

**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. 02/SB/2020

Kamal Singh Rawat, aged about 52 years s/o Late Sri Jeet Singh, Sub Inspector, Uttarakhand Police, presently posted at Police Station Raipur, Dehradun.

....Petitioner

vs.

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

....Respondents

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

JUDGMENT

DATED: JANUARY, 11, 2023

Justice U.C.Dhyani (Oral)

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

“(i). To quash the impugned order dated 16.01.2019 (Annexure: A-1) by which adverse entry has been awarded by the respondent no.3 in the service record of the petitioner as well as appellate order dated 15.11.2019 (Annexure: A-2) by which appeal of the petitioner has also been rejected by the respondent no.2, along with its effect and operation also..

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

2.1 Censure entry was awarded to the petitioner Sub-Inspector (C.P.) under Rule 4(1) (b) (iv) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (henceforth referred to as the Rules of 1991), on 16.01.2019.

2.2 An investigation was handed over to the petitioner. The same was reviewed by the S.S.P. on 10.09.2018. The S.S.P. found that no meaningful efforts were made to work out the crime, even after four months of registration of F.I.R. At Sl. No. 4 of the extract of the Case Diary (for short, C.D.) dated 10.07.2018, the I.O. had mentioned that CCTV footage, which was made available by the Bank, will be perused, but the petitioner-I.O. did not peruse such CCTV footage on time and did not make meaningful effort to work out the crime. The petitioner-I.O. was lax and careless in carrying out the investigation. The I.O. was negligent in discharging his duties. Censure entry was, accordingly, recorded for the work and conduct of the petitioner.

2.3 Annexure : A-10 carries copy of show cause notice dated 27.11.2018, under the Rules of 1991. Petitioner replied to the same on 02.01.2019 (Annexure: A-11). The disciplinary authority was not satisfied with the reply of the petitioner, therefore, he awarded censure entry to him *vide* order dated 16.01.2019 (Annexure: A-1). Aggrieved with same, he preferred departmental appeal to the appellate authority on 15.03.2019 (Annexure: A-13), which appeal was decided on 15.11.2019 against the petitioner (Annexure: A-2). Petitioner had no other alternative, except to file

the present claim petition, therefore, he has filed the present one for redressal of his grievances.

2.4 Earlier preliminary enquiry (P.E.) was conducted by Sri Pankaj Gairola, C.O. Sadar, Dehradun. The enquiry officer filed his report on 21.10.2018 (Annexure: A-12). During P.E., the enquiry officer also took the statement of the petitioner.

3. Section 173 Cr.P.C., 1973 provides that, 'Every investigation under this Chapter shall be completed without unnecessary delay'.

4. Let us peruse the extracts of C.Ds., in an effort to find out whether the petitioner conducted the investigation and performed his duties, as I.O., sincerely or not. The details of investigation carried out by the petitioner have been given in Table- A at internal Pg. Nos. 7 to 10 of the claim petition, which is reproduced herein below:

TABLE - A

S.N	Date	Parcha No.	Detail of investigation	Annexure Nos.
1.	28-4-2018	1	The Copy of FIR dated 24-4-2018 alongwith the detail mentioned in the Parcha from Sr. No. 196410 to 196413 alongwith Bank Statement and map of spot of the investigation.	A-14
2.	7-6-2018	2	Sr. No. 674997 of the G.D. alongwith letter dated 7-6-2018 written to Manager HDFC Dehradun	A-15
3.	26-6-2018	3	Sr. No. 916457 of the G.D. in which the details of the efforts made by the petitioner.	A-16
4.	10-7-2018	4	Sr. No. 864610 the details of investigation with the Bank for C.C. Tv. footage	A-17
5.	18-7-2018	5	Sr. No. 916485 alongwith a letter written to S.O.G.	A-18
6.	31-8-2018	6	Sr. No. 916489 alongwith a letter written to S.S.P.	A-19
7.	11-9-2018	7	Sr. No. 864674 alongwith a letter dated 11-9-2018 written to Manager, HDFC Dehradun	A-20
8.	15-9-2018	8	Sr. No. 864677 alongwith details obtained from the Banks	A-21
9.	18-9-2018	9	Sr. No. 864678, 79, alongwith letter dated 18-9-2018 written to Manager	A-22

			PNB E.C. Road Dehradun	
10.	19-9-2018	10	Sr. No. 864682 alongwith a letter dated 19-9-2018 written to Manager PNB E.C. Road Dehradun and letter dated 18-9-2018 written to Divisional Manager of Bank and Reserve bank of India	A-23
11.	20-9-2018	11	Sr. No. 864683 alongwith a letter dated 20-9-2018 written to Sr. Suptd. of Police Dehradun	A-24
12.	24-9-2018	12	Sr. No. 864687, 88, 89, 90 alongwith G.D. details and letter dated 24-9-2018 written to Manager HDFC Dehradun alongwith the details of the Datas	A-25
13.	25-9-2018	13	Sr. 864691, 92 alongwith letter dated 24-9-2018 letter to PNB E.C. Road Dehradun and Reserv Bank of India alongwith Bank Statements	A-26
14.	26-9-2018	14	Sr. No. 864694, alongwith letter dated 25-9-2018 from Reserve Bank of India and a letter 27-9-2018 under section 91 CrPC reminder to PNB Dehradun	A-27
15.	27-9-2018	15	Sr. No. 864695 alongwith letter dated 25-9-2018 from Reserve Bank of India and notice dated 27-9-2018 under section 91 CrPC to PNB	A-28
16.	4-10-2018	16	Sr. No. 343807 aloangwith letter addressed to PNB under section 91 Cr PC reminder	A-29
17.	8-10-2018	17	Sr. No. 343808, 09 the details of the ATM of Jugal son of Dharamveer at Sahranpur alongwith photographs of the culprits and letter dated 4-10-2018 addressed to PNB, HDFC , Indian Overseas Bank and Lokpal also a letter to Jugal Upadhayay, Deepak Kumar under section 160 Cr.PC.	A-30
18	11-10-2018	18	Sr. No. 343810 alongwith notice under section 91 Cr PC to PNB Saharanpur and Indian Bank Sahranpur	A-31
19.	12-10-2018	20	Sr. No. 343811 alongwith letter from Deepak Kumar alongwith Bank certificates and details and also letter for investigation at Rajsthan and Bihar addressed to the petitioner	A-32
20	1-11-2018	19	Sr. No. 343822, 23, 24 alongwith details of investigation	A-33
21.	25-11-2018	20A	Sr. No. 343832, 33 alongwith letter for taking the ATM in custody by the petitioner and FIR dated 11-4-2018 lodged by Jugal.	A-34

22.	4-12-2018	23	Sr. No. 343848 alongwith photograph of culprits Anuj and others and details of the Bank transaction.	A-35
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5. The incident, allegedly, took place on 24.04.2018 at 05:00 pm within the jurisdiction of P.S. Premnagar. F.I.R. was lodged on 28.04.2018 at 04:05 pm. The F.I.R. was lodged against unknown accused. On 28.04.2018, the I.O. reproduced the F.I.R. in the extract of C.D. dated 28.04.2018. Statement of complainant/ informant Smt. Rekha Chaudhary was taken. The I.O. proceeded for site inspection and visited the place of occurrence on the same day. He prepared site plan (Annexure: A-14).

5.1 On 07.06.2018, the I.O. served notice upon the Bank Manager for CCTV footage (Annexure: A-15). Copy of the notice was served upon the Bank Manager, HDFC Bank, Rajpur Road, under Section 91 Cr.P.C. (Annexure: A-15 *colly*). Since the CCTV footage was not made available to the petitioner-I.O., therefore, he sent reminder to the Bank. This has been mentioned in the extract of C.D. dated 22.06.2018 (Annexure: A-16)

5.2 In the extract of C.D. dated 10.07.2018 (Annexure: A-17), it has been mentioned that the Bank has provided the CCTV footage. It has also been indicated in such extract of C.D. dated 10.07.2018 that no system is available in the Bank for watching CCTV footage for the Bank.

5.3 It has been mentioned in the extract of C.D. dated 18.07.2018 (Annexure: A-18) that on receiving an information that an old ATM thief has come to Dehradun, petitioner-I.O. approached the suspect, who denied having committed the alleged offence.

5.4 On 18.07.2018, petitioner-I.O. moved an application to S.O.G. In-charge, for supplying the Cell-Site data of 24.04.2018 [between 03:00 to 07:00 pm] of ATM of HDFC Bank, Rajpur Road, (Annexure: A-18 *Colly*).

5.5 It has been mentioned in the extract of C.D. dated 31.08.2018 (Annexure: A-19) that such letter has been sent to SSP.

5.6 On 11.09.2018 (Annexure: A-20), petitioner-I.O. gave notice under Section 91 Cr.P.C. to the Branch Manager, HDFC Bank, Rajpur Road, for providing the CCTV footage, regarding which reminder was issued earlier.

5.7 It has been mentioned in extract of C.D. dated 15.09.2018 (Annexure: A-21) that details of CCTV footage have been obtained by the I.O. from the Bank.

5.8 The investigation was handed over to another Police officer. Thereafter, charge sheet was submitted by that Police Officer as I.O. and the accused persons are stated to be facing trial in the Court of competent jurisdiction.

6. While learned Counsel for the petitioner pleaded for setting aside the orders impugned, learned A.P.O. made an endeavour to justify departmental action.

7. The 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 Hon'ble Supreme Court of India 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.”

8. 'Judicial review of the administrative action' is possible under three heads, viz:

- (a) illegality,
- (b) irrationality and
- (c) procedural impropriety.

9. The limited scope of judicial review has also been assigned by Hon'ble Supreme Court in *Johri Mal's case*, (1974) 4 SCC 3, as follows:

"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

10. There appears to be no procedural flaw in conducting summary departmental enquiry. This Tribunal is of the view that due process of law has been followed while conducting the departmental proceedings.

11. The facts, culled out from the record, reveal that the inference drawn by the disciplinary authority is based on his 'subjective satisfaction'. The inference thus drawn, has been upheld by the appellate authority. According to the Tribunal, the inference drawn by the disciplinary authority is based on 'subjective satisfaction', because the disciplinary authority has used the words 'meaningful efforts' and does not appear to have considered the facts, which have been given by the petitioner and have been reproduced by the Tribunal in the chart given above. Efforts were, no doubt made by the petitioner to work out the crime, but to find out as to whether the efforts so made, were 'meaningful' or not, disciplinary authority was required to give some reasons in the impugned order, which have not been given. Why the efforts made by the petitioner were not meaningful, required some inputs from the disciplinary authority, to enable the Tribunal/ Court to find out whether those efforts, in fact, were meaningful or not. The same is lacking in the instant case. Had the disciplinary authority observed that the petitioner has not made any effort to work out the crime, the Tribunal would have readily interfered, inasmuch as some efforts were factually made by the petitioner.

12. The words, 'meaningful efforts' is a relative term. Some may view the same efforts as meaningful, whereas others may opine that the efforts were not sufficient. In any case, the same requires some reasons to be given by the disciplinary authority and appellate authority, which has not been done in the instant case. But, the next question which arises for consideration of this Tribunal is, whether it should usurp the discretion of disciplinary authority, which has been upheld by the appellate authority, the reply is an emphatic 'NO', inasmuch as the Tribunal is not exercising appellate jurisdiction. The scope of judicial review of 'administrative action' is very limited, only to the extent of – (a) illegality, (b) irrationality and (c) procedural impropriety.

13. The situation thus emerges is that neither the Tribunal can junk the impugned orders, as an appellate Court and nor can substitute its own discretion for the discretion exercised by the disciplinary authority, as upheld by the appellate authority.

14. The matter needs to be remitted back for reconsideration.

15. Reasonableness, which is the foundation of Rule of Law, is antithesis of arbitrariness. Subjectivity is another facet of arbitrariness. Only objectivity is permissible in a society governed by Rule of Law. Tribunal's mind is troubled by two things- (i) if the subjective decision is upheld, the same will strike at the root of 'reason' and (ii) if the decision of the disciplinary authority is interfered with, the same may give rise to incidents of misconduct. Both the extremes are bad. Neither the incident of misconduct should be permitted to take place, nor arbitrary or subjective decisions should be encouraged. In the instant case, it is not a question that the efforts were not made by the petitioner, the question is whether the efforts thus made were meaningful or not. It is no doubt true that the crime was not worked out till the disciplinary authority reprimanded the petitioner. No sooner the censure entry was given, the investigation was expedited, as a result of which the charge sheet was submitted (might be by another investigating officer). The crime could not be worked out till the District Police Chief looked red. For sustenance of Rule of Law, it was required that the disciplinary authority should have considered the efforts made by the petitioner before coming to the conclusion that the efforts thus made were not 'meaningful efforts'. It is possible that had the disciplinary authority considered, objectively, those efforts, he would have given a verbal warning to the petitioner, to see that immediately thereafter or subsequently, the crime is worked out and the culprits are apprehended.

16. Thus, neither this Tribunal can re-appreciate the evidence, nor it can usurp the jurisdiction of two authorities below. The Tribunal is clear as regards the extent of interference by it in review jurisdiction. At the cost of repetition, it must be observed that it is very limited. The Tribunal cannot re-appreciate the law and facts, nor can substitute its own discretion for the discretion exercised by the disciplinary authority (as upheld by the appellate authority), in judicial review.

17. The claim petition is disposed of by directing the disciplinary authority, Respondent No.3 to review its decision dated 16.01.2019 and consider the efforts made by the petitioner objectively and pass a reasoned

and speaking order. The impugned punishment order and consequently the appellate order, are set aside. If the disciplinary authority still imposes some penalty on the petitioner, the petitioner is entitled, in law, to file departmental appeal. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 11, 2023
DEHRADUN

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