UTTARAKHAND PUBLIC SERVICES TRIBUNAL, DEHRADUN

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

------ Chairman

&

Hon'ble Sri D.K. Kotia

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

CLAIM PETITION NO. 40/SB/2014

Ajay Kumar, S/o Shri Jaypal Singh, presently posted as Junior Assistant, Commercial Tax Department, Roorkee, District-Haridwar

……Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary (Finance) Civil Secretariat, Dehradun.
2. Additional Commissioner, Commercial Tax, Garhwal Zone, Dehradun.
3. Joint Commissioner, Commercial Tax, Haridwar Division, Haridwar.

…..…Respondents

Present: Sri Shashank Pandey, Counsel for the petitioner

Sri U.C. Dhaundiyal, A.P.O. for the respondents

JUDGMENT

DATE: NOVEMBER 20, 2015

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

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

"a. To issue order or direction quashing the order dated 21.09.2010 vide which the petitioner was punished.

b. To issue order or direction quashing the order dated 08.04.2011 by which the appeal of the petitioner was rejected.

c. To issue any other direction as the Hon'ble Tribunal deems fit in the facts and circumstances of the case.

d. To give cost of petition to the petitioner."

2. The petitioner is a Junior Assistant in the Commercial Taxes Department of the Government of Uttarakhand. He was awarded minor penalties of (i) censure entry and (ii) withholding of annual increment. The same has been challenged in this claim petition.

3. The facts in brief are that the Commercial Taxes Department imposed a penalty of Rs. 4,55,689 on a Registered Dealer namely, Semen Laboratories India Pvt. Ltd., Haridwar while passing Tax Assessment Order for the year 2006-07 under the Central Sales Tax Act for bringing various goods into the State of Uttarakhand without intimation in an unauthorized manner. The dealer filed an appeal (No. 487/2008) against this penalty before the Appellate Authority of the Department. The contention of the dealer in this appeal was that it had intimated the Department to increase in the number of goods to be brought into the State of Uttarakhand on 31.1.2006 through an application. The dealer produced Receipt No. 336018 before the Appellate Authority in support of its contention. On the basis of this, the Appellate Authority reduced the amount of penalty from Rs. 4,55,689 to Rs. 43,716 vide its order dated 15.5.2009.

4. After the order passed in the first Appeal, the Department noticed that the application of the dealer for increasing number of goods to be brought into Uttarakhand State was not available in the Tax Assessment File as well as in the Confidential file. It was also found that in the receipt dated 31.1.2006 (No. 336018), 'the

application for increasing goods' was added later on in a different hand writing using the carbon paper.

5. Considering the serious nature of the matter, a preliminary enquiry was conducted by the Department through Shri S.P. Nautiyal, the Deputy Commissioner, Commercial Taxes. The inquiry officer submitted his report on 11.6.2010 and found the petitioner, who was posted on the desk of 'Dak Prapti Register' during the period from the imposition of fine to the decision of the Appeal, responsible for this manipulation.

6. After the preliminary inquiry , the petitioner was given a show cause notice on 01.07.2010 (Annexure: A 4) as to why he should not be punished. The relevant part of this show cause notice is reproduced below:

> "उक्त फर्म पर अर्थदण्ड की कार्यवाही से अपीलीय सुनवाई तक उक्त पटल पर आप तैनात रहे हैं तथा इस पटल के पूर्व के समस्त अभिलेख तत्समय आपके चार्ज में ही थे। इस प्रकार इन अभिलेखों पर पूर्णरूप से आपका नियत्रंण था तथा इनकी देखरेख की पूर्ण जिम्मेदारी भी आपकी थी। उक्त मूल रसीद जारी कर्ता कर्मी द्वारा अपने लिखित स्पष्टीकरण में उक्त कथित 'वस्तु बढ़ाने का प्रार्थनापत्र' रसीद पर बाद में किसी अन्य द्वारा लिखा गया, यह स्पष्ट करता है कि बाद में इस पंजी की कार्यालय प्रतियों में बिना आपकी सहमति के कुछ भी नही किया जा सकता था अथवा उक्तानुसार उक्त रसीद की कार्यालय प्रति पर जो मैन्युप्लेशन हुआ है वह आपकी सहमति से ही हुआ है अथवा आपके द्वारा किया गया है। तथा आप द्वारा किये गये इस कृत्य से विभाग को राजस्व की काफी हानि उठानी पड़ी है।
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> उक्त अधिकारी द्वारा जांच रिपोर्ट में स्पष्ट किया है कि उक्त फर्म द्वारा अपील स्तर पर जो उक्तानुसार वस्तु बढ़ाने संबंधो प्रमाण दिया गया है उस रसीद में निश्चित ही आपके द्वारा मैन्युप्लेशन कर अथवा कराकर बाद में इस जारी मूल रसीद एवं इसकी कार्यालय प्रति पर कार्बन लगाकर अपने निजी लाभ हेतु एक व्यापारी को लाभ पहुंचाने के लिए ''वस्तु बढ़ाने हेतु प्रार्थनापत्र'' अंकित कर दिया गया। आपके उक्त कृत्य से विभाग को राजस्व की भारी क्षति उठानी पड़ी है। अतः उक्त से आपको उक्त कृत्य के लिए दोषी माने जाने का पूर्ण आधार है।

उक्त प्रकरण सम्बन्धी प्राप्त उपरोक्तानुसार रिपोर्ट को आपको इस आशय से संसूचित किया जा रहा है कि आप इस पत्र प्राप्ति के एक सप्ताह के अन्दर उक्त के आलोक में अपना लिखित स्पष्टीकरण इस कार्यालय को अपने कार्यालयाध्यक्ष के माध्यम से प्राप्त करायें, तथा बताएं कि क्यों न उक्त कृत्य के लिए पूर्णतः दोषी मानते हुए आपको कर्मचारी आचरण नियमावली के प्राविधानों के तहत दण्डित कर दिया जाये।"

7. In reply to the above show cause notice, the petitioner submitted a reply to the Department on 5.7.2010 (Annexure: 5) and denied the allegations made against him.

8. After considering the reply of the petitioner, the disciplinary authority passed a reasoned order on 21.09.2010 (Annexure: A-1) and found the petitioner guilty and awarded the minor penalties of (i) censure entry and (ii) withholding of annual increment. The relevant part of punishment order (the impugned order) is reproduced below:

"उक्त प्रकरण में श्री एस0पी0नौटियाल डिप्टी कमिश्नर(क0नि0) –द्वितीय एवं अतिरिक्त प्रभार असिस्टैन्ट कमिश्नर वाणिज्य कर खण्ड–1, हरिद्वार द्वारा प्रेषित आख्या का अवलोकन करने के उपरान्त उक्त समय में रेलवे जांच चौकी, हरिद्वार पर तैनात कनिष्ठ सहायक, श्री अजय कुमार को कार्यालय के पत्र संख्या –955 दिनांक 01–07–2010 द्वारा श्री नौटियाल द्वारा प्रेषित आख्या के आधार पर एक सप्ताह के अन्दर स्पष्टीकरण प्रस्तुत करने के निर्देश दिये गये.....

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उक्त के अनुपालन में श्री अजय कुमार, कनिष्ठ सहायक द्वारा असिस्टैन्ट कमिश्नर(प्रभारी) वाणिजय कर, रेलवे जांच चौकी, हरिद्वार के पत्र संख्या 43– दिनांक 06–07–2010 के माध्यम से अपना लिखित स्पष्टीकरण दिनाक 05–07–2010 प्रेषित किया गया। जिसमें कनिष्ठ सहायक, अजय कुमार द्वारा अवगत कराया गया कि 'उपरोक्त रसीद पर जिस राईटिंग में यह पंक्ति लिखो गई है वह राईटिंग मेरी नहीं है और न ही मेरे द्वारा लिखी गयी है और न ही मै उस समय सम्बन्धित पटल पर कार्यरत था। यह मुझे फसाने की साजिश है, मैं उक्त प्रकरण पर शपथपूर्वक बयान करता हूं कि मैं पूर्णतः निर्दोष हूं। यदि यह कार्य उनकी तैनाती के बाद हुआ है ता कार्यालय समय प्रातः 10.00 बजे से पूर्व या फिर सायं 5.00 बजे के बाद उनकी अनुपस्थिति

में किया गया होगा या फिर उनके द्वारा लिये गये अवकाश के दिनों में किया गया होगा। उनके द्वारा स्पष्टीकरण में यह भी कहा गया है कि महोदय के संज्ञान में लाना है उस समय मेरे कमरे मं कोई ताला नहीं लगाया जाता था, जिसका मेरे द्वारा विरोध किया गया और तैनात चौकीदार को भी कहा गया। सम्पूर्ण दस्तावेजों को उनके द्वारा कपड़े में बांधकर व्यवस्थित ढंग से रखा जाता था किन्तु अन्य कर्मचारियों द्वारा दस्तावेज खोल लिये जाते थे, जिनका मेरे द्वारा कार्यालय में तैनात वरिष्ठ सहायक को भी शिकायत की गयी व समय–समय पर आलमारी की मांग की गयी, साथ ही वरिष्ठ सहायक को फार्म –16 जो सहायता केन्द्रों से प्राप्त होते व फार्म–16 की पत्रावलियां होने के कारण एवं अन्य कर्मचारियों एवं वकीलों की आवाजाही रहती थी, कायालय में कार्यालय के दस्तावेज रखने को छोटा कमरा होने के कारण कोई जगह बची नही था, स्पष्टीकरण में यह भी अंकित किया गया कि रसीद संख्या –336018 दिनांक 31–01–2006 पर की गई ओवर राईटिंग के सम्बन्ध में कुछ नही जानता, मैं उक्त प्रकरण में पूर्णतया निर्दोष हू अर्थात उक्त रसीद पर की गई ओवर राईटिंग मेरी नहीं है। ऐसा संवेदनशील कार्य कब कैसे और किसने किया मैं अवगत नहीं हूं। अतः उक्त प्रकरण में मुझे दोषी न माना जाने की प्रार्थना की गयी है।

असिस्टैन्ट कमिशनर, वाणिज्य कर खण्ड–1/4 हरिद्वार से उक्त कर्मचारी की गोपनोय पत्रावली एवं उक्त अवधि से सम्बन्धित आर–29 रजिस्टर मंगवायी गई। जिनका अवलोकन किया गया । गोपनीय पत्रावली के अवलोकन करने पर पाया गया कि रसीद संख्या–336018 दिनांक 31–01–2006 द्वारा फार्म–सी में वस्तुओं के बढ़ाने के सम्बन्ध में कोई प्रार्थना पत्र न तो पत्रावली पर ही उपलब्ध है, नहीं उक्त प्रार्थना पत्र के सम्बन्ध मं आदेश फलक में अंकित है । उक्त अवधि के पंजी–29 का अवलोकन करने पर पाया गया कि रसीद संख्या–336018 दिनांक 31–01–2006 में उक्त फर्म द्वारा रूपपत्र –।।। एवं वस्तु बढ़ाने हेतु प्रार्थना पत्र अंकित है, परन्तु ''वस्तु बढ़ाने हेतु प्रार्थना पत्र'' का कार्बन का इम्प्रैशन अन्य शब्दों के इम्प्रैशन के सापेक्ष साफ एवं राईटिंग भी भिन्न प्रतीत हो रहा है । ''वस्तु बढ़ाने हेतु प्रार्थना पत्र'' का कार्बन इम्प्रैशन उक्त पेज में अंकित एवं इसी रसीद में रूपपत्र–।।। के इम्प्रैशन को देखने पर प्रथम दृष्टतया ही बाद में अन्य कार्बन लगााकर इन्द्राज करना स्पष्ट होता है। यद्यपि उक्त वस्तु बढ़ाने का प्रार्थना पत्र श्री अजय कुमार, कनिष्ठ सहायक द्वारा ही स्वयं बढ़ाया हो, यह कार्बन प्रति से स्पष्ट नहीं होता, परन्तु आर– 29 के उक्त रसीद में वस्तु बढ़ाने हेतु प्रार्थना पत्र बाद में बढ़ाया जाना उक्त के अवलोकन से स्पष्ट हो जाता है । श्री

नौटियाल, डिप्टी कमिश्नर (क0नि0)– द्वितीय वाणिज्य कर एवं अतिरिक्त प्रभार असिस्टैन्ट कमिश्नर, वाणिज्य कर खण्ड–1, हरिद्वार, द्वारा जांच रिपोर्ट में उक्त वस्तुओं को बढ़ाये जाने एवं उक्त को बढ़ाने में श्री अजय कुमार के सहमति से होने के सम्बन्ध में जो भी तथ्य अंकित किया गया है। उससे श्री अजय कुमार की इस मामले में संलिप्तता होना परिलक्षित होता है तथा इससे स्पष्ट होता है कि उक्त'' वस्तु बढ़ाने हेतु प्रार्थना पत्र'' को पूर्व के रसीद की कार्यालय प्रति में बढ़ाने में श्री अजय कुमार की सहमति रही है। यदि उनकी सहमति ना भी रही हो तब भी श्री अजय कुमार उक्त वस्तु बढ़ाने हेतु प्रार्थना पत्र की कार्यालय प्रति पर बाद में बढ़ाने हेतु पूर्णतः दोषी है। चूंकि उक्त मैन्युपुलेशन श्री अजय कुमार के खण्ड–1 हरिद्वार प्राप्ति/प्रेषण लिपिक के पद पर रहते हुए हुआ है। श्री अजय कुमार की जिम्मेदारी थी कि उनके चार्ज में जो भी अभिलेख थे उनका रख–रखाव इस प्रकार रखते कि कोई दुर्भावना ग्रस्त होकर उनका दुरूपयोग न कर पाये।

श्री अजय कुमार द्वारा अपने स्पष्टीकरण में यह अंकित करने से कि जहॉ पर उनका अभिलेख रखा गया था, उस कमरे में ताला नहीं लगाया जाता था, न ही उनके पास अभिलेखों को रखे जाने के लिए आलमारी ही उपलब्ध थी, परन्तु कमरे में ताला लगाने एवं आलमारी प्राप्ति के सम्बन्ध में उनके द्वारा जो प्रयास करना अपने स्पष्टीकरण में अंकित किया है, के सम्बन्ध में कोई भी प्रमाण स्पष्टीकरण के साथ संलग्ल नहीं किया गया है । यहॉ पर यह भी उल्लेखनीय है कि हरिद्वार/विभाग में स्थित समस्त कार्यालयों में अभिलेख आमतौर इसी प्रकार से रखे जाते रहे हैं । परन्तु गतवर्षो में इस प्रकार का मैन्युपुलेशन का कोई मामले हरिद्वार स्थित किसी भी कार्यालय में होने का संज्ञान में नहीं आया है । अतः उक्त से स्पष्ट होता है कि पूर्व में जारी रसीद में "वस्तु बढ़ाने हेतु प्रार्थना पत्र" बढ़ाये जाने (जिसके कारण राजस्व की क्षति संभावित है) के मामले में श्री अजय कुमार द्वारा निश्चित रूप से राजकीय सेवक होने के नाते अपने कर्तव्यों का निर्वहन उचित रूप से नहीं किया गया, फलस्वरूप इस कृत्य के लिए एतद्द्वारा श्री अजय कुमार को परिनिन्दित किया जाता है तथा श्री कुमार की एक वार्षिक वेतन वृद्धि अस्थायी रूप से राकी जाती है । ''

9. The petitioner filed an appeal against the punishment order on 14.10.2010 (Annexure:A-6) which was considered and rejected by the appellate authority on 08.04.2011 (Annexure:A-2).

10. The petitioner has also stated in the claim petition that a Revision under Rule 13 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 was also filed by him but the copy of the same has not been annexed to the petition. However, the petitioner has enclosed a letter of the Additional Commissioner dated 30.08.2011 forwarding this revision to the Joint Commissioner as Annexure:A-7 to the petition. The perusal of Annexure: A-7 reveals that the representation which has been forwarded is "review" and not the 'revision'. The petitioner has stated that his revision is still pending.

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

i. Because the petitioner was neither given any charge-sheet nor any enquiry was conducted against the petitioner.

ii. Because no handwriting expert was called to examine whether the cutting on the receipt was made in the petitioner's handwriting or not.

iii. Because the department/disciplinary authority has failed to elaborate as to how the petitioner should have taken care of the register in the absence of any almirah or a box with lock and key provided to him."

12. Respondents have opposed the claim petition. In their joint written statement, respondents No.1 to 3 have stated that the grounds of the petition are not sustainable. The minor penalties of censure entry and withholding of the increment has been awarded as per rules adhering to the principles of natural justice. The petitioner has been provided due opportunity to defend himself. The reply to the show cause notice given by the petitioner was duly examined and considered and a detailed order has been passed by the competent authority as per law and rules. It has been further stated that the petitioner has not made any revision under Rule 13 of the

Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. Rather, the petitioner has given an application of 'review' which is not in accordance with rules. The respondents have stated in the end that the petition is devoid of merit and liable to be dismissed.

13. No rejoinder affidavit has been filed on behalf of the petitioner.

14. We have heard both the parties and perused the record. The original record of inquiry was also summoned and the same has also been perused by us.

15. Before we discuss the arguments of the parties, it would be appropriate to look at the rule position related to the minor penalties. We reproduce the relevant rules of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 below:

> *"3. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants :--*
>
> ***(a) Minor Penalties--***
>
> *(i) Censure;*
>
> *(ii) Withholding of increments for a specified period;*
>
> *(iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;*
>
> *(iv) Fine in case of persons holding Group "D" posts :*
>
> ***(b) Major Penalties--***
>
> *(i) Withholding of increments with cumulative effect;*
>
> *(ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;*

(iii) Removal from the Service which does not disqualify from future employment;

(iv) Dismissal from the Service, which disqualifies from future employment."

"10. (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule

(2) impose one or more of the minor penalties mentioned in rule-3.

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated to the concerned Government Servant."

16. The above rule position makes it clear that the petitioner has been awarded minor penalties (censure entry and withholding of increment) provided under Rule 3(a) and, therefore, the procedure prescribed under Rule 10 was required to be followed.

17. We have carefully examined the whole process of awarding censure entry and withholding of increment and gone through the inquiry file. The petitioner was given the show cause notice informing him the substance of imputations against him; his reply and explanation have been duly considered by the disciplinary authority; the relevant record has been perused and considered by the punishing authority; a reasoned order to impose minor penalties has been passed by the competent authority; and the order passed has been communicated to the petitioner. We are, therefore, of the opinion that the proceedings of imposing censure entry and withholding of increment were conducted in a just and fair manner and we do not find violation of any rule or law or principles of natural justice in the process of awarding minor penalties to the petitioner.

18. Learned counsel for the petitioner argued that the petitioner has not been given any charge sheet nor any inquiry was conducted against the petitioner. As mentioned above, the present case in hand is a case of minor penalties and Rule 10 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 has prescribed the procedure to impose the minor penalties. The charge sheet is not required to be issued in case of minor penalties under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 and, therefore, no further inquiry based on charge sheet is the requirement under the said Rules. As we have mentioned above, the procedure for imposing minor penalties has been duly followed and the punishment order passed is as per rules and law.

19. Learned counsel for the petitioner also argued that no handwriting expert was called to examine whether the cutting on the receipt was made in the petitioner's handwriting or not. He has also contended that the disciplinary authority has failed to elaborate as to how the petitioner should have taken care of the register in the absence of any almirah or a box with lock and key provided to him. 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*."

20. 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."

21. 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 substitute its own conclusion with regard to the misconduct of the delinquent for that of the departmental authority. In case of disciplinary inquiry, the technical rules of evidence and the doctrine of "proof beyond doubt" have not application. "Preponderance of probabilities " and some material on record would be enough to reach a conclusion whether or not the delinquent has committed misconduct.

22. 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."

23. 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 01.07.2010 (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 minor penalties by the disciplinary authority. The disciplinary authority has passed the punishment order after due consideration of petitioner's reply. The provisions of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 in regard to awarding of minor penalties have been complied with by the competent authority.

24. For 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.

JUSTICE J.C.S.RAWAT
CHAIRMAN

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: NOVERMBER 20, 2015.
DEHRADUN

KNP