

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

**CLAIM PETITION NO. 40/SB/2023**

Pramod Kumar, aged about 45 years, s/o Sri Suresh Chandra, presently posted as Sub-Inspector, Kotwali, Mussoorie, District Dehradun.

**.....Petitioner**

**VS.**

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, 4 Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Garhwal Range, DIG Office, Dehradun.
3. Senior Superintendent of Police, Dehradun, Office of SSP, Dehradun.

**.....Respondents.**

Present: Sri Shashank Pandey, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondent State.

**JUDGMENT**

**DATED: JANUARY 18, 2024**

**Justice U.C.Dhyani (Oral)**

By means of present claim petition, petitioner seeks to issue order or direction to set aside order dated 28.06.2021 (Annexure: A-1), passed by respondent no. 3 and order dated 18.01.2022 (Annexure: A-2), passed by respondent no.2, among others.

2. Facts, in brief, of the claim petition are that, in the intervening night of 01/10.01.2021, when the petitioner was posted as Night-Duty Officer in P.S.Rajpur, District Dehradun, he received an information regarding death

of one Sri Suryansh Rana. As per the information received, Sri Suryansh Rana fell from 2<sup>nd</sup> floor of Hotel Blue Star, situated at I.T.Park, Dehradun. The petitioner, along with Police force went to the place of incident.

3. The imputation against the petitioner is that he should have inspected the place of incident and should have taken the mobile phone, purse, wrist-watch and bottles of liquor in his custody. Since petitioner failed to do so, a show cause notice was given to him under the relevant provisions of the Uttarakhand Police Act. The petitioner replied to the same. The disciplinary authority was not satisfied with the reply, therefore, awarded censure entry for the carelessness of the petitioner, in his Annual Confidential Report (A.C.R.) for the year 2020- 2021 *vide* order dated 28.06.2021 (Annexure: A-1). Aggrieved with the same, the petitioner preferred departmental appeal. The departmental appeal was dismissed by the appellate authority *vide* order dated 18.01.2022 (Annexure: A-2).The decision of the disciplinary authority was affirmed.

4. Aggrieved with the aforesaid orders, petitioner has filed present claim petition.

5. Claim petition has been contested on behalf of respondents. Counter Affidavit has been filed by Sri Ajay Singh, S.S.P., Dehradun. Material averments contained in the claim petition have been denied in the C.A.

6. Ld. A.P.O. has vehemently opposed the claim petition and defended the departmental action to justify censure entry awarded to the petitioner for the carelessness committed by him in conducting his duties properly. Ld. A.P.O. has also placed various decisions of Hon'ble Apex Court to argue that the scope of judicial review is very limited and this is not the case in which the Tribunal should interfere in the findings of two authorities below.

7. Ld. Counsel for the petitioner submitted that when petitioner received the information, Sri Suryansh Rana had not died by then. Petitioner, as a responsible Police officer, thought it proper to first take him to the hospital for giving him medical aid and then do the rest. He, along with other

Police officers, took Sri Rana to Coronation Hospital, Dehradun, where Sri Rana was found 'brought dead'. Ld. Counsel for the petitioner also submitted that the petitioner was not nominated as an investigating officer of the case when he received the information and he was instructed by the higherups not to disturb the place of occurrence till the field unit comes. According to Ld. Counsel for the petitioner, when field unit (Forensic Science Laboratory) reached, they sealed the place of occurrence and took the place in their custody. There was, therefore, no occasion/ priority for the petitioner to have taken the mobile phone, purse, wrist-watch and bottles of liquor in his custody. The imputation against the petitioner is unfounded, therefore, punishment given on the basis of such imputation, should be set aside. Ld. Counsel for the petitioner also submitted that the investigating officer, after concluding the investigation, submitted charge-sheet under Section 304 A IPC against the hotel owner. Trial is pending against him.

8. This Tribunal is conscious of the fact that it has not to sit as an appellate court while making judicial scrutiny of the orders impugned. This Tribunal is also conscious of the fact that the scope of judicial review is very limited. There are catena of decisions rendered by Hon'ble Apex Court on the point of scope of judicial review. Observations given by Hon'ble Court in such decisions, are as follows:

(i) In the decision of *Lalit Popli vs. Canara Bank & others [Appeal (Civil) 3961 of 2001]*, it was held by Hon'ble Apex Court that the power of judicial review conferred upon Constitutional Court or Tribunal is not of the appellate authority, but is only confined to decision making process. Only when finding recorded by disciplinary authority is not supported by an evidence or is unreasonably arrived at, writ Court can interfere with the finding of disciplinary authority.

(ii) It has been reiterated in *State of Karnataka vs. Umesh (Civil Appeal Nos. 1763-1764 of 2022)*, that the Court exercising judicial review does not act as an appellate forum over the finding of disciplinary authority and does not reappreciate the evidence on the basis of which findings of misconduct have been arrived at in course of disciplinary enquiry. The Court, in exercise of judicial review restricts its review to determine whether (i) rules

of natural justice have been complied with; (ii) finding of misconduct is based on some evidence; (iii) statutory rules governing conduct of disciplinary enquiry were followed; (iv) finding of disciplinary authority suffer from perversity; and (v) penalty is disproportionate to the misconduct.

(iii) In the decision of *Government of Tamilnadu and another vs. A. Rajapandian*, (1995)1 SCC 216, Hon'ble Supreme Court has observed that, where the Tribunal had not found any fault with the proceedings conducted by the inquiring authority, held, it had no jurisdiction to reappraise the evidence and set aside the order of dismissal on the ground of insufficiency of evidence to prove the charges. It is further observed by the Hon'ble Court that in such a case Supreme Court would not examine the merits of appreciation of evidence by the Tribunal and inquiry authority.

(iv) In the decision of *State of Karnataka vs. N. Gangaraj* (Civil Appeal No. 8071 of 2014), it has been held by Hon'ble Supreme Court that power of judicial review is confined only to decision making process. Only when finding recorded by disciplinary authority is not supported by evidence or is unreasonably arrived at, writ court can interfere with the finding of.

9. The limited scope of judicial review has been discussed by Hon'ble Supreme Court in *Johri Mal's case*, (1974) 4 SCC 3, as under:

“28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

- (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
- (ii) A petition for a judicial review would lie only on certain well-defined grounds.
- (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions

within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

10. In *M.P. Gangadharan vs. State of Kerala, (2006) 6 SCC 162*, Hon'ble Apex Court has observed thus:

“The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a strait-jacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review.”

11. When the petitioner received the information, the victim was, reportedly, alive and when he reached the place of incident, he thought it proper to first take the victim to the hospital for giving him medical aid and then do rest of the things. He, along with other Police officers, took the victim to Coronation Hospital, where the victim was found ‘brought dead’. Petitioner was not the investigating officer of the case when he received the information. He was said to be instructed by the higherups not to disturb the place of occurrence till the field unit comes, which is usually done in such cases. F.S.L. team might have sealed the place of occurrence subsequently. Possibly, there was no occasion for the petitioner to take mobile phone, purse etc. of the victim in his custody. Even if there was such occasion, it was his duty, as a responsible Police Officer, to take the victim to the hospital for giving him medical aid and then to do everything else. Whosoever was entrusted the investigation of the case, he submitted charge-sheet against the hotel owner under Section 304 A IPC and it is said that the trial is pending against the accused.

12. In the instant case, statutory rules governing conduct of disciplinary enquiry have been followed. Rules of natural justice have also been complied with. Finding of misconduct is based on such facts with which the petitioner was not concerned with directly. Petitioner pleaded, in reply to the show cause notice to him, that he is innocent. These grounds have not been

appreciated. Though there is no mistake in decision making process, but, the decision itself has unreasonably been arrived at. Exercise of discretion vested in the authorities below, appears to have occasioned miscarriage of justice to the petitioner. Censure entry entails civil and evil consequences.

13. When the findings are *per se* not acceptable, then the Tribunal can interfere. The petitioner appears to have given cogent reasons for not taking the mobile phone etc. in his custody, while submitting his reply to the show cause notice, on 10.05.2021. It appears that the same has not been considered by the authorities below, otherwise, they would not have probably arrived at such erroneous finding.

14. Interference is called for in the impugned orders. Order dated 28.06.2021 (Annexure: A-1) and order dated 18.01.2022 (Annexure A-2) are hereby set aside.

15. The claim petition is disposed of. No order as to costs.

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: JANUARY 18, 2024.*  
*DEHRADUN*

*VM*