

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

Present: Hon'ble Mr. Rajendra Singh  
-----Vice Chairman (J)

**CLAIM PETITION NO. 89/SB/2021**

R.K. Saklani, s/o Late Sri G.D Saklani, aged about 45 years, presently posted on the post of Sub-Inspector, Police Office, Tehri Garhwal.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Secretariat, Subash Road, Dehradun.
2. Dy. Inspector General of Police, Garhwal Region, Uttarakhand.
3. Senior Superintendent of Police, District Tehri Garhwal.

.....Respondents

Present: Sri L.K.Maithani, Advocate for the Petitioner  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: MAY 18, 2022**

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

*To quash the impugned punishment order No. Da-22/2020 of dated 27.12.2020 (Annexure No. A-1) passed by the S.S.P., Tehri Garhwal and impugned appellate order dated 24.07.2021 (Annexure No. A-2) passed by the respondent No. 2 with its effect and operation and with all consequential benefits with costs.*

2. Brief facts, as narrated in the claim petition are as follows:

In the year 2020, when the petitioner was posted as Incharge Inspector at Thana Muni-ki-Reti, an application was made by SERI Equipment Finance Limited to S.S.P., Tehri Garhwal for providing police help to recover the vehicle given to Mr. Avtar Singh s/o Ajab Singh r/o H. No. 65, Gali No. 2, Village Haripur Sector-4, Panchkula, Haryana, who failed to pay the monthly instalment of loan provided by SERI Equipment Finance Ltd for

JCB Machine and Rock Breaker. The S.S.P., Tehri Garhwal marked this application to SHO Muni-ki-Reti with endorsement to enquire into the matter and submit report before him within 5 days.

After receiving the above application along with copy of award dated 27.01.2020 of the Arbitrator through Complaint Cell, the petitioner gone into the matter and found that due to non-payment of instalment of loan by Sri Avtar Singh, the Arbitrator, Shri Donal Das Gupta passed an ad-interim order dated 27.01.2020 on the application of SREI Equipment Finance Limited by which Shri Devinder Singh and Shri Pawan Kumar were appointed as receivers to take the possession of JCB machine along with its all accessories. The following directions were issued to the local police by the Arbitrator in the order dated 27.01.2020:

The liberty to the Receivers to take necessary steps to approach the police authority within whose jurisdiction the said asset is lying for necessary police help for compliance of this order. The Officer-in-charge of the local police station is directed to render necessary assistance to the Receivers for implementation of this ad-interim order whenever such assistance will be required. On 25.02.2020, the petitioner was directed the *Prabhari* Sub-Inspector Reporting Police Chowki Byasi to go with the receivers at the spot to maintain the peace. The receivers made his arrival at Chowki Byasi at 15:30 in Rapat No. 09 from where Incharge Sub-Inspector Sh. Durgesh Kothiyal and Constable Pankaj Salar along with Receivers reached at the spot and after completing the formalities, the receivers took the machine on the trolley. Sri Avtar Singh, made a complaint before the respondent no. 3 and made allegation of taking away the vehicle forcibly without the permission of the Court. On the complaint, the inquiry was handed over to Shri Pramod Kumar Shah, the C.O., Narendra Nagar. The C.O., Narendra Nagar recommended for investigation on the application of Shri Avtar Singh after registering the case under Sections 420, 406, 467 and 198 IPC. Thereafter, on the complaint of Shri Avtar Singh, the respondent registered the Criminal Case No. 34 of 2020 under Section 392 IPC and investigation was handed

over to S.I. Shri Amit Kumar, P.S. Narendra Nagar who on the basis of report of C.O., Narendra Nagar, registered the Criminal Case No. 34/2020 under Section 420, 406, 467 and 198 IPC and recovered the pokeland machine along with Rock breaker from the yard of Receivers and deposited them into Thana Muni-ki-Reti. In the investigation, the statement of Arbitrator was taken by S.I. Shri Himmat Singh and found that under Arbitration Act, the order of the Arbitration to recover/seize the pokeland machine was wholly valid. Despite the fact that order dated 27.01.2020 of the Arbitrator was a valid order and in the application of SERI Equipment Finance Limited for police help, the SSP, Tehri Garhwal, respondent no. 3 marked the direction to SHO, Thana Muni-ki-reti to take action as per rules.

The respondent No. 3 issued the show cause notice dated 25.06.2020 to the petitioner asking him to explain as to why the censure entry be not awarded to him for the year 2020 in his character roll under the provisions of Rule 23(2) of Uttarakhand Police Act 2007. The petitioner replied to the show cause notice on 13.07.2020 and denied from all the charges levelled against him. The petitioner further submitted that after reply to the show cause notice, the respondent no. 3 *vide* his letter dated 21.11.2020 directed the Dy. S.P., Narendra Nagar, Shri Pramod Kumar Shah to give his report in the matter of the petitioner. The C.O. Narendra Nagar *vide* his inquiry report dated 25.12.2020 held the petitioner guilty in the matter. Thereafter, the respondent no. 3 punished the petitioner with the punishment of censure entry in his character roll *vide* order dated 27.12.2020. The petitioner preferred an appeal dated 23.03.2021 against the impugned order, which was rejected by the appellate authority *vide* order dated 24.07.2021 without applying his judicious mind.

The petitioner submitted that the inquiry report dated 25.12.2020 was never served or communicated to him prior to the punishment nor any other document or inquiry report on the basis of which charges were made against the petitioner, along with the show cause notice, due to which, he was deprived from the fair opportunity of defence in the departmental

proceedings conducted against the petitioner. In the application of SERI Equipment Finance Limited, the petitioner acted as per law. In this matter, the discretion of the petitioner was not unjust, unfair, improper or illegal. There is no fact and evidence nor any rule or law against the petitioner which shows the negligence or carelessness of the petitioner. It is also submitted that under the provisions of Uttarakhand Police Act, 2007 and U.A./U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, the penalties are provided for that acts which construed misconduct.

It has further been submitted by the petitioner that the findings of the inquiry officer in respect of the complaint of Shri Avtar Singh are wrong and perverse and false. In the investigation of Criminal Case No. 34/2020, it was found that the order dated 27.01.2020 was a true and valid order, passed by the Arbitrator on the basis of which, investigating officer removed the sections 420, 406, 467 and 198. This fact also proved by the application dated 26.02.2020 of Shri Avtar Singh filed before the Arbitrator for withdrawal of order dated 10.02.2020. In para 480 of the Police Regulation, it is provided that punishment will be awarded only when it was necessary for keeping discipline. It is submitted that the act of the petitioner does not create any indiscipline towards his duties. The act of the respondents is wrong, illegal, arbitrary, discriminatory and malafide and against the principles of natural justice and violative to Article 14 and 16 of the Constitution of India. Thus, the punishment orders passed against the petitioner are wrong and illegal and liable to be quashed.

3. The claim petition has been opposed by the respondents by filing Counter Affidavit. It has been stated that that when the petitioner was appointed as Inspector-in-Charge Police Station Muni-ki-reti in the year 2020, a complaint 27.02.2020 made by Shri Avtar Singh, son of Shri Ajaib Singh, resident of House No. 65, Street No. 02, Haripur Sector 04, Panchkula. The investigation was conducted by the Deputy Superintendent of Police, Narendranagar regarding the allegations made in the complaint. In his

findings of the investigation dated 21.02.2020, Deputy Superintendent of Police Narendranagar has mentioned that Inspector-in-Charge, Muni-ki-reti Shri Ram Kishore Saklani is guilty of contrary conduct in the disputed case. The Departmental proceedings were conducted against the petitioner under the Uttaranchal Police Offices of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 Adaptation and Modification Order, 2002.

During the departmental inquiry/proceedings, the petitioner was given sufficient opportunity of defend himself, but the petitioner failed to prove the innocence of the allegations levelled. As a result, the Inquiry Officer / Circle Officer, Narendranagar on the basis of sufficient evidence in his investigation report dated 09.03.2020 found the petitioner guilty that the recovery agency was separately involved in the important case related to Pockland machine, rock breaker machine, in which the parties were interested to the tune of Rs 60 lakh, not to follow the clear provisions of law and not to make any recovery memo during recovery and not to get any guidelines from higher authorities and in this way to act contrary to the principles of natural justice and the other party who was ready to present the side. The petitioner has been found guilty to proceed unilaterally without giving the other party an opportunity to present their case. The second party had reached the police station Muni-ki-reti area during the said period, while the disputed Pockland machine was present in the police station area only and the order of the arbitration award was to recover the Pockland machine only, while the Rockbreaker machine was also fraudulently taken in the possession of Receiver of Shree Finance Company.

As a result, on the complaint letter of the applicant in Muni-ki-reti police station, a case crime no. 34/2020 under Section 392 IPC was registered, in which the investigation was done by increasing sections 420,406,467,198 IPC separately. In this way, finding the petitioner guilty of the allegations in the departmental inquiry, the petitioner was issued show cause notice dated 25.06.2020 under Rule 14 (2) of the Rules of 1991. The petitioner has been provided due opportunity to defend himself. After

considering his reply to the show cause notice, the impugned punishment of 'censure entry' was passed against the petitioner by respondent No.3. Thus, he was given reasonable opportunity to defend himself following the principles of natural justice. The appellate authority after considering all the facts and grounds raised by the petitioner in his appeal, passed a reasoned order and his appeal was dismissed on merit. Being a member of Police Force, petitioner was duty bound to abide by the discipline, but he was found guilty for misconduct. His reply to the show cause notice was found totally unsatisfactory. There is no perversity in the order passed by the respondents. His reply was duly considered by the authorities and it was found that the imputations are based on facts and evidence and the claim petition being devoid of merit, deserves to be dismissed.

4. The petitioner has also filed rejoinder affidavit and the same averments have been reiterated and elaborated in it which were stated in the claim petition.

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

6. 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 sub-rule (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).....”

7. 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.

8. After hearing both the parties and going through the claim petition/written statement/ rejoinder, I find that the 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. The petitioner was also provided required opportunity to defend himself. After the inquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The reply of the petitioner to the show cause notice 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.

9. 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.

10. From the perusal of record, it is also revealed that the show cause notice dated 25.06.2020 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 reappreciating of 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 a misconduct. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Tribunal.

11. Learned counsel for the petitioner contended that the petitioner was not provided the copy of the inquiry report and copies of other



documents used against the petitioner and, therefore, reasonable opportunity of hearing was not given to him in gross violation of the principles of natural justice. Learned A.P.O. refuted the argument and pointed out that the proceedings against the petitioner have been conducted under Rule 14(2) of Rules of 1991 and the procedure laid down under the said rule has been followed. He argued that sufficient opportunity was provided to the petitioner to defend himself by issuing the show cause notice as per rule 14(2) of Rules of 1991. After perusal of rules and record, I agree with the contention of learned A.P.O. and I am of clear view that the proceedings are in accordance with rules adhering to the principles of natural justice.

12. 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.

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

**ORDER**

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

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

*DATE: MAY 18, 2022.*  
*DEHRADUN*  
*KNP*