

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 95/SB/2020

Shri Gunanand Sati, aged about 36 years, s/o Shri Purushottam Dutt Sati,
Constable in Uttarakhand Police, presently posted at *Abhiyojan Karyalaya*,
Haridwar.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary (Home), Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri Abhishek Chamoli, Advocate for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 04, 2022

Justice U.C.Dhyani (Oral)

PRAYER

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

- “(i) The impugned order Annexure: A-1 dated 15.06.2019 may kindly be declared void, illegal, against fundamental, constitutional, civil right of the petitioner, rules, orders and principles of natural justice and may kindly be quashed and set aside.
(ii) The Hon’ble Tribunal may kindly quash and set aside the appellate order dated 21.01.2020 Annexure: A-2 of this claim petition.
(iii) Any other relief, which the Hon’ble Court may deem fit and proper in the circumstances of the case.
(iv) To award cost of this petition to the petitioner.”

BACKDROP

2. Brief facts, giving rise to present claim petition, are as follows:

2.1 The petitioner was appointed as Constable in the Police Department in the year 2001 and joined his duties at Raiwala, District Dehradun.

2.2 In the year 2018, when the petitioner was posted at P.S.Doiwala, he was assigned the duty of *Pairokar* in District Court to represent P.S.Doiwala. Job of Pairokar of P.S. Clement Town was assigned to Constable No. 383 Arun Kumar.

2.3 On 10.07.2018 an incident took place in the jurisdiction of P.S.Clement Town. Sub Inspector Ombir Singh Rawat and S.I. Dilbar Singh Negi, In-charge P.S.Clement Town seized two vehicles, viz, vehicle no. HR-58-B 3599 under Section 3/181/113/194/39/192/207 M.V.Act and vehicle no. HP-71-6249 under Section 31/181/39/192/190 (2)/ 194/184/207 M.V. Act for overloading. Challani report of the vehicles was submitted to C.O. City Office on 11.07.2018 by Constable No. C335 Usha Bhatt, Dak Runner.

2.4 It is alleged that challani report of vehicle no. HR-58-B-3599 and challani report of vehicle no. HP-71-6249 (truck) were obtained by Constable Arun Kumar, Pairokar of P.S. Clement Town and Constable Gunanand Sati, Pairokar of P.S.Doiwala, respectively, from *Peshi* Office Sadar Dehradun and delivered in the Court of 1st Addl. Chief Judicial Magistrate, Dehradun through *Ahalmed* Sri Dhirendra Kumar Bhanu. On 11.07.2018, release order of vehicle no. HR-58-B 3599 was obtained by Mohd. Hasan s/o Mehmood and release order of vehicle no. HP-71-6249 was obtained by Sanjai s/o Dharmendra and the vehicles were taken from P.S. Clement Town.

2.5 According to the petitioner, Sri Ashok Pundir, Administrative Officer in the office of C.J.M., Dehradun, in his evidence in Case Crime No. 2677/2019 stated that *vide* order dated 16.02.2018, C.J.M., Dehradun, ordered that all the challans under the jurisdiction of P.S. Clement Town will be submitted in the Court of C.J.M., Dehradun, but the said challans were submitted in the Court of 1st A.C.J.M., Dehradun, after obtaining Challan reports from P.S.Clement Town by Constable No. 383 Arun Kumar. (Copy of statement of Sri Ashok Pundir is enclosed as Annexure: A-3).

2.6 F.I.R. was lodged against Sri Dharendra Kumar Bhanu, Ahalmed posted in the Court of Addl. C.J.M. and Constable Arun Kumar (Copy of F.I.R.: Annexure- A 4). Charge sheet was filed against Sri Dharendra Kumar Bhanu in Case Crime No. 337/2018 under Sections 409, 420, 466, 468 and 479 IPC. Petitioner is shown as the witness in the said charge sheet. (Copy: Annexure- A 5).

2.7 In the investigation report of S.I. Kishan Devrani (Annexure: A-6) C.D. No. 11 (Sl. No. 347879, pg. No. 44), evidence of petitioner was recorded.

2.8 In the evidence of Constable Arun Kumar, recorded by S.I. Ravi Prasad, it is admitted by Constable Arun Kumar that both the challans were submitted by him as per C.D. No. 24 (Sl. No. 670481 to 670482). (Copy: Annexure- A 7). The C.J.M., Dehradun was on Mussoorie Tour on 11.07.2019.

2.9 According to Ld. Counsel for the petitioner, the petitioner has not committed any 'misconduct'. It was the duty of the *Pairokar* of P.S. Clementtown to collect the challani reports from *Peshi* Office and submit the same before the competent Court, as per order dated 16.02.2018 of the C.J.M., Dehradun. There is neither 'receiving' by the petitioner in the *Peshi* Office, nor any evidence on record that the challani report was delivered to the petitioner because he was the *Pairokar* of P.S. Doiwala, not of P.S. Clement Town. During investigation, it was revealed from the evidence of Sri Ashok Pundir, *Ahalmed* of C.J.M., that both the challans were delivered to Constable Arun Kumar.

2.10 A show cause notice dated 11.03.2019 (Annexure: A-9) along with draft censure entry under Rule 14 (2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991), was served upon the petitioner. He filed his reply (Annexure: A-11) to the show cause notice, denying the charges levelled against him. The disciplinary authority did not find the reply of the petitioner satisfactory and *vide* order dated 15.06.2019 (Annexure: A 1), awarded censure entry to the petitioner.

2.11 Aggrieved with the same, petitioner preferred departmental appeal (Annexure: A-12) before Respondent No.2, which appeal was dismissed *vide*

order dated 21.01.2020 (Annexure: A 2) by the appellate authority. Faced with no other alternative, present claim petition has been filed.

A.P.O.'S VERSION

3. Ld. A.P.O., at the very outset, defending the action of the department, submitted that the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and the Court 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. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

4. Learned A.P.O. submitted that 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 Subordinate Rank (Punishment & Appeal) Rules, 1991 (for short, Rules of 1991) are valid and *intra vires*. Censure entry, therefore, can be awarded.

LEGAL PROVISIONS

5. Here the petitioner Constable 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 Subordinate Rank (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."

6. 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.*

7. Most relevant question, from the point of view of present petitioner, would be— what is the procedure laid down in sub-rule (2) of Rule 14?

“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.”

8. The inquiry contemplated under the Police Regulations is in the nature of preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice, he or she should be in a position to see whether there is any truth in such imputation. The inquiry is, therefore, meant only for personal satisfaction of the Superintendent of Police to enable him (or her) to come to a decision as to whether the matter is to be dropped or whether any action is necessary. No punishment can be imposed as a result of inquiry itself. In the instant case, the appointing authority has not awarded punishment to the petitioner on the result of preliminary inquiry. On the basis of such preliminary investigation, the appointing authority, foreseeing that it is a case of minor punishment, followed the procedure laid down in sub-rule (2) of Rule 14, which has been quoted above.

9. The appointing authority, after informing the delinquent of the action proposed to be taken against him and of the imputations of acts or omission, on which it is proposed to be taken and after giving him a reasonable opportunity of making such representation, as he wished to make against the proposal, passed the impugned order (Annexure: A1). Thereafter, the appellate authority, after considering the contents of appeal, affirmed the view taken by the disciplinary authority and dismissed the appeal *vide* order Annexure: A2. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. There is a reference of the explanation furnished by the delinquent. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the order directing ‘censure entry’ against the petitioner.

10. Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 are important in the context of present claim petition. The said provisions read 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 behavior 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.

11. The next question would be— what is the extent of Court’s power of judicial review on administrative action? This question has been replied in Para 24 of the decision in *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, as follows:

“24. The decisions referred to hereinabove highlights 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.”

12. ‘Judicial review of the administrative action’ 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’. If the penalty is disproportionate, the same can always be cured in judicial review.

DISCUSSION AND FINDINGS

13. This Tribunal does not find this case to be the case of judicial review, in holding that the delinquent is guilty of misconduct, 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. There were reasonable grounds before the authorities below to have arrived at such conclusions. This Tribunal is of the view that 'due process of law' has been followed while holding the delinquent guilty of misconduct. No legal infirmity has successfully been pointed in the same.

14. 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, 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 Disciplinary Authority, as upheld by the Appellate Authority. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety. This Tribunal, therefore, is unable to take a view different from what was taken by the two authorities below in holding the petitioner guilty of misconduct.

15. At this stage of dictation, Ld. Counsel for the petitioner submitted that 'censure entry' entails serious civil consequences, therefore, considering the innocence of the petitioner, the 'censure entry' should be substituted by any other minor penalty, such as 'fatigue duty'. Ld. A.P.O. opposed such argument of Ld. Counsel for the petitioner and submitted that the procedure, as prescribed in the Rules of 1991, culminates only into major or minor penalty. The procedure, as prescribed, does not culminate into 'other minor penalties' as provided under sub-rules (2) & (3) of Rule 4 of the Rules of 1991.

16. Ld. Counsel for the petitioner submitted that in **sub-rule (3) of Rule 4** it has been provided that the Constables may be punished with fatigue duty, which shall be restricted to the following tasks—

- (i) *Tent pitching;*
- (ii) *Drain digging;*
- (iii) *Cutting grass, cleaning jungle and picking stones from parade grounds;*
- (iv) *Repairing huts and butts and similar work in the lines; and*
- (v) *Cleaning Arms.*

17. Ld. A.P.O. drew attention of this Tribunal towards Rule 15 of the Rules of 199. Procedure prescribed in Orderly room punishment is as follows:

“15-Orderly room punishment—Reports of petty breaches of discipline and trifling cases of misconduct by a Police Officer, not above the rank of Head Constable, shall be enquired into and disposed of in orderly room by the Superintendent of Police or other Gazetted Officer of the Police Force. In such cases punishment may be awarded in a summary manner after informing the Police Officer verbally of the act or omission on which it is proposed to punish him and giving him an opportunity to make verbal representation. A Register in Form 2 appended to these rules shall be maintained for such cases. In this Register, text of the summary proceeding shall be recorded.”

18. Ld. A.P.O. submitted that the disciplinary authority or appellate authority or the Tribunal cannot award punishment as prescribed under sub-rules (2) & (3) of Rule 4 of the Rules of 1991 if the procedure of minor penalties [Rule 4 (1)(b)] has been adopted.

19. This Tribunal is unable to agree to such submission of Ld. A.P.O. because the rule is that the procedure adopted for comparatively minor punishment cannot be used to give punishment for graver misconduct, but the converse is not true. The procedure adopted for comparatively minor punishment, cannot be used to give bigger penalty, but the procedure adopted for bigger penalty may be used to give ‘orderly room punishment’ or comparatively minor penalty. Law is clear on the point.

20. Normally, this Tribunal would have converted minor punishment of ‘censure entry’ into ‘other minor punishment’, such as fatigue duty, etc., but Ld. A.P.O. vehemently opposed such jurisdiction of the Tribunal, arguing that the Tribunal has no authority to substitute any ‘minor punishment’ with ‘other minor punishment’ on its own and should leave it to the discretion of the Ld. Authorities below to do it. Ld. A.P.O. argued that Courts cannot

assume and usurp the discretion of the appellate authority and substitute lesser punishment.

21. In the decision rendered in *Rajasthan Tourism Development Corporation Limited and Another vs. Jai Raj Singh Chauhan*, (2011)13 SCC 541, Hon'ble Supreme Court has observed, as below:

“22. We have no doubt that if the learned Single Judge and the Division Bench were apprised of the law laid down by this Court, the former may have instead of substituting the punishment of dismissal from service with that of stoppage of two increments with cumulative effect remitted the matter to the disciplinary authority with a direction to pass fresh order keeping in view the fact that the writ petitioner had already suffered by remaining out of employment for a period of about seven years.

23. At this juncture, we may note that learned counsel for the appellants fairly agreed that ends of justice will be served by remitting the matter to the disciplinary authority with a direction that the respondent be awarded a minor punishment provided an undertaking is given by him not to claim wages for the period between the dates of dismissal and reinstatement. Learned counsel for the respondent that his client will not claim pay and allowances for the period during which he remained out of employment.

24. In the result the appeal is allowed, the orders passed by the learned Single Judge and the Division Bench of the High Court are set aside and the following directions are given:

1. The Corporation is directed to reinstate the respondent within a period of 15 days from the date of receipt/production of a copy of this order.
2. The respondent shall not be entitled to wages for the period between the dates of dismissal and reinstatement.”

CONCLUSIONS

22. To recapitulate, when the petitioner was posted in Police Station, Doiwala, district Dehradun, a ‘show-cause’ notice was issued to him on 11.03.2019. The imputation was that *Challani report* under the Motor Vehicles Act (for short, ‘M.V.Act’) was not submitted to the competent Court, having jurisdiction (CJM, Dehradun). The petitioner replied to the show cause notice on 26.03.2019, stating among other things, that he did not do it deliberately. It was not intentional. The preliminary inquiry was conducted. Inquiry officer found the petitioner guilty of misconduct. In his reply, the petitioner questioned the findings recorded by the inquiry officer, *inter-alia*, on the grounds that (a) the inquiry officer did not give finding whether the Court of ACJM-I was the link-Court of the CJM on 11.07.2018 or not (b) statements of Sri Dhirendra Kumar Bhanu, clerk of ACJM-I, were not recorded. Sri Dhirendra Kumar Bhanu was an important witness (c) what

was the evidence collected by C.O. Sadar to show that the petitioner received the *Challani report*? (d) who received the *Challani report* from *Peshi Karyalaya*? (e) propriety of holding the petitioner guilty, only on the basis of oral statement of a police man, posted in *Peshi Office*.

23. The disciplinary authority, *vide* order dated 15.06.2019 (Annexure: A1) was not satisfied with the explanation given by the petitioner (*no reasons were given*). The disciplinary authority, therefore, directed 'censure entry' to be recorded in the Character Roll of the petitioner, as per provisions of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, as below:

In the year 2018, when the delinquent Constable was posted in Police Station, Doiwala, district Dehradun, he was deputed as Court Pairokar for district Court pertaining to the cases of Police Station, Doiwala. On 10.07.2018, vehicle no. HR 58-2-3599 under section 3/181/113/39/192/207 MV Act and vehicle no. 71-6249 under section 3/181/113/194/39/192/190(2)/207 of M.V. Act were seized within the jurisdiction of Police Station Clement Town. The Challani reports of both the vehicles were sent by Police Station, Clement Town to office of C.O. Sadar, on 11.07.2018. The delinquent Constable received Challani report of vehicle no. HP 71-6249 from the office of C.O. Sadar and gave to Sri Dharendra Kumar Bhanu, who was posted as *Ahalmed* (Clerk) in the Court of 1st Addl. CJM, Dehradun. *Vide* order dated 16.02.2018, the CJM, Dehradun had directed that the Challani reports of M.V. Act, relating to Police Station, Clement Town shall be filed in the Court of CJM, Dehradun. The delinquent Constable, therefore, did not file the Challani report of vehicle no. HP 71-6249 in the Court of CJM after receiving it from the office of C.O. Sadar. He did not perform his duties well. He was careless and therefore, 'censure entry' be awarded for his misconduct.

24. Aggrieved by the order dated 15.06.2019 (Annexure: A1) of the disciplinary authority, the petitioner preferred a departmental appeal, which was also dismissed by the Inspector General of Police, Garhwal Region/ appellate authority *vide* order dated 21.01.2020. Feeling aggrieved with the same, the petitioner has filed present claim petition.

25. The petitioner has filed the examination-in-chief of PW-1 Ashok Pundir recorded in the Criminal Case No. 2677/2019, State vs. Dharendra Kumar Bhanu, in the Court of CJM, Dehradun. Annexure: A4 is the copy of FIR filed by Sri Ashok Pundir, *Ahalmed*, CJM, Dehradun on 19.07.2019 against Sri Dharendra Kumar Bhanu, *Ahalmed* in the Court of ACJM-I, Dehradun and Constable Arun Kumar, *Pairokar*, Police Station, Clement Town and others. The name of present petitioner does not find place in the

same. FIR was although filed against Sri Dharendra Kumar Bhanu, Constable Arun Kumar and other unknown persons, but the charge sheet was filed only against Sri Dharendra Kumar Bhanu, *Ahalmed*, posted in the Court of ACJM-I, Dehradun. In other words, the Criminal Case No. 2677/2019 relating to Case Crime No. 337/2018 under Sections 409, 420, 466, 468 and 471 IPC was instituted against Sri Dharendra Kumar Bhanu and not against the petitioner. In his report dated 30.05.2019 (Annexure:A8), which has been submitted by the C.O. City-I, Dehradun to S.S.P., Dehradun, it has been mentioned that on 11.07.2018, Camp Court of CJM, Dehradun was being held in Mussoorie. In other words, C.O. City, Dehradun found that there was Camp Court of CJM at Mussoorie. C.O. City also found (Annexure: A8) that ACJM-I was the link-officer of the CJM, Dehradun in his absence. *Vide* order dated 30.05.2018, C.O. City also found that the *Challans* under the M.V. Act were being submitted by the *Pairokars* of the concerned police stations to the Court Clerk, whenever they asked for it. **C.O. City, in his report dated 30.05.2019, also found that Sri Gunanand Sati and Constable Arun Kumar, both, duly received respective *Challani Reports* from the *Peshi Office* under their signatures.** Sri Gunanand Sati, the petitioner in his statement to C.O. City-I, Dehradun (report dated 14.12.2018, Annexure: A10) pleaded ignorance as to whether he took the *Challani report* of vehicle no. HR-58-B-3599 under MV Act to the Court or not. It was possible that he might have taken the *Challani report* to the Court Clerk, on his asking, the delinquent-petitioner stated. C.O. City, in his report dated 14.12.2018 (Annexure: A10), found that the *Challani Report* of vehicle no. HP 71-6249 was received by Constable Gunanand Sati from the *Peshi Office* Sadar and was given to Sri Dharendra Kumar Bhanu, Clerk of the Court of ACJM-I, Dehradun. **Even if the entire case of the respondent department be admitted to be true, the fact remains that no motive was imputed to the petitioner in handing over the *Challani report* of vehicle no. HP 71-6249 in the Court of ACJM-I. Had the petitioner been hand-in-glove with Sri Dharendra Kumar Bhanu, a charge sheet would have been submitted against the petitioner too with the aid of section 120B IPC. There is nothing on record to show that he did it deliberately. Also, there is nothing on record to show that the petition did the same for any personal or financial gains.** It appears that Sri Dharendra Kumar Bhanu, *Ahalmed* in the Court of ACJM-I,

asked the petitioner for bringing the *Challani report* and accordingly, he handed over the same to the Court Clerk. It has also come on record that as per practice, whenever the Court clerk asks any Pairokar of concerned Police Station to bring the *Challani report*, he will handover the same to the clerk concerned. **In any case, the magnitude of the misconduct is not such, as to award petitioner ‘censure entry’, which entails civil consequences and has bearing on future service prospects of the petitioner. Not giving *Challani report* in the proper court may amount to carelessness, which is apparent in the instant case, but awarding of ‘censure entry’, simply for not handing over the *Challani report* in the Court of CJM, who was holding Camp Court at Mussoorie on that day, seems to be disproportionate. It is not the case of the respondent department that the petitioner did not handover the *Challani report* to anyone. It is the definite case of the respondents that the petitioner handed over the *Challani report* but to the clerk of different Court. ‘Censure entry’ would have been justified, had the CJM held the Court at Dehradun on 11.07.2018. It has come to the light that CJM was holding Camp Court at Mussoorie on such date. It is possible that concerned clerk who used to deal with the Challans under the M.V. Act, could have also gone to Mussoorie.** It came to notice during the preliminary inquiry that Sri Dharendra Kumar Bhanu, *Ahalmed* asked for *Challani report* and therefore, the petitioner handed over such *Challani report* to the clerk concerned as per the practice. In these circumstances, even though, misconduct is, *prima-facie*, made out against the petitioner, but certainly, he deserves to be given lesser penalty than the ‘censure entry’, which finds place under the heading ‘minor penalty’. The other minor penalties, besides fatigue duty, according to the statute book are,-.

- (i) *Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).*
- (ii) *(ii) Punishment Drill not exceeding fifteen days.*
- (iii) *(iii) Extra guard duty not exceeding seven days.*
- (iv) *(iv) Deprivation of good conduct pay.*

26. Other minor penalties may be given to a Constable. Petitioner is also a constable. The gravity of his misconduct certainly does not attract ‘censure’, which entails civil consequences. It will, therefore, be in the fitness

of things and in the interest of justice, if censure entry is converted into ‘other minor penalty’ or even to simple ‘warning’.

27. But the Tribunal is afraid that the same cannot be done by it on its own. Although ‘misconduct’ is made out against the petitioner and no interference is called for in such finding of disciplinary authority, as upheld by the appellate authority, but certainly interference is called for in the punishment order, requesting the disciplinary authority to consider that the rigours of ‘censure entry’ are reduced to ‘other minor penalty’ or even substituted by mere ‘warning’ only.

28. The claim petition is thus disposed of with the direction to respondent no. 1 to consider that ‘censure entry’ to the petitioner is reduced to ‘other minor penalty’ or even to ‘warning’. The orders impugned are kept in abeyance till such time there is fresh consideration on the point of punishment by the learned authority below. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 04, 2022
DEHRADUN

VM/KNP