels a search operation had been initiated in neighbouring country Nepal. Radio, T.V., Newspaper was employed to the effect. Local NGO's have been contacted to spread information that was made available to the petitioner through photo pamphlets and all the above was undertaken by the petitioner even when the family members of the missing person were not fully cooperating. When the petitioner brought all these facts and all efforts that he undertook to the notice of the Police Appellate Authority pointing out that this shows that the petitioner does not deserve an adverse entry in his ACR and he has actually acted as per standard operating procedures and has discharged his duties to the best of his abilities, while recording all the efforts undertaken by the petitioner, the appellate authority has specifically stated that it does not feel the

need to offer a response to the efforts undertaken by the petitioner. They simply wished to ignore the same so as to penalize the petitioner wrongfully and record an adverse entry in the record of the petitioner which is unfair.

2.23. The petitioner has fully cooperated with the action initiated against him to record the adverse entry in his ACR even when he first received the show cause notice he promptly submitted his response to the same in the hope that the higher authorities in the Police would realize that the petitioner could not be wrongly penalized on hyper technical grounds and that in the absence of the age factor only five days more have been taken, if the date of taking action has been calculated from 24-05-2017, when the actual date of calculating action should be from 13-06-2018 when the age of the missing person became clear to the petitioner and he followed the guidelines on the same day.

2.24. If it is rightfully calculated from 13-06-2018, it will be clearly observed that the petitioner has promptly acted and registered the complaint as per the process prescribed by the Director General of Police, Uttarakhand on the same day. However, to suit their convenience the petitioner is being wrongly penalized and all his efforts that he undertook in the line of duty have been fully belittled and an adverse entry has been recorded in his character performance in an arbitrary manner which is unfair to the petitioner.

2.25. Even assuming for the sake of arguments that the petitioner was under an obligation to comply the orders dated 27-01-

2016, the petitioner has registered the criminal case on 13-06-2017 almost on 21st day of receiving the information and it could be only a delay of six days in making compliance of the order passed by the Director General of Police. Further it is nobody's case that this delay of six days proved fatal in the case. More particularly when there is a case that at the initial stage the age of the missing person was not mentioned.

2.26. All the aforesaid aspects were not taken into consideration and in an absolutely mechanical manner the appeal was dismissed.

2.27. The orders impugned were challenged before the Hon'ble High Court of Uttarakhand at Nainital and the Hon'ble Court was pleased to call for the counter affidavit, and when the matter was listed for hearing, as the Hon'ble Court observed that the matter should be tried by the Hon'ble Tribunal and only on the ground the petitioner was not having any other option except to withdraw the writ petition with liberty to approach before this Hon'ble Tribunal and further when the petitioner requested for limitation, the Hon'ble High Court has permitted the petitioner to claim the benefit of Section 14 of the Limitation Act.

3. Learned A.P.O. has filed counter affidavit on behalf of the respondent No. 3, in which it has been stated that-

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

3.2. यह कि याचिका का प्रस्तर संख्या-1 अभिलेखीय है परन्तु याची का कथन वास्तविक तथ्यों से विपरीत होने के कारण अस्वीकार है। इसके अतिरिक्त यह कहना है कि याची द्वारा उपराक्त प्रस्तर में किये गये कथन विधि एवं तथ्यों के विपरीत हैं इसलिए याची द्वारा प्रस्तुत याचिका किसी भी प्रकार से सुनवाई हेतु अंगीकृत किये जाने योग्य नहीं है तथा याची, याचिका में किये गये कथनों के आधार पर किसी प्रकार का अनुतोष प्राप्त करने का अधिकारी नहीं है और याची की याचिका सव्यय निरस्त किये जाने योग्य है।

3.3. यह कि याचिका के प्रस्तर संख्या- 4 (iii) में किये गये कथन तथ्यों पर आधारित होने के कारण कोई टिप्पणी नहीं करनी है, तथापि इस सम्बन्ध में कथन है कि थाना टनकपुर, उधमसिंहनगर जनपद में अवस्थित न होकर जनपद-चम्पावत में स्थित है।

3.4. यह कि याचिका के प्रस्तर संख्या- 4 (V) एवं 4 (Vi) में किये गये कथन जिस प्रकार से वर्णित किया गया है स्वीकार नहीं है, इस सम्बन्ध में कथन है कि लापता संजीव कुमार के दिनांक 22-05-2017 से लापता होने की सूचना दिनांक 24-05-2017 को थाने की जी०डी० में दर्ज हुई थी, पुलिस महानिदेशक के आदेशानुसार लापता व्यक्ति के नाबालिग होने की स्थिति में तत्काल तथा 18 से 60 वर्ष तक के (पुरुष) का 15 दिन तक लापता का पता न चलने की स्थिति में नियमित मुकदमा पंजीकृत कर विवेचना किये जाने के निर्देश प्राप्त थे, जिनकी याची को अक्षरशः जानकारी होने के बावजूद याची के द्वारा लापता संजीव कुमार की उम्र का तत्काल पता न कर गुमशुदा रिपोर्ट दर्ज होने के 21 दिन में मुकदमा अपराध सं०/प्र०सू०रि० सं० 30/2017, अन्तर्गत धारा 365 दर्ज किया गया, जो याची के द्वारा दायित्व निर्वहन में लापरवाही के साथ ही उच्चाधिकारियों के निर्देशों की अवहेलना करना तथा प्रकरण में जाँच में लापरवाही किया जाना दर्शित करता है। याची का कथन किसी साक्ष्य से समर्थित नहीं है कि उसके द्वारा ससमय लापता संजीव कुमार को तलाश करने तथा उसकी उम्र व हुलिया पता लगाने के लिये कोई प्रयास किये गये हों।

3.5. यह कि याचिका के प्रस्तर संख्या- 4 (viii) से 4 (xi) में किये गये कथन जिस प्रकार से वर्णित किये गये हैं, स्वीकार नहीं हैं, याची के द्वारा अपने बचाव में व स्वयं के द्वारा जाँच में की गयी कमियों व अपनी लापरवाही को छिपाने के उद्देश्य से झूठे तथ्यों को वर्णित किया गया है इस सम्बन्ध में कथन है कि याची के ठलीगाड़ चौकी का प्रभारी होने के कारण दायित्व था कि वह गुमशुदगी रिपोर्ट में लापता की उम्र व हुलिया अंकित न होने की स्थिति में सर्वप्रथम लापता के परिजनों से उसकी उम्र तथा हुलिया का पता करता, इस प्रकार याची के द्वारा गुमशुदगी की रिपोर्ट पर उसे प्राप्त जाँच के प्रथम चरण में उम्र व हुलिया का पता न कर अपने दायित्व निर्वहन में लापरवाही की गयी, याची के द्वारा अपने बचाव में तथ्यों को तोड़-मरोड़ कर प्रस्तुत किया गया है, जबकि दिनांक 24-05-2017 को दर्ज गुमशुदगी रिपोर्ट की जाँच याची को प्रभारी निरीक्षक कोतवाली-टनकपुर के द्वारा देने के उपरान्त याची के द्वारा उस पर कोई जाँच नहीं की गयी और न लापता संजीव कुमार की उम्र अथवा हुलिया पता करने का कोई प्रयास किया गया, मात्र उम्र व हुलिया पता करने में 21 दिन का समय लगा दिया गया, यदि गुमशुदा रिपोर्ट पर जाँच के प्रथम चरण में याची के द्वारा लापता की उम्र व हुलिया पता कर लिया होता तो 15 दिन के अन्दर जी०डी० में दर्ज गुमशुदा रिपोर्ट नियमित मुकदमे में तरमीम हो गयी होती। इससे स्पष्ट होता है कि याची के द्वारा उच्चाधिकारियों के आदेशों का अनुपालन करने तथा अपने दायित्वों का निर्वहन करने में लापरवाही बरती गयी है।

3.6. यह कि याचिका के प्रस्तर संख्या- 4 (xiii) एवं 4 (xiv) में किये गये कथन अस्वीकार हैं पुलिस अधीक्षक चम्पावत के द्वारा याची को प्रतिकूल प्रविष्टि दिये जाने के सम्बन्ध में पारित आदेश दिनांक 21-05-2018 याची के कृत्यों के अनुरूप सही है, लापता व्यक्ति की उम्र व हुलिया पता करने में 21 दिन का समय लगना स्वयं ही यह दर्शित करता है कि याची के द्वारा जाँच में कोताही बरती गयी, याची के द्वारा प्रस्तुत स्पष्टीकरण मामले के तथ्यों व परिस्थितियों के अनुसार संतोषजनक नहीं था, पुलिस अधीक्षक चम्पावत के द्वारा मामले के तथ्यों व

परिस्थितियों, याची के द्वारा प्रस्तुत प्रतिउत्तर पर विचार कर आदेश पारित किया गया, जिसका उल्लेख पारित आदेश दिनांक 21-05-2018 में किया गया है।

3.7. यह कि याचिका के प्रस्तर संख्या- 4 (XV) से 4 (XXi) में किये गये कथन अस्वीकार हैं, याची के द्वारा प्रस्तुत अपील, मामले के तथ्यों व परिस्थितियों पर विचार कर पुलिस उपमहानिरीक्षक, कुमाऊँ रेन्ज नैनीताल के द्वारा दिनांक 11-09-2018 को विस्तृत एवं कारण सहित आदेश पारित कर याची की अपील को अस्वीकार करते हुए पुलिस अधीक्षक चम्पावत के द्वारा पारित आदेश दिनांक 21-05-2018 की पुष्टि की गयी। अपीलीय अधिकारी के द्वारा याची के द्वारा प्रस्तुत सभी बिन्दुओं पर विचार कर याची के विरुद्ध पारित परिनिन्दा लख से दण्डित करने के आदेश को बरकरार रखा गया है, इसमें न तो किसी प्रकार से तथ्य की भूल है और न विधि की इस प्रकार अपीलीय प्राधिकारी के द्वारा पारित आदेश पूर्णतः विधिक व्यवस्थाओं पर आधारित है और यथावत रखे जाने योग्य है, याची के द्वारा अपने कथनों के संबन्ध में कोई दस्तावेजी साक्ष्य प्रस्तुत नहीं किया गया है इस कारण भी याची की याचिका में कोई बल न होने के कारण याचिका निरस्त किये जाने योग्य है।

3.8. यह कि याचिका के प्रस्तर संख्या- 4 (XXii) से 4 (XXV) में किये गये कथन अस्वीकार ह, याची के द्वारा अपने दायित्वों का निर्वहन नहीं किया गया और अपने बचाव में इस बिन्दु को बार-बार उजागर किया जा रहा है कि गुमशुदगी रिपोर्ट में लापता की उम्र नहीं लिखी थी, परन्तु 21 दिन तक याची के द्वारा लापता की उम्र पता करने के लिये क्या प्रयास किये गये इस सम्बन्ध में कोई साक्ष्य प्रस्तुत नहीं किया गया। याची के द्वारा उच्चाधिकारियों के आदेशों का पालन न कर अपने कर्तव्यों का निर्वहन न करना पाये जाने के कारण याची के द्वारा अपीलीय अधिकारी के द्वारा अपील निरस्त की गयी। अपनी लापरवाही व गलती को छुपाने के लिये याची के द्वारा लापता क अभिभावकों के ऊपर दोषारोपण किया जा रहा है अन्यथा किसी बच्चे के माता-पिता/अभिभावक अपने बच्चे की उम्र अथवा हुलिया किसी पुलिस अधिकारी के पूछने पर न बतायें, ऐसा संभव नहीं है, याची के

द्वारा गुमशुदगी की जाँच में की गयी अपनी लापरवाही व गलती को छुपाने के लिये लापता के अभिभावकों के ऊपर दोषारोपण किया जा रहा है, याची इस तथ्य को साबित करने में असफल रहा है कि उसे गुमशुदगी की जाँच मिलने के 21 दिन तक लापता की उम्र का पता करने के लिये क्या प्रयास किये इस प्रकार याची की याचिका किसी साक्ष्य से समर्थित न होने के कारण निरस्त किये जाने योग्य है।

3.9. यह कि याचिका के प्रस्तर संख्या- 4 (XXVII) में किये गये कथन अस्वीकार हैं, याची के विरुद्ध पारित परिनिन्दा लेख का दण्ड विधिक व्यवस्थाओं के अनुसार पारित किया गया है, इसमें कोई त्रुटि नहीं है, इस कारण याची की याचिका निरस्त की जा कर, याची के विरुद्ध पारित परिनिन्दा लेख से दण्डित किये जाने का आदेश यथावत् रखे जाने योग्य है।

3.10. यह कि याचिका का प्रस्तर GROUNDS-5 (a) लगायत 5 (aa) के संबंध में कथन है कि याची के द्वारा याचिका के पूर्ववर्ती प्रस्तरों में वर्णित तथ्यों व कथनों को ही आधार के रूप में वर्णित किया है, जिनका उत्तर प्रतिशपथपत्र/लिखित विवेचन पत्र के पूर्ववर्ती प्रस्तरों में दिया जा चुका है उक्त के आधार पर याची की याचिका के आधार स्वीकार नहीं ह एवं याची की याचिका आधारहीन होने के कारण निरस्त किये जाने योग्य है।

4. Rejoinder affidavit has also been filed by the petitioner reiterating the facts mentioned in the present claim petition.

5. I have heard the learned Counsels for the parties and perused the record in depth.

6. Learned Counsel for the petitioner in his brief argument emphasized mainly upon the fact that it was not the petitioner, who made deliberate delay in filing the FIR as per the new norms, as set by the DGP's order dated 27.01.2016 regarding the missing minors or disappearance of minors, who are below the age of 18 years, rather

the circumstances existing relating to the missing person compelled the petitioner IO for such an inadvertent delay. Therefore, petitioner has challenged the punishment itself.

7. Learned Counsel for the petitioner has relied upon the cases of Civil Appeal of 2010 (Arising out of S.L.P. (C) No. 19318/2007) Mohd. Yunus Khan vs. State of U.P. & Ors. decided on 28 September 2010 and Writ-C No. 1004474 of 2010 Allahabad Bank Staff Association Through its General Secy. Sri Vs. Presiding Officer, Central Govt. Industrial Tribunal-Cum-Labo, decided on 18.01.2024.

8. Learned A.P.O. emphasized only upon the delay factor in filing the claim petition.

9. In his rebuttal, learned Counsel for the petitioner explained that the delay factor has already been condoned by the Hon'ble High Court. He further emphasized that the entire matter is well documented and its conclusion would depend upon the compassionate interpretation of the circumstances existing at that time before the petitioner as IO.

10. After having perused the record, the Tribunal has noticed the following significant points, which would give decisive turn to the conclusion in the instant matter as follows:-

- (i). In the remote villages and areas of Uttarakhand, this happens quite often that due to various reasons, including lack of opportunities of livelihood, or some other socio-familial reasons, the teen-aged boys run away from their parents' home to nearby

Urban areas or the cities of plains' areas, or the bigger cities and NCR etc., and remain missing for substantial periods of time before turning back again to their families. The probability of kidnapping or any other heinous crime is usually rare. Therefore, this instant matter of petitioner's conduct is to be analyzed in the light of this socio-economic scenario prevailing in Uttarakhand Hills, and remote villages.

- (ii). The background of this instant matter begins on 27.01.2016 with the issuance of an order by the DGP, Uttarakhand Police based upon the observations and directions of the Hon'ble Apex Court in connection to the endeavours for search and investigations pertaining to the missing persons below the age of 18 years, whereby, the entire Uttarakhand Police was instructed to lodge FIR and begin criminal investigation, if the missing person is not back within a period of 15 days from the first intimation or cognizance. The earlier practice was to wait for a period of 21 days after which the FIR and criminal proceedings used to begin.
- (iii). The impugned DGP's order dated 27.01.2016 is very sensitively linked to a 'sine qua non' that the age of missing person should be below 18 years for these new instructions to take effect. Though to a

common man this appears to be a very innocuous borderline, but its legal ramifications are severe from the angle of Investigating Officer, for obvious reasons.

- (iv). In the instant matter, there is no doubt that the entire lot of circumstances leading to a delay of 21 days in filing an FIR and intimation of the criminal investigation, as described by the petitioner is only his words of mouth, which is not much supported by documentary evidences or corroborated clearly by witnesses, nevertheless there is one single evidence that corroborates the petitioner's explanation for delay is that on the fateful day of 24.05.2017 a missing report was filed at PS Tanakpur, for which, the father of the missing boy, a resident of Rudrapur town in District Udham Singh Nagar had turned-up alongwith a huge crowd for his support, but who failed to specify even the basic informations about the missing boy like age, complexion, built or looks etc. to the Head Moharrir of the police station, as is evident from the concerning police record. Even the photograph of the missing boy provided by his father was an old one, and did not help much in ascertaining the boy's age.

- (v). This is a point for consideration regarding the dilemma of the IO in such a case where there is an equal possibility the missing boy being a minor, or a major person above 18 years of age, wherein the DGP's guidelines dated 27.01.2016 would vary widely in their application.
- (vi). The investigation in such circumstances is conducted, more-often-than-not, in the background of local social norms and practices existing in the day-to-day life in the region. This is also noteworthy here that the parents of the missing boy themselves had been trying to locate the boy on their own, even in the bordering villages of Nepal and in the famous Poornagiri Devi Mela at Tanakpur in anticipation that the boy could have run away to visit the Mela.
- (vii). To cut the story short, the superior police authorities of the petitioner took the petitioner's conduct seriously as a disobedience in relation to the DGP's directions dated 27.01.2016, and the subsequent chronology is as follows:-

27.06.2017	Respondent No. 3 ordered for preliminary enquiry
22.08.2017	Preliminary enquiry report submitted
09.10.2017	Show-cause notice issued to the petitioner
03.11.2017	Petitioner submitted a prompt explanation

21.05.2018	Punishment order issued
29.07.2018	Departmental appeal filed before the Appellate Authority
11.09.2018	Appeal rejected by the Appellate Authority
26.05.2022	The Public Services Tribunal rejected the claim petition because of delay.
01.03.2024	The Tribunal rejects the Review Application also.
29.05.2024	Hon'ble High Court of Uttarakhand at Nainital condoned the delay, and hence this instant claim petition.

(viii). This is manifest from the above mentioned chronology of events that during the disciplinary proceedings the petitioner did not shirk from explaining his view point and circumstances promptly and cooperated with the Department in concluding the disciplinary proceedings. Obviously, the petitioner did not have any inkling that he had committed any disobedience deliberately, and was of a firm belief that in the given circumstances he had tried his level best.

(ix). This is apparent before the Tribunal that since the award of punishment against the petitioner by the Respondent No. 3 on 21.05.2018 it has been a period of more than 06 years, and volumes of water has flown down the rivers. The respondent No. 3 was obviously under obligation to make certain the

compliance of DGP's order dated 27.01.2016 within the District, and the best course of ensuring the same was to award punishments to the non-adhering IOs. Definitely, award of punishment in this instant matter must have set an example for all the Police Stations of District Champawat, and this must have elicited sufficient compliance of the impugned order dated 27.01.2016 thereafter.

- (x). Nevertheless, the concept of punishment is not meant for retribution, rather it is aimed to be correctional in nature for the punished employee, and as a deterrent for the others. That purpose of the punishment in question was achieved in the intervening period of disciplinary proceedings.

As per the averments of the petitioner, he had tried his level best to trace the missing boy, despite quite a degree of non-cooperation and non-coordination at the level of missing boy's parents. Even though the averments of the petitioner are not much supported by documentary evidences it does not necessarily mean that the petitioner was telling a lie, particularly when the petitioner's version is established primarily by the police station record where initially the Informant, father of the missing boy had failed to specify the important identification parameters, on the basis of which a meaningful conclusion could be drawn about the age of the missing boy. Therefore, the petitioner does deserve a benefit of doubt in this matter.

ORDER

Accordingly, the claim petition is hereby allowed. The impugned order dated 11-09-2018 passed by the respondent no. 2, Inspector General of Police, Kumaon Region, Nainital whereby, the appeal preferred against the order dated 21-05-2018 passed by the respondent no. 3 has been rejected and the order dated 21-05-2018 passed by the respondent no. 3, whereby, the adverse entry has been awarded to the petitioner for the year 2017, are hereby quashed. The respondent No. 3 is directed to expunge the adverse entry from the service record of the petitioner within a period of 45 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: 8th OCTOBER, 2026
NAINITAL
BK