BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice U.C.Dhyani
------ Chairman
Hon'ble Mr. Rajeev Gupta
-------Vice Chairman (A)

CLAIM PETITION NO. 154/SB/2019

Sunil Kumar, s/o Sri Sita Ram, aged about 40 years, Sub Inspector, Uttarakhand Police, presently posted at Thana Clementown Dehradun.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Dehradun.

….Respondents

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

JUDGMENT

DATED: AUGUST 17, 2020

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks to quash impugned punishment order dated 05.04.2019 (Annexure: A 1) passed by Respondent No.3 and appellate order dated 02.09.2019 (Annexure: A-2) passed by Respondent No.2, among others.

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

2.1 When the petitioner was posted as S.I. in Chauki Naya Gaon, P.S. Patel Nagar, case crime nos. 175/13, 176/13 and 177/13 were instituted against the accused persons under Section 8/20 NDPS Act in the year 2014. After investigation, petitioner-Investigating Officer submitted charge sheets against the accused persons on 28.02.2014. Extracts of case diary were also submitted. The Investigating Officer mentioned name of Smt. Sarita Dobhal, C.O. Sadar in the list of witnesses. When the accused persons were put to trial and prosecution evidence was under way, the Court concerned issued summons to Smt. Sarita Dobhal, Addl. S.P., Rural, on 23.07.2018, 30.08.2018 and 08.01.2019, whereas in fact, Smt. Jaya Baloni, C.O. Sadar was the Gazetted Officer at the time of the arrest of accused persons. The statements of Smt. Jaya Baloni, the then C.O. Sadar were taken by Investigating Officer and the said fact was recorded in the case diary also. When the charge sheet was submitted, the I.O.- petitioner mentioned the name of Smt. Sarita Dobhal, instead of Smt. Jaya Baloni. Preliminary Inquiry was conducted by Smt. Shweta Chaube, the then S.P. City. She submitted her report on 21.09.2019. A show cause notice along with draft censure entry was issued to the petitioner on 04.02.2019. Such show cause notice was received by the petitioner on 08.02.2019. The petitioner was directed to explain within 15 days as to why departmental proceedings be not initiated against him and why censure entry be not awarded to him. He did not submit any reply.

2.2 The SSP, Dehradun, therefore, awarded censure entry in the character roll of the petitioner under the relevant Rule of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991.

2.3 Departmental appeal was filed against the order of SSP, Dehradun, by the petitioner, without getting any success. Hence, present claim petition.

2.4 The impugned order dated 05.04.2019 (Annexure: A-1) passed by SSP, Dehradun and appellate order dated 02.09.2019 (Annexure: A-2) passed by the appellate authority I.G. Police, Garhwal Range are, therefore, under the scrutiny of this Tribunal.

3. Ld. A.P.O., at the very outset, defending the departmental action, submitted that the orders impugned do not warrant any interference. 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, according to Ld. A.P.O. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

4. 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.

5. 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.

6. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and in all times, conduct himself in accordance with specific or implied orders of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.

7. The term 'misconduct' has not been defined in any of the conduct rules or any other enactment. 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.

8. The term ‘misbehaviour’ has also nowhere been defined in Civil Services Rules. The term ‘Misbehaviour’ literally means improper, rude, or uncivil behaviour.

9. 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 intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term ‘misconduct’ usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty cannot be excused.

10. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behaviour and conduct which may be in force.

11. 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 of 1991(for short, Rules of 1991) are valid and *intra vires.* Censure entry, therefore, can be awarded.

12. Here the petitioner 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.”

13. 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.

14. 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."

15. 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.

16. The height of carelessness and negligence on the part of the petitioner-I.O., in the instant case, is beyond one's comprehension. Every I.O. is well aware of the fact that in the criminal cases, the accused persons are acquitted, if the prosecution is not able to prove the case against them beyond reasonable doubt. The cases registered under the Narcotics Drugs Psychotropic Substance Act are of enormous importance and accused persons are acquitted, very often, on technical grounds. That apart, the petitioner has committed an irresponsible act in wrongly mentioning the name

of Smt. Sarita Dobhal, C.O., whereas, in fact, he should have mentioned the name of Smt. Jaya Baloni, C.O.. There is remote chance of conviction once wrong witness has been mentioned in the charge sheet. If recovery of contraband is shown in presence of a C.O. (Gazetted Officer) and the name of different C.O./ Police Officer is mentioned in the list of witnesses in the charge sheet, everyone knows what will be the fate of that criminal case. The act may not be deliberate one, but certainly shows the height of negligence on the part of Investigating Officer, which negligence might prove costly to the prosecution.

17. Ld. A.P.O. has submitted that prosecution might lose its case only because wrong name of the arresting officer/ Gazetting Officer was mentioned by the I.O.-petitioner, in the charge sheet. Naturally, when summonses were issued to C.O. Smt. Sarita Dobhal, the same must have come to her as a surprise, inasmuch as she was never the arresting officer/ Gazetted Officer at the time of recovery of contraband from the accused persons named in the charge sheet. C.O. Smt. Sarita Dobhal had nothing to do with that criminal case and even if she appeared or would have appeared before the Trial Court, she would only plead ignorance about the facts of the case. In any case, the negligence of the I.O. (read petitioner in the instant case) is unthinkable and unpardonable. This mistake was committed by the I.O. in the charge sheet, which is an important piece of evidence from the point of view of prosecution. He has, although, rightly mentioned the name of C.O. Smt. Jaya Baloni in the extracts of case diary.

18. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. There is no reference of preliminary inquiry in the impugned order. Essentials of procedure laid down in sub-rule (2) of Rule 14 have been taken into account, while passing the order directing ‘censure entry’ against the petitioner. A reasonable prudent person would normally, not disagree with the inference drawn by appointing authority, as affirmed by appellate authority.

19. To elaborate further, there is no reference of ‘preliminary inquiry’ in sub-rule (2) of Rule 14 of the Rules of 1991. Such sub-rule only prescribes that minor punishments may be imposed after informing the Police Officer in writing, 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 giving him a reasonable opportunity of making such representation, as he may wish to make against the proposal. Such preliminary inquiry is merely a fact finding inquiry. It is only meant for the satisfaction of the appointing authority, notwithstanding the fact that the delinquent was also involved in it. Preliminary inquiry, in the instant case, has been used by the appointing authority only to derive satisfaction for giving show cause notice, which is in the nature of informing the delinquent of the action proposed to be taken, imputations of the acts or omission and giving him a reasonable opportunity of making representation. Preliminary inquiry has not been used in arriving at a finding. It is only a precursor to the action proposed to be taken.

20. 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 of in *Nirmala J. Jhala vs. State of Gujrat and others*, *(2013) 4 SCC 301*, as follows:

> "24.The decisions referred to hereinabove highlight 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."

21. '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', of late.

22. This Tribunal, therefore does not find it to be a case of judicial review, 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 conclusion. 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 out in the same.

23. 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.

24. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety. No interference is called for in the same.

25. The claim petition, therefore, fails and is dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 17,2020
DEHRADUN

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