BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Justice U.C.Dhyani

------ Chairman

Hon'ble Mr. Rajeev Gupta

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

CLAIM PETITION NO. 20/SB/2020

Nand Kishore Gwadi aged about 38 years s/o Sri Madan Mohan Gwadi, presently posted as Sub Inspector in Uttarakhand Police at Anti Human Trafficking Unit at Mayapuri, Haridwar, Uttarakhand.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, District Haridwar..

….Respondents

Present: Sri V.P.Sharma, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 25 , 2020

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks to quash impugned punishment order dated 20.12.2019 (Annexure: A 1) passed by Respondent No.3 and appellate order dated 05.02.2020 (Annexure: A-2) passed by Respondent No.2, among others.

2. Facts in brief, giving rise to present claim petition, are as follows:

A Criminal Case No. 383/10 under Sections 420,467, 468, 471 IPC, pertaining to P.S. Jwalapur, District Haridwar, was instituted against accused Balraj r/o 1086, Arya Nagar, P.S. Jwalapur, Haridwar, in the Court of CJM, Haridwar. Investigation of case crime no. 383/10 was conducted by S.I. Govind Singh Kunwar. When accused failed to appear, CJM, Haridwar issued Non Bailable Warrant (NBW) against him, which was received in P.S.Jwalapur on 26.07.2015. The NBW was handed over to the petitioner for execution. Petitioner made an attempt to affect arrest of the accused on 27.07.2015. He could not be arrested, as he was not available at his given address. On 27.07.2015, the petitioner recorded his return (to P.S.Jwalapur) in General Diary (GD) No. 42 at 15:30 hrs. Petitioner also made an entry in GD regarding return of NBW to the Court concerned. He (petitioner) did not return NBW to the Court issuing the same. He again made an attempt to arrest the accused on 2/3.03.2016, but, by that time, the accused had obtained stay order from Hon'ble High Court, seeking stay of his arrest. The petitioner did not make an entry in GD of the P.S. concerned in this respect. He did not indicate, in the GD, as to what did he do with the NBW and kept the same unauthorizedly with him for eight months.

Preliminary enquiry was conducted by Ms. Kamlesh Upadhyay, S.P. City, Haridwar. She submitted her report to SSP, Haridwar on 06.09.2019 (Report Annexure: A 4). Petitioner was held guilty. A show cause notice dated 20.09.2019 (Annexure: A 3) along with draft censure entry was issued to the delinquent petitioner under Rule 14(2) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991. The petitioner replied to the same on 01.10.2019 (copy of reply to the show cause notice: Annexure- A 5). SSP, Haridwar was not satisfied with the same, therefore, *vide* order dated 24.12.2019 (Annexure: A 1) directed censure entry in the character roll of the petitioner. Annexure: A 1 is under challenge in present claim petition.

Aggrieved with the same, petitioner filed departmental appeal against the order passed by SSP, Haridwar. The appellate authority (I.G. Police, Garhwal Region), affirmed the order of SSP, Haridwar, and dismissed the appeal *vide* order dated 05.02.2020(Annexure: A 2). Appellate authority's order dated 05.02.2020 is also under challenge in present claim petition.

3. Ld. A.P.O., at the very outset, defending the departmental action, submitted that the orders impugned do not warrant any interference. According to Ld. A.P.O., the Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

4. What is misconduct? The same finds mention in Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 , as below:

> **"3(1)** Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;
>
> **3(2)** Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behaviour and conduct which may be in force."

The word 'devotion', may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

5. Discipline is the foundation of any orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public.

6. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and in all times, conduct himself in accordance with specific or implied order of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.

7. The terms 'misconduct' or 'misbehaviour' has not been defined in any of the Conduct Rules or Civil Services Rules. The dictionary meaning of the word 'misconduct' is nothing but bad management, malfeasance or culpable neglect of an official in regard to his office. In short, it can be said that

misconduct is nothing but a violation of definite law, a forbidden act. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.

8. The word 'misconduct' covers any conduct, which, in any way, renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term 'misconduct' usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty cannot be excused.

9. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behaviour and conduct which may be in force.

10 A Division Bench of Hon'ble High Court of Judicature at Allahabad, in *Bhupendra Singh and others vs. State of U.P. and others, (2007)(4) ESC 2360 (ALL)(DB),* has held that the provisions of Rule 4(1)(b)(iv) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991(for short, Rules of 1991) are valid and *intra vires.* Censure entry, therefore, can be awarded.

11. Here the petitioner has been awarded minor penalty, in which the procedure prescribed is as follows;

> **Sub- rules (2 & 3) of Rule 5 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991**
>
> "**Sub-rule (2)**— The cases 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.
>
> **Sub-rule (3)**— the cases in which minor penalties mentioned in sub-rule (2) & (3) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in Rule 15."

12. The next question would be, what are the minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4? The reply is as follows:

> **(b) Minor Penalties**:
>
> *(i) Withholding of promotion.*
>
> *(ii) Fine not exceeding one month's pay.*
>
> *(iii)Withholding of increment, including stoppage at an efficiency bar.*
>
> *(iv)Censure.*

13. Most relevant question, from the point of view of present petitioner, would be— what is the procedure laid down in sub-rule (2) of Rule 14?

> "**14(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."

14. The inquiry contemplated under the Police Regulations is in the nature of preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice, he or she should be in a position to see whether there is any truth in such imputation. The inquiry is, therefore, meant only for personal satisfaction of the Superintendent of Police to enable him or her to come to a decision as to whether the matter is to be dropped or whether any action is necessary. No punishment can be imposed as a result of inquiry itself. In the instant case, the appointing authority has not awarded punishment to the petitioner on the result of preliminary inquiry. On the basis of such preliminary investigation, the appointing authority, foreseeing that it is a case of minor punishment, followed the procedure laid down in sub-rule (2) of Rule 14, which has been quoted above.

15. When the petitioner was posted as S.I. in Kotwali Jwalapur, an F.I.R. under Sections 420, 467, 468 and 471 IPC was lodged. The investigation was entrusted to S.I. Govind Singh Kunwar. Criminal Case No. 383/2010 was instituted. The non-bailable warrant of the accused Balraj, r/o 1086, Arya Nagar, P.S. Jwalapur, Haridwar, issued by CJM, Haridwar, which (NBW) was received in P.S. Jwalapur on 26.7.2015, was given to the petitioner for execution. The petitioner made an attempt to affect the arrest of accused Balraj on 27.07.2015, but the said accused could not be apprehended.. Petitioner made an entry in General Diary (GD) No. 42 at 15:20 hrs regarding his return to P.S.Jwalapur on 27.07.2015. He also made an entry in GD regarding return of NBW to the Court concerned, but, in fact, he did not return the same to CJM's Court. NBW, issued by the Court remained with the petitioner for eight months. On 2/3.3.2016, the petitioner again made an attempt to arrest accused Balraj, but, in the meanwhile, he had obtained a stay order against his arrest from Hon'ble High Court. The imputation against the petitioner is that he did

not enter relevant facts in GD and unauthorizedly kept the NBW with him for eight months. When preliminary enquiry was conducted, the petitioner was found guilty and, therefore, he was awarded 'censure entry'.

16. Imputations against the petitioner are explicit. They are self explanatory. Whereas the petitioner entered his return in P.S. concerned on 27.07.2015 at 15:20 hours and also recorded return of NBW to the Court concerned, but in fact, he did not return the NBW to the Court concerned and kept the same in his possession unauthorizedly for eight months. On the basis of that NBW, when the petitioner made an attempt to arrest the accused again on 2/3.03.2016, he (accused) had obtained the stay order from Hon'ble High Court. Entering a fact in the GD and in fact, not doing it— is it not a misconduct? Keeping an NBW unauthorizedly in his possession for eight months, whatever might be the reason, will it not amount to misconduct? Not recording important facts in GD is certainly 'misconduct'. Recording a fact in the GD that NBW is being returned to the Court and, in fact, not doing it, will tantamount to misconduct. In his reply dated 01.10.2019 (Annexure: A 5) to the show cause notice, the petitioner has admitted his mistake at internal pg. no. 2 (of the reply). The petitioner has also filed rejoinder affidavit to plead his innocence. But assuming, for the sake of arguments, if all the facts mentioned in the rejoinder affidavit are accepted, even then no reasonable prudent person would draw an inference that the petitioner was not careless in performing his duties. Assuming that he was awfully busy in his official duties, the question is, what prevented him from entering the correct facts in the GD. What prevented him from doing what was recorded by him in the G.D.? Only the petitioner can give the reply to such questions.

17. The imputations against the delinquent petitioner are – He did not enter relevant facts in GD and unauthorizedly kept the NBW with him for eight months. Petitioner also made an entry in GD regarding return of NBW to the Court concerned. Another imputation was that when the petitioner made an attempt to arrest the accused again, after eight months, he (accused), by such time, was armed with the stay order against his arrest, but the delinquent petitioner did not make an entry in the GD of such fact. The imputations are different from those projected in the claim petition. The petitioner has, in the instant claim petition, proceeded on the assumption that he was punished for

non-execution of NBW. The same is not true. He was not punished for not arresting the accused Balraj, but for not entering the relevant facts in GD and unauthorizedly keeping the NBW with him for eight months. The petitioner has tried to justify that he was awfully busy in official duties, therefore, he could not affect arrest of accused. This Tribunal has already mentioned above that the insinuations were different from those which were perceived by the delinquent petitioner.

18. Ld. Counsel for the petitioner submitted that the act of the petitioner is not deliberate and intentional. This Tribunal does not subscribe to such view of Ld. Counsel for the petitioner. Any Sub Inspector, or, for that matter, any Police official knows it fully well that whatever is done by him or her, has to be recorded in GD. Every movement and every activity of him has to be correctly recorded in GD. Here, the petitioner, although made an entry in the GD that the NBW is being returned to the Court concerned, but, in fact, did not do it. After eight months, when he made an attempt to arrest the accused again, the accused, by such time, was armed with stay order (against his arrest), but such fact was also not disclosed by the delinquent petitioner in the GD. In other words, the fact of obtaining stay order against his arrest by the accused was not entered by the petitioner in the GD. The facts are, therefore, clear and have been proved against the delinquent petitioner, leaving no doubt in the mind of the Tribunal that the petitioner is guilty of carelessness and dereliction of duty.

19. Petitioner has relied upon a decision rendered by Hon'ble Apex Court in *State of Haryana vs. Ved Kaur, (2017) 6SCC 796*. We do not know, why such a decision has been filed along with rejoinder affidavit. The facts of *Ved Kaur's* decision (*supra*) are entirely different from the facts of present claim petition. In Ved Kaur's case, parity between co-delinquents was sought. They, it appears, were convicted for offences involving moral turpitude. The delinquents were also terminated from service. It appears that departmental proceedings, as also criminal proceedings were initiated against co-accused. On the basis of findings of the Court in criminal case, which had bearing on the departmental proceedings, all the consequential benefits except payment of back wages were ordered in *Ved Kaur's* case. Here, delinquent's case is entirely on different footing and is clearly distinguishable from *Ved Kaur's* case. No benefit, therefore, can be given to the petitioner on the basis of this ruling.

20. To utter surprise of Tribunal, the petitioner has sought to declare the punishment of 'censure entry' as major punishment. A prayer has also been made that major punishment cannot be awarded without following the procedure prescribed for the same. It is, no doubt, true that the procedure for minor punishment has been followed in the instant case, because 'censure entry' is a minor punishment. Had 'censure entry' been categorized as major punishment (*it is not so*), the procedure for major penalty ought to have been followed. Award of 'censure entry', in the statute book, is a minor punishment. How this Tribunal can hold that censure entry has the effect of major punishment? In a nutshell, 'censure entry' is a minor punishment and procedure meant for minor punishment has been adopted in the present case

21. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. There is no reference of preliminary inquiry in the impugned order. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the order directing 'censure entry' against the petitioner. A reasonable prudent person can never disagree with the inference drawn by appointing authority, as affirmed by appellate authority that omission on the part of petitioner amounts to misconduct.

22. To elaborate further, there is no reference of 'preliminary inquiry' in sub-rule (2) of Rule 14 of the Rules of 1991. Such sub-rule only prescribes that minor punishments may be imposed after informing the Police Officer in writing, of the action proposed to be taken against him, and of the imputations of acts 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. Such preliminary inquiry is merely a fact finding inquiry. It is only meant for the satisfaction of the appointing authority, notwithstanding the fact that the delinquent was also involved in it. Preliminary inquiry, in the instant case, has been used by the appointing authority only to derive satisfaction for giving show cause notice, which is in the nature of informing the delinquent of the action proposed to be taken, imputations of the acts or omission and giving him a reasonable opportunity of making representation. Preliminary inquiry has not been used in arriving at a finding. It is only a precursor to the action proposed to be taken.

23. The next question would be— what is the extent of Court's power of judicial review on administrative action? This question has been replied in Para 24 of the decision of in *Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301*, as follows:

> "24.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 mala fides, 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."

24. 'Judicial review of the administrative action' is possible under three heads, *viz:*

(a) illegality,
(b) irrationality and
(c) procedural impropriety.

Besides the above, the 'doctrine of proportionality' has also emerged, as a ground of 'judicial review', of late.

25. The limited scope of judicial review has also been assigned by Hon'ble Supreme Court in Johri Mal's case, (1974) 4 SCC 3, as follows:

> "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 fact ors 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.

26. This Tribunal, therefore does not find it to be a case of judicial review, in the absence of any material on record, to hold that formation of belief/ opinion by the appointing authority, as upheld by the appellate authority, suffers from *malafide* or there is anything, on record, to hold that there was procedural error resulting in manifest miscarriage of justice and violation of principles of natural justice. There were reasonable grounds before the authorities below to have arrived at such conclusion. This Tribunal is of the view that due process of law has been followed while holding the delinquent guilty of misconduct. No legal infirmity has successfully been pointed out in the same.

27. Any allegation against the delinquent Police official, may not be treated as true, but when such insinuation is fortified by some substance, on record, the court may draw an adverse inference against the delinquent. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present case is adjudged from the aforesaid yardstick, this Tribunal finds no reason to interfere in the inference drawn by the Disciplinary Authority, as upheld by the Appellate Authority in so far as holding the petitioner guilty of misconduct is concerned.

28. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety. No interference is called for in the same.

29. The claim petition is dismissed. However, in the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 25,2020
DEHRADUN

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