BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Sri V.K. Maheshwari

------ Vice Chairman (J)

&

Sri D.K. Kotia

------- Vice Chairman (A)

CLAIM PETITION NO. 33/DB/2013

Constable No. 53 (C.P.) Krishan Kumar Dixit, S/o Sri Horam Dixit (Retd. Sr. Sub-Inspector), R/o 162, Brahmpuri, Haridwar

……Petitioner

VERSUS

1. State of Uttarakhand through its Principal Secretary, Home Department, Subhash Road, Dehradun,
2. Additional Director General of Police (Administration), Uttarakhand, Dehradun,
3. Deputy Inspector General of Police, Pauri Region, Pauri (Uttarakhand),
4. Superintendent of Police, New Tehri, District Tehri Garhwal

……Respondents

Present: Sri J.P.Kansal, Counsel,
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: JULY 08, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. This petition has been filed for seeking the following relief:

> *"(a) That the above impugned three orders ANNEXURE-A1, A2 and A3 be kindly held wrong, illegal, against law, rules and principles of natural justice and accordingly be kindly quashed and set aside and the petitioner be kindly reinstated in the services with all consequential benefits including pay and allowances to the petitioner; or in the alternative lesser punishment than dismissal/removal of the petitioner from the services be kindly ordered;*
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> *(b) That the petitioner be held entitled and allowed pay, allowance and other benefits for the period 13.03.2012 till the date of his reinstatement in service as admissible on duty and the respondents be ordered to pay the same to the petitioner;*
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> *(c) any other relief, in addition to, modification or substitution of the above relief, which the Hon'ble Tribunal deem fit and proper in the circumstances of the case and facts on record, be kindly allowed to the petitioner against the Respondents; and*
>
> *(d) Rs. 20,000/- as costs of this petition be allowed to the petitioner against the respondents*."

2. The relevant facts in brief are that the petitioner was a Police Constable in Civil Police who was appointed in 2006. He was suspended on 13.03.2012 (Annexure: A-5) by respondent No. 4. The departmental inquiry was initiated against him under Rule 14(1) of the "Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991" (which is applicable in Uttarakhand). The petitioner was issued the charge sheet on 22.4.2012 (Annexure: A-7). The charges against him were that while working at Police Chowki Kulmada, Police Station, Chamba, District Tehri Garhwal, on 29.2.2012 he left the duty without permission and misbehaved with the Sub-Inspector, Incharge of the Police Chowki. The petitioner submitted reply to the charge sheet on 25.04.2012 (Annexure: A-8) and 4.6.2012 (Annexure: A-9) and denied the charges. The inquiry officer conducted the inquiry, submitted the inquiry report on 8.06.2012 (Annexure: A-11) and found the petitioner guilty. Agreeing with the report of the inquiry officer, the respondent No. 4 issued a show cause notice to the petitioner on 16.6.2012 (Annexure: A-10) as to why he be not dismissed from the service. The petitioner replied to the show cause notice on 4.7.2012. The respondent No. 4 did not find the reply satisfactory and he dismissed the service of the petitioner vide order dated 01.08.2012 (Annexure: A-1). His 'appeal' was also rejected on 01.10.2012 (Annexure: A-2) and thereafter, his 'revision' was also rejected on 23.04.2013 (Annexure: A-3). Hence, the petition.

3. The main grounds on the basis of which the impugned orders (Annexure: A-1, A-2 and A-3) have been challenged are:

(i) The inquiry has not been conducted as per law and rules and there is no evidence on record to prove the charges levelled against the petitioner.

(ii) The inquiry officer has also based his finding on past punishments given to the petitioner while he was not charged for the past punishments and therefore, the inquiry proceedings are illegal.

(iii) The petitioner was not provided opportunity to make his submission against the findings of the inquiry report and before that the disciplinary authority agreed with the findings of the inquiry report and issued the show cause notice for dismissing him from the service.

4. The claim petition has been opposed by the respondents No. 1 to 4. In their joint written statement, it has been stated that the grounds of the petition are not sustainable. The inquiry has been conducted as per law and rules. The petitioner has been provided due opportunity to defend himself. The charges against him were duly examined and inquired into by the inquiry officer and he has been rightly found guilty. The past punishments which have been mentioned by the inquiry officer in his report are factual. However, the disciplinary authority while passing the punishment order has not taken cognizance of past punishments and the same were not considered by him as is

clear from the impugned order (Annexure: A-1). While issuing show cause notice for proposed punishment, the disciplinary authority also provided copy of the inquiry report to the petitioner and he has passed the punishment order after considering the reply of the petitioner to this show cause notice and therefore, the disciplinary authority has passed the punishment order as per rules and law. In the light of above, the respondents have stated in the written statement that the petition is devoid of merit and liable to be dismissed.

5. The petitioner has also filed the rejoinder affidavit and mainly reiterated in it the contents of his petition.

6. The respondents have also filed the additional written statement and have reiterated mainly the same points which have been stated in the written statement.

7. We have heard both the parties and perused the record including the inquiry file carefully.

8. Learned counsel for the petitioner has argued that the inquiry has not been properly conducted against the petitioner and is against the law. There is no evidence on record to prove the charge against the petitioner. Learned A.P.O. has contended that the allegations that inquiry is not as per rules and law are baseless. The inquiry has been conducted fairly, the petitioner was given due opportunity to defend himself and after the proper appreciation of evidence, the charges were found to be proved against the petitioner.

9. We have carefully examined the whole process of conducting the inquiry and gone through the inquiry file. The petitioner was given the charge sheet as per rules and his reply to the charge sheet has been duly considered by the inquiry officer. The petitioner was given a notice to appear before the inquiry officer. He did appear and participated in the inquiry proceedings. All evidences which were mentioned in the charge sheet have been taken and recorded in the presence of the petitioner. He was given due opportunity to cross-examine all the witnesses. He also cross-examined all the witnesses. After examination and cross-examination of all the witnesses, the petitioner was further given opportunity to provide any other evidence which he would like to produce in his defence. In response to this, the petitioner submitted a written statement on 4.6.2012 which was also duly considered. We therefore, reach the conclusion that the inquiry was properly conducted in a just and fair manner and we do not find violation of any rule or law in the process of holding the inquiry.

10. Learned counsel for the petitioner contended that there was not sufficient or proper evidence to prove the charges against the petitioner. The charges against the petitioner were that he left his duty half-an-hour early without permission and he also misbehaved with his superior officers. The inquiry officer on the basis of the reply of the petitioner to the charge sheet and examination of all the witnesses and their cross-examination by the petitioner has reached the conclusion that the charges are proved. This Tribunal is

making a judicial review and not sitting as appellate authority. It is settled principle of law that in judicial review, reappreciation of evidence as an appellate authority is not made. The adequacy or the reliability of the evidence is not the matter which can be permitted to be argued before the Tribunal. The Hon'ble Apex Court in para 24 of **Nirmala J.Jhala Vs. State of Gujrat 2013(4) SCC 301** has held as under:-

> *"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 malafides, 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."

The Hon'ble Supreme Court, in case of **B.C.Chaturvedi vs. Union of India, 1995(5) SLR, 778** has also held as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary

authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant.* ***Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal****. In Union of India v. H.C. Goel (1964) I LLJ 38 SC , this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued*."

In the light of above, we do not find any force in the argument of learned counsel for the petitioner that there were not sufficient evidences and the charges against the petitioner are not proved. The perusal of entire record does not reveal any irregularity or illegality in the manner of holding the inquiry by the inquiry officer. The inquiry has been conducted by the competent authority and the Rules governing the inquiry have been duly followed. The petitioner has been provided due opportunity of hearing and the principle of natural justice has been followed. The inquiry report adequately deals with the relevant evidences in respect of the charges levelled against the petitioner. The Tribunal has no power to re-appreciate the evidence as an

appellate authority and therefore, there is no case for the interference by the Tribunal in this regard.

11. Learned counsel for the petitioner has also contended that the inquiry officer has considered the past conduct of the petitioner for which the petitioner was entitled to a notice thereof and generally the charge sheet should have contained the list of previous punishments in the charges. It is settled proposition of law as enumerated in Mohd. Yunus Khan Vs. State of U.P. & others 2010(7) 970. The Hon'ble Apex Court in para 33 has held as under:-

> *"33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the post conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment."*

In the light of the above position of law, we have examined the facts of the present case in hand. It is correct that the inquiry officer has mentioned the list of past punishments imposed upon the petitioner in his inquiry report. But when we go through the punishment order, we do not find at any place that the disciplinary authority has considered the past conduct of the petitioner at the time of passing the punishment order. Ld. Counsel for the petitioner could not demonstrate such averment in the order of punishment. Thus, it is clear that the disciplinary authority has not considered past conduct of the petitioner while

passing the punishment order. Even if the inquiry officer has written about the past conduct of the petitioner in his report, since the said fact did not find place in the punishment order while coming to the conclusion for awarding punishment by the disciplinary authority, it is of no avail to the petitioner. Thus, we do not find any force in the argument of learned counsel for the petitioner in this regard.

12. Learned counsel for the petitioner has contended that the petitioner was not provided an opportunity to make representation against the inquiry report submitted by the inquiry officer. Before providing this opportunity, the disciplinary authority has drawn conclusion on the inquiry report. The disciplinary authority should have first sought comments of the petitioner on the inquiry report and after considering inquiry report and the comments of the petitioner, he should have finally reached the conclusion regarding guilt (or no guilt) of the petitioner and only after that he should have done the exercise to decide the punishment. The disciplinary authority prior to this mandatory exercise issued the show cause notice to the petitioner (Annexure: A-10) with the proposed punishment and therefore, there is gross violation of the principles of natural justice as provided under Article 311 of the Constitution of India.

13. The contention of the counsel for the petitioner stated above in paragraph 12 is very crucial as this very significantly affects the petitioner’s right to have a reasonable opportunity of hearing. We would like to elaborate it further

with the help of the judgment of the Hon'ble Supreme Court in the following paragraph.

14. The Hon'ble Apex Court in Managing Director, ECIL Vs. B. Karunakar, 1993, SCC(L&S), 1184 has discussed this issue and the following findings are very relevant which are reproduced below:

> *"26. The reasons why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also principles of natural justice is that the findings recorded by the enquiry officers form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes*

into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute and important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the stages of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is

thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him. The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.," it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second

Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29.Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

15. It is clear from above that before the disciplinary authority considers the report of the inquiry officer, it is essential that first the employee must get an opportunity to make representation against the inquiry report. The disciplinary authority must consider the inquiry report only after the opportunity is provided to the employee to make a

representation against the inquiry report. The disciplinary authority must draw his conclusion only after considering the report of the inquiry officer and the representation of the employee against the inquiry report. If this procedure is not followed then it would mean denial of fair opportunity to the employee in violation of the principle of natural justice. After the conclusion is drawn by the disciplinary authority as per the process above, the disciplinary authority will decide the penalty, if any, on the basis of his conclusion. Further show cause notice for proposed penalty is not required after the 42nd amendment in the Constitution of India in 1976.

16. In the present case in hand, the petitioner has not been provided an opportunity to make a representation against the inquiry report and before that the disciplinary authority has drawn his conclusion in respect of the inquiry report and issued show cause notice for proposed punishment. Therefore, the petitioner was denied the opportunity to defend himself by not allowing representation against the inquiry report and the disciplinary authority has drawn the conclusion before this mandatory requirement was complied with.

17. In the light of discussion above in paragraphs 12 to 16, we find that in the present case in hand, the show cause notice given to the petitioner was merely a show cause notice against the proposed punishment. It is clear that no notice to represent against the inquiry report was given before the disciplinary authority took into consideration the findings of the report of the inquiry officer. We therefore, find that the inquiry proceedings are vitiated.

18. For the reasons stated above in paragraphs 12 to 17, we have reached the conclusion that the petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. The impugned order dated 01.08.2012 (Annexure: A-1), appellate order dated 01.10.2012 (Annexure: A-2) and revisional order dated 23.04.2013 (Annexure: A-3) are set aside. The petitioner would be reinstated. However, it would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law from the stage of providing a fresh opportunity to the petitioner to represent against the inquiry report in the light of observation made in this judgment. The respondents would be at liberty to suspend the petitioner if they find that he is liable to be suspended in accordance with law. The question regarding payment of salary from the period of dismissal to the period of reinstatement would be decided by the competent authority at the appropriate time during the inquiry or after the inquiry as the law permits. If the said proceeding of inquiry is started against the petitioner, the same will be disposed of expeditiously, preferably within a period of three months from the date copy of this order is presented before respondent No. 4. No order as to costs.

Sd/- *Sd/-*

V.K.MAHESHWARI **D.K.KOTIA**
VICE CHAIRMAN (J) VICE CHAIRMAN (A)

DATE: JULY 08, 2015
DEHRADUN

KNP