

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

Through audio conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 83/NB/SB/2020

Constable 229 Rajesh Singh Rana, Presently posted as Constable in Police Station Kotwali Tanakpur, District Champawat.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Dehradun, Uttarakhand.
2. Director General of Police, Government of Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Kumaon Region, Nainital, District Nainital.
4. Superintendent of Police, Champawat, District Champawat.
5. Deputy Superintendent of Police, Tanakpur, District Champawat.
6. S.H.O., Kotwali Tanakpur, District Champawat.

.....Respondents

Present: Sri D.K. Joshi, Advocate for the Petitioner.
Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 15, 2021

Justice U.C.Dhyani (Oral)

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

1. *To quash the inquiry report dated 23.03.2020, impugned order dated 17.04.2020, order dated 12.05.2020 and order dated 11.06.2020 (Annexure no. A1, Annexure no. A2, Annexure no. A3 and Annexure no. A4).*
2. *To direct the respondents to expunge the petitioner of adverse entry and further directing the respondents to remove the censure entry awarded to the petitioner from his service record.*
3. *To direct the respondents to grant the benefit of pay scale, increment etc. by counting the suspension period of the petitioner i.e. 20.03.2020 to 05.04.2020.*

2.1 Brief facts, giving rise to the present claim petition are, as follows:

2.2 When petitioner was posted in Police Station Kotwali, Tanakpur, district Champawat, he received suspension order dated 20.03.2020, issued by Respondent no. 4. His services were put under suspension, alleging that on 10.03.2020, on the occasion of Holi Festival, petitioner uttered words intended to insult modesty of a Lady Constable, to her annoyance. Show cause notice dated 20.03.2020 was issued to him (Annexure-A5). *Vide* order dated 06.04.2020, suspension of the petitioner was revoked by Respondent no. 4 (Annexure-A6). Respondent no. 4 issued show cause notice dated 04.04.2020 (Annexure-A7). Another show cause notice dated 08.04.2020 was issued by Respondent no. 4 whereby petitioner was asked to explain within 15 days, as to why the salary and other allowances, than those were paid to him during suspension period from 20.03.2020 to 05.04.2020 be not withheld (Annexure-A8). Petitioner replied to the show cause notices dated 04.04.2020 and 08.04.2020. Inquiry was conducted in the meanwhile. The inquiry report dated 23.03.2020 (Annexure-A1) was submitted by Sri Bipin Chandra Pant, Deputy Superintendent of Police, Tanakpur, district Champawat.

2.3 Petitioner's contention is that punishment order dated 17.04.2020 has been given by Respondent no. 4 without considering the actual facts. A fresh show cause notice dated 30.04.2020 was issued by Respondent no. 4 (Annexure-A9). Petitioner replied to such show cause notice denying the allegations. Respondent no. 4 *vide* order dated 12.05.2020 denied the benefit of suspension period of the petitioner (Annexure-A3). Consequential order was passed on 12.05.2020 whereby subsistence allowance only was permitted during suspension period. However, suspension period was to be counted for the purposes of other service benefits. Meaning thereby, suspension period i.e. 20.03.2020 to 05.04.2020 was to be counted for the purposes of benefit of leave, increments, promotion and superannuation. No allowance except subsistence allowance was permitted to him during suspension period. Copy of order dated 12.05.2020 is Annexure-A3.

2.4 Petitioner filed departmental appeal before Respondent no. 3 for setting aside the order dated 17.04.2020 without getting success [Copy of memo of appeal Annexure-A10].

2.5 It has been indicated in the claim petition that lady Constable has not whispered anything against the petitioner. The inquiry officer must be an

independent person. Since Sri Bipin Chandra Pant, D.S.P., was not an independent person, therefore, inquiry is vitiated.

2.6 Petitioner did not use any abusive language against lady Constable with intention to hurt her. It has also been pleaded in the petition that something unusual happened on the occasion of Holi celebration. He was later on pardoned by the lady Constable. Department appeal filed before Respondent no. 3 was decided against the petitioner on 11.06.2020, which was received by the petitioner on 29.06.2020. Faced with no other alternative, petitioner filed present claim petition.

2.7 Petitioner has challenged inquiry report dated 23.03.2020; order dated 17.04.2020 whereby petitioner was awarded censure entry; impugned order dated 11.06.2020 whereby his departmental appeal against the impugned order dated 17.04.2020 was dismissed; order dated 12.05.2020 whereby it was directed that petitioner would not be allowed anything else except the subsistence allowance during suspension period but the suspension period was included for the purposes of benefits of increments, promotion etc. of the petitioner.

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

4. 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.

5. 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, as also the order, restricting his salary to the extent of subsistence allowance during suspension period. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

* * *

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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. In WP (S/B) No. 86 of 2021, Nand Kishore Gwari vs. State of Uttarakhand and others, the Hon'ble High Court of Uttarakhand vide judgment and order dated 25.02.2021 did not interfere with the order, whereby the delinquent police official was awarded censure entry.

* * *

13. 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.”

14. 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]

15. 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.*

16. 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."

17. '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'. In the instant case, censure entry has been awarded to the delinquent petitioner for indecent behaviour with a lady Constable. The punishment, therefore, cannot be said to be disproportionate.

18. A show cause notice along with draft censure entry was given to the delinquent petitioner on 04.04.2020. The imputation against the petitioner was that on 10.03.2020, on the occasion of Holi, when the petitioner was posted in Police Station, Tanakpur, he used indecent language against a Lady Constable, who was posted on RT Set duty. Petitioner intended to insult modesty of woman and used abusive language. In other words, petitioner used abusive language and insulted the modesty of a woman, which is gross carelessness and dereliction of duty by a member of disciplined force. Such an act of delinquent petitioner was 'censured'. When petitioner replied to the show cause notice, the explanation was not found satisfactory by S.P, Champawat. Such order dated 17.04.2020 was challenged by the petitioner by filing departmental appeal before D.I.G., who, after giving a detailed judgment, dismissed the appeal on 11.06.2020 citing cogent reasons.

19. Simultaneously, another show cause notice was given to the delinquent petitioner on 30.04.2020 to explain within 15 days as to why salary for the suspension period *i.e.* from 20.03.2020 to 05.04.2020 be not withheld except the subsistence allowance, which was given to him during suspension period. Petitioner replied to the same but the disciplinary authority was not satisfied with the explanation and therefore, S.P., Champawat *vide* order dated 17.04.2020 passed an order to this effect that although suspension period shall have no effect towards leave, increments, promotion, retirement etc., but the petitioner shall not be given any other wages except the subsistence allowance, which was given during the suspension period *i.e.* 20.03.2020 to 05.04.2020. Such order appears to have been passed under Para 54-B FHB (Vol. 2 to 4), which is reproduced 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*]

20. **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.**

21. Much emphasis has been laid by learned Counsel for the petitioner that the inquiry officer must be an independent person. It goes without saying that the inquiry officer must be an independent person. But what does the petitioner gain, advancing such an argument? There is no iota of evidence on record to suggest that the inquiry officer was not independent person. Whereas, petitioner is a Constable, the inquiry officer was a Deputy Superintendent of Police.

21.1 According to sub rule (8) of Rule 7 of the Uttarakhand Govt. Servants (Discipline and Appeal), (Amendment) Rules, 2010, **the Disciplinary Authority may, himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.**

21.2 The inquiry officer was definitely two stages above the rank of the charged government servant.

21.3 The fact that a lady Constable pardoned the delinquent petitioner is indicative of the fact that something untowards must have happened. Since the petitioner was pardoned by the lady Constable, therefore, probably such fact being a mitigating factor, only minor punishment was given to the petitioner, whereas, ordinarily in such cases, the misconduct entails major punishment.

22. 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 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."

23. 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 or restricting his salary to the subsistence allowance during the suspension period. No legal infirmity has successfully been pointed out in the same.

24. 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.

25. 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:”

25.1 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.”

25.2 The allegations against the petitioner were serious. If such allegations are established, they might ordinarily warrant major penalty. It is different matter that, in the present case, the petitioner was let off with minor punishment only.

26. There is no infirmity in the orders of Disciplinary Authority and Appellate Authority. These orders are, accordingly, affirmed.

27. Orders impugned do not call for any interference. The claim petition, therefore, fails and is dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 15, 2021
DEHRADUN
KNP