

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

Present: Hon'ble Mr. Rajendra Singh
-----Vice Chairman (J)

CLAIM PETITION NO.81/NB/DB/2020

Const. 689 C.P. Rajendra Joshi, aged about 36 years, s/o Sri H.C.Joshi,
presently posted at Police Station Jhankayya, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun, Uttarakhand.
2. Inspector General of Police, Kumaon Range, Nainital, Uttarakhand.
3. Senior Superintendent of Police, Udham Singh Nagar, Uttarakhand.

.....Respondents.

Present: Sri Dinesh Gahtori, Advocate, for the petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 03, 2022

Present claim petition has been filed by the petitioner for the following reliefs:

- “1. To set aside the orders dated 14.02.2020 passed by the S.S.P., Udham Singh Nagar and order dated 10.08.2020 passed by the Inspector General of Police, Kumaon Range, Nainital.*
- 2. To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the facts and circumstances of the case.*
- 3. To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.”*

2. The petitioner is a Constable posted at Police Station, Jhankayya, District Udham Singh Nagar.

3. The petitioner was issued a show cause notice on 30.12.2019 by the Senior Superintendent of Police, Udham Singh Nagar (Respondent no. 3) as to why the censure entry be not given to him as a minor penalty under 'The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991' (which is applicable in the State of Uttarakhand). The allegation against the petitioner, based on the preliminary enquiry in the show cause notice was as under:

“कारण बताओ नोटिस

कानि० 689 ना०पु० राजेन्द्र जोशी,

द्वारा – थानाध्यक्ष झनकईया

वर्ष 2019 में जब आप थाना रूद्रपुर जनपद उधमसिंहनगर में नियुक्त थे तो यूआईआरडी द्वारा दिनांक 1.1.19 से दिनांक 31.12.19 तक सीरगोटिया के समीप पडे खाली सरकारी भूमि पर पार्किंग का ठेका रामकिशन खेडा निवासी भूरारानी को देते हुए पार्किंग शुल्क वसूल किये जाने का लाईसेन्स निर्गत किया गया था। रामकिशन खेडा द्वारा पार्किंग वसूली हेतु सीरगोटिया निवासी तौहिद बेग पुत्र बसी बेग को नियुक्त कर उक्त दोनों द्वारा स्थानीय युवकों की एक टीम बनाकर शहर क्षेत्र में आने वाले वाहनों से पार्किंग शुल्क वसूला जाने लगा। दिनांक 29.8.19 को इन्द्रा चौक किच्छा रोड रूद्रपुर क्षेत्र में बसी बेग की उक्त टीम के सलमान उर्फ कीटाणु द्वारा ट्रकों से की जा रही पार्किंग के नाम पर अवैध वसूली के दौरान हुए वाद-विवाद में स्थानीय लोगों द्वारा इन्हें अवैध वसूली किये जाने हुए पकड़े जाने पर इनके द्वारा उनके मालिक मोहन खेडा द्वारा उन्हें ट्रकों से पर्ची काटने तथा इसके एवज में कोतवाली, को सुविधा शुल्क दिये जाने की बात खुले तौर पर सभी के समक्ष कही गयी, जिस पर पुलिस द्वारा उक्त सलमान उर्फ कीटाणु को हिरासत में लेते हुए कोतवाली में बसी बेग, मोहन खेडा आदि के विरुद्ध नामजद अभियोग पंजीकृत किया गया। प्रश्नगत प्रकरण में प्रचलित की गयी जांच से आप द्वारा अभियुक्त वसीबग से वर्ष के दौरान मोबाइल से दिन एवं रात्रि में कई-कई बार बात करना प्रकाश में आया है तथा अवैध वसूली करने वाले व्यक्तियों से नियमित वार्ता करना एवं सम्पर्क बनाये रखने का दोषी पाया गया है जो आपका अपने कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीनता, शिथिलता अकर्मण्यता एवं स्वेच्छाचारिता का द्योतक है।

अतः आप द्वारा नोटिस प्राप्ति के 15 दिवस के अन्दर अपना लिखित स्पष्टीकरण प्रस्तुत करें, कि क्यों न आपके इस कृत्य के लिये उत्तराखण्ड (उ०प्र० अधीनस्थ श्रेणी के पुलिस अधि० / कर्म० की (दण्ड एवं अपील) नियमावली -1991) अनुकूलन एवं उपान्तरण आदेश-2002 के नियम-14(2) की विभागीय कार्यवाही के अन्तर्गत आपकी चरित्र

पंजिका में निम्नलिखित परिनिन्दा लेख अंकित कर दिया जाये। यदि अपका लिखित स्पष्टीकरण निर्धारित अवधि के अन्दर इस कार्यालय में प्राप्त नहीं होता है तो यह समझा जायेगा। कि आपको उक्त संबंध में कुछ नहीं कहना है और स्पष्टीकरण के अभाव में एकपक्षीय निर्णय लेकर अग्रिम आदेश पारित कर दिय जायेंगे।

प्रकरण से संबंधित जांच आख्या की छायाप्रति संलग्न है-

वर्ष -2019

“वर्ष 2019 में जब यह कानि0 थाना रुद्रपुर जनपद ऊधमसिंहनगर में नियुक्त था तो यूआईआरडी द्वारा दिनांक 1.1.19 से 31.12.19 तक सीरगोटिया के समीप पडे खाली सरकारी भूमि पर पार्किंग का ठेका श्री राममिशन खेडा निवासी भूरारानी को देते हुए पार्किंग शुल्क वसूल किये जाने का लाईसेन्स निर्गत किया गया था। राममिशन खेडा द्वारा पार्किंग वसूली हेतु सीरगोटिया निवासी तौहित वेग पुत्र बसी बेग को नियुक्त कर उक्त दोनो द्वारा स्थानीय युवकों की एक टीम बनाकर शहर क्षेत्र में आने वाले वाहनों से पार्किंग शुल्क वसूला जाने लगा। दिनांक 29.08.19 को इन्द्रा चौक किच्छा रोड रुद्रपुर क्षेत्र में बसी बेग की उक्त टीम के सलमान उर्फ कीटाणु द्वारा ट्रकों से की जा रही पार्किंग के नाम पर अवैध वसूली के दौरान हुए वाद-वाद में स्थानीय लोगों द्वारा इन्हें अवैध वसूली किये जाने हुए पकड़े जाने पर इनके द्वारा उनके मालिक मोहन खेडा द्वारा उन्हें ट्रकों से पर्ची काटने तथा इसके एवज में कोतवाली को सुविधा शुल्क दिये जाने की बात खुले तौर पर सभी समक्ष कही गयी, जिस पर पुलिस द्वारा उक्त सलमान उर्फ कीटाणु को हिरासत में लेते हुए कोतवाली में बसी बेग, मोहन खेडा आदि के विरुद्ध नामजद अभियोग पंजीकृत किया गया। प्रश्नगत प्रकरण में प्रचलित की गयी जांच से इनके द्वारा अभियुक्त वसीवेग से वर्ष के दौरान मोबाइल से दिन एवं रात्रि में कई-कई बार बात करना प्रकाश में आया है तथा अवैध वसूली करने वाले व्यक्तियों से नियमित वर्ता करना एवं सम्पर्क बनाये रखने का दोषी पाया गया है जो इस कानि0 का अपने कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीनता, शिथिलता, अकर्मण्यता एवं स्वेच्छाचारिता का द्योतक है, जिसकी परिनिन्दा की जाती है।”

4. The petitioner submitted the reply to the show cause notice and denied the charge levelled against him.
5. Respondent No. 3 considered the reply to show cause notice submitted by the petitioner and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of censure entry on 14.02.2020 (Annexure no. 1).

6. The petitioner filed an Appeal against the punishment order to respondent No. 2 which was rejected on 10.08.2020 (Annexure no. 2).

7. The petitioner has contended in the claim petition that Mr. Vashi Beig who was the employee of the parking owner was in touch with the personnel posted in the Chowki and the petitioner for gathering the information and Mr. Vashi Beig also used to give information to the police regarding any doubtful person and vehicle moving in the area and Mr. Vashi Beig was the informer of the police and was useful in unveiling the offence registered as FIR No. 200/19 u/s 392 411 IPC and FIR no. 5/2019 u/s 394/506 IPC. The petitioner further stated in his reply that regarding illegal charging of parking fee by Mr. Vashi Beig was not in the knowledge of him. On 28.08.2019, the information regarding the illegal parking fee by the employees of the parking was given to the SHO (Kotwali) who directed the Chowki Incharge, Rampura to take action in the matter and the Chowki Incharge on 28.08.2019 investigated the matter and the information so collected was recorded in the General Diary (GD) and an FIR No. 453/19 u/s 384, 504 5056 IPC was registered by Nafish Ahmad and one Salman @ Kitanu was arrested on 29.08.2019 itself, as such the charges levelled against the petitioner are liable to be rejected. It was also stated by the petitioner in his reply that during preliminary inquiry, the written statement of Constable Hemant Singh, Harikrishan, Ramesh Chandra, H.C. Driver Chandra Singh, Constable Anil Kumar, Vimal Kumar, Vijay Karki, Lal Singh, Mahesh Raunkali, Bhawan Singh, Irfan, Harish Chandra Sanwal were recorded by the inquiry officer and all the witnesses had denied the allegations. The investigating officer of FIR No. 453/2019 u/s 384, 504 506 IPC also deposed before the inquiry officer that no evidence of receiving illegal gratification by the petitioner were found.

8. It is also contended that the inquiry was conducted by the Additional Superintendent of Police, Rudrapur who after recording the statement of the witnesses submitted his report dated 21.12.2019 to the Senior Superintendent of Police Udham Singh Nagar. The inquiry officer recorded

the statement of as many as 20 witnesses and no one had admitted the involvement of the petitioner for receiving illegal gratification in lieu of illegal parking fee. The inquiry officer in its examination of witnesses held that it was not proved that the petitioner or any other police personnel was guilty of involvement in illegal charging of parking fee. Only telephonic conversation between petitioner and Mr. Vashi Beig was found which was due to gathering the information as police informer but not aware about the involvement of Vashi Beig in illegal activities. No evidence was found against the petitioner regarding involvement in the illegal gratification. The inquiry officer erred in law by recording that the petitioner is guilty. It is settled principles of law that the inquiry officer cannot record his opinion regarding guilty.

9. On the basis of the inquiry report, the Senior Superintendent of Police, Udham Singh Nagar passed the impugned order dated 14.02.2020 by which a censure has been ordered. Before passing the impugned, no opportunity was granted to the petitioner and on the basis of the preliminary inquiry, the order of punishment was passed, which is illegal.

10. The petitioner submitted the statutory appeal before the Inspector General of Police, Kumaon Range, Nainital against the order dated 14.02.2020, but the appellate authority without considering the facts submitted by the petitioner rejected the appeal of the petitioner vide order dated 10.08.2020.

11. The respondents opposed the claim petition by filing Counter Affidavit. It has been stated by the respondents that that the enquiry officer in its enquiry found the petitioner guilty and the charges were proved against him. In the enquiry, the enquiry officer found that the petitioner has connection with the persons who are involved in the illegal recuperation and also the petitioner was in regular touch with the accused Vashi Beig through mobile phone. In the call details, it was found that he talked several times to the accused Vashi Beig. The respondent authority after following the law and procedure, passed the order accordingly and before passing the

punishment order, full opportunity of hearing was given to the petitioner. The punishment order is as per law. The appellate authority after due consideration and examination of the facts of the case, passed the appellate order and rejected the appeal, which is also just and proper and is as per law. Hence, the claim petition is liable to be dismissed.

12. I have heard both the parties and perused the record.

13. Learned Counsel for the petitioner argued that on the basis of the inquiry report, the Senior Superintendent of Police, Udham Singh Nagar passed the impugned order, which is illegal and before passing the impugned order, no opportunity was granted to the petitioner. Since no evidence of involvement of the petitioner in the offence was found in the inquiry and merely having some telephonic Conversation with the accused does not make the petitioner guilty that too when the conversation was only for the purpose of gathering information of the area. No report of preliminary inquiry was ever served upon the petitioner nor any evidence gathered during preliminary inquiry was served upon the petitioner so that the petitioner could cross-examine the witnesses of preliminary inquiry, as such the impugned orders have been passed without application of mind. It has been argued on behalf of the respondents that the enquiry officer in its enquiry found the petitioner guilty and the charges were proved against him. It has also been found that the petitioner has connection with the persons who are involved in the illegal recuperation and also he was in regular touch with the accused Vashi Beig through mobile phone. In the call details, it was found that he talked several times to the accused Vashi Beig. The respondent authority after following the law and procedure, passed the order accordingly and before passing the punishment order, full opportunity of hearing was given to the petitioner.

14. After hearing both the parties and going through the claim petition/written statement, I find that a preliminary enquiry was conducted in a fair and just manner. The petitioner participated in the preliminary enquiry. The enquiry officer has taken statements of all the relevant

witnesses including the petitioner. On the basis of sufficient evidence, the enquiry officer has reached the conclusion that the petitioner was guilty. The petitioner was also provided required opportunity to defend himself. After the preliminary inquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The reply of the petitioner to the show cause notice was also duly examined and considered and after that the disciplinary authority has passed the order awarding minor punishment of censure entry to the petitioner.

15. It is settled position of law that this Tribunal cannot interfere in the findings of the enquiry officer recorded after the conclusion of the enquiry unless it is based on the malafide or perversity. The perversity can only be said when there is no evidence and without evidence, the enquiry officer has come to the conclusion of the guilt of the delinquent official. In the case in hand, there is sufficient evidence to hold the petitioner guilty for misconduct as recorded by the enquiry officer and there is no perversity or malafide in appreciation of evidence.

16. Learned counsel for the petitioner contended that the petitioner was not provided the copy of the preliminary inquiry report and the petitioner was also not allowed to cross-examine the witnesses and, therefore, reasonable opportunity of hearing was not given to him in gross violation of the principles of natural justice. Learned A.P.O. refuted the argument and pointed out that the proceedings against the petitioner have been conducted under Rule 14(2) of Rules of 1991 and the procedure laid down under the said rule has been followed. Learned A.P.O. also contended that the proceedings against the petitioner were related to the minor punishment and the petitioner was not entitled to cross examine the witnesses under Rule 14(2) of the Rules of 1991. Therefore, he argued that sufficient opportunity was provided to the petitioner to defend himself by issuing the show cause notice as per rule 14(2) of Rules of 1991. After perusal of rules and record, I agree with the contention of learned A.P.O.

and I am of clear view that the proceedings are in accordance with rules adhering to the principles of natural justice.

17. This Tribunal is of the view that preliminary inquiry was rightly conducted as per the rules; petitioner was given opportunity to show cause; his reply was properly considered on merits and after giving full opportunity of defence and after following the due procedure, he was punished with a minor punishment of awarding censure entry. The Tribunal finds that the punishment order as well as appellate order is legally perfect, valid in law and does not require any interference by this Tribunal. Unless the order is perverse to the record, this Tribunal cannot test the discretion of the disciplinary authority for awarding the punishment, inasmuch as it is proportionate to the guilt as proved after conducting just, fair and impartial inquiry. This Tribunal finds no illegality, irregularity or impropriety in the impugned orders and the claim petition, lacks merit and the same deserves to be dismissed.

ORDER

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: AUGUST 03, 2022
DEHRADUN.
KNP