

BEFORE THE PUBLIC SERVICES TRIBUNAL UTTARAKHAND
AT DEHRA DUN.

Claim Petition No. 16/2012

Vakarulhaq S/o Sri Misbahaulhaq, R/o C/o S.S.P. Roshnabad, District Haridwar.

.....Petitioner

Versus.

1. State of Uttarakhand through Secretary, Ministry of Home Affairs, Uttarakhand, Secretariat, Dehradun.
2. Upper Police Mahanideshak Apradh Evam Kanoon, Uttarakhand, Dehradun.
3. Police Mahanirikshak, Garhwal Region, Uttarakhand, Dehradun.
4. Senior Superintendent of Police, Haridwar.

.....Respondents.

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiya, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: JANUARY 21, 2013.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman : Oral)

1. This petition has been filed by the petitioner for seeking a direction to quash the impugned order dated 16.9.2008, (Annexure-1) by which the petitioner has been awarded a punishment of deprivation of 15 days' salary; and the appellate order dated 14.9.2009, (Annexure-2) passed by the D.I.G., Garhwal Region, Uttarakhand dismissed the appeal and further order passed in revision on 31.5.2011, (Annexure-3) by which revision petition has also been dismissed against the impugned order. The petitioner has further prayed for the consequential relief, if any to the petitioner.

2. Brief facts of the case are that the petitioner had been working as Urdu Translator in the office of the S.S.P., Haridwar. Sri Satwant Singh, resident of Shankapuri, Majra, Roorkee lodged a report against 7 persons U/S 395 of I.P.C. in the Police Station as Crime No. 106 of 2007. Sri Gayyur S/o Sri Ayub Gada was one of the named accused in the said F.I.R. Gayyur made a complaint against the petitioner that a sum of Rs.10,000/- had been given to the petitioner who demanded the said amount in the name of the Circle Officer, Roorkee. A preliminary enquiry was ordered by the S.S.P., Haridwar vide order dated 10.6.2008 which is evident from the report of the S.P., Rural dated 6.8.2008. In pursuant of the said order of the S.S.P., enquiry was conducted by Sri Ajay Joshi, S.P., Rural, Haridwar who held that the Urdu Translator Vakarulhaq had taken Rs.10,000/- from Sri Gayyur Gada in the name of senior officers and he was found guilty as after obtaining the said money, he returned the same to the complainant. Thereafter, a show cause notice was issued to the claim petitioner on 23.8.2008 by which it is alleged that he has taken a sum of Rs. 10,000/- in the name of senior officers and by the said act he committed misconduct. He was called upon to give his written reply within 7 days, as to why his salary for one month be not stopped by awarding a punishment to him and thereafter he submitted his reply and after submitting the reply, the claim petitioner was awarded the punishment by the impugned order depriving him only of 15 days' salary from his role.

3. Respondents have filed the written statement. It is admitted to the respondents that the claim petitioner is a Urdu Translator in the S.S.P. office and it is also admitted that a report was lodged against some persons in which the complainant Gayyur was one of the accused and it is also admitted that after the receipt of

complaint from Gayyur, an enquiry was conducted by the S.P., Rural, Haridwar in which he was found guilty and the impugned punishment was awarded to him. In the W.S. it is further prayed that the petition may be dismissed.

4. I have heard learned counsel for the parties and perused the record. Ld. Counsel for the petitioner has contended that the petitioner was not given any proper opportunity during the preliminary enquiry or at the time of awarding the punishment. The petitioner has further contended that the petitioner has no relation with the complainant and he had never taken Rs.10,000/- from the complainant and he never refunded the amount of Rs. 10,000/- to him and the said complaint was false. It is further contended that the complainant during the enquiry never stated that amount of Rs.10,000/- at which place, at what time, on which date was given to the petitioner and he has also not stated that before whom he has given Rs. 10,000/- and he has further contended that the petitioner is innocent, his punishment order as well as the orders passed in appeal and revision may be quashed. It was urged before me that preliminary enquiry officer has suggested the punishment and said punishment order is bad in the eyes of law. Ld. Counsel further pointed out that the appellate authority did not apply his mind and as such the order of Respondent No.3 is not in accordance with law.

5. Ld. A.P.O. appearing on behalf of the respondents contended that the due opportunity has been given to the petitioner. He further contended that the preliminary enquiry officer has found the petitioner guilty of the misconduct and after applying his mind by the departmental enquiry officer, awarded the minor punishment. After going through the preliminary enquiry report, the S.S.P. took recourse of awarding the minor punishment and issued the show cause notice containing the

imputations which is on record and the claim petitioner submitted his reply of the show cause notice and thereafter the punishment order was passed. The S.S.P., Haridwar has given the show cause notice of the proposed punishment of deprivation of one month's salary, whereas after perusal of the explanation of the petitioner, he awarded the punishment of depriving of 15 days salary only, so after due diligence he passed the said order. It was further contended that the petitioner was given the show cause notice which is at page no. 30 of the Enquiry file and by the said order he was given details of the imputation as well as opportunity to go through the entire record of the enquiry during the notice period and thereafter he had to submit his explanation. Ld. A.P.O. appearing for the respondents further pointed out that he did not avail the said opportunity of inspection of the entire record. Ld. Counsel for the claim petitioner could not demonstrate me that he availed the said opportunity to inspect the record. However, the claim petitioner had simply submitted the reply to the notice which is Annexure-5 to the petition.

6. It is settled principle of law that if any complaint is received either oral or written, or the facts coming otherwise to the knowledge of the competent authority to take disciplinary action, it is open to him to make such preliminary enquiry as he deems proper to ascertain the prima facie truth of the allegations and evidences available in this regard. For such an enquiry hardly any rule exists in the general law but such a procedure is implicit in the very nature of things. It is always better and a desirable step to have the preliminary enquiry at the preliminary stage otherwise the civil servant would be charged with misconduct recklessly and without reasons. After the receipt of the preliminary enquiry, it is the discretion of the competent officer to take a decision as to whether the person against whom the preliminary enquiry report

has been received, should be dealt with by minor punishment or by major punishment. If he feels to award major punishment, he will order the departmental enquiry to frame the charges; serving the charge sheet and all evidence in support of the charges. The reply of the delinquent officer would be obtained against the charges and the evidence would be recorded before the delinquent officer/official and he would be required to appear and cross-examine the witnesses. Thereafter, finding of the enquiry officer would be recorded which will be sent to the competent officer. In the case of preliminary enquiry, it is usually held to determine whether a prima facie case for a formal departmental enquiry is made out or not; it is not to be confused with departmental enquiry. In short a preliminary enquiry is for the purposes to collect the facts and evidence in connection to the allegation made against the civil servant, he may or may not be associated, is within the discretion of the competent authority. Preliminary enquiry even may be held ex parte; as it is mainly for the satisfaction of the competent authority. But during the preliminary enquiry, civil servant has no right to be heard. After receipt of the preliminary enquiry, competent authority desires to hold the regular departmental enquiry, the delinquent official has the full right to be heard during the departmental enquiry. The statement of the complainant has been recorded during preliminary enquiry which is revealed from the original record summoned by this Court. Ld. Counsel for the claim petitioner could not demonstrate me that there is any provision of law to give an opportunity to the petitioner to cross-examine the witnesses at the time of the preliminary enquiry. It is also settled law that the preliminary enquiry report cannot be basis of the major punishment., but the evidence taken by him would be brought on record for the basis of the charge.

7. Ld. Counsel for the claim petitioner also pointed out that even if the minor punishment after the preliminary inquiry was to be inflicted by the competent officer. The imputation should have been put to the petitioner in detail. The Ld. A.P.O. refuted the contention. The notice which was given to the petitioner, is self explanatory. It is not denied by the Ld. Counsel for the petitioner that Annexure-2, following notice was not given to the petitioner. The notice of imputation after preliminary report is as follows:-

उर्दू अनुवादक वकार उल हक,

द्वारा: प्रधान लिपिक, पुलिस कार्यालय रोशनाबाद।

जब आप वर्ष 2007 में पुलिस कार्यालय हरिद्वार में नियुक्त थे तो दिनांक 15-4-2007 को वादी श्री सतवन्त सिंह नि० निकट शनिदेव मंदिर, शंकरपुरी माजरा रूडकी द्वारा थाना रूडकी पर मु० अ० सं० 106/07 धारा 395 भादवि बनाम 8-10 बदमाश नाम पता अज्ञात पंजीकृत कराया गया। अभियोग की विवेचना से अभि० 1- शमशेर अली पुत्र यामीन नि० मुल्हेडा, थाना मंगलौर, 2- इस्माद उर्फ पप्पन पुत्र चिम्मन, 3- आकिल पुत्र मेहरबान 4- फययाज पुत्र मेहरबान, 5- इयाज पुत्र कर्मइलाही, 6-बाबूभान पुत्र मुर्तजा नि०गण चमरयान, थाना पुरकाजी मु०नगर एवं 7-गयूर पुत्र अयूब गाडा नि० कस्वा व थाना पुरकाजी मु० नगर के नाम प्रकाश में आये। इसी दौरान आपके द्वारा गयूर अहमद से सम्पर्क कर उसके मुकदमे की पैरवी करने हेतु क्षेत्राधिकारी रूडकी के नाम से झांसा देकर 10 हजार रुपये लिये गये जिसके संबंध में गयूर अहमद द्वारा क्षेत्राधिकारी रूडकी के समक्ष उपस्थित होकर शिकायत की गयी। प्रकरण में प्रा० जांच पुलिस अधीक्षक, ग्रामीण के सुपुर्द की गयी। प्रा० जांच के दौरान आपके द्वारा गयूर अहमद के 10 हजार रुपये वापस किये गये। प्रा० जांचकर्ता की जांच आख्या से आप उच्चाधिकारियों के नाम से 10 हजार रुपये लेने के पूर्ण रूप से दोषी पाये गये। आपके उक्त कृत्य से पुलिस की छवि धूमिल हुई है।

अतः आप इस कारण बताओ नोटिस के 07 दिवस के अन्दर अपना लिखित स्पष्टीकरण इस कार्यालय में प्रस्तुत करें, कि क्यों आपको उक्त अनशासहीनता बरतने के सम्बंध में एक माह के वेतन के अर्थदण्ड से दण्डित कर दिया जाये। यदि आपका स्पष्टीकरण निर्धारित अवधि के

अन्दर प्राप्त नहीं होता है तो यह समक्षा जायेगा कि आपको अपने बचाव कुछ नहीं कहना / प्रस्तुत करना है।

स्पष्ट किया जाता है कि यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर प्राप्त होता है तो उस पर सम्यक विचारोपरान्त ही निर्णय लिया जायेगा। अन्यथा स्पष्टीकरण के अभाव में एक पक्षीय आदेश पारित कर दिये जायेगे। इस समबन्ध में यदि आप पत्रावली का अवलोकन करना चाहते हैं तो इसी अवधि में कर सकते हैं।

पत्रांक: ज- 221/2008
दिनांक: अगस्त 23, 2008

वरिष्ठ पुलिस अधीक्षक,
हरिद्वार।

8. From the perusal of the notice it is clear that it details both, the imputation as well as the right of hearing to the petitioner after the preliminary enquiry report. It is also evident from the record that he has also given reply to the said show cause notice so it is revealed that the petitioner was given a proper opportunity before passing the impugned order. I do not find any force in the contention of the Ld. Counsel for the petitioner

9. Ld. Counsel for the petitioner also pointed out that there is no evidence regarding the allegation made in the complaint about taking of Rs.10,000/- to give to the higher officers of the petitioner which was later on returned to the complainant. It is well settled principle of law that if any administrative preliminary enquiry or final enquiry is conducted, the right of judicial review is limited. The Court would not interfere with the finding of facts arrived at the inquiry except in the case of malafide or perversity; viz there is no evidence to support the findings. The Court cannot appreciate the evidence like an appellate authority. So long as there is some evidence to support the conclusion arrived by the competent authority, the same has to be sustained. It is clear from the claim petition that no malice has been alleged or pleaded in the petition, The learned counsel for the petitioner could not demonstrate that he has pleaded malice in the petition. The

findings recorded by the preliminary enquiry officer are based on the evidence of Gayyur who has supported his allegation made in the complaint, which is on record. The findings are not perverse on the ground that there is no evidence. While exercising the powers of review, the court cannot normally substitute its own conclusion with regards to the findings of the departmental authority. The court has a limited power to see that the conclusion is based on evidence or not. In view of the above, I do not find any force in the contention of the Ld. Counsel for the petitioner.

10. Now it is to be seen as to whether the preliminary enquiry report, which contains a specific para by which the enquiry officer has recommended the minor punishment to the claim petitioner and due to the fact of the said proposed punishment, the report is bad and minor punishment awarded is liable to be vitiated or not. The perusal of the preliminary enquiry report clearly reveals that the enquiry officer after coming to the conclusion that the claim petitioner was guilty for the misconduct, he has further recommended the minor punishment. Now, I have to see the effect of the said recommendation to the punishment awarded to the petitioner. Ld. Counsel for the petitioner contended that the said recommendation vitiates the entire minor punishment awarded by the competent authority. Ld. A.P.O. appearing for the State refuted the contention. It is settled position of law that unless the statutory rules or specific order under which an officer is appointed to hold an enquiry under law, so requires the enquiry officer, need not make any recommendation to punishment which may be imposed on the delinquent officer in the case of the charges to be framed against him, are held proved at the enquiry. If, however, the enquiry officer makes any recommendation that the said recommendation like his finding of fact on merit, neither the

findings nor the recommendations are binding on the competent authority and the whole regular enquiry cannot be vitiated on the ground that the enquiry officer submitted the recommendation for the punishment. If there are charges against the civil servant, it is for the competent authority to be satisfied that the civil servant is guilty and deserves the punishment proposed. The satisfaction of the enquiry officer cannot take place the satisfaction of the competent authority. The competent authority may agree or may not agree with the findings or recommendation of the enquiry officer; even, if the enquiry officer has given the recommendation that recommendation would be beyond his jurisdiction, but the punishment awarded by the competent authority after applying his mind would not vitiate the punishment awarded by him. In the case in hand, the matter is not of the regular departmental enquiry. The recommendations for minor punishment have been made in the preliminary enquiry, which was against the petitioner. The competent authority did not agree with the recommendation of the preliminary enquiry officer and he awarded lesser punishment than the proposed minor punishment by the enquiry officer. In view of the above, I do not find any force in the contention of the Ld. Counsel for the petitioner.

11. No other argument was advanced to press any other ground except mentioned above. The claim petition is liable to be dismissed.

12. The claim petition is dismissed accordingly. No order as to costs.

Sd/-

(JUSTICE J.C.S. RAWAT)
CHAIRMAN

DATE: JANUARY 21, 2013
DEHRADUN.