

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Through audio conferencing

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

----- Chairman

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 70/NB/DB/2020

Birender Singh Gaira, aged about 31 years, S/o Shri Balwant Singh Gaira, R/o ROP Reporting Outpost-Dangoli, PS-Baijnath, District-Bageshwar, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand, through Secretary Home, Civil Secretariat, Subhash Road, Dehradun.
2. Director General of Police Uttarakhand, Police Headquarter 12, Subhash Road, Dehradun.
3. Inspector General of Police, Kumaon Range, Nainital.
4. Superintendent of Police, Bageshwar, Behind Vikas Bhawan Off, Almora-Bageshwar Road, Dunga Patti, District Bageshwar.

.....Respondents

Present: Sri Piyush Tiwari, Advocate for the Petitioner.

Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: JULY 09, 2021

Justice U.C.Dhyani (Oral)

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

(i) To quash the impugned show cause notice dated 23.03.2020 passed by respondent No. 4 proposing penalty of 'Censure' being Annexure-A1.

(ii) To quash the impugned order dated 11.06.2020 passed by respondent No. 4 imposing penalty of 'Censure' being Annexure-A2.

(iii) To quash the impugned show cause notice dated 11.06.2020 passed by respondent No. 4 proposing to recover the

rest of salary other than subsistence allowance for the period from 08.09.2019 to 02.10.2019 for 25 days, being Annexure-A3.

(iv) To quash the impugned order dated 30.07.2020 passed by respondent No. 4 wherein recovery of the rest of salary other than subsistence allowance was made, being Annexure-A4.

(v) To direct the respondent No. 4 to pay the remaining pay and allowance of the suspension period to the petitioner w.e.f. 08.09.2019 to 02.10.2019 for 25 days and treat the period of suspension as on duty.

(vi) To quash the impugned appellate orders dated 20.07.2020 passed respondent No.3 wherein penalty of 'Censure' awarded by the disciplinary authority was upheld, being Annexure-A5.

(vii) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(viii) To award the cost of the petition in favour of the petitioner and against the respondents.

2. Annexure-A2 and Annexure-A5 are in the teeth of present claim petition. Besides this, denial of full salary to the petitioner during suspension period, is also under challenge in this claim petition, among others.

3. Annexure-A2 is a punishment order under Rule 14(2) of the U.P. Police Officers of the Subordinate Ranks (Punishment & and Appeal) Rules, 1991 (for short, 'the Rules of 1991'). Censure entry was awarded to the petitioner *vide* order dated 11.06.2020. Departmental Appeal was preferred by the delinquent-petitioner against the order dated 11.06.2020 of the Superintendent of Police, Bageshwar. Such departmental appeal was dismissed *vide* order dated 20.07.2020 by the Appellate Authority/ Inspector General of Police, Kumaon Zone, Nainital. The petitioner has challenged both these orders, which have been brought on record as Annexure-A2 and Annexure-A5, among others.

4. Annexure-A2 was passed on the basis of notice dated 23.03.2020, along with 'draft censure entry'. The delinquent-petitioner gave his reply on 07.04.2020. The Disciplinary Authority was not satisfied

with the explanation furnished by the petitioner, who was posted as a Constable in Kotwali, Bageshwar.

5. The imputation against him, in a nutshell, is that he was in collision with one Mr. Tara Chandra Chaube, who was engaged in illegal gravel mining (*reta-bajri* mining). In an audio clip, which was viralled in social media and whatsapp, delinquent-constable was talking to Mr. Tara Chandra, who was seeking favour of the petitioner to release a truck carrying gravel (*reta-bajri*). The Appellate Authority, while passing the order on 20.07.2020, considered the submissions of the appellant and affirmed the order passed by the Superintendent of Police, Bageshwar on 11.06.2020. The Appellate Authority did not find any reason to interfere with the order passed by the Disciplinary Authority-S.P., Bageshwar.

6. A show cause notice was also issued to the petitioner on 11.06.2020 (Copy Annexure-A3) as to why his salary should not be restricted to the subsistence allowance, which was given to the petitioner during suspension period? Petitioner's services were suspended from 08.09.2019 to 02.10.2019.

7. Although such notice (Annexure-A3) was received by the petitioner on 13.06.2020, but inspite of a direction to furnish his explanation within 8 days of receipt of notice, he did not submit the same. Superintendent of Police, Bageshwar, therefore, *vide* order dated 30.07.2020 (Annexure-A4) directed that the petitioner's salary and allowances shall be restricted only to the salary and allowances, which were given to him during suspension period. He will not be entitled to anything else. Suspension period shall, however, be counted for the purpose of pension/leaves and for the purpose of promotion etc.

8. Annexure-A7 is a copy of order whereby his services were put under suspension. On having found a text message and audio clip viralled in social media/whatsapp on 07.09.2019, the delinquent-constable was suspended on 08.09.2019. *Vide* Annexure-A8, suspension of the petitioner was revoked on 02.10.2019. A fact finding inquiry/preliminary inquiry was

conducted by Sri M.C. Joshi, Deputy Superintendent of Police, Bageshwar, who submitted his report to Superintendent of Police, Bageshwar on 26.01.2020 (Annexure-A9). Apart from the statements of other police officials, statements of petitioner was also recorded during preliminary inquiry, by Deputy Superintendent of Police, Bageshwar. The allegations levelled against the delinquent-constable were, *prima-facie*, found to be true.

9. C.A./W.S. has been filed on behalf of the respondent department, justifying the departmental action for petitioner's involvement in illegal gravel mining activities. The Tribunal does not think it necessary to reproduce the averments of C.A./W.S., for they are already part of record.

10. Rejoinder affidavit has been filed by the petitioner in support of his claim petition, contradicting the facts/allegations mentioned in the C.A./W.S.

11. Ld. A.P.O. submitted that the orders impugned do not warrant any interference and the Tribunal 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.

* * *

12. 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.”

[Emphasis supplied]

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.

13. Discipline is the foundation of every 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.

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

15. The terms 'misconduct' or 'misbehaviour' have 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.

16. 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. The term 'misconduct' usually implies an act done willfully with a wrong intention. So dereliction of or deviation from duty cannot be excused.

17. 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.

* * *

18. 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 the Subordinate Ranks (Punishment & Appeal) Rules of 1991 are valid and *intra vires*. Censure entry, therefore, can be awarded.

19. 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 the Subordinate Ranks (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."

20. **The procedure laid down in sub-sub (2) of Rule 14 of the Rules of 1991**, is as below:

"(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."

[Emphasis supplied]

21. 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.*

22. The petitioner has been awarded 'censure entry' for his misconduct. What is the extent of Court's power of judicial review on administrative action? This question has been replied by Hon'ble Supreme Court, in para 24 of the decision of *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, in the following words:

"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."

23. 'Judicial review of the administrative action', therefore, 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'.

24. **Show cause notice was given to the delinquent constable *vide* order dated 23.03.2020 (of S.P., Bageshwar). The imputation was that**

when the delinquent constable was posted in P.S. Kotwali, Bageshwar, then, on 07.09.2019, a text message and audio clip was viralled against him in social media. A preliminary inquiry was conducted into the incident by Circle Officer (C.O.), Sri Mahesh Chandra Joshi. The C.O./Inquiry Officer found that the delinquent constable was in contact with mining mafia, Tara Chandra Chaube, who was involved in illegal gravel mining. The audio clip was made viral by Sri Tara Chandra, in which, there was a conversation between delinquent constable and Tara Chandra for release of heavy vehicle, loaded with illegal gravel. A criminal case was already registered against the mining mafia. The image of the police was tarnished, when text message showing conversation between them was made viral in social media. It is misconduct on the part of the delinquent-petitioner.

25. A copy of preliminary inquiry report was sent to the petitioner along with the show cause notice, asking him to submit his explanation within 15 days of the receipt of notice. The notice was given to the delinquent-constable to show as to why 'censure entry' be not recorded in his Character Roll.

26. Draft censure entry for the year 2020 was also sent to the delinquent constable along with the show cause notice.

27. The reply was given by the delinquent-petitioner on 07.04.2020 (copy Annexure-A16). In his reply (Annexure-A16), the delinquent petitioner denied the allegations levelled against him. He also stated that the complainant/Tara Chandra is a man of criminal antecedents, against whom criminal cases have been registered. He deals in tent business. The police has a duty to prevent the crimes and therefore, they (Police) come in contact with the public to elicit information in favour of police administration. According to the petitioner, there is no evidence against him, even Tara Chandra did not furnish any proof against him. The petitioner also stated that he was not present on the spot, as he was on C.L. on that date. He is also not empowered to release the vehicle.

Whenever any programme was arranged in or under the jurisdiction of the police station, the services of Tara Chandra for arranging chairs, tent etc. were taken.

28. It is the submission of learned A.P.O. that, assuming for the sake of arguments, the petitioner was on leave on that date, it is not the case of the department that the delinquent constable was present on the spot. It is the case of the department that he had conversation with Tara Chandra Chaube, on mobile phone, who sought favour from him for getting the vehicle loaded with gravel released.

29. It is true that there is no allegation against the petitioner that he got the vehicle released. It is also not the imputation against him that he promised to get the vehicle released. The conversation between the delinquent constable and mining mafia was regarding release of truck loaded with gravel. This Tribunal is not deciding a criminal case, in which the standard of proof is, 'proof beyond reasonable doubt'. Standard of proof, in departmental proceedings is, 'preponderance of probability'. Here the evidence against the petitioner is text message and audio clip, depicting conversation between the delinquent constable and mining mafia. Preliminary inquiry report was supplied to the petitioner mentioning the details. No doubt, the police has to come in contact with the public to elicit information for maintaining law and order, but someone asking for a favour, for release of truck loaded with gravel, casts doubt on the integrity of the person from whom favour is sought. Frequent personal conversation by a police official with a person of criminal antecedents casts doubt on the integrity of such police official. Preliminary inquiry was conducted by a senior police officer. Why would he submit a wrong report against his subordinate police official? During preliminary inquiry, the C.O. has taken the statements of persons concerned, including delinquent constable. What else is required to prove a case of minor penalty, like censure, against a Govt. Servant? It is not a case of major penalty, in which the charge sheet was required to be

issued against the delinquent. The procedure required under Rule 14(2) of the Rules of 1991 has been adopted with precision.

30. There are limitations on judicial intervention. The Tribunal can intervene only when due procedure has not been followed, which has been followed in the instant case. The Tribunal can intervene when it is the case of no evidence, which is available in the instant case. The Tribunal can also intervene when, in the given set of facts, no reasonable prudent person will believe the imputations against the delinquent Govt. Servant to be true, which is also not so in the present case.

31. Moreover, there is a saying that 'Caesar's wife must be above suspicion'. Integrity of a public servant should be above board. In current scenario, the same may not be true, but the question is, if moral-ethical standard of government servants is deteriorating day-by-day, should not any effort be made to prevent the same? Should we also adopt '*Chalta hai*' attitude. The Courts and Tribunals are saviours of democracy. The delinquent constable here may not be blamed too much, for, the imputations levelled and proved against him are not of 'serious' nature. The imputation is not that he was taking illegal gratification, and was caught red handed. The imputation is not that he gave an assurance to mining mafia that he will get the vehicle released. Had text message and audio clip not been viralled by Tara Chandra, probably, the incident would not have come to light.

32. Every person is easily influenced by the behavioural pattern of the society. Asking for favours is not uncommon these days. Instant case is only a tip of the iceberg. A good law cannot be permitted to become an obsolete law simply because good law has not been able to deliver the goods. U.P. Govt. Servants Conduct Rules, 1956 (and now Uttarakhand Rules, 2003) cannot be repealed simply because they have failed to achieve their objectives. Nowadays, public has gathered a feeling that Rules of 1956 (and corresponding Rules of 2003) are being observed by breach. If there is rampant corruption in the society, efforts should be

made to prevent the same, and not to repeal the Prevention of Corruption Act itself. 'Rule of Law' is the symbol of organized society. A public servant should uphold the Constitution and the laws. The Courts and Tribunals cannot close their eyes. Such incidents cannot be swept under the carpet, under the pretext that such things occur in 'normal course'.

33. Why the imputations were not levelled against other police constables? Why Tara Chandra did not level allegations against others? It may be true that when Tara Chandra was unable to meet the requirements of delinquent constable, he, being a person in public domain, chose to viral the text message and audio clip. The police department, in its wisdom, chose to get the fact inquired by the C.O. The delinquent petitioner placed his case before the C.O., who found the delinquent guilty while submitting the preliminary inquiry report. The show cause notice was given to the delinquent constable by S.P. Bageshwar, with draft censure entry. S.P. Bageshwar was not satisfied with the reply of the delinquent petitioner, and the result is 'censure entry' against the petitioner. Even the appellate authority did not interfere with the decision of the disciplinary authority by a reasoned order.

34. S.P., Bageshwar directed that censure entry be awarded in the Character Roll of the petitioner, for the year, 2020, as below:

Constable CP Birendra Singh Gaira was in contact with Tara Chandra Chaube, who was involved in illegal gravel mining activities. Tara Chandra Chaube got audio clip viralled. Such audio clip showed conversation between Constable 119 CP Birendra Singh Gaira and Tara Chandra Chaube. The conversation between them for releasing the heavy vehicle loaded with illegal gravel was confirmed. Constable was in contact with mining mafia. The Constable was in touch and in conversation with mining mafia, Tara Chandra Chaube, which (act of the Constable) tarnished the image of the police in the eyes of the public. It was an act of gross carelessness and indifference towards his duties,

which is clearly indicative of tarnishing the image of the police in the public. Such an act of the Constable is 'censured'.

(The above is not the exact translation. It only conveys meaning).

35. Learned Counsel for the petitioner submitted a catena of decisions before this Tribunal to show that the petitioner is innocent and the 'censure entry' awarded to him should be interfered with. In all humility, this Tribunal is of the view that imputations against the petitioner are unambiguous. The decisions cited by the learned Counsel for the petitioner, mostly, relate to major penalties, in which the procedure followed by the inquiry officer was on much-much higher pedestal and on different footing. In such minor penalty cases, the only requirement of law is that a show cause notice should be given, expecting a reply from the delinquent/subordinate police official, and on the basis of such reply and material, if any, thus collected, either the delinquent should be exonerated or he should be punished with any one of the minor penalties, which has been done in the instant case. Additional precaution has been taken in the instant case by holding a preliminary inquiry, which, otherwise, was not necessary. It was in the nature of a fact finding inquiry. As has been mentioned above that the C.O., while conducting preliminary inquiry, has gone into the details of the incident, which was not for releasing the truck loaded with gravel, but on conversation between the delinquent constable and mining mafia, who indirectly sought a favour for releasing the truck, which, when viralled, tarnished the image of the police in the eyes of the public and thereby the petitioner was 'censured' for misconduct. There is a thin line of difference between those who are caught, and those who go scot free. If somebody is caught and others go scot free, then those who are caught, cannot take a plea that since others, who committed the same misconduct, were not indicted therefore, those who are caught should also be allowed to go free. Such excuse, in the opinion of this Tribunal, is not available to anyone. The object of this Tribunal is not to sermonize the government servants, but only to impress upon them that there is a set of forgotten Rules, by the name of 'U.P.

Government servants Conduct Rules', which Rules of 1956 have been rewritten by the State of Uttarakhand, in the year 2003, which should be remembered by all. If some of the government servants are not adhering to such rules, the same does not mean that all government servants should be permitted to violate the same with impunity.

36. Reliance has been placed upon a decision, rendered by Hon'ble Apex Court in *Shri B.D.Gupta vs. State of Haryana (1973)3 SCC 149*, to argue that the petitioner was not given reasonable opportunity to the show cause notice, preceding 'censure entry' and withholding payment of any sum in excess of subsistence allowance is liable to be struck down. The Tribunal shall consider the second limb of argument of learned Counsel for the petitioner subsequently. So far as first argument is concerned, it is culled out from the record that the petitioner was given reasonable opportunity to the show cause notice. Petitioner also replied to such notice, and on the basis of his reply, censure entry was directed to be awarded to him. A copy of preliminary inquiry report was supplied to him along with show cause notice, to which petitioner replied. Although S.P., Bageshwar should have passed an elaborate order while awarding censure entry, but the fact remains that no prejudice has been caused to the petitioner, if the first order impugned (Annexure-A2) is not happily worded. The order of disciplinary authority was assailed by the petitioner before the appellate authority, who has passed a detailed and reasoned order while dismissing the departmental appeal.

Departmental proceedings were started against *Shri B.D.Gupta (supra)* on the charges of illegal gratification. The procedure of major punishment was initiated against him. In the instant case, show cause notice was given to the petitioner under the Rules of 1991, procedure for minor penalty was initiated, and after the petitioner submitted his reply to the show cause notice, censure entry was awarded to him. Although the principles of law have universal application, but the context and magnitude of the charges in *Shri B.D.Gupta's* case were on different footing.

This Tribunal has already set out the contents of show cause notice and censure entry, in one of the foregoing paragraphs of this judgment. There is no ambiguity in the show cause notice and the first impugned order (Annexure-A2) awarding censure entry to the petitioner. The Tribunal does not see any reason to infer that if the order of S.P., Bageshwar is not happily worded, the same has resulted in miscarriage of justice or has caused any prejudice to the petitioner. The appellate authority has passed a detailed order, and has dealt with every substantial point, which was raised by the appellant in the departmental appeal.

37. A reference of *Surath Chandra Chakrabarty vs. State of West Bengal*, 1970(3) SCC 548, has been given by learned Counsel for the petitioner on Civil Services (Classification, Control and Appeal) Rules, in which the charges were found to be vague and indefinite. The statement of allegations to delinquent servant were not supplied to him, despite request. The procedure laid down in Rule 55 was not followed. In the instant case, the facts are entirely on different pedestal. The imputations are clear. Preliminary inquiry report was supplied to the delinquent along with the show cause notice, which was replied to by him. Disciplinary authority passed an order which was affirmed by the appellate authority by a reasoned order.

38. In *State of Uttar Pradesh vs. Mohd. Sharif (Dead) through L.Rs.* (1982) 2 SCC 376, the charge sheet was served on the delinquent employee not indicating with sufficient particularity, the date, time and location of the incident, which constituted the charge of misconduct. Copies of statement of witnesses recorded during preliminary inquiry were not furnished to him. In the circumstances, Hon'ble Supreme Court found that reasonable opportunity of defence was not afforded to the delinquent. The facts of present case are clearly distinguishable from the facts of *Mohd. Sharif's* case (*supra*). Reasonable opportunity of defence was given to the delinquent constable in the instant case.

39. The decision of *Sawai Singh vs. State of Rajasthan (1986) 3 SCC 454*, has also been referred to by learned Counsel for the petitioner. In *Sawai Singh's* decision, charges were found to be vague and evidence not sufficient to connect the charged officer with the alleged misconduct and therefore, the Hon'ble Apex Court held that departmental inquiry was vitiated by non-compliance with the principles of natural justice. Again it was a case of major penalty, of removal from service, the procedure of which is entirely different. In the instant case, there is no violation of principles of natural justice and due procedure of law has been followed while awarding minor penalty.

40. Limited scope of judicial review has also been highlighted by Hon'ble Supreme Court in *Johri Mal's case, (1974) 4 SCC 3*, as below:

"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 facts 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.

41. 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.

42. 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, as has been mentioned above, 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.

43. The 'show cause notice' (Annexure-A1) and orders under challenge (Annexures-A2 & A5) are, therefore, neither illegal nor irrational, nor do they suffer from procedural impropriety. No interference is called for in the same.

* * *

44. Here, the allegation against the petitioner is of tarnishing the image of the police in the estimation of public, by his conversation and coming in contact with a mining mafia.

45. It is indeed a misconduct, but the magnitude of such misconduct is not that large, as would have ordinarily given occasion to

the department to award major penalty, and it is on account of this reason that limited inference is called for in Annexure-A4. This Tribunal is of the view that such part of the impugned order dated 30.07.2020 (Annexure-A4) whereby the appellant was informed that he shall not be allowed anything more than what had already been paid to him and subsistence allowance, should be interfered with, for the reasons assigned in the following paragraphs.

46. Since we have been driven to discuss Annexure-A4, therefore, it will be apposite to reproduce Para 54-B, Financial Hand Book (Vol. 2 to 4), herein below for convenience:

“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).....

[*Emphasis supplied*]

47. Order in Annexure-A4 was although passed, after giving opportunity to the delinquent to submit reply to show cause notice, but admittedly, the petitioner did not file such reply. An ex-parte order was passed. The Tribunal finds a representation dated 19.08.2020, on the file, which was addressed by the petitioner to S.P., Bageshwar. Learned Counsel for the petitioner informed the Tribunal that the petitioner could not reply to the show cause notice of S.P., Bageshwar and, therefore, order dated 30.07.2020 (Annexure-A4) was passed. On a query of the Tribunal, learned Counsel for the petitioner replied that since the petitioner had gone into deep mental agony, therefore, he could not submit his reply on regularization of suspension period, on time. It may be noted here that show cause notice was issued to the petitioner on 11.06.2020 regarding regularization of suspension period from,

08.09.2019 to 02.10.2019 (25 days), but he failed to reply the same and accordingly, an ex-parte order dated 30.07.2020 (Annexure-A4) was passed.

48. In Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, the following has been provided:

“4. Suspension.—(1) A Government Servant against whose conduct an inquiry is contemplated or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the Appointing Authority:

Provided that suspension should not be resorted to unless the allegations against the Government Servant are so serious that in the event of their being established may ordinarily warrant major penalty.”

[Emphasis supplied]

It will be apposite to reproduce Rule 17 of the Rules of 1991 also herein below for convenience:

“17. Suspension-(1) (a) A Police Officer against whose conduct an enquiry is contemplated, or is proceeding, may be placed under suspension pending the conclusion of the enquiry in the discretion of the appointing authority or by any other authority not below the rank of Superintendent of Police, authorized by him in this behalf.”

49. It is the submission of learned Counsel for the petitioner that a police official can be placed under suspension only if departmental inquiry on the specific charges is either pending or contemplated against him. Since procedure for departmental inquiry is only meant for major penalty under Rule 14(1) and not for Rule 14(2) regarding minor penalty, therefore, the suspension period, in the instant case, can be regularized [which has been done]. According to learned Counsel, the petitioner is entitled to full salary and suspension period is required to be treated ‘on duty’.

50. A reference of instructions issued by DoP&T, Govt. of India, has also been given by learned Counsel for the petitioner. The instructions read as below:

“Where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR (54-B) and the employee concerned should, therefore, be paid full pay and allowance for the period of suspension by passing a suitable order under FR 54-B.”

51. We are on a different aspect, and such aspect was also put to learned A.P.O. during arguments. We propose to deal with the issue in this way- when a text message and audio clip were viralled against the delinquent constable, the question is, were the contents of the message and conversation, of such a serious nature that, in the event of those imputations having been proved, they would have attracted major penalty? We have been observing repeatedly that it was not a case of taking illegal gratification. The truck loaded with illegal mining gravel was not released at the instance of the delinquent constable, even if he would have exercised his influence, in securing its release. It is a case of petitioner's conversation with a mining mafia, who used to supply tent etc. to the police while arranging official functions, regarding release of a truck. No doubt, when the text message and audio clip were viralled, the same must have tarnished the image of the police in the opinion of the public, and is, indeed a misconduct, but certainly, the magnitude of such misconduct was not such, as would have attracted major penalty. If major penalty could not have been given, in the event of allegation being established, why suspension?

52. The Tribunal is although not going into the legality of the suspension of the petitioner, for the same was the discretion of the appointing authority, but, is certainly of the considered view that a fresh order in terms of Para 54-B of FHB needs to be passed after considering representation dated 19.09.2020 of the petitioner, after giving one more

opportunity of hearing to him, in the peculiar facts of the case. The Tribunal has already indicated above that the petitioner could not reply to show cause notice dated 11.06.2020 regarding regularization of suspension period from 08.09.2019 to 02.10.2019 and, therefore, the respondent No.4, S.P., Bageshwar, passed the impugned order dated 30.07.2020 (Annexure-A4). Although the suspension period of the petitioner was regularized, but it was mentioned therein that petitioner shall not be allowed anything more than what has already been paid to him as subsistence allowance for the period 08.09.2019-02.10.2019.

Such direction of the Tribunal is based on simple logic. No doubt, it is a case of misconduct, but the question is, were the contents of text message and conversation, of such a serious nature that, in the event of imputations being established, they would have ordinarily attracted major penalty? If not, why suspension was resorted to? Procedure of major penalty was not adopted. A preliminary inquiry, which is a fact-finding inquiry, was initiated. Thereafter, procedure for minor penalty was followed, and a minor penalty (censure) was awarded to the petitioner. In this way, there appears to be sufficient ground for giving full salary to the petitioner during suspension period, but we are afraid, the Tribunal cannot do so, for the same can only be done, by S.P., Bageshwar, it at all, he or she thinks that the same should be done in terms of Para 54-B of Financial Hand Book.

53. It is on account of this reason that a part of the order impugned dated 30.07.2020 (Annexure-A4) whereby the petitioner was informed that he shall not be allowed anything more than what had already been paid to him as subsistence allowance for the period 08.09.2019-02.10.2019, is hereby set aside. Such part of Annexure-A4, having been interfered with, the matter is remanded to S.P., Bageshwar (Respondent No.4) for passing a fresh order as per Para 54-B of Financial Hand Book, after giving one more opportunity of hearing to the petitioner.

54. The net effect, therefore, would be that, whereas order dated 11.06.2020 (Annexure-A2), passed by learned disciplinary authority, as affirmed by learned appellate authority on 20.07.2020 (Annexure-A5) are upheld, this Tribunal interferes with only such part of the order dated 30.07.2020 (Annexure-A4), whereby the petitioner was informed that he shall not be allowed anything more than what had already been paid to him as subsistence allowance, during suspension period, and is, accordingly, set aside, and for that, the matter is remanded with a direction to Respondent No.4, S.P., Bageshwar, to pass a fresh order, as per Para 54-B of the Financial Hand Book, after giving one more opportunity of hearing to the petitioner, at an earliest possible and without unreasonable delay.

55. Claim petition is partly dismissed and partly allowed, as above.
No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 09, 2021
DEHRADUN.
KNP