

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL DEHRADUN  
AT BENCH NAINITAL**

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

**Claim Petition No. 08/N.B./2005**

Jeewan Chandra Mishra S/o Sri P.B. Mishra, R/o Village Sanuvdyar, District Bageshwar.

.....Petitioner

**Versus.**

1. State of Uttaranchal through Secretary, Home & Civil Police, State Government of Uttaranchal, Dehradun.
2. The Director General of Police, Uttaranchal, Dehradun.
3. The Inspector General of Police, Kumaon Region, Nainital.
4. The Senior Superintendent of Police, Udham Singh Nagar.

.....Respondents.

Present: Sri M.C.Pant, Ld. Counsel  
for the petitioner.

Sri V.P.Devrani, Ld. A.P.O.  
for the respondents.

**JUDGMENT**

**DATED: APRIL 22, 2013.**

1. Present claim petition has been filed for the following relief:-  
“That in view of the facts mentioned above the petitioner prays for following relief:-  
(I) That by an order, the orders dated 27<sup>th</sup> October 2004, 27<sup>th</sup> May 2004 and 3<sup>rd</sup> December 2003 be set aside.

- (II) That the respondents be directed to consider the case of the petitioner for promotion ignoring the censure entry on the integrity of the petitioner for the year 2002.
- (III) Any other relief deems just and proper in the facts and circumstances of the case be allowed to the petitioner.
- (IV) Cost of the petition be allowed in favour of the petitioner.”
2. It is admitted case to the parties that the petitioner was posted as Constable Clerk in the year 2002 at Police Station Jaspur, District Udham Singh Nagar. That, certain complaints were received against the petitioner that he had demanded some money for releasing Sri Lekhraj Singh and Sri Makhan Singh on bail. Thereupon, a preliminary enquiry was conducted by Sri K.R.Bhatt, Circle Officer, Udham Singh Nagar at the behest of the D.I.G., Kumaun Range, Nainital. The Circle Officer, while concluding his report, had opined that there is a prima facie case against the petitioner that he had demanded Rs.500/- from Sri Lekhraj Singh and Sri Makhan Singh for releasing them on bail.
3. After receipt of the said report, a show cause notice was issued by the Respondent No.4 on 15.9.2003 by which it was informed that he had taken Rs. 500/- from Sri Lekhraj Singh and Sri Makhan Singh for releasing them on bail and further it was also indicated in the said notice that as to why his integrity for the year 2002 should not be withheld and he was asked to explain and respond about the above facts within the stipulated period. The petitioner also replied on 7.10.2003 to the show cause notice in which he has stated about his ignorance and denied all the allegations made against him.
4. Thereafter, the petitioner was awarded an adverse entry withholding integrity for the year 2002. The petitioner preferred an appeal against that order, which was rejected by the Respondent No.3. Again the petitioner preferred revision, which was also dismissed by the

Revisional authority. Feeling aggrieved by the said orders, he has preferred this claim petition.

5. The petitioner has alleged the impugned orders passed by the respondents reveal that neither adequate opportunity of hearing was given to the petitioner nor the statement of the relevant witnesses were taken by the preliminary enquiry officer. The conclusions are based on malafide and without application of mind.
6. The respondents have contested the petition and alleged in their written statement that proper opportunity was given to the petitioner and there was no malafide on the part of the respondents while awarding the minor punishment to the petitioner. The punishing authority, the appellate authority and the revisional authority had applied their mind while passing the impugned orders. At the last respondents have prayed that petition of the petitioner may be dismissed.
7. Ld. Counsel for the petitioner contended that no proper opportunity has been given to the petitioner while the preliminary enquiry was conducted against the petitioner. The petitioner was never given an opportunity to cross-examine the witnesses recorded by the preliminary enquiry officer, namely, Circle Officer Rudrapur and the enquiry had been conducted ex parte without calling him to participate in the enquiry. It was further contended that during the preliminary enquiry, the statement of Constables Satveer Singh, Anil Kumar, C.M.O. Jaspur had not been recorded by the preliminary enquiry officer. Smt. Saroj Kumari, Ram Avtar, Chaukhai Singh and Chandra Pal Singh had not named him as a culprit of the misconduct. In the application given by Sri Lekhraj Singh and Sri Makhan Singh, the name of the petitioner had not been mentioned. Ld. Counsel for the petitioner further contended that the evidence did not disclose a prima facie misconduct against the petitioner for which he has been punished. The said punishment order

is actuated by malafide and the authorities did not apply their mind while passing the impugned orders. They have not considered the reply of the petitioner which was submitted by him to the punishing authority. The Ld. A.P.O. appearing on behalf of State contended that a preliminary enquiry is usually held to determine whether prima facie case for a formal departmental enquiry is made out and the preliminary enquiry of this nature is held in case of a civil servant holding a civil post and it must not be confused with the regular departmental enquiry (which usually follows after a preliminary enquiry).

8. The first and the foremost question arises whether the petitioner was entitled to get the participation in the preliminary enquiry and whether the principle of natural justice had been violated. The principle of natural justice is applicable only in the cases where regular departmental enquiry is initiated against the delinquent civil servant. An order by the competent authority to the prejudice of a person in derogation of his vested rights, may be made only in accordance with the basic rules of justice and fair play. The competent authority is however under a duty to give the person, against whom an enquiry is held, an opportunity to set up his version of defence and opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. It is also well settled principle of law that if any departmental enquiry is held, the person must be informed of the case he called upon to meet and the evidence in support thereof. It is one of the fundamental rules of our Constitution setup that every citizen is protected against the exercise of arbitrary authority by the State or by its officer. Duty to act judicially is implicit in the exercise of such power. It is also a settled position of law that the rules of natural justice can operate only in the areas not covered by any law validly made. Whether principle of natural justice has to be adhered

to or not, is to be seen in the facts and circumstances of each case. Under Article 311 a regular departmental enquiry is conducted that the above principle of natural justice would be applicable. But in case of a preliminary enquiry, the principle of natural justice will not be applicable.

9. On receipt of a complaint or the facts coming otherwise to the knowledge of the authority competent to take disciplinary action, it is open to him to make such preliminary enquiry as he deems proper to ascertain the prima facie truth of the allegations and evidence available in this respect. For such an enquiry hardly any rule exists but such procedure is implicit in the very nature of the case. The preliminary enquiry may be *ex parte* or it would be permissible to interrogate the delinquent official. Such preliminary enquiry is not only permissible but is very desirable step because the civil servant should not be charged with misconduct recklessly and without reason. Therefore, as far as a preliminary enquiry is concerned, there is no question of its being governed by Article 311 (2) of the Constitution of India. For that, enquiry is really for the satisfaction of the punishing authority to decide whether punitive action should be taken under the rules in case of civil servant to which he had a right. In short, a preliminary enquiry is for the purpose of collecting of facts in regard to the conduct and work of the Government Servant in which he may or may not be associated so that the authority concerned may decide whether or not to initiate the enquiry against the civil servant under Article 311 for inflicting the punishment prescribed under the rules. Thus, preliminary enquiry is usually held to determine whether prima facie case for departmental enquiry is made out or not; it is very necessary that these two different enquiries should not be confused in the case of preliminary enquiry.

There is no need of calling the delinquent official to cross examine the witnesses examined in the preliminary enquiry.

10. In the present case the preliminary enquiry was conducted on the receipt of the complaint and in the preliminary enquiry a prima facie misconduct was found against the petitioner so he was given a notice. The notice clearly alleges that the petitioner had taken a sum of Rs. 500/- from Sri Lekhraj Singh and Sri Makhan Singh for releasing them on bail vide Annexure-4 to the petition. Thereafter, the proposed minor punishment of withholding the integrity for the year 2002 has also been communicated by the said notice. It is further indicated in the notice that if he had to make any inspection of the records, he can inspect the same within the stipulated time. he was further noticed that he may submit his reply within the stipulated period. Pursuant to the said notice, the petitioner has replied to the punishing authority and made his detailed submissions in his reply . Apart from that the petitioner never inspected the record of the preliminary enquiry. After considering the reply of the petitioner, the punishing authority had decided to award the petitioner only a punishment of awarding an entry withholding the integrity for the year 2002 as such sufficient notice was given to him in accordance with the provisions of the law. As such principle of natural justice has not been violated in the instant case.
11. The second point which has been raised by the Ld. Counsel for the petitioner that the order is based on malafide. It is settled position of law that if malafides are pleaded in the pleadings, the details of the malafides should be pleaded in the pleading; merely stating a fact that the order is based on malafide, is not sufficient. When the malafide with its details is pleaded, then the party, against whom the malafide has been pleaded, is a necessary party. The petitioner has alleged a sweeping remark in Para 4 (i) that the order is passed by the

respondents on the basis of malafide, is not sufficient. There are three respondents, who have passed the impugned orders against the petitioner and even the petitioner has not stated in the pleadings against whom he is pleading bias or malafide. As such the plea of malafide is not maintainable.

12. The petitioner has also contended that the authorities have not applied their mind while passing the impugned orders. I have gone through all the three orders passed by the authorities. Perusal of the orders reveals that the authorities have applied their mind. Ld. Counsel for the petitioner could not demonstrate me as to how respondents have not applied their mind in passing the said orders. The orders are exhaustive and it cannot be said that the orders have been passed without application of mind.
13. The forth question which arises is, what is the scope or the power of the Court to interfere with the findings recorded by the authorities? Ld. Counsel for the petitioner contended that some of the witnesses who were necessary for the enquiry, were not recorded and he has also pointed out that the application of Sri Lekhraj Singh and Sri Makhan Singh did not indicate the name of the petitioner in their applications. He also stated that there was no evidence against the petitioner before the preliminary enquiry officer and the preliminary enquiry officer has recorded the perverse finding without based on any evidence that the petitioner had taken Rs.500/- from Sri Lekhraj Singh and Sri Makhan Singh to release them on bail. Thus, the petitioner has challenged the fact of finding recorded by the preliminary enquiry officer. He has also challenged this report before the punishing authority as well as the appellate and revisional authority. They did not agree with the petitioners contention and awarded the minor punishment. It is settled position of law, the court would not interfere with the findings arrived

at in the enquiry proceedings excepting in a case of malafide or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot reappraise the evidence like an appellate authority, so long as there is some evidence to support the conclusion arrived at by the enquiry officer, the same has to be sustained.

14. In the instant case no departmental enquiry has been initiated, only the preliminary enquiry has been conducted by the Circle Officer, Udham Singh Nagar. There is no malafide against the Circle Office. Ld. Counsel for the petitioner could not demonstrate me any malafide against the said preliminary enquiry officer. It is also settled law that there is some evidence which the appellate authority has accepted and which evidence may reasonably support the conclusion that the officer was guilty of the improper conduct, it is not the function of the Court in a petition to review the evidence and to arrive at a independent finding on the evidence. The Court may interfere where the statutory authority has acted without or in excess of his jurisdiction or where it has committed an error of law apparent on the face of the record. Where conclusion of the enquiry officer, on the very face of it is so wholly arbitrary and capricious that no reasonable person could have ever arrived at the conclusion, the Court can interfere.
15. In the instant case the enquiry officer has recorded a number of witnesses to come to the truth of the enquiry . Sri Vimal Singh S/o Sri Lekhraj Singh has stated in his statement before the preliminary enquiry officer:-

जब हम आ रहे थे तभी सिरोही जी ने हमसे 500/रु० की मांग और की, तब हमने पूछा कि ये 500/रु० किस लिये, तब उन्होंने कहा कि यह कार्यालय के लिये हैं, इन्हें दे दो । उस समय हमारे पास पैसे नहीं थे तो वह कहने लगे कि अभी



लाकर दो तो वह बड़ी मुश्किल से माने कि घर से लाकर दे देना । मैंने घर जाकर 500/रु० लिये और 50-50 के 10 नोट लगाकर कानि० क्लर्क जीवन जी को दिये फिर मैं अपने घर चला गया ।

16. As such the above statement is self explanatory and there is an evidence against the petitioner that he received a sum of Rs.500/- from the aforesaid witness. Thus, there is evidence about the above fact, as such the Court is of the view there is no perversity in the findings. I do not find any force in the contention of the Ld. Counsel for the petitioner and I am completely in agreement with the contention of the Ld. A.P.O. who appeared on behalf of State.
17. No other submission was advanced by the Ld. Counsel for the parties. In view of the above the petition has no merit and deserves to be dismissed.

#### ORDER

The claim petition is accordingly dismissed. No order as to costs.

The original record which has been received by this office, may be returned to the Ld. A.P.O. for transmitting it to the authorities concerned.

Sd/-

(JUSTICE J.C.S.RAWAT)  
CHAIRMAN

DATE: APRIL 22, 2013  
NAINITAL