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. 153/SB/2019

Sarwan Kumar, Constable 21 CP, s/o Sri Naresh Kumar Sharma, Presently posted at Cyber Crime Police Station (Special Task Force) Dehradun.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun
4. Senior Superintendent of Police, Dehradun.

….Respondents

Present: Sri V.P.Sharma, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: 05.03.2021

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks the following reliefs:

(i) To quash impugned punishment order dated 18.09.2019 (Annexure: A 1) passed by Respondent No.2.

(ii) To quash and set aside the impugned notice dated 11.10.2013 (Annexure: A-2) and the show cause notice dated 23.11.2013 (Annexure: A-3).

(iii) To quash and set aside the impugned dismissal order dated 19-12-2013 (Annexure: A-4).

(iv) To quash and set aside the appellate order dated 21.05.2014 (Annexure: A-5) and quash and set aside order dated 28.05.2014 (Annexure: A-6).

(v) To issue and directions to pay full salary for the illegal dismissal period from 19.12.2013 to 28.05.2014.

(vi) To quash and set aside the suspension order dated 13.08.2012 as well as the order dated 09-10-2012 for paying the subsistence allowance to the petitioner whenever the petitioner is entitled for full salary for the suspension period from 13.08.2012 to 09.10.2012((Annexure: A-7 and A-8).

(vii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case, in favour of the petitioner.

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

2.1 When the Constable petitioner was posted in P.S. Clementown, Dehradun, in the year 2012, FIR relating to case crime no. 31/2012 under Sections 420, 413 IPC was lodged against the accused persons, namely, Pankaj and Satish Kumar. The same was being investigated by S.I. Smt. Sangeeta Nautiyal. The Investigating Officer was influenced by accused persons, for reducing the gravity of offence, allegedly, by paying illegal gratification of Rs. 2 lacs and two laptops. Object was to minimize the crime against the accused Satish. Allegedly, illegal gratification was taken through one Govind Bansal. When the incident came to light, she returned money along with the laptops to the accused. S.I. Sangeeta Nautiyal could not help the accused. Case Crime no. 56/2012 under Section 7/13 Prevention of Corruption Act, 1988 was instituted against S.I. Sangeeta Nautiyal and the petitioner. Present Constable petitioner was, allegedly, hand-in-glove with the S.I. in this act of illegal gratification.

2.2 Departmental proceedings were initiated against the S.I. and Constable petitioner under the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. At the same time, criminal case no. 56/2012, under Section 7/13 of Prevention of Corruption Act, 1988 was also instituted against both of them. The allegation, as stated above, was that the petitioner along with S.I. Sangeeta Nautiyal took illegal graft of Rs.2 lacs along with two laptops for minimizing the offence against the

accused persons. After departmental inquiry, a recommendation was given that the services of the petitioner should be dismissed. Consequently, a show cause notice was given to the petitioner on 23.11.2013. The petitioner submitted his reply to SSP, Dehradun. The SSP, Dehradun was not satisfied with the explanation submitted by the petitioner and, therefore, *vide* order dated 19.12.2013, the petitioner was dismissed from service. A departmental appeal was filed by the petitioner. D.I.G., Garhwal Range, *vide* order dated 21.05.2014 directed reinstatement of the petitioner in service till the criminal case pending against him was decided. SSP, Dehradun, *vide* order dated 28.05.2014 directed reinstatement of the petitioner in service. A Final Report No. 12/17 was submitted by the investigating officer of case crime no. 56/2012, under Section 7/13 of Prevention of Corruption Act, 1988, on 18.11.2017. Since, it was a case of no evidence and no case property was recovered, therefore, Ld. Addl. Special Sessions Judge(Anti Corruption) accepted the Final Report on 17.03.2018.

2.3 Legal advice was taken by the department from legal expert. I.G., Police, Garhwal Range (Appellate Authority) found, *vide* order dated 18.09.2019, that although the F.R. has been accepted by the Special Judge, Anti Corruption, but since petitioner's conduct has sent wrong message in the public, therefore, directed award of 'censure entry' in his character roll, which is under challenge in the 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. The Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which have been upheld by the appellate authority, according to Ld. A.P.O. 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 finally 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. The procedure laid down in sub-rule (2) of Rule 14 is as follows:

> "**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."

In the instant case, the procedure for imposing major penalty has been adopted which is much more elaborate than the procedure adopted for minor penalty, including show cause notice. Finally minor penalty has been imposed, which is permissible in law.

14. 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."

15. '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'.

16. This Tribunal 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 while holding delinquent guilty of misconduct. 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.

17. 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 authorities below to hold the petitioner guilty of misconduct.

18. The appellant order under challenge, in the instant case, is neither illegal nor irrational, nor does it suffer from procedural impropriety in so far as holding the delinquent guilty of misconduct is concerned. Appointing authority had already held him guilty of misconduct.

The extent of the application of doctrine of proportionality has been dealt with by this Tribunal in a couple of decisions, as below:

> APPLICATION OF DOCTRINE OF PROPORTIONALITY: EXTENT- Quite often it is argued by Ld. A.P.O., in such cases, that once it is found by the Tribunal that delinquent is guilty and misconduct is established, then it should not use its discretion by substituting 'other minor penalty' for 'minor penalty'. It is, therefore, desirable to examine the concept of proportionality, as perceived in administrative law. England has a unitary unwritten Constitution in which Parliament is sovereign and supreme so that no act of Parliament can be held *void* by a Court of law. In India, neither Parliament nor State Legislature can take away jurisdiction of Hon'ble Supreme Court or Hon'ble High Courts to issue the writs mentioned in Articles 32 and 226 of the Constitution of India. The rule as to judicial review on the limited ground of patent error of law has been adopted in India from England. It is true that discretion maybe exercised reasonably. A person who is entrusted with the discretion must direct himself properly in law. He must call his own attention to the matter which he is bound to consider. He must exclude from his consideration, matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it was within the powers of the authority. in Short vs. Poole Corporation, 1925 All

Er Rep 74 (CA), example of a red-haired teacher was given, who was dismissed because she had red hair. That is unreasonable in one sense. In another sense, it is taking into consideration extraneous matters.

It was only in the year 1985 that Lord Diplock identified the ingredients of the concept of judicial review in Council of Civil Service Union vs. Minister for the Civil Service, 1985 AC 374. According to him, judicial review could be possible under three heads, namely, illegality, irrationality and procedural impropriety. . The doctrine of proportionality was also relevant.

The principle of proportionality ordains that administrative measures must not be more drastic than is necessary for attaining the desired reason. The principles of reasonableness and proportionality cover a great deal of common grounds. 'Proportionality', it is held by House of Lords, requires the Court to judge whether the action taken was really needed, as well as whether it was without the range of courses of action that could reasonably be followed. Proportionality is, therefore, a more exacting test in some situations and is then to be rejected as requiring the Court to substitute its own judgment for that of the proper authority. In R. vs. Secretary of State for the Home Department, ex p brind, (1991) 1 AC 696, it was observed that the doctrine of proportionality may require a review Court to assess the balance which the decision maker has struck not merely whether it is within the range of rational or reasonable decisions. Secondly, proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations.

In M.A. Rashid vs. State of Kerala, (1974) 2SCC 687, the Hon'ble Apex Court, considering the test of reasonableness and the scope for Court's interference held as below:

"8. Where powers are conferred on public authorities to exercise the same when 'they are satisfied' or when 'it appears to them', or when 'in their opinion' a certain state of affairs exists; or when powers enable public authorities to take 'such action as they think fit' in relation to a subject matter, the Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

9. Where reasonable conduct is expected the criterion of reasonableness is not subjective, but objective.....

10..... The standard of reasonableness to which the administrative body is required to conform may range from the court's own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis."

In Ranjeet Thakur vs. Union of India, (1987) 4 SCC 611, Hon'ble Supreme Court relied upon Lord Diplock in Council of Civil Service Union Case (*supra*), as below:

"...Judicial Review has, I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground l would call 'illegality'. the second, 'irrationality' and the third, 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community."

In Union of India vs. G.Ganayutham , (1997) 7 SCC 463, the Hon'ble Apex Court responded to the question as to whether power of judicial review permits the High Courts or Administrative Tribunals to apply the principle of proportionality thus:

"The position pertaining in the year 1997, of proportionality in administrative law in England and India was summarized:

(a) To find out if an administrative order was illegal or was one which no sensible decision-maker could have arrived at. The Court would consider whether relevant matters had been taken into account and not the irrelevant.
The court would not go into the correctness of the choice made by the administrator of several alternatives which may be available. Nor will the Court substitute its own decision for that of the administrator. This is the Wednesbury test.
(b) The Court would interfere on grounds of illegality, procedural impropriety or irrationality.
The possibility of including proportionality being brought into English administrative law was not ruled out.
These are the principles laid down in the CCSU case.
(c) The English courts merely exercise a secondary judgment only to examine whether the decision-maker could have arrived at the primary judgment in the manner he has.
(d) Only if the European Convention is incorporated in England would the English Courts render primary judgment on the validity of administrative action. Since the Convention has incorporated the doctrine of proportionality.
(e) The position in India is that where no fundamental freedom are involved the Courts will play a secondary role only. However, where fundamental freedoms are affected by any administrative or executive action, whether the Courts would assume a primary role and apply the principle of proportionality only if freedoms under Article 19, 21, etc. are involved and not Article 14, was left open for consideration."

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.

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

"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. We are not unmindful of the development of the law that from the doctrine of Wednesbury Unreasonableness, the court is leaning towards the doctrine of proportionality. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted".

19. According to Rules 24 and 25 of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules , 1991, appellate authority / revisional authority has power to enhance the punishment and the Govt. can modify or revise / reduce the order passed by such authority or enhance the penalty imposed upon the delinquent. In such circumstances, does it lie in anyone's mouth to say that the Tribunal cannot substitute a 'minor punishment' with 'other minor punishment'. Rules 24 and 25 read as below:

24. Enhancement of punishment—A punishment may be enhanced by :— (a) an appellate authority on appeal; or (b) any authority superior to the authority to whom an application will lie, in exercise of revisionary powers : Provided that before enhancing the punishment such authority shall call upon the officer punished, to show cause why his punishment should not be so enhanced, and that an order by such authority so enhancing a punishment shall, be deemed to be an original order of punishment.

25. Powers of Government—Notwithstanding anything contained in these Rules, the Government may, on its own motion or otherwise, call for and examine the records of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and against which no appeal has been preferred under these rules and— (a) confirm, modify or revise the order passed by such authority; or (b) direct that a further inquiry be held in the case; or (c) reduce or enhance the penalty imposed by the order; or (d) make such other order in the case as it may deem fit : Provided that where it is proposed to enhance the penalty imposed by any such order the police officer concerned shall be given an opportunity of showing cause against the proposed enhancement.

20. It appears to be a case of ‘no evidence’. The accused petitioner was not even put to trial. During investigation itself, no case was made out against him. The same imputations were levelled against him in the departmental proceedings. Although the standard of proof in criminal cases and departmental proceedings is different, yet the fact remains that the accused was not even put to trial (in the Law Court) and the F.R. was submitted by the Investigating Officer C.O. Jaya Baluni. In other words, no case was found against the accused petitioner under Section 7/13 of Prevention of Corruption Act, 1988 and as a consequence thereof, final report was submitted against him, which was accepted by Special Judge (Anti Corruption).

21. Apparently, the decision taken by the appellate authority seems to be correct at the first blush, but when the Tribunal goes into the depth of the matter, it finds that the punishment awarded to the petitioner should be reduced. There are mitigating circumstances in favour of the petitioner. Although corruption on the part of a public servant is intolerable and the public authority should show zero tolerance towards corruption, yet the fact remains that there should be some evidence against the wrongdoer before crucifying him. At the same time, a public servant should have undoubtedly a clean image.

22. Caesar’s wife must be above suspicion. A public servant, much less a Police Official, should be possessed of impeccable integrity and should have clean image in the eyes of the public and his Superiors. It is on account of this fact that the appellate authority (I.G. Police, Garhwal Range), in the instant case, has awarded censure entry to the petitioner. The Tribunal feels that considering the insinuation levelled against the petitioner, ends of justice will be met, if the petitioner, in the peculiar facts of the case, is awarded with ‘other minor penalty’, instead of ‘censure entry’..

23. Under sub-rule (3) of Rule 4 of the Rules of 1991, the Constables may also be punished with ‘fatigue duty’ which shall be restricted to the following tasks:

(i) Tent pitching;
(ii) Drain digging;
(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines; and
(v) Cleaning Arms.

24. Fatigue duty' is also a type of minor penalty, which finds place in the statute book under sub-rule (3) of Rule 4 of the Rules of 1991 and appears to be *at par* with 'censure entry' *minus* civil consequences. In other words, whereas 'censure entry' entails civil consequences, 'fatigue duty' does not. Considering the facts of this claim petition, this Tribunal finds that rigour of censure entry should be mitigated, in the peculiar facts of the case, although the finding of 'misconduct' should not be interfered with.

25. In the given facts of the case, in the interest of justice, this Tribunal finds that rigour of censure entry should be mitigated, and the petitioner is awarded with 'other Minor Penalty', *viz,* 'fatigue duty', instead of 'censure entry'. This Tribunal has been persuaded to interfere, only to this extent, on the ground of emerging 'doctrine of proportionality', substituting 'censure entry' with 'fatigue duty'.

26. Petitioner sought relief for quashing punishment order dated 18.09.2019, passed by Respondent No.2, which we have upheld to the extent of holding the petitioner guilty of misconduct, but have only converted the punishment of 'censure entry' into 'fatigue duty', which also finds place in the statute book.

27. Petitioner has also prayed for quashing notice dated 11.10.2013 (Annexure: A 2) and show cause notice dated 23.11.2013 (Annexure: A 3), which have already been merged into final order. Petitioner's order for dismissal from service has also been set aside by Police authorities themselves and, therefore, this Tribunal need not pass further order in respect of Reliefs No.(ii) and (iii). Petitioner has also prayed for setting aside the appellate order dated 21.05.2014 (Annexure: A-5) passed by D.I.G., Police, Garhwal and order dated 28.05.2014 (Annexure: A 6), passed by S.S.P., Dehradun, which is a consequential order. We fail to understand as to why the petitioner has challenged Annexure: A-5, which is for reinstatement of his service till the decision in the criminal case was pending against him. In other words, Annexure: A-5 is the order passed in favour of petitioner. Prayer No. (v) is for direction to pay full salary

during dismissal period from 19.12.2013 and Prayer No. (vi) is for setting aside suspension order dated 13.08.2012, as well as order dated 09.10.2012, for directing the payment of full salary during dismissal/ suspension period.

28. So far as Reliefs No. (v) and (vi) are concerned, we have provisions in Para 54-B, Financial Handbook, Vol. 2 to 4, as also Rule 22 of the Rules of 1991, as below:

> "**54-B** (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—
> (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and
> (b) whether or not the said period shall be treated as a period spent on duty.
> (2).....

Rule 22 of the Rules of 1991 is quoted as below:

> " 22. Counting of dismissal period—Where an appeal against the orders of dismissal or removal succeeds, the appointing authority shall consider and make a specific order (i) regarding the period of suspension preceding his dismissal or removal as the case may be, and (ii) whether or not the said period shall be treated as a period spent on duty in accordance with the provisions of Rule 54 of the Financial Hand Book, Vol. II, Parts II to IV."

Rules, therefore, provide that when a Govt. servant, who has been suspended, is reinstated, the authority competent to order reinstatement, shall consider and make a specific order regarding pay and allowances to be paid to the Govt. servant for the period of dismissal/ suspension ending with reinstatement and whether or not the said period shall be treated as a period spent on duty.

29. Ld. Counsel for the petitioner submitted that no such order has been passed by the Police Authority despite the fact that the petitioner moved representation to this effect on 20.03.2018 (addressed to S.S.P., Dehradun). It is also submitted by Ld. Counsel for the petitioner that Addl. Superintendent of Police, S.T.F., Uttarakhand, *vide* letter dated 14.06.2018 forwarded the request of the petitioner to S.S.P., Dehradun, stating therein that in the case crime no. 56/12 under Section 7/13 Prevention of

Corruption Act, State vs. Sangeeta Nautiyal and another, the Investigating Officer has submitted Final Report on 17.03.2018. The Constable-petitioner has made a request for payment of his entire salary during dismissal/ suspension period. Ld. A.P.O. conceded the fact that such representation has not been decided as yet.

30. That being so, a direction is given to the authority competent to consider and make a specific order regarding pay and allowances to be paid to the petitioner for the period of dismissal/ suspension and whether or not the said period shall be treated as a period spent on duty, within a period of eight weeks, as per law and intimate the decision so taken to the petitioner within ten weeks from today.

31. Claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 05.03.2021
DEHRADUN

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