

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

Present: Hon'ble Mr. Rajeev Gupta  
-----Vice Chairman (A)

**CLAIM PETITION NO.45/NB/SB/2021**

Sadik Hussain, aged about 28 years, s/o Sri Shakir Hussain, presently posted as Sub Inspector, Police Station, Bhanbhulpura, Haldwani, District Nainital.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Home Department, Dehradun.
2. Inspector General of Police, Kumaon Region, Nainital.
3. Senior Superintendent of Police, Nainital, District Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate, for the Petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents

**JUDGMENT**

**DATED: FEBRUARY 04, 2022**

This claim petition has been filed seeking the following reliefs:

*“(i) To quash the impugned order dated 11.12.2020 and order dated 22.03.2021 along with its effect and operation and after calling the entire record.*

*“(ii) To issue order or direction to expunge the adverse entry censure recorded in the service record of the applicant and grant all the service benefits or pass any other order direction which this Hon'ble Court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.*

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

2. The claim petition briefly mentions the following:

When the petitioner was posted as Sub Inspector, Betalghat, District Nainital then the respondent no. 3 directed the Additional Superintendent of Police, Haldwani District Nainital to hold an enquiry on the complaint of Mr. Amir Tomar, Advocate against the S.H.O. Rohitash Singh and the petitioner. That pursuant to the order of the respondent no. 3, the Additional Superintendent of Police, Haldwani District Nainital completed his enquiry and submitted the report on 31.12.2019 to the respondent No. 3. It is pertinent to mention here that the respondent no. 3 before appointing the enquiry officer did not serve any charge sheet on the petitioner and straightway appointed the enquiry officer for enquiring on the charges. Thus the whole disciplinary proceeding is liable to be quashed.

Pursuant to the enquiry report dated 31.12.2019, the respondent no. 3 issued a show cause notice to the petitioner on 06.06.2020 and directed him to submit his reply within 15 days. The respondent no. 3, in the show cause notice, mentioned the punishment and did not disclose his reasons for not agreeing with the opinion of the enquiry officer for taking the lenient view. The aforesaid act of the respondent no. 3 shows his pre-mind set condition that he has made his mind to award the punishment of censure to the petitioner. Thus seeking the reply of the petitioner is a futile exercise. It is relevant to mention here that aforesaid act of the disciplinary authority is against the provisions of law laid down by the Hon'ble Apex Court in case of MD. ECIL vs. B. Karunakaran and also in violation of the judgment and order of the Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015, Mahesh Chandra Gupta vs. State of Uttarakhand and others and WPSS No. 192 of 2017, Constable 51 AP Jogendra Kumar vs. State of Uttarakhand. After receiving the show cause notice, the petitioner submitted his reply to the enquiry report and denied the findings of the enquiry officer. The disciplinary authority in utter hot haste passed the

impugned order on 11.12.2020 and also ignored the suggestion of the enquiry officer. The disciplinary authority in its impugned order passed the punishment which was mentioned in show cause notice dated 06.06.2020. Feeling aggrieved by the impugned order dated 11.12.2020, the petitioner preferred statutory appeal before the respondent no. 2 through proper channel and requested the respondent no. 2 to quash the order of censure entry. Thereafter, the appellate authority without applying his mind on the legal issues raised by the petitioner, rejected the appeal on 22.03.2021 in a cursory and stereo-type manner.

Hence this petition.

3. Counter Affidavit has been filed on behalf of the respondents stating that it was found in the preliminary enquiry that in the night of 10.08.2019, the petitioner, during patrolling, caught vehicles involved in illegal mining and after he was asked by Station House Officer (SHO) of the Police Station to return to the Police Station and not to take any action against the vehicles, the petitioner returned to the Police Station and recorded his return in Report No. 42, time 23:30 hrs on 10.08.2019 but did not get any specific incident about illegal mining recorded; while it became clear from the statements of other witnesses (Constable and Constable Driver) that during patrolling on 10.08.2019, 5-6 vehicles carrying mining material were stopped and questioned and after the phone of the SHO, they left those vehicles and returned to the Police Station in the government vehicle. The petitioner neither got any incident recorded in the General Diary of the Police Station about the discussion/incident of not taking action against the vehicles involved in the illegal mining nor informed any superior officer in writing or verbally about the incident. Instead of informing superior officer about the behaviour of the SHO and lack of coordination with him, under a planned conspiracy, the petitioner saved in his mobile the audio recording of the talk with SHO on night of 10.08.2019 and after about four months, made this audio recording viral to tarnish the image of the department. In the Counter Affidavit, the

averments made in the claim petition are denied and request has been made to dismiss the claim petition.

4. Rejoinder Affidavit has been filed by the petitioner against the C.A. of the respondents, stating that the preliminary enquiry was initiated to see whether the then SHO threatened the petitioner for taking action against the 7-8 vehicles involved in the illegal mining belonging to the MLA which were caught by the petitioner and did not take any action against the illegal mining and on one another occasion handcuffing of one Tribhuwan Singh by the then SHO and misbehaving with him, on the written complaint of one Shri Amit Tomar, Advocate. Thus the whole brief history as stated in the Counter Affidavit is completely false as well as biased and an afterthought to justify the illegal punishment awarded to the petitioner to hush up the influential names involved in the illegal mining in the area. Rejoinder Affidavit, *inter-alia*, states that the enquiry officer committed a serious mistake by not examining the explanation of the petitioner that he simply shared the audio with the group of his fellow members of the police station which was a normal practice which was practiced due to the instructions of the SHO himself to share all the matters of police station with the group.

5. I have heard learned Counsel for the petitioner and learned A.P.O. and perused the record.

6. The contention of learned Counsel for the petitioner is that the respondent no. 3, before appointing the enquiry officer, did not submit any charge sheet on the petitioner and straight away appointed the enquiry officer for enquiry/ charge. He, moreover, had already made up its mind to award the punishment of censure to the petitioner as the same has been mentioned in the show cause notice. He relies upon the judgement of Hon'ble Apex Court passed in the case of M.D. ECIL vs. B. Karunakaran and judgements of Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015 "Mahesh Chandra Gupta vs. State of Uttarakhand and others" and

WPSS No. 192 of 2017 “Constable 51 AP Jogender Kumar vs. State of Uttarakhand and others”.

7. Learned A.P.O. has argued that the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal Rules), 1991 (hereinafter referred as the ‘Rules of 1991’) have been adopted in the State of Uttarakhand and Rule 14(2) of these Rules is about the procedure to be followed in the case of minor punishments and this Rule reads as under:

*“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.”*

According to the abovementioned Rule, punishment proposed is required to be mentioned in the show cause notice.

8. The Tribunal also observes that Hon’ble High Court in its recent judgment dated 25.02.2021 in Writ Petition (S/B) No. 86 of 2021, Nand Kishore Gwari vs. State of Uttarakhand & others, delivered by a Division Bench, headed by Hon’ble C.J. has found nothing wrong in the show cause notice issued under Rule 14(2) of the Rules of 1991 stating that the punishment of censure may be imposed alongwith the draft entry. The relevant extract of the above judgment of Hon’ble High Court of Uttarakhand is quoted below:

*“8. Secondly, the learned Tribunal has correctly noted the fact that if the show cause notice dated 20.09.2019 is read holistically, it merely provides an opportunity to the petitioner to place his defense before the department within a period of seven days. The part of the show cause notice quoted by the learned counsel for the petitioner, in fact, belongs to “the draft”, which has been attached with the show cause notice. The draft is of a possible punishment, which may be imposed upon the delinquent officer. The draft does not indicate, and cannot indicate, as to what would be the final and eventual outcome of the inquiry. Therefore, the contention being raised by the learned counsel for the petitioner that the department has already pre-judged the issue is bereft of any merit.”*

9. The Tribunal further observes that the judgement of the Hon’ble Apex Court in the case of M.D. ECIL vs. B.Karunakaran relied upon by the

learned Counsel for the petitioner is about the case of major punishment where it is required that the disciplinary authority should provide a copy of the inquiry report to the delinquent and provide opportunity of giving representation/ reply on the same before it arrives at its conclusion with regard to the guilt or innocence of the employee and decides to impose penalty on the delinquent. The report of the inquiry officer as referred to in the above judgement of the Hon'ble Apex Court is after charge-sheet having been issued under disciplinary proceedings of major punishment and an inquiry officer having been appointed by the disciplinary authority to inquire into those charges.

10. In the instant case, there has been no contemplation of major punishment and the enquiry report of Addl. S.P. is of preliminary enquiry, which is a simple fact finding enquiry and not an enquiry under disciplinary proceedings for major punishment. The Tribunal, therefore, finds no fault in the show cause notice issued to the petitioner (copy Annexure: A4) wherein the proposed censure entry has also been mentioned and the petitioner has been asked to submit written explanation against the facts found against him in the preliminary enquiry. A copy of the preliminary enquiry report has also been enclosed with the show cause notice.

11. Learned Counsel for the petitioner has also argued that the respondent no. 3 was not the appointing authority of the petitioner and thus he was not having the authority to award punishment to the petitioner under Section 23 of the Uttarakhand Police Act, 2007. The Tribunal observes that Section 23(2) of Uttarakhand Police Act, 2007 reads as under:

*“23 (2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely:*

- (a) fine not exceeding one month's salary,*
- (b) reprimand or censure”*

The petitioner was a non-gazetted police officer subordinate to respondent no. 3, who was the Senior Superintendent of Police, District

Nainital, and as such, he could award the punishment of censure to the petitioner, according to Section 23(2) of the Uttarakhand Police Act, 2007.

12. Learned Counsel for the petitioner has further argued that the disciplinary authority in passing the impugned order of punishment of censure has ignored the suggestion of the inquiry officer who had recommended to take lenient view in the matter of the petitioner. He has also referred to a decision of Hon'ble Supreme Court in Civil Appeal No. 1884 of 1993 Punjab National Bank and others vs. Kunj Behari Misra with other Civil Appeal No. 7433 of 1995, Chief Personnel (Disciplinary Authority), Punjab National Bank and others vs. Shanti Prasad Goel, reported in (1998)7 SCC 84, according to which, the disciplinary authority is required to give an opportunity of representation to the charged employee before differing with the findings of the enquiry report. The Tribunal observes that (i) the preliminary enquiry, in the instant case was only a fact finding enquiry and not the inquiry of an inquiry officer appointed after charge sheet has been issued; and (ii) the preliminary enquiry officer did hold the petitioner responsible for tarnishing the image of Police by making the audio viral; and (iii) the petitioner has been given an opportunity to submit written explanation to the show cause notice proposing the punishment of censure with which copy of the preliminary enquiry report has also been enclosed. Thus, there is no force in the argument of learned Counsel for the petitioner.

13. Learned Counsel for the petitioner stated that the impugned punishment is in fact a minor punishment but when the promotion process will start for the next higher post then certainly it will be treated as major punishment. The respondent department while imposing the penalty/punishment to the petitioner has ignored the excellent service record of the petitioner and in law it is mandatory for the respondent authority to look into the past record of the delinquent. The Tribunal observes that under the Rules of 1991, which have been adopted in the State of Uttarakhand, 'Censure' has been placed in the category of minor punishment and 'censure' can affect the promotion prospects of a police

officer only for a couple of years. Any punishment is sure to have some resultant effect otherwise it will not be a punishment at all. The Tribunal understands that even in the case of employees of other government departments, 'censure' has been classified as minor punishment. It is also observed that there is no provision by which the other service record of a delinquent is required to be considered in a matter of disciplinary proceedings against the delinquent. Natural justice requires that other service records, whether 'good' or 'bad' should not influence in any way the disciplinary proceedings in a particular matter.

14. Learned Counsel for the petitioner has further argued that the appellate authority is duty bound to pass reasoned orders dealing with contentions of the employee but in the instant case, the appellate authority has not exercised his powers and has rejected the appeal in cursory and stereo-type manner. Hon'ble Apex Court in the case of Deokinandan Sharma vs. Union of India & others, reported in 2001(5)SCC 340, has held that the appellate authority is duty bound to pass reasoned order dealing with the appellant's contentions. In the case of Ram Chander vs. Union of India and Union of India vs. Tulsiram Patel, the Hon'ble Apex Court has held that while deciding statutory appeal, the appellate authority is required to give hearing to the government servant concerned and also pass reasoned order dealing with the contentions raised in the appeal. In the case of State of Uttaranchal & others vs. Kharag Singh, reported in 2008(8) SCC, the Hon'ble Apex Court has held that the appellate authority is required to support his decision with reference to enquiry records.

15. The Tribunal observes that the appellate authority has dealt with all contentions raised in the appeal and has given his findings on all the contentions in his detailed reasoned order running into 31 pages by which the appeal of the petitioner has been rejected. In this order, he has also referred to preliminary enquiry as and when required. As far as the opportunity of hearing to the Govt. Servant by the appellate authority is concerned, there is no provision for the same under the Rules of 1991. Moreover, the petitioner himself does not appear to have asked for an

opportunity of hearing. Thus, the appellate authority was not required to give opportunity of hearing to the petitioner in the instant case.

16 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.

17. 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.

18. 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 servant to be loyal, diligent, faithful and obedient.

19. 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.

20. 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.

21. In the instant case, the main allegation against the petitioner has been of making audio recording viral after about four months and thus tarnishing the image of the police department. According to the preliminary enquiry, the petitioner has made the statement that he was quite upset with the behaviour of the SHO and perhaps on the complaint of the SHO, the petitioner was transferred from District Nainital to District Bageshwar. Therefore, he sent two audio recordings in the whatsapp group of police station, Betalghat from where they went viral. He did not send those audio recordings to anybody else. The petitioner also stated that he had not told about the incident of 10.08.2019 or the misbehaviour of the SHO to any superior police officer as the SHO had personally terrified him to such extent that he could not tell them to any superior officer. However, in his explanation to the show cause notice as well as in the appeal to the appellate authority, his averment is that he has not made said audio viral and as far as his statement in this regard in the preliminary enquiry is concerned, it was at the instance of the inquiry officer who told that if he does not give such statement he, would get a case instituted against the petitioner. He has also stated that the entire detail of the happening on 10.08.2019 was put up in a written report in front of the then SHO who was requested to send the same to the S.S.P., Nainital but the SHO did not send it forward as it was a complaint against him only. The petitioner had also told about entire incident to Smt. Anusha Badola, the then Circle Officer, Bhowali on

phone. However, in the affidavits filed before this Tribunal, the petitioner has not mentioned anything about the preliminary enquiry officer forcing him to give such statement or that he had verbally informed about the incident to the then Circle Officer on phone. On the other hand, in para 14 of the Rejoinder Affidavit, he writes the following:

*“14.The contents of para 10 of the counter affidavit are not admitted. The Enquiry officer committed a serious mistake by not examining the explanation of the petitioner that he simply shared the audio with the group of his fellow members of the police station which was a normal practice which was practiced due to the instructions of the SHO himself to share all the matters of police station with the group.”*

According to the above, the petitioner simply shared the audio with the group of his fellow members of the police station. Even if the petitioner had simply shared audio with the group of fellow members of the police station, he should have known that such audio could be made viral by any other member of the group and that the same would tarnish the image of the police department. Thus, this act of the petitioner clearly falls under the definition of ‘misconduct’. The Tribunal finds no reason to interfere with the impugned order of punishment of censure and the appellate order, rejecting the appeal of the petitioner.

#### **ORDER**

In view of the above, the petitioner is not entitled to any relief and the claim petition is hereby dismissed.

No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

DATED: FEBRUARY 04, 2022  
DEHRADUN  
KNP