

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

Claim Petition No. 03/N.B./S.B./2014

Madan Pal Singh, Constable (M), S/o Sri Punna Singh, aged about 39 years, presently posted at Office of the Commandant, Indian Reserved Battalion-II, Hardwar.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Home, Civil Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General, PAC, Police Headquarters, Dehradun.
3. Additional Director General (Administration), Dehradun.
4. Sena Nayak, Indian Reserved Wahini, Bail Parao, Ramnagar, Nainital.

..... Respondents.

Coram : **Hon'ble Justice J. C. S. Rawat**

..... **Chairman**

&

Hon'ble Sri D.K. Kotia

..... **Vice-Chairman (A)**

Present: Sri Devesh Ghildiyal, Advocate for the petitioner.
None for the respondents.

JUDGMENT**DATED: 26th November, 2014****Mr. Justice J.C.S. Rawat (Oral)**

The petitioner has filed this claim petition for seeking the following relief:-

- “(i). To issue order or direction for quashing the impugned order dated 16.2.2012, appellate order dated 21.8.2012 and revisional order dated 12.3.2013 (Annexure No. A-1, A-2 and A-3) respectively along with all consequential benefits.
- (ii). Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.
- (iii). To award cost of this petition to the petitioner.”

2. In nut-shell, it is admitted case of the parties that the petitioner was a Constable in PAC and he joined his service on 23.12.2009. Thereafter, on 22.09.2011, the petitioner was posted in the Accounts Department assigning him the work of maintaining the accounts like, Salary, T.A./D.A. and G.P.F., Pension and Ledger, etc. of the non-gazetted officers, on 07.12.2011 Sri Mandan Lal a Head Constable submitted an application for withdrawal of non-refundable G.P.F. amounting to Rs. 2,000,00/- (Rs. Two lacs) for the marriage of his daughter. The petitioner did not examine the said application and verified the record. The G.P.F. Record of the petitioner revealed that earlier he had already withdrawn G.P.F. for his daughters and, therefore, the report submitted by the petitioner was incorrect and

failed in his duty to put up facts before the higher authorities correctly. The matter when reached the I.G., P.A.C. for sanction of withdrawal from P.F., it was found after due checking that Shri Madan Lal is not eligible to withdraw money from P.F. as he has already withdrawn money from G.P.F. for marriage of his all the daughters earlier. On the said fact preliminary enquiry was held and on 27.1.2012 and a show-cause notice was issued to the petitioner under which he was proposed an adverse entry. The petitioner replied the said show-cause notice. The appointing authority was not satisfied with the explanation of the petitioner, so he rejected the representation and awarded the censure entry to the petitioner. Feeling aggrieved by the said order, the petitioner preferred appeal and revision. The appeal and revision were also dismissed by the competent authority, which are Annexure Nos. 2 & 3 to the claim petition. Hence this petition has been preferred by the petitioner.

3. The respondents filed written statement and refuted the contention in which it is alleged that the petitioner has committed a mistake by not verifying about the details which are required to grant the G.P.F. The petitioner without examining all the aspects given in the G.P.F. Rules verified the case for granting the withdrawal of the G.P.F. A preliminary enquiry was held against the petitioner and Preliminary Enquiry Officer held him responsible for the said misconduct. Thereafter, a show-cause notice was given for minor punishment of censure entry and after due consideration of submissions made by the petitioner, he was given the punishment of censure entry. The respondents had complied with all the necessary requirements provided under the Rules to punish the petitioner and written statement supports the orders of appointing authority, appellate authority and revisional

authority. The respondents have prayed for rejecting the claim petition with costs.

4. We have heard the learned counsel for the parties and perused the record.

5. The main contention of the petitioner is that the application dated 07.12.2011 was submitted in Proforma No. 2 of the G.P.F. Rules for granting withdrawal of the G.P.F. advance of Rs. 2,000,00/- for the marriage of the daughter of Sri Madan Lal. The petitioner was a newcomer in the Accounts Section. There was no column for verification and details of the children to be shown, so under the said consideration he submitted a report for grant of the G.P.F. withdrawal to the Accountant and the Accountant also submitted to the Commandant. The petitioner's intention was not to commit the fault and he had no intention to conceal the fact from the authorities. The learned counsel for the petitioner further contended that the evidence which was the basis of the punishment is not such by which he can be punished for the censure entry.

6. From the perusal of record, it is revealed that the show-cause notice dated 27.1.2012 was issued and in his reply to this notice, the petitioner has not challenged it and nowhere it has been averred that the show-cause notice was bad in the eye of law or it was not served upon him. The petitioner replied the show-cause notice and he alleged the same plea which he has raised before the Tribunal. The learned counsel for the petitioner could not demonstrate any illegality in the show-cause notice or in the procedure for awarding punishment of the censure entry adopted by the competent officer. The competent

authority has passed the punishment order after due consideration of petitioner's reply. Thus, the show-cause notice conforms all the requirements of law.

7. Thus, the claim petition is also based on the same ground on which he has submitted his reply to the show-cause notice. It is well settled principle of law that judicial review is not akin to adjudication on merit by re-appreciating of the evidence as an appellate authority. An order can be set-aside if it is based on extraneous consideration or when there are no grounds at all for passing or when ground are such that no one reasonably arrive at the conclusion. The Tribunal or Court does not sit as a court of appeal, but it merely reviews the manner in which decision was made. The court or the Tribunal can interfere the findings of the appointing authority while exercising the power of judicial review if the Tribunal or the Court is satisfied that the order suffers from mala fide. In other words, neither the question as to whether there was sufficient evidence before the authority can be raised/examined nor the question of re-appreciation of evidence to examine the correctness of the orders under challenge can be made, if there is some evidence available against the petitioner and authority had relied upon the said evidence and passed punishment order. The Tribunal cannot set-aside the order on the ground of insufficient evidence. In the instant case in hand the petitioner has himself admitted the fact that he being a newcomer to the Accounts Section he had no knowledge of the G.P.F. Rules and he did not make any further verification as there is no column in the application proforma. The contention raised by the learned counsel for the petitioner did not pertain to the manner of holding the proceeding against the petitioner. The contention pertains to the re-appreciation of facts raised by the

petitioner before the competent authority. The Tribunal cannot sit as an appellate court over the orders of the punishing authority, appellate authority and revisisonal authority. Thus, the contention of the learned counsel for the petitioner has no force.

8. No other point was advanced by the learned counsel for the parties.

9. In view of the above, the claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No orders as to costs.

Sd/-

D.K. Kotia
Vice-Chairman (A)

Sd/-

JUSTICE J.C.S. RAWAT
CHAIRMAN

DATED: 26th November, 2014
NAINITAL