

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 33/DB/2020

Sri Anil Kumar Bhatt aged about 40 years s/o Sri Kanta Prasad Bhatt, r/o 236 k
Devpuram Tunwala, Dehradun, Uttarakhand.

Office Address: S.S.P. Office, S.I.S. Cell, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Range, Dehradun, Uttarakhand.
3. Senior Superintendent of Police, Dehradun, Uttarakhand.

....Respondents

Present: Sri Abhishek Panwar, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: APRIL 11, 2022

Justice U.C.Dhyani (Oral)

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

“a. To set aside the order communicated through letter no 68/2019 dated 24.07.2019 by the Senior Superintendent of Police, Dehradun.

b. To set aside the order communicated through letter no. COG-CA-Appeal-02 Dehradun/2019 dated 30.01.2020.

c. Any other relief to which the petitioner is entitled.”

PETITIONER’S VERSION

2. Facts, giving rise to present claim petition, are as follows:

2.1 When petitioner was posted at PS, Prem Nagar, District Dehradun, a message was flashed on R.T. set on 30.12.2018, which was sent by the office of Senior Superintendent of Police, Dehradun, to the petitioner, and other concerned, to attend a seminar, which was to be held on 31.12.2018, in the office of the Deputy Inspector General of Police, Garhwal Range Office, Dehradun, regarding case crime no. 114/2018, Manoj Kumar vs. Prem Singh and others, under Section 420, 467, 468, 471 and 120B of IPC.

2.2 When the message was flashed on R.T. set, the petitioner was in his night duty, in nearby areas of Prem Nagar, to maintain law and order. Petitioner could not receive the message flashed out on R.T. set and therefore, could not attend the seminar on the next date. Disciplinary action was taken against him.

2.3 Petitioner was not present in his police mobile van because he was doing duty in hotspot places of the area for maintaining law and order.

2.4 According to the claim petition, the working hours of the petitioner were from 8:00 am to 8:00 pm. The timing of flashing message on R.T. set was during the midnight at 1:05 am. At that time, the petitioner was not present in his police mobile van. When the petitioner came back in the morning, he came to know from his senior officer that a seminar has been convened regarding case crime no. 114/2018 in DIG office. Petitioner went to attend the seminar, but by that time, the meeting was over. Petitioner got to know that a disciplinary action would be taken against him for not attending the seminar.

2.5 On 22.03.2019, an investigation against the petitioner for not attending the seminar was initiated by SSP, Dehradun. On 25.05.2019, Deputy Superintendent of Police, Circle Officer, Rishikesh, found petitioner negligent of his duties.

2.6 On 03.06.2019, a show cause notice was sent by SSP, Dehradun. Petitioner was given show cause notice, why strict action be not taken against him for not attending the seminar in the office of Deputy Inspector General of Police, Garhwal Range, Dehradun.

2.7 Petitioner got to know that Constable, Rajkumar gave statement that he forwarded R.T. set message in whatsapp group on 07:19 am. As per GD entry , petitioner came to police station at 7:27 am. *Vide* order dated 27.07.2019, the petitioner was found guilty. According to the claim petition, the petitioner was not given proper opportunity of hearing.

2.8 Petitioner preferred departmental appeal against order of 'Censure'. On 30.01.2020, petitioner's departmental appeal was dismissed.

2.9 Hence, present claim petition has been filed in the Tribunal on 03.07.2020.

RESPONDENTS' VERSION

3. Written Statement has been filed on behalf of the respondents, denying material facts, contained in the claim petition. Counter Affidavit has been filed by the Sri Arun Mohan Joshi, DIG/ SSP, Dehradun, mentioning therein that due opportunity of hearing was given to the petitioner before passing the impugned orders. It has also been indicated in the counter affidavit that the petitioner is guilty of misconduct on the basis of facts, as set out in the show cause notice and impugned orders.

4. Ld. A.P.O., defending the departmental action, submitted that the orders impugned do not warrant any interference. According to Ld. A.P.O., the Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary

authority, which has been upheld by the appellate authority. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

5. Rejoinder Affidavit has been filed by the petitioner reiterating the facts contained in the claim petition.

DISCUSSION

6. What is misconduct? The same finds mention in Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 , as below:

“3(1) Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;

3(2) Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behaviour and conduct which may be in force.”

The word ‘devotion’, may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

7. Discipline is the foundation of any orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public.

8. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and in all times, conduct himself in accordance with specific or implied order of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.

9. The terms ‘misconduct’ or ‘misbehaviour’ has not been defined in any of the Conduct Rules or Civil Services Rules. The dictionary meaning of the word ‘misconduct’ is nothing but bad management, malfeasance or

culpable neglect of an official in regard to his office. In short, it can be said that misconduct is nothing but a violation of definite law, a forbidden act. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.

10. The word 'misconduct' covers any conduct, which, in any way, renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term 'misconduct' usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty cannot be excused.

11. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behaviour and conduct which may be in force.

12. A Division Bench of Hon'ble High Court of Judicature at Allahabad, in *Bhupendra Singh and others vs. State of U.P. and others, (2007)(4) ESC 2360 (ALL)(DB)*, has held that the provisions of Rule 4(1)(b)(iv) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991) are valid and *intra vires*. Censure entry, therefore, can be awarded.

13. Here the petitioner has been awarded minor penalty, in which the procedure prescribed is as follows;

Sub- rules (2 & 3) of Rule 5 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991

“Sub-rule (2)— The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14.

Sub-rule (3)— the cases in which minor penalties mentioned in sub-rule (2) & (3) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in Rule 15.”

14. The next question would be, what are the minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4? The reply is as follows:

(b) Minor Penalties:

(i) *Withholding of promotion.*

(ii) *Fine not exceeding one month's pay.*

(iii) *Withholding of increment, including stoppage at an efficiency bar.*

(iv) *Censure.*

15. Most relevant question, from the point of view of present petitioner, would be— what is the procedure laid down in sub-rule (2) of Rule 14?

“14(2)- Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.”

16. The inquiry contemplated under the Police Regulations is in the nature of preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice, he or she should be in a position to see whether there is any truth in such imputation. The inquiry is, therefore, meant only for personal satisfaction of the Superintendent of Police to enable him or her to come to a decision as to whether the matter is to be dropped or whether any action is necessary. No punishment can be imposed as a result of inquiry itself. In the instant case, the appointing authority has not awarded punishment to the petitioner on the result of preliminary inquiry. On the basis of such preliminary investigation, the appointing authority, foreseeing that it is a case of minor punishment, followed the procedure laid down in sub-rule (2) of Rule 14, which has been quoted above.

17. While learned Counsel for the petitioner pleaded for setting aside the order impugned, learned A.P.O. made an endeavour to justify departmental action.

18. Petitioner was investigating officer of the case crime no. 114/2018, Manoj Kumar vs. Prem Singh and others, under Section 420, 467, 468, 471 and 120B of IPC, PS Prem Nagar. The seminar was convened by DIG, Garhwal Range, Dehradun. Presence of petitioner, as Investigating Officer, was therefore very essential in the discussion regarding investigation of case crime No. 114/2018 in the seminar. There could be no better person, other than the petitioner, as Investigating Officer, to highlight the facts of the case. The message was flashed on R.T. set, obviously with an idea to ensure the presence of the petitioner in the seminar. Can anybody ever imagine, in such background of the case, that the petitioner was not informed to attend the seminar on 31.12.2018?

19. Petitioner blows hot and cold while mentioning his duty timings in the intervening night of 30.12.2018/ 31.12.2018. On the one hand, he says that he was not present in his police mobile van, inasmuch as he was busy in maintaining law and order situation and on the other hand, he says that his working hours were from 8:00 am to 8:00 pm and therefore, message on R.T. set, in the midnight at 01:05 am, was not received by him. He should have either stated that he was not on duty when R.T. set message was flashed or he should have stated that he did not receive the message as he was busy in maintaining law and order situation. Both the things cannot run together.

20. In any case, he has taken contradictory stands in paras 4, 5, 6 and 7 of the reply to show cause notice. Show cause notice was duly given to him, to which the petitioner replied. Disciplinary Authority/ SSP, Dehradun, took notice of the facts set out by the department and the explanation furnished by the delinquent petitioner. Disciplinary Authority also found that the message was found in whatsapp of petitioner's mobile.

21. During preliminary enquiry, the statements of the petitioner, Sh. Dilbar Singh Negi, S.O. Nehru Colony; Constable Rajkumar, PS Vikas Nagar; Constable Jagjot Singh Chauhan (Driver of the petitioner) were

recorded. Sri Virendra Singh Rawat, CO, Rishikesh, Dehradun, in his preliminary enquiry report dated 25.05.2019, found the petitioner guilty of not attending the seminar despite having knowledge of the same, (which is a misconduct). Constable Jagjot Singh Chauhan, in his statement before CO, Rishikesh, stated that SI Anil Bhatt (petitioner) was night duty officer on 30.12.2018/ 31.12.2018. Sri Jagjot Singh Chauhan was the driver of the official vehicle of the petitioner.

22. Departmental appeal was decided by Sri Ajay Rautela, IG, Garhwal Range, Uttarakhand, on 30.01.2020. Appellate Authority, in its order impugned has discussed not only the facts of the case but has aptly come to the conclusion, after citing reasons, as to how 'misconduct' was committed by the petitioner.

23. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the order directing 'censure entry' to the petitioner. A reasonable prudent person will never disagree with the inference drawn by appointing authority, as affirmed by appellate authority, that omission of the petitioner, in not attending the Seminar, was a misconduct.

24. To elaborate further, there is no reference of 'preliminary inquiry' in sub-rule (2) of Rule 14 of the Rules of 1991. Such sub-rule only prescribes that minor punishments may be imposed after informing the Police Officer in writing, of the action proposed to be taken against him, and of the imputations of acts or omission, on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation, as he may wish to make against the proposal. Such preliminary inquiry is merely a fact finding inquiry. It is only meant for the satisfaction of the appointing authority, notwithstanding the fact that the delinquent was also involved in it. Preliminary inquiry, in the instant case, has been used by the appointing authority only to derive satisfaction for giving show cause notice, which is in the nature of informing the delinquent of the action proposed to be taken, imputations of the acts or

omission and giving him a reasonable opportunity of making representation. Preliminary inquiry has not been used in arriving at a finding. It is only a precursor to the action proposed to be taken.

25. The next question would be— what is the extent of Court's power of judicial review on administrative action? This question has been replied in Para 24 of the decision of in *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, as follows:

"24. The decisions referred to hereinabove highlight clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."

26. 'Judicial review of the administrative action' is possible under three heads, viz:

- (a) illegality,
- (b) irrationality and
- (c) procedural impropriety.

Besides the above, the 'doctrine of proportionality' has also emerged, as a ground of 'judicial review', of late.

27. The limited scope of judicial review has also been assigned by Hon'ble Supreme Court in *Johri Mal's case*, (1974) 4 SCC 3, as follows:

"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution would vary from case

to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

- (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
- (ii) A petition for a judicial review would lie only on certain well-defined grounds.
- (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.
- (v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

INFERENCE

28. This Tribunal, therefore does not find it to be a case of judicial review, in the absence of any material on record, to hold that formation of belief/ opinion by the appointing authority, as upheld by the appellate authority, suffers from *malafide* or there is anything, on record, to hold that there was procedural error resulting in manifest miscarriage of justice and violation of principles of natural justice. There were reasonable grounds before the authorities below to have arrived at such conclusion. This Tribunal is of the view that due process of law has been followed while holding the delinquent guilty of misconduct. No legal infirmity has successfully been pointed out in the same.

29. Any allegation against the delinquent Police official, may not be treated as true, but when such insinuation is fortified by some substance, on

record, the court may draw an adverse inference against the delinquent. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present case is adjudged from this yardstick, the Tribunal finds no reason to interfere in the inference drawn by the Disciplinary Authority, as upheld by the Appellate Authority.

30. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety. No interference is called for in the same.

ORDER

31. The claim petition is dismissed. However, in the circumstances, there shall be no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 11, 2022
DEHRADUN

VM/RS