BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

------ Chairman

Hon'ble Mr. D.K.Kotia

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

CLAIM PETITION NO. 47/DB/2014

Shamim Ahmed S/o Mushtak Ahmed aged about 29 years Constable Civil Police, Thana Chamba, District Tehri Garhwal.

……Petitioner.

VERSUS

1. State of Uttarakhand through Secretary, (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Garhwal Circle, Uttarakhand, Dehradun.
3. Superintendent of Police, District Tehri Garhwal.

……Respondents

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: SEPTEMBER 01,2015.

(Justice J.C.S. Rawat, (Oral)

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

"(i). To issue an order or direction to set aside the impugned order dated 10.04.2013 (Annexure-A-1), and 04.05.2013 (Annexure-A-2) passed by the respondent No.3 and appellate order dated 23.02.2014 (Annexure-A-3) passed by the respondent No.2 declaring the same as against the rules and law.

(ii) To issue an order or direction to the respondents to pay the entire salary of the suspension period to the petitioner.

(iii) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award the cost of the petition to the petitioner."

2. The petitioner had been working in the Civil Police, Uttarakhand as Constable at the time of the incident. It is further alleged that the Arjun Singh was involved in a Criminal Case and he was charged to commit theft in the different houses of the locality and he had stolen money, ornaments, scooty etc from such incidents. It is alleged that on 28.4.2011 at about 2.30 P.M. two Policemen, out of which one was the petitioner, met Arjun Singh near petrol pump and Arjun Singh had been carrying two bags on a scooty and met Constable Shamim Ahmed, the petitioner there. It is alleged that the petitioner snatched both the bags and scooty from the possession of Arjun Singh and that was not deposited in the Police Station and after taking the said articles, he went outside the Police Station without leave. It is also alleged the another Policeman was never identified by Arjun Singh and the scooty was not recovered. Thus, on receiving the said information, the petitioner was immediately suspended and a departmental inquiry was conducted against the petitioner after framing the charges against him. The petitioner replied the charge sheet and thereafter the inquiry officer inquired the matter and recorded the statements of different witnesses which find places in the inquiry report, Annexure-A 9. Thereafter the inquiry officer found him guilty and submitted his report to the departmental authority. The departmental authority issued a show cause notice to the petitioner which is on record as Annexure-A 8. The reply was submitted by the petitioner. After considering the reply, the punishing authority punished the petitioner by the impugned order. Feeling aggrieved by the said impugned order, the petitioner preferred an appeal before the competent authority, which was also dismissed by him. Thereafter, petitioner preferred this claim petition before this Tribunal.

3. The respondents refuted all the allegations made in the claim petition and they supported the order of the authorities. Ld. Counsel for the

petitioner contended that the impugned order passed against the petitioner is wrong and illegal because it did not contain any reasons by which the representation of the petitioner has been rejected and the punishment has been awarded to him. He further contended that the impugned order and the appellate order have been passed in the mechanical process without application of mind. Ld. A.P.O. refuted the contention.

4. We have gone through the contents of the impugned order which is Annexure-A 1 to the claim petition. Para-3 of the said order is extracted as under:-

"उपरोक्त संबंध में इस कार्यालय द्वारा दिनांक 20.3.2013 को कारण बताओ नोटिस निर्गत किया गया था जो आपके द्वारा दिनांक 21.3.2013 को प्राप्त किया गया है तथा स्पष्टीकरण दिनांक 5–4–2013 को प्रेषित किया गया है। मेरे द्वारा स्पष्टीकरण का गहराई से अवलोकन एवं मनन किया गया तो स्पष्टीकरण में अंकित तथ्य सन्तोषजनक नहीं पाये गये।"

Perusal of the order clearly reveals that the appointing authority/ punishing authority has written that he has seen the explanation and has also taken into account while awarding the punishment and after going through the entire record he found it to be unsatisfactory. We feel that the punishing authority has given sufficient reasons and has taken into account the entire explanation and he has found it not to be acceptable. In view of the above, we find that the contention of the Ld. Counsel for the petitioner has no force.

5. Ld. Counsel for the petitioner further contended that the alleged property which has been snatched by the petitioner from Arjun Singh, has not been recovered so far; the statements of the witnesses recorded during the inquiry are contradictory with each other; no criminal case has been registered against the petitioner; the accused Arjun Singh has been made witness against the petitioner; Arjun Singh has also disclosed in his statement that there were two Police Constables at the spot and the name of the other Constable is not known to him and during the course of the inquiry he has not been identified and no inquiry has been initiated against him, as such the

entire inquiry and punishment is liable to be quashed. Ld. Counsel for the respondents refuted the contention and contended that the scope of judicial review is very limited and the Court is not sitting as an appellate Court. The Tribunal has only to see as to whether the manner of conducting the inquiry was correct or not.

6. The scope of the judicial review is though very limited. The Court or the Tribunal would not interfere with the findings of the fact arrived in the departmental enquiry proceedings excepting in a case of malafide or perversity. That where, there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity would have arrived at that finding and with objectivity, the Court cannot re-appreciate the evidence like an appellate Court so long as there is some evidence to support the conclusion arrived by the departmental authority, the same has to be sustained. While exercising the power of judicial review the Tribunal cannot normally substitute its own conclusion with regard to the misconduct of the delinquent for that of the departmental authority.

7. In this regard, we would like to examine the judgment of the Hon'ble Apex Court, which lays down the proposition of law as to when the Tribunal can re-appreciate the evidence adduced before the enquiry officer. The Hon'ble Supreme Court, in case of **B.C.Chaturvedi v. Union of India, 1995(5) SLR, 778** has 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."

From the perusal of the above, it is clearly held by the Hon'ble Supreme Court that Court and the Tribunal may not interfere with the findings of the enquiry officer regarding the appreciation of evidence where the authority found that the proceedings against the delinquent officer were consistent to the rules of natural justice or in violation of statutory rules. The Tribunal has no power to re-appreciate the evidence as an appellate court. Thereafter, the Hon'ble Supreme Court in case of High Court, judicature at Bombay through its **Registrar Vs. Shri Udaysingh & others, 1997(4), SLR, 690**. In this case, a complaint was made by a litigant against Civil Judge (Junior Division) for demanding of illegal gratification of Rs. 10,000 to deliver the judgment in her favour. As soon as, she received such information, she complained the matter immediately to her advocate, Assistant Govt. Pleader, who in turn District Govt. Pleader informed the District Judge of the said demand of illegal gratification made by Civil Judge (J.D.). The District Judge, awarded an adverse entry to the delinquent and the Hon'ble High Court

initiated a departmental enquiry and ultimately, he was dismissed from the service by the disciplinary authority. The High Court set aside the dismissal of the delinquent and held that the District Judge was biased against the officer and he recorded evidence of three Advocates and the complainant and there was no other evidence to come to the conclusion that the delinquent officer was actuated with a corrupt motive to demand illegal gratification to deliver favorable judgment. In these circumstances, the Hon'ble High Court allowed the appeal held as under:-

> "10. Accordingly, the order of the Tribunal in reversing the imposing of the penalty was set aside. In another judgment in State of Tamil Nadu v. S. Subaramaniam [1996] 7 SCC 509, this Court has considered the scope of the power of judicial review vis-a-vis re-appreciation of evidence and concluded as under :
> "The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of removal. Thus this appeal by special leave.
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> The only question is : ***whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved.*** The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellate on complaints relating to service conditions of employees, it is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure

that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi v. Union of India : (1996)ILLJ1231SC , State of Tamil Nadu v. T.V. Venugopalan : (1994)6SCC302 , Union of India v. Upendra Singh : (1994)ILLJ808SC , Government of Tamil Nadu v. A. Rajapandian : (1995)ILLJ953SC and B.C. Chaturvedi v. Union of India at pp. 759- 60. In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed.

11. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt. Kundanben, defendant in the suit for eviction. It is true that due to time lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there is bound to be some discrepancies in evidence. But the Disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. ***Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct***. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether as a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is: whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a judgment favourable to a party has been proved? In that behalf, since the evidence by Kundanben, the aggrieved defendant against whom a decree for eviction was passed by the respondent alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who

complained immediately to her advocate, who in turn complained to Assistant Government Pleader and the Assistant Government Pleader in turn complained to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established and cannot be disputed. It is true that the High Court has directed the District judge to substantiate the adverse remarks made by the District Judge on the basis of the statements to be recorded from the advocates and the complaint. At that stage, the respondent was not working at that station since he had already been transferred. But one important factor to be taken note of is that he admitted in the cross-examination that Shri Gite, District Government Pleader, Nasik had no hostility against the respondent. Under these circumstances, contemporaneously when Gite had written a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties, there is some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption; conduct of the respondent needs to be condemned. Under these circumstances, he appears to have reached the conclusion that the conduct of the respondent required adverse comments. But when enquiry was done, the statements of the aforesaid persons were recorded; supplied to the respondent; and were duly cross-examined, the question arises: whether their evidence is acceptable or not? In view of the admitted position that the respondent himself did admit that Gite had no axe to grind against him and the District Judge having acted upon that statement, it is difficult to accept the contention that the District Judge was biased against the respondent and that he fabricated false evidence against the respondent of the three advocates and the complainant. When that evidence was available before the disciplinary authority, namely, the High Court, it cannot be said that it is not a case of no evidence; nor could it be said that no reasonable person like the Committee of five Judges and thereafter the Government could reach the conclusion that the charge was proved. So, the conclusion reached by the High Court on reconsideration of the evidence that the charges prima facie were proved against the respondent and opportunity was given to him to explain why disciplinary action of dismissal from service could not be taken, is well justified.

12. Under these circumstances, the question arises : whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion

> that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is: what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

The perusal of the above quoted judgment, the Hon'ble Apex Court has held that in the departmental enquiry, the misconduct has not to be proved beyond reasonable doubt. In the case of disciplinary enquiry, the technical rules of evidence have no application. The preponderance and some evidence on record would be necessary to reach to the conclusion that the delinquent has committed the misconduct. If there is some evidence, it is for the enquiry officer to appreciate and not to the court and the Tribunal.

8. The Hon'ble Supreme Court in the case of **State of West Bengal & others Vs. Sankar Ghosh, 2014 (3) SLR, 682**. The matter came up before the Hon'ble Supreme Court, the respondent was a Constable in the Calcutta Armed Police. He was arrested under Section 392, 395 and 412 of the Indian Penal Code read with Section 25 and 237 of the Arms Act for his complicity in the commission of dacoity using a motor cycle. Thereafter, he was arrested and the department suspended him immediately. Thereafter, the enquiry was initiated against him. The enquiry officer held him guilty of the charges levelled against him and the said finding was concurred by the departmental authorities and he was dismissed from the service. The appellate authority also dismissed his appeal. During the course, the respondent/delinquent was acquitted in the Criminal case by the Session Judge. The delinquent filed a claim petition before the West Bengal Administrative Tribunal and allowed the petition and the State Govt. was directed to reinstate the petitioner. Aggrieved by the said order, the Calcutta High Court also dismissed the

appeal and the appeal was preferred before the Hon'ble Supreme Court. The Hon'ble Apex Court in Para 10 & 11 held as under:

"10. We may, at the very outset, point out that the Respondent was a member of the disciplined force. He was working as a Sepoy in the 2nd Battalion of the Kolkata Armed Force and at the relevant point of time he was working as Sepoy on deputation with the traffic department of Kolkata Police. It is true that the Respondent was dismissed from service due to his involvement in the criminal case, wherein he was charged with the offences under Sections 395/412 Indian Penal Code and Sections 25/27 of the Arms Act. It is also the stand of the department that being a member of the disciplined force, his involvement in such a heinous crime tarnished the image/prestige of the Kolkata Police Force in the estimation of the members of public in general. Before the Enquiry Officer from the side of the department, four witnesses were examined, including Jiban Chakraborty, the S.I. Police. Exh. A-3 to A-12 are the documents produced before the Enquiry Officer. PW3, S.I. Jiban Chakraborty, the Inspector of Police before the Enquiry Officer deposed as follows:

During investigation he arrested some suspects into this case. In pursuance to the statement of the suspects he arrested the C.O. from his residence situated in 389, Milangarh, Natagarh under P.S. Ghosla (24 Pgs.-N) on 26.11.03 at 01.05 hrs. He prepared the arrest memo (Exhibit No. A5). He conducted in search at this residence and recovered a sum of Rs. 10,000/- from his possession being the stolen recovered money of the said case. He also recovered the motor cycle bearing No. WB24F-3050 from his house. During investigation he also recovered one private car. He stated that both the motor cycle and the private car were used during the commission of the crime. During investigation he came to know that the O.C. is a Constable of Kolkata Police posted to 2nd Bn of Kolkata Police working on deputation traffic deptt. The C.O. was produced before the Ld. Court of SDJM, Barrackpore and was remanded to P.O. till 29.11.03 on further production, the C.O. was remanded to jail custody and enlarged on Bail on 30.3.04. After completion of investigation he submitted charge-sheet against the C.O. and Ors. Under Section 395/412 Code of Civil Procedure,25/27/35 Arms Act

During cross examination, the P.W. stated that he seized motor cycle was registered in the name of Sri Swapan Ghosh and the same was seized from the possession of Swapan Ghosh. During cross examination the P.W. stated that it is not a fact that the C.O. has no complicity into the case. After thorough investigation & enquiry prima facie charge established against the C.O. and others.

11. The enquiry officer believed the evidence of PW3 and concluded that the charges leveled against the respondent were proved beyond any shadow of doubt, except the charge that the respondent stayed out without permission. PW3 had categorically stated that he conducted a search at the residence of the respondent and recovered a sum of Rs.10,000/- from his possession being the stolen money. He had also recovered the motor cycle bearing No.WB24F-3050 from the respondent's house which was used for the commission of the crime. During

the investigation, he had also recovered one private car from the respondent's residence. Investigation revealed that both the motor cycle and the private car were used during the commission of the crime."

9. As mere on the evidence of PW-3 above, the enquiry Officer believed the evidence and held that the charges levelled against the Respondent were proved beyond any shadow of doubt. Thus the evidence which was produced before the enquiry officer, was only on recovery of the Motorcycle and Rs. 10,000/- from his possession which was subject matter of the dacoity. A recovery of the private care was also made during the investigation. These both were involved in the commission of the offences. Only on that basis, the charge was found proved.

10. The Hon'ble Supreme Court in **Para 25 of M.V. Bijlani Vs. Union of India 2006(4) SCC 713** has held as under:-

"Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures."

11. In the light of the above proposition of law, now we have to examine the evidence adduced before the enquiry officer . It is not disputed by the Ld. Counsel for the petitioner that the witnesses were examined in the presence of the delinquent; the petitioner had cross-examined the witnesses; it is not shown that the witnesses had some malafide against the petitioner. In the light of the above evidence, the enquiry officer has held that the petitioners were guilty. In the light of the judgment as quoted above, there is some evidence, coupled with the other oral evidence of Arjun Singh and Sri Arun Joshi with the preponderance of facts, it is revealed that there is an evidence on record. It has also been

established that the disciplinary authority being fact finding authority have exclusive powers to consider the evidence with a view to maintain discipline. Both the authorities are vested with the discretion to impose appropriate punishment keeping in view of the magnitude or gravity of the misconduct. The Tribunal while exercising the powers of judicial review, cannot normally substitute its own conclusion after re-appreciation of the facts on record. The Hon'ble Apex Court as laid down that the Tribunal has to see as to whether the findings of the enquiry officer had been based on some evidence or not. If there is some evidence and the conclusion supports the same fact, the disciplinary authority is entitled to hold the delinquent official guilty of the charges. The Tribunal in its powers of judicial review does not act as an appellate authority to re-appreciate the evidence. In the case in hand Arjun Singh, Arun Joshi coupled with other supporting evidence recorded by the inquiry officer is sufficient to prove the charge. In view of the above, at last we do not find any force in the contention of the Ld. Counsel for the petitioner.

12. Ld. Counsel for the petitioner further laid stress that the respondents have not lodged any FIR against the petitioner, as such the punishment is liable to be quashed. It is the discretion of the appointing authority either to take action against the petitioner on administrative side or on the criminal side. If no criminal case has been registered, it cannot be held that the departmental inquiry cannot proceed. It is the settled law that the departmental and the criminal proceedings can also move simultaneously. Where the respondents had opted only to take the recourse of administrative inquiry, so it cannot be held that the punishment is bad in the eyes of law because it is also well within the jurisdiction of the respondents to initiate an independent departmental inquiry leaving the criminal prosecution aside.

13. We specifically asked Sri L.K.Maithani, Ld. Counsel for the petitioner as to whether he has to make any submission about the relief No.2 by which the petitioner has sought a direction to the respondents to pay entire salary of the suspension period to the petitioner; Sri Maithani, Ld. Counsel for the petitioner has stated that he is not pressing this

relief at this stage now. He further contended that if the punishment order would have been quashed, then this relief would have been sustainable for the petitioner as the petition is going to be dismissed, as such he is not entitled to get the Relief No.2.

14. No other points were urged by the Ld. Counsel for the parties. In view of the above the claim petition is liable to be dismissed.

ORDER

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

D.K.KOTIA) VICE CHAIRMAN (A)

(JUSTICE J.C.S.RAWAT) CHAIRMAN

DATED**:** SEPTEMBER 01, 2015
DEHRADUN
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