

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 48/SB/2021

Raman Bisht (Sub Inspector), aged about 28 years, s/o Jayveer Singh Bisht, r/o 5-B, Dikhet, Devikhet, Kanda Khal, Pauri Garhwal, Kandakhal, Uttarakhand-246144.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Department of Home Affairs, Secretariat, Dehradun.
2. The Senior Superintendent of Police, Uttarkashi.
3. The Inspector General of Police, Garhwal Region, Uttarakhand.

.....Respondents.

Present: Sri Tarun Matta & Sri Rishabh Rangher, Advocates for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 12, 2022

The petitioner has filed this claim petition for seeking the following reliefs:

To set aside/quash the impugned order dated 19.02.2020 (Letter no. JA-04/2019) passed by the respondent no.2, the Senior Superintendent of Police, Uttarkashi (Annexure A).

To set aside/quash the impugned order dated 18.05.2020 bearing number COG-CA-Appeal-03 (Uttarkashi)/2020 passed by the respondent no.3, Inspector General of Police (Garhwal Region), Uttarakhand (Annexure B).

Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem fit just and proper in the circumstances of this case.

Award the cost of the petition to the petitioner against the respondents."

2. The petitioner is a Sub-Inspector in the Police Department. He was issued a show cause notice in 2019 vide letter no. Ja.-04/2019 by the Superintendent of Police, Uttarkashi as to why the censure entry be not given to him as a minor penalty under "The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991". The allegation against the petitioner, based on the inquiry, in the show cause notice reads as under:-

“वर्ष 2017 में नूरुलनबी हाल निवासी तिलोथ थाना कोतवाली उत्तरकाशी द्वारा थाना कोतवाली उत्तरकाशी में उसकी पुत्री आयशा के बिना बताये घर से कहीं चले जाने की सूचना पर दिनांक 25-12-2017 गुमशुदगी दर्ज करायी गयी थी, जिसे दिनांक 15-01-2018 को मुअ0स0 05/2018 धारा 365 भा0द0वि0 में तरमीन कर विवेचना आपके सुपुर्द की गयी। आवेदक श्री सुलममान पुत्र अल्लादिया निवासी ग्राम शाहपुर थाना फतेहपुर, जिला सहारनपुर (उ0प्र0) द्वारा दिनांक 12-02-2018 को आपके एवं एस0ओजी0 टीम के कर्मचारीगण कान्स0 शाएब (औसाफ खान) कान्स0 प्रशान्त राणा, कान्स0 नितिन द्वारा उसके घर से उसके नाबालिक पुत्र उस्मान को आयशा के अपहरण मामले में सहताब पुत्र अब्दुल गफ्फूर निवासी परागपुर थाना चिलकाना, जिला सहारनपुर व बिलाल निवासी ग्राम सीकरी थाना चिलकाना सहारनपुर की मौजूदगी में उठाकर ले जाने शाम को देहरादून के होटल में ल जाकर पूछताछ करने, आवेदक को फोन कर देहरादून आकर लड़के को ले जाने तथा उसके बेटे के साथ मारपीट व अमानवीय बर्ताव किये जाने सम्बन्धी कतिपय आरोप लगाते हुए राष्ट्रीय मानवाधिकार नई दिल्ली को एक शिकायती प्रार्थनापत्र प्रेषित किया गया, जिसकी जांच मानवाधिकार नई दिल्ली द्वारा सीबीसीआईडी को आवंटित की गयी।

अपराध अनुसंधान विभाग द्वारा की गयी जांच के दौरान पाया गया कि कु0 आयशा पुत्री नूरुलनबी उम्र 18 वर्ष की गुमशुदगी दिनांक 25-12-2017 को श्री नूरुलनबी की तहरीर के आधार पर थाना कोतवाली में पंजीकृत हुयी थी दिनांक 15-01-2018 को उक्त गुमशुदगी को मु0अ0स0 05/18 धारा 365 भादवि0 में तरमीन किया गया था जिसकी विवेचना उ0नि0 रोहित कुमार द्वारा सम्पादित की गयी थी, जिसमें उ0नि0 रोहित कुमार के अवकाश पर चले जाने के कारण थानाध्यक्ष उत्तरकाशी द्वारा दिनांक 11-02-2018 को उपरोक्त विवेचना इनके सुपुर्द की गयी थी। इनके द्वारा विवेचना में गुमशुदा के भाई शमीम एवं उसको पत्नी नगमा के बयानों से आयशा का उत्तरकाशी आने से पूर्व अपने गांव के ही उस्मान पुत्र सुलमान से प्रेम सम्बन्ध होने की बात प्रकाश में आने पर ही उस्मान के घर पर दबिश देकर उसे पूछताछ हेतु बुलाया गया व उस्मान के जुर्म

का इकबाल करने पर उसे रिमाण्ड हेतु न्यायिक मजिस्ट्रेट उत्तरकाशी के समक्ष पेश कर उसका पी0सी0आर0 लिया गया था । लेकिन पी0सी0आर0 के दौरान उस्मान के बयानों के आधार पर उसके बताये अनुसार शाहपुर व आस-पास आयशा की हत्या किये जाने के स्थान का पता न चल पाने पर दिनांक 20-02-2018 को उस वापस जिला कारागार, टिहरी गढ़वाल में दाखिल कर दिया गया था। दिनांक 23-02-2018 को विवेचना के दौरान ग्राम तिलोथ में आपको पता चला कि कु0 आयशा ने गुम होने से पूर्व एक महिला संजू के फोन से किसी से बात की थी, जिसके आधार पर दिनांक 24-02-2018 को कु0 आयशा को ग्राम विकोल से मनोज लाल के घर से बरामद किया गया जिसने बताया कि उसने अपनी मर्जी से मनोज लाल से विवाह कर लिया है। दिनांक 26-02-2018 को कु0 आयशा को न्यायालय में पेश किया गया जिसने अपने 164 सी0आर0पी0सी0 के बयानों में मनोज के साथ मंदिर में शादी करने तथा उसी के साथ रहने व उस्मान का अपने जाने में कोई हाथ न होना बताया गया जिसके आधार पर उसी दिन दिनांक 26-02-2018 को इनके द्वारा माननीय न्यायालय में उस्मान को उपरोक्त अभियोग में न्यायिक अभिरक्षा से मुक्त करने हेतु अन्तर्गत धारा 169 सी0आर0पी0सी0 में रिपोर्ट प्रेषित की गयी जिसके आधार पर उस्मान दिनांक 01-03-2018 को जिला कारागार टिहरी से रिहा हो गया था।

अतः आपको निर्देशित किया जाता है कि इस कारण बताओ नोटिस प्राप्त के 08 दिवस के अन्दर अपना लिखित स्पष्टीकरण अधोहस्ताक्षरी को उपलब्ध कराना सुनिश्चित करे। आपको स्पष्ट किया जाता है कि आपका स्पष्टीकरण यदि निर्धारित अवधि के अन्दर प्राप्त नहीं होता है तो यह समझा जायेगा कि आपको उक्त सम्बन्ध में कुछ नहीं कहना है तथा आपके विरुद्ध एक पक्षीय कार्यवाही कर दी जायेगी। उक्त सम्बन्ध में यदि आप किसी अभिलेख का अवलोकन करना चाहें तो किसी कार्य दिवस का कार्यालय में उपस्थित होकर कर सकते हैं।”

3. The petitioner submitted the reply/explanation to the show cause notice on 12.06.2019 and denied the charges levelled against him.
4. Superintendent of Police, Uttarkashi considered the reply/explanation to show cause notice and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of censure entry on 19.02.2020.

5. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region, Uttarakhand on 18.05.2020.

6. The petitioner has contended in the claim petition that on 25.12.2017 one Shri Nurulnabi, r/o Tiloth, Uttarkashi registered a missing complaint in Thana Kotwali Uttarkashi of his daughter Km. Aaisha. Thereafter, complaint dated 15.01.2018 was registered as Case No. 05/2018 u/s 365 IPC. The complaint was registered under the then on-duty officer S.I. Rohit Kumar. S.I. Rohit Kumar went on leave, thereafter, the case was handed over to the petitioner on 11.02.2018. During the investigation, it was transpired by Shri Shamim (Kumari Aaisha's Brother) and Smt. Nagma (Kumari Aaisha's Sister-in-Law) that Kumari Aaisha had love affair with their neighbour's son Usman s/o Suleman. To confirm the statement of Shri Shamim and Smt. Nagma the SOG Team, Uttarkashi in a routine manner took out the CDR (Call Detail Report) and through the report, it transpired that Usman and Kumari Aaisha were in regular touch with each other. The petitioner took permission/order from Shri Dadan Pal (Senior Superintendent of Police, Uttarkashi) and also with Constable Ausaf Khan, Constable Prashant Rana, Constable Bir Singh, Constable/Driver Narender Meh left for Dehradun. Thereafter, the petitioner with his team on the same date left for Chowki Muzaffarabad, Than Fatehpur where they took assistance from the local police and left for Village Sahapura. The petitioner and the team inquired Usman and Suleman but could not get satisfactory answers. Because it was late in the evening the petitioner and team asked Usman and his father Suleman to come to Dehradun next day. Next day i.e. 13.02.2018, they reached Dehradun at 15:00 and were again examined and inquired by the petitioner. Usman confessed about the love relationship with Kumari Aaisha and also admitted that Kumari Aaisha was pregnant with his child he was the last person to meet Kumari Aaisha before she went missing. In further inquiry, Usman could not give suitable answers to the question asked, so the petitioner

and team on suspicion took Usman and left to Thana Kotwali, Uttarkashi on the same date i.e. 13.02.2018 and noted their presence at Kotwali Uttarkashi on 14.02.2018.

7. On 14.02.2018, Usman was questioned in detail by Shri Mahadev Uniyal, Thana Incharge, and then he confessed that he murdered, burned and buried Kumari Aisha. The confession by Usman was made before petitioner, Shri Mahadev Uniyal, Thana Incharge and other senior officers on 14.02.2018, the petitioner left no other option than to arrest Usman and present him before the Court of Judicial Magistrate, Uttarkashi. On 15.02.2018, Usman was presented before Judicial Magistrate, Uttarkashi and there Usman's confession that he murdered, burned and buried Kumari Aisha before the Court. Thereafter, under the orders from Judicial Magistrate, Uttarkashi, Usman was taken under PCR for 7 days from 17.02.2018 to 23.02.2018)

8. On 23.02.2018, further investigation in Case No. 5/2018 led to Tilosh, Uttarkashi where a woman admitted that Kumari Aisha has called from her number and went missing since. Further, petitioner and S.I. Raman Bisht took out the CDR (Call Detail Report). As soon as the location of the number traced was found out petitioner, S.I. Raman Bisht, Constable Chandramohan Negi, Constable Prashant Rana, Constable Bir Singh, Lady Constable Puja, Constable/Driver Arvind Jayada searched Nagrajdhar, Tehri and started searching for Kumari Aisha. On 24.02.2018, Kumari Aisha was found with Shri Manoj Lal s/o Late Shri Gurdayal Singh r/o village Nagudpatti, Nagrajdhar, Tehri Garhwal. On 26.02.2018, Kumari Aisha was presented before the Judicial Magistrate and recorded the statements u/s 164 CrPC. It has been submitted by the petitioner that petitioner is in the service of the nation since 2015 and no punishment/inquiry or whatsoever has ever been held against the petitioner. The respondents in a routine and cursory manner issued the impugned orders dated 19.02.2020 and 18.05.2020 without taking into consideration the grounds raised by the

petitioner and while passing the impugned orders respondents no. 2 & 3 have committed a material irregularity and illegality. The impugned orders have been passed on the basis of presumptions and surmises.

9. Respondents have opposed the claim petition by filing written statement, it has been stated that when in the year 2017, the petitioner was posted in Police Station, Uttarkashi, on the basis of complaint dated 25.12.2017 of Mr. Nurulanabi regarding missing of his daughter Aaisha. Thereafter, on 15.01.2018, a case crime No. 05/2018 under section 365 IPC was registered. The said investigation was being done by S.I. Rohit Kumar, but on account of his leave, the same was handed over to the petitioner on 11.02.2018. During the investigation, the missing Aaisha's brother Samim and his wife Nagma gave statements that Aaisha had a love affair with Usman s/o Suleman of her village, it is suspected that Usman had taken Aaisha, accordingly the then investigator registered the case crime no. 05/2018 under section 365 IPC. For the recovery of kidnaper in the said case, the petitioner, S.I. Civil Police Raman Bisht inadvertently without any confirming electronic evidence collection such as CDR report/location, without taking the recovery of the kidnaper, without taking the statements of his brother, Shamim and Sister-in-law Nagma about love affairs with Usman s/o Suleman of Aaisha's village, the SOG Team's Hamrahi Constable 129 Civil Police, Ausaf Khan, Constable 340 Civil Police Veer Singh and Constable 389 Civil Police Prashant Rana arrested him on 14.02.2018 after admitting the crime.

10. It has further been contended that after the arrest of Susman, his father Suleman r/o Shahpura sent complaint letter to the National Human Right Commission, New Delhi stating that his son has arrested forcibly under the police pressure and has been sent to jail. The Human Right Commission registered the case no. 1669/24/64/2018 dated 28.06.2018 and sent the same to the Inspector General of Police, Uttarakhand for investigation, on which taking action by the Director

General of Police Uttarakhand, the impartial inquiry of the matter was handed over to the Crime Research Department. While conducting the fair and impartial inquiry in the matter, the inquiry officer/Inspector General of Police, Crime Research Department, headquarters, Dehradun in his inquiry report dated 23.05.2019 found petitioner and his Team guilty of negligence and carelessness and recommended departmental proceedings under the U.P./Uttaranchal Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, Adaptation and Modification 2002, which was approved by the Director General of Police. Thereafter, the disciplinary authority issued the show cause notice dated 03.06.2019 under Rule 14(2) of the Rules of 1991 and given time to give reply to the show cause notice. The petitioner replied to the show cause notice, which was rejected being found unsatisfactory and baseless. Thereafter, petitioner was awarded minor punishment, which is as per law. The aggrieved by the impugned order, the petitioner also appealed, which was also rejected by the appellate authority vide order dated 18.05.2020. The petitioner being responsible officer of the police force, was negligent towards his duties. The impugned orders as perfectly as per rules.

11. I have heard both the parties and perused the record carefully.

12. Before the arguments of the parties are discussed, it would be appropriate to look at the rule position related to the minor punishment in Police Department. Relevant rules of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable in the state of Uttarakhand) are given below:-

“4. Punishment (1) The following *punishments* may, for good and sufficient reasons and as hereinafter provided, be imposed upon a *Police Officer*, namely:-

(a) *Major Penalties* :-

(i) *Dismissal from service.*

(ii) *Removal from service.*

(iii) *Reduction in rank including reduction to a lower scale or to a lower stage in a time-scale,*

(b) *Minor Penalties* :-

(i) *With-holding of promotion.*

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

(iii) With-holding of increment, including stoppage at an efficiency bar.

(iv) **Censure.**

(2).....

(3).....”

“5. Procedure for award of punishment- (1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.

(2) The case 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 subrule (2) of Rule 14.

(3).....”

“14. Procedure for conducting departmental proceedings- (1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I.

(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.

(3).....”

13. The above rule position makes it clear that in order to impose minor penalty, it is mandatory to inform 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 to give him a reasonable opportunity of making such representation as he may wish to make against the proposed minor penalty.

14. After hearing both the parties and going through the claim petition/written statement, I find that an enquiry was conducted in a fair and just manner. The enquiry is based on statements and documents related to the allegations. On the basis of sufficient evidence, the enquiry officer has reached the conclusion that the petitioner was guilty. After the enquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The reply of the petitioner to the show cause was also duly examined and considered

and after that the disciplinary authority has passed the order awarding minor punishment of censure entry to the petitioner.

15. It is settled position of law that this Tribunal cannot interfere in the findings of the enquiry officer recorded after the conclusion of the enquiry unless it is based on the *malafide* or perversity. The perversity can only be said when there is no evidence and without evidence, the enquiry officer has come to the conclusion of the guilt of the delinquent official. In the case in hand, there is sufficient evidence to hold the petitioner guilty for misconduct as recorded by the enquiry officer and there is no perversity or *malafide* in appreciation of evidence.

16. From the perusal of record, it is also revealed that the show-cause notice dated 03.06.2019 was issued and in his reply to this notice, the petitioner could not demonstrate any illegality in the show cause notice or in the procedure for awarding punishment of the censure entry. It is well settled principle of law that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. The Tribunal does not sit as a court of appeal as the scope of judicial review is limited to the process of making the decision and not against the decision itself. Power of judicial review is meant to ensure that the delinquent receives fair treatment. The Tribunal is concerned to determine that the enquiry was held by a competent officer, that relevant rules and the principles of natural justice are complied with and the findings or conclusions are based on some evidence. The authority entrusted to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. The Disciplinary Authority is the sole judge of facts. In case of disciplinary enquiry, the technical rules of evidence and the doctrine of "Proof beyond doubt" have no application. "Preponderance of probabilities" and some material on record would be enough to reach a conclusion whether or not the delinquent has committed misconduct. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Tribunal.

17. In the case in hand, after careful examination of the whole process of awarding minor punishment of censure to the petitioner, I find that the minor punishment was awarded to the petitioner after an enquiry. The enquiry was based on evidence and there is no *malafide* and perversity. The petitioner was given reasonable opportunity to defend himself. There is no violation of any rule, law or principles of natural justice in the enquiry proceedings conducted against the petitioner.

18. For the reasons stated above, the claim petition is devoid of merit and the same is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 12, 2022.
DEHRADUN.
KNP