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. 41/SB/2013

Virendra Singh Aswal S/o Shri Prem Singh Aswal Aged about 33 years, Constable Civil Police R/o Q. No. 5, Type-2, Thana, Vasant Vihar, Dehradun.

…………Petitioner

VERSUS

1. State of Uttarakhand through Secretary (Home) Government of Uttarakahnd, Secretariat, Subhash Road, Dehradun.
2. Addl. Director General of Police (ADM.) Uttarakhand, Dehradun.Chief
3. Deputy Inspector General of Police, Dehradun Region, Uttarakhand, Dehradun.
4. Senior Superintendent of Police, District Dehradun.

………Respondents

Present: Sri M.C.Pant, Ld.Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. A P.O.
for the respondents.

<u>JUDGMENT</u>

<u>DATED: NOVEMBER 05, 2015</u>

<u>(DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN(A))</u>

1. The petitioner has filed this petition for seeking the following relief:-

    "(i) To quash the impugned punishment order dated 03.07.2010 (Annexure No.1) along with appellate order dated 01.08.2010 (Annexure No.2) and revisional order dated 16.03.2013 (Annexure No.3) along with its effect and operations.

(ii) To issue an order and direction to the respondent to remove or delete the endorsement of censure entry from the character roll of the petitioner with all consequential benefits.

(iii) To issue any other order and direction which this court may deem fit and proper in the circumstances of the case.

(iv) Award the cost of the case."

2. The relevant facts in brief are that the petitioner who is a Constable (No. 678) in civil Police in the State of Uttarakhand , was posted at Police Station Vasant Vihar, Dehradun. The petitioner was issued a show cause notice on 10.6.2010 (Annexure: A-4) by the respondent No.4 as to why a censure entry be not given to him as a minor penalty under 'The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991' (which is applicable in the State of Uttarakhand). The charge leveled against the petitioner in the show cause notice was that 3 applications of one Mrs. Rupali Aggarwal were sent by the 'Police Complaint Cell' of Dehradun office to the Police Station Vasant Vihar, Dehradun dated 23.01.1999, 17.02.1999 and 20.02.1999 for necessary action. These 3 applications were given for inquiry to the Sub-Inspector Sri Pradip Rana, In-charge, Police Post, Indra Nagar, Police Station Vasant Vihar, Dehradun. On the same matter, an application of Mrs. Rupali Aggarwal was sent to the Police Station Vasant Vihar, Dehradun by the Court of Judicial Magistrate-II, Dehradun for inquiry. Sub-Inspector Sri Pradip Rana inquired this matter also. Inquiry officer (Sub-Inspector Sri Pradip Rana) after inquiry, submitted his report to the Police Station Vasant Vihar, Dehradun. Inquiry officer enclosed with his report all the applications which were received through the Police Complaint Cell and also from the Court of Judicial Magistrate as all the applications were related to the same matter. The petitioner sent

the inquiry report along with all the 4 applications to the Court of Judicial Magistrate after entering the papers in the Dispatch Register (Dak Bahi). As a result, the Police Complaint Cell remained unaware about the disposal of 3 applications sent by it and the Cell, therefore, could not delete these references from its Order Book. It was alleged in the show cause notice that the petitioner should have sent the inquiry report and all the applications to the Police Complaint Cell so that after deleting the references from its Order Book, papers could be sent to the Court of Judicial Magistrate. By not doing so, the petitioner showed carelessness and negligence in performing his duty.

3. The petitioner submitted the reply to the show cause notice on 2.7.2010(Annexure:A-5) to Respondent No.4. His main contention in the reply was that the Sub-Inspector Sri Pradip Rana directed him to send all the papers directly to the Court. He acted as directed by his superior officer and, therefore, the petitioner should not be held guilty for negligence or carelessness in performing his duty.
4. Respondent No.4 considered the reply to the show cause notice submitted by the petitioner and did not find the same satisfactory. Respondent No.4, after examining the petitioner's reply, reached the conclusion that the petitioner was responsible for the maintenance of Dispatch Register (Dak Bahi). It was his duty to bring to the notice of the In-charge of the Police Station that the papers were required to be sent to the Police Complaint Cell. Respondent No.4 found the petitioner guilty for performing his duty carelessly and negligently and awarded minor punishment of censure entry. The punishment order reads as under:-

"आदेश

मेरे द्वारा आरक्षी 678 ना0पु0 वीरेन्द्र सिंह असवाल द्वारा प्रेषित लिखित स्पष्टीकरण दिनांकित 2/7/2010 का जो मेरे द्वारा निर्गत परिनिंदा लेख के कारण बताओ नोटिस संख्याः ज–76/2010 दिनांकित 10/6/2010 के प्रतिउत्तर में दिया गया है का गहनता से अध्ययन कर मनन किया गया। आरक्षी द्वारा अपने बचाव में अंकित किया गया है कि शिकायत कर्ता श्रीमती रूपाली अग्रवाल द्वारा प्रेषित पत्रों की जांच हेतु थाना बसंत विहार प्रेषित किया जाना एवं जांच उपनिरीक्षक श्री प्रदीप कुमार राणा द्वारा किए जानें के संबंध में कोई लापरवाही एवं उदासीनता का तत्व सम्मिलित नहीं है। कारण बताओं नोटिस से भी स्पष्ट है कि प्रार्थी के पास थाने पर प्राप्त होने वाली डाक/प्रार्थना पत्रों के आर्डर बुक किये जाने का कार्यभार था। यह भी कारण बताओं नोटिस से स्पष्ट है कि उप निरीक्षक श्री प्रदीप कुमार राणा द्वारा सभी प्रार्थना पत्रों में जांच रिपोर्ट तैयार कर एक साथ संलग्न कर थानें में दाखिल किये गये। इस संबंध में तत्समय उप निरीक्षक श्री प्रदीप कुमार राणा से प्रार्थी द्वारा निवेदन किया गया था कि शिकायत प्रकोष्ठ की रिपोर्ट अलग से पुलिस कार्यालय भेजी जानी है इसलिए इन पर अलग रिपोर्ट लगा दो इस पर उनके द्वारा कहा कि न्यायालय पहले है जो मैंनें संलग्न कर दिया है रिपोर्ट सीधे न्यायालय भेजो। चूंकि वह अधीनस्थ कर्मचारी है इसलिए वरिष्ठ अधिकारियों के आदेशों का सम्मान किया जाना उसका प्रथम कर्तव्य है। इस प्रकार उसके द्वारा शिकायती प्रार्थना –पत्रों को मय जांच आख्या सहित सीधे न्यायालय को प्रेषित की गई है जिसमें उसकी कोई लापरवाही नहीं है।

मेरे द्वारा दण्ड पत्रावली पर उपलब्ध समस्त अभिलेखीय साक्ष्यों को गहनता से अवलोकन किया गया तो पाया गया कि वर्ष–2009 में जब यह आरक्षी थाना बसंत विहार में नियुक्त था तो इनके द्वारा मालखना मोहर्रिर व अपराध के साथ ही थानें पर प्राप्त होनें वाली डाक/प्रार्थना–पत्रों का आर्डर बुक किये जानें का भी कार्य सम्पादित किया जा रहा था। श्रीमती रूपाली अग्रवाल द्वारा प्रेषित किये गये शिकायती प्रार्थना–पत्र दिनांकित 23–1–2009, 17–2–2009 एवं 20–2–2009 को शिकायत प्रकोष्ठ पुलिस कार्यालय देहरादून से कार्यवाही किये जानें हेतु थाना बसंत विहार भेजे गये थे। यह सभी प्रार्थना–पत्र तत्कालीन उ0नि0 प्रदीप राणा, चौकी प्रभारी इन्द्रानगर को जांच हेतु दिये गये थे। इस प्रकरण से संबंधित एक प्रार्थना–पत्र श्रीमती रूपाली अग्रवाल का न्यायालय जुडिशियल मजि0 द्वितीय देहरादून से जांच हेतु थाने को प्राप्त हुआ था जिसकी जांच उक्त उ0नि0 द्वारा की गई। जांचकर्ता अधिकारी द्वारा न्यायालय को जांच रिपोर्ट तैयार कर सभी उपरोक्त प्रार्थना–पत्रों को एक साथ संलग्न कर थाने में दाखिल किये गये। चूंकि सभी

प्रार्थना–पत्रों का संबंध एक ही प्रकरण से था जिस कारण इनके द्वारा सभी प्रा0पत्रों को डाकवही में चढ़ाकर न्यायालय को प्रेषित किये गये जिसके कारण शिकायत प्रकोष्ठ पुलिस कार्यालय की आर्डर बुक से उपरोक्त प्रार्थना–पत्रों को खारिज नहीं किये जा सके। इनको चाहिए था कि प्रश्नगत प्रार्थना–पत्रों को मय जांच रिपोर्ट सहित शिकायत प्रकोष्ठ पुलिस कार्यालय हेतु वापस भिजवाते जिससे उन्हें नियमानुसार खारिज करते हुए संबंधित न्यायालय को शिकायत प्रकोष्ठ के माध्यम से भेजे जाते। किन्तु इनके द्वारा ऐसा न करके अपने कर्तव्यों के प्रति घोर लापरवाही, उदासीनता एवं अकर्मण्यता बरती गई है। आरक्षी का यह तर्क कि जांचकर्ता अधिकारी द्वारा उसे प्रार्थना–पत्र सीधे मय जांच आख्या सहित न्यायालय को भेजनें हेतु निर्देशित किया गया था जिसके कारण उसके द्वारा प्रश्नगत प्रार्थना–पत्रों को सीधे न्यायालय भेजे गये के संबंध में उल्लिखित करना है कि जब इन्हें स्पष्टरूप से ज्ञात था कि शिकायती प्रार्थना–पत्र पुलिस कार्यालय के माध्यम से जांच हेत थानें पर प्राप्त हुए हैं तो इन्हें चाहिए था कि शिकायती प्रार्थना–पत्रों के संबंध में प्रकरण को थानाध्यक्ष के संज्ञान में लाकर पुलिस कार्यालय हेतु अग्रसारित करवाते किन्तु इनके द्वारा ऐसा न करके अपने कर्तव्यों के प्रति घोर उदासीनता बरती गई है।

अतः उपरोक्त वर्णित परिस्थितियों में आरक्षी 678 ना0पु0 वीरेन्द्र सिंह असवाल का लिखित स्पष्टीकरण संतोषजनक न पाते हुए इनकी चरित्र पंजिका में उत्तरांचल अधीनस्थ श्रेणी के पुलिस आधिकारियों की (दण्ड एवं अपील) नियमावली 1991, अनुकूल एवं उपान्तरण आदेश 2002 के नियम–4(2)(ख) के उपनियम 4 में निहित प्राविधानों के तहत निम्नांकित प्रस्तावित परिनिन्दा लेख अंकित किये जाने के आदेश पारित किये जाते हैं–

वर्ष–2010

वर्ष–2010 में जब यह आरक्षी थाना बसन्तविहार में नियुक्त था तो इनके द्वारा मालखाना मोहर्रिर व अपराध से सम्बन्धित कार्यों के साथ ही थानें पर प्राप्त होने वाले डाक/ प्रार्थना –पत्रों के आर्डर बुक किये जाने का कार्य सम्पादित किया जा रहा था। श्रीमती रूपाली अग्रवाल द्वारा प्रेषित किये गये शिकायती प्रार्थना–पत्र दिनांकित 23–1–2009, 17–2–2009 , एवं 20–2–2009 को शिकायत प्रकोष्ठ पुलिस कार्यालय देहरादून से कार्यवाही किये जानें हेतु थाना बसन्त विहार भेजे गये थे। यह सभी प्रार्थना–पत्र तत्कालीन उ0नि0 प्रदीप राणा, चौकी प्रभारी इन्द्रानगर को जांच हेतु दिये गये थे। इस प्रकरण से संबंधित एक प्रार्थना–पत्र श्रीमती रूपाली अग्रवाल का न्यायालय जुडिशियल मजि0 द्वितीय देहरादून से जांच हेतु थाने को प्राप्त

हुआ था जिसकी जांच उक्त उ0नि0 द्वारा की गई। जांचकर्ता अधिकारी द्वारा सभी प्रार्थना–पत्रों में जांच रिपोर्ट तैयार कर सभी उपरोक्त प्रार्थना –पत्रों को एक साथ संलग्न कर थाने में दाखिल किये गये। चूंकि सभी प्रार्थना –पत्रों का सम्बन्ध एक हो प्रकरण से था जिस करण इनके द्वारा सभी प्रा0पत्रों को डाकवही में चढ़ाकर न्यायालय को प्रेषित किये गये जिसके कारण शिकायत प्रकोष्ठ पुलिस कार्यालय की आर्डर बुक से उपरोक्त प्रार्थना –पत्रों को खारिज नहीं किये जा सके। इनको चाहिए था कि यह प्रश्नगत प्रार्थना–पत्रों को मय जांच रिपोर्ट सहित शिकायत प्रकोष्ठ पुलिस कार्यालय हेतु वापस भिजवाते जिससे उन्हें नियमानुसार खारिज करते हुए सम्बन्धित न्यायालय को शिकायत प्रकोष्ठ के माध्यम से भेजे जाते किन्तु इनके द्वारा ऐसा न करके अपने कर्तव्यों के प्रति घोर लापरवाही, उदासीनता एवं अकर्मण्यता बरती गई है। जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर लापरवाही एवं उदासीनता का द्योतक है । इनके उक्त कृत्य की परिनिंदा की जाती है।।

पंत्राकः जः 76/2010

दिनांकः जुलाई 03,2010 वरिष्ठ पुलिस अधीक्षक

जनपद देहरादून"

5. The petitioner filed the appeal to Respondent No.3 against the punishment order which was rejected. Therefore, he filed a revision to Respondent No.2 which was also rejected. Hence, the petition.
6. The petitioner has challenged the impugned orders (Annexure: A-1, Annexure:A-2 and Annexure: A-3) mainly on the ground that the act of the petitioner was bonafide; there was no willful or deliberate misconduct; inquiry report was directly sent to the Court in compliance of the order of his superior officer; the petitioner was not given opportunity of making submissions against the preliminary inquiry; statement of Sub-Inspector Sri Pradip Rana was not recorded while conducting the preliminary inquiry; and the acts of respondents are violative of Section 23 of the Indian Contract Act and also against the principles of natural justice.

7. The claim petition has been opposed by Respondent Nos. 1 to 4. In their joint written statement, it has been stated that the grounds of the petition are not sustainable. The minor penalty of censure entry has been awarded as per law and rules. The petitioner has been provided due opportunity to defend himself. The reply to show cause notice given by the petitioner was duly examined and he has been found guilty and, therefore, the disciplinary authority has passed the punishment order as per rules and law.
8. No rejoinder affidavit has been filed on behalf of the petitioner.
9. We have heard both the parties and perused the record including the inquiry file carefully.
10. Before we discuss the arguments of the parties, it would be appropriate to look at the rule position related to the minor punishment in Police Department. We reproduce the relevant rules of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable in the state of Uttarakhand) 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)………………………"

11. 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 proposal.

12. We have carefully examined the whole process of awarding censure entry and gone through the inquiry file. The petitioner was given the show cause notice as per rules; his reply to the show cause notice has been duly considered by the disciplinary authority; and a reasoned order to impose censure entry has been passed by the competent authority. We are, therefore, of

the opinion that the proceedings of imposing censure entry were conducted in a just and fair manner and we do not find violation of any rule or law in the process of awarding the minor punishment to the petitioner.

13. Learned Counsel for the petitioner has argued that the petitioner had sent the report and papers directly to the Court as he was directed to do the same by his superior officer and, therefore, he cannot be held guilty. Ld. Counsel for the petitioner has also contended that while conducting the preliminary inquiry, the statement of Sub-Inspector Sri Pradip Rana was not recorded. It has also been stated by the Ld. Counsel for the petitioner that the conduct of the petitioner was banafide and there was no willful or deliberate misconduct on his part. All these issues were raised by the petitioner in his reply to the show cause notice which were duly considered by the disciplinary authority before passing the order of punishment. This Tribunal is making a judicial review and not sitting as appellate authority. It is settled principle of law that in judicial review, re-appreciation of evidence as an appellate authority is not made. The adequacy or reliability of the evidence is not the matter which can be permitted to be argued before the Tribunal. The Hon'ble Supreme Court, in case of **B.C.Chaturvedi vs. Union of India, 1995(5) SLR, 778 in para 12 & 13** 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.*"

14.The Hon'ble Apex Court in para 24 of **Nirmala J.Jhala Vs. State of Gujrat 2013(4) SCC 301** has also 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."*

15. It is clear from the above judgments that the scope of the judicial review is 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 or 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. The Court or Tribunal cannot re-appreciate the evidence like an appellate Court so long as there is some evidence to support the conclusion arrived at 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.

16. It is also well settled law that the judicial review is directed not against the 'decision' but is confined to the examination of the 'decision making process'. Hon'ble Supreme Court in S.R. Tewari Vs. Union of India 2013 (6) SCC 602 has held as under:-

> "The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding."

17. In view of above, we find that in the case in hand, this Tribunal has no reason to interfere. From the perusal of record, it is revealed that the show cause notice dated 10.06.2010 (Annexure:-A-4) was issued and nowhere it has been averred that the show cause notice was bad in the eye of law. The petitioner replied to the show cause notice and he raised the same plea which he has raised before the Tribunal. The Ld. Counsel for the petitioner could not demonstrate any illegality in the show cause notice or in the procedure for awarding punishment of the censure entry by the competent authority. The competent authority has passed the punishment order after due consideration of petitioner's reply. The

provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks(Punishment & Appeal) Rules, 1991 in regard to awarding of minor punishment have been fully complied with by the competent authority.

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

ORDER

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

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

DATED: NOVEMBER 05, 2015
DEHRADUN

VM