BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL BENCH AT NAINITAL

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 39/NB/SB/2020

Sundar Lal, s/o Sri Bahadur Ram, Constable 516 Civil Police Chowki, Mangoli, District Nainital.

.....Petitioner

vs.

- 1. State of Uttarakhand through Secretary, Home, Secretariat, Dehradun.
- 2. Deputy Inspector General of Police, Kumaon Zone, Nainital.
- 3. Senior Superintendent of Police, Nainital, District Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate, for the Petitioner Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: APRIL 21, 2023

Present claim petition has been filed for seeking the following reliefs:

- "(i) To quash the impugned order dated 23.01.2020 passed by Senior Superintendent of Police, Nainital awarding censure entry to the petitioner and to quash the order dated 11.05.2020 passed by learned Deputy Inspector General of Police, Kumaon Zone, Nainital whereby the appeal against order dated 23.01.2020 has been dismissed.
- (ii) Grant any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.
- (iii) Award the cost of the petition to the petitioner."
- 2. The facts of the case, in brief, are that the petitioner while posted as Constable in civil police at P.S. Mallital District Nainital, on 05.10.2019,

he was assigned duty at Riksha Stand Mallital for routine checking. On being inspection of S.I. B.C. Masiwal, the petitioner was found absent from his duty and consuming liquor, he abused Mr. B.C. Masiwal under influence of liquor. Thereafter preliminary inquiry was conducted by Superintendent of Police, Crime/Traffic, Nainital, who recorded the statements of witnesses and submitted his report to the S.S.P., Nainital on 23.11.2019. In the preliminary inquiry report, no specific time has been mentioned. The petitioner placed under suspension from 18.04.2019 to 23.10.2019. After completion of preliminary inquiry, show cause notice dated 04.12.2019 was issued to the petitioner. On receipt of show cause notice, petitioner submitted his detailed reply to S.S.P., Nainital, denying the allegations leveled against him. The petitioner specifically mentioned in the reply that when he was at Barrack, he asked Constable Anand Prasad regarding sending his medical papers to the S.S.P. Office, but the said Constable did not give any suitable reply to the petitioner therefore, some talks took place between them, which was informed to S.I. B.C. Masiwal by the Constable Anand Prasad. It was also mentioned in the reply that the petitioner is under treatment of dengue in September 2019 and he was hospitalized at Soban Singh Jeena Base Hospital.

Thereafter without considering the reply furnished by the petitioner and without proper application of mind, the S.S.P., Nainital *vide* its order dated 23.01.2020 imposed punishment of censure entry upon the petitioner. On 25.01.2020, the S.S.P., issued another show cause notice regarding suspension of the petitioner. The petitioner replied to this show cause notice, praying for grant of full salary and allowances for suspension period. Aggrieved by the order dated 23.01.2020 passed by S.S.P., Nainital, petitioner preferred appeal before DIG, Kumaon Region Nainital, specifically placing on record the true and correct facts and praying for setting aside of order dated 23.01.2020. That too by means of a cryptic order, without examining the validity of the inquiry and of the punishment order held that the factum of petitioner consuming liquor is proved in the medical examination report and found the petitioner guilty of misconduct,

the appellate authority thus dismissed the appeal vide order dated 11.05.2020. Hence the claim petition.

3. Counter Affidavit has been filed on behalf of respondents and have stated that on 05.10.2019, the petitioner was directed to discharge his duties at Riksha Stand, Mallital from 8:00 AM to 20:00 p.m. Due to election, the Senior Sub Inspector was on checking, who found the petitioner absent from the place of duty and when inquired from other police person, present on duty, they informed that the petitioner has gone for eating food at Police Station. The Senior Sub Inspector, when visited the Police Station, he was informed by the police personnel that the petitioner consumed liquor and is using filthy language. Having knowledge of the same, the Senior Sub Inspector informed his superior officer i.e. S.H.O and C.O and also sent the petitioner for medical examination. In the medical report, the petitioner was found intoxicated (Consumed Liquor). The act of the petitioner was found indiscipline and negligent. The Superintendent of Police, Crime/Traffic Nainital was appointed as enquiry officer to conduct the enquiry. The inquiry officer in its report found the petitioner guilty of consuming liquor and absent from duty and also of misbehavior in Police Station. Thereafter, the petitioner was served a show cause notice no. N-235/2019 dated 04.12.2019, which was replied by him on 12.01.2020. The disciplinary authority after going through the reply, found it unsatisfactory and after going through the records and reply of the petitioner pursuant to the provision 4(1)(B) (4) of U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 Adoption and Modification order 2002, passed the punishment order censure entry. Aggrieved by the punishment order, the petitioner submitted the statuary appeal before the appellate authority, who after going through the evidence and record and by following the law and procedure rejected the same vide order no. COK-Appeal-24/2020 dated 11-05-2020 and maintained the punishment of censure. In respect of the payment of the allowance of suspension period w.e.f. 18.10.2019 to 23.10.2019, the disciplinary authority passed the order for payment of the allowance of suspension period, which has been paid to the petitioner. The orders under challenged are just and prefect and hav been passed by the respondents with due transparency and also by following the law and procedure and also given the opportunity of hearing to the petitioner. Thus, on this count the claim petition is devoid of merit and liable to be dismissed with cost.

- 6. No Rejoinder Affidavit has been filed on behalf of the petitioner.
- 7. I have heard learned Counsel for the parties and perused the record.
- 8. Learned Counsel for the petitioner has argued that after completion of preliminary inquiry, show cause notice dated 04.12.2019 was issued to the petitioner. On receipt of show cause notice, petitioner submitted his detailed reply to S.S.P., Nainital whereby he was denied the allegations that when the petitioner was at Barrack, he asked the Constable Anand Prasad regarding sending his medical papers to the S.S.P. Office but the said Constable did not give any suitable reply to the petitioner, therefore, some talks took place between the said Constable and the petitioner. The same was informed by the Constable Anand Prasad to S.I. B.C. Masiwal. The petitioner was under treatment of dengue in September 2019 and he was hospitalized at Soban Singh Jeena Base Hospital. The S.S.P., Nainital vide its order dated 23.01.2020, without considering the reply of petitioner and without proper application of mind, minor punishment of censure entry was imposed upon the petitioner. Aggrieved by the order of censure entry dated 23.01.2020 passed by S.S.P., Nainital, petitioner preferred appeal before the DIG, Kumaon Zone Nainital, which was also by means of a cryptic order, without examining the validity of the inquiry and of the punishment order held that the factum of petitioner consuming liquor is proved in the medical examination report and therefore, the petitioner is guilty of misconduct and the appellate authority dismissed the appeal vide order dated 11.5.2020. The orders passed by the respondents are perverse, which have been passed without application of mind.

- 9. Learned A.P.O. on behalf of the respondents has argued that on 05.10.2019, the petitioner was directed to discharge his duties at Riksha Stand, Mallital from 8:00 AM to 20:00 p.m. Due to election, the Senior Sub Inspector was on checking, who found the petitioner absent from the place of duty and when inquired from other police person present on duty, they informed that the petitioner has gone for eating food at Police Station. The Senior Sub Inspector, when visited the Police Station, he was informed by the police personnel that the petitioner consumed liquor and is using filthy language. Having knowledge of the same, the Senior Sub Inspector informed his superior officer i.e. S.H.O and C.O and also sent the petitioner for medical examination. In the medical report, the petitioner was found intoxicated (Consumed Liquor). The act of the petitioner was found indiscipline and negligent. The Superintendent of Police, Crime/Traffic Nainital was appointed as enquiry officer to conduct the inquiry, who in its report found the petitioner guilty of consuming liquor and absent from duty and also of misbehavior in Police Station. Thereafter, the petitioner was served with a show cause notice no. N-235/2019 dated 04.12.2019, which was replied by the petitioner on 12.01.2020. The disciplinary authority after going through the reply found it unsatisfactory and after going through the records and reply of the petitioner, pursuant to the provision 4(1)(B) (4) of U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 Adoption and Modification order 2002 passed the punishment order of censure entry. The appellate authority after going through the evidence and record and by following the law and procedure, rejected the appeal of the petitioner vide order no. COK-Appeal-24/2020 dated 11.05.2020 and maintained the punishment of censure. The orders under challenged are just and proper and have been passed by the respondents with due transparency and also by following the law and procedure and also given the opportunity of hearing to the petitioner.
- 10. In view of the above discussion, the Tribunal finds that on 05.10.2019, when the petitioner was assigned duty at Riksha Stand Mallital

for routine checking, on being inspection of S.I. B.C. Masiwal, it was found that the petitioner was absent from his duty and consuming liquor and the petitioner abuses Mr. B.C. Masiwal under influence of liquor. The preliminary inquiry was conducted by the S.P., Crime/Traffic, Nainital on 23.11.2019. During inquiry, the statements the petitioner and also of departmental officials were recorded. During inquiry, S.S.I., Bhuwan Chandra Masiwal given his statement that-

बयान व0उ0िन० भुवन चन्द्र मासीवाल कोतवाली मल्लीताल जिला नैनीताल ने बयान किया कि मैं थाना मल्लीताल में विरष्ट उपिनरीक्षक के पद पर तैनात हूँ। दिनांक 5. 10.2019 को मैं क्षेत्र में मौजूद था तथा चुनाव के सम्बन्ध में क्षेत्र में संदिग्ध व्यक्तियों की चैकिंग के दौरान ही कर्मचारियों की डियूटिया चैक करते रिक्शा स्टैण्ड मल्लीताल में पहुंचा तो कानि0 516 ना०पु० सुन्दर लाल अपनी डियूटी पर मौजूद नही था बाद में थाने पर वापस आया तो कर्मचारिगणो द्वारा बताया कि उक्त कानि० सुन्दर लाल शराब के नशे में मदहोश है तथा कर्मचारियों को भद्दी मद्दी गालिया दे रहा है। जिस सम्बन्ध में एसएचओ महोदय व सीओ महोदय को टेलीफोन में माध्यम से सूचित किया गया तथा उच्चाधिकारियों के आदेश से उक्त कानि० का मेडिकल परीक्षण कराया गया जिसमें शराब पीने की पुष्टि हुई। मेरे द्वारा उसके साथ कोई मारपीट व अभद्र व्यवहार नहीं किया गया। यही मेरे दयान है।

Constable 723 CP Anand Prasad, Kotwali, Mallital given the statement before the inquiry officer, as follows:

बयान कानि० 723 ना०पु० आनन्द प्रसाद कोतवाली मल्लीताल जनपद नैनीताल मो०न० 9412980690 ने बयान किया कि मैं कोतवाली मल्लीवाल मे कानि0 क्लर्क के पद पर तैनात हूँ। दिनांक 5.10.2019 को में थाना कार्यालय में मौजूद था तो समय लगभग 13.00 बजे कानि० 516 ना०पु० सुन्दर लाल जिसकी डियूटी म०का० सुषमा नेगी के साथ रिक्शा स्टैण्ड में लगाई गयी थी वह डियूटी स्थल रिक्शा स्टैण्ड में न होकर शराब पीकर थाना कार्यालय में आया था मेरे साथ गाली गलीच व अभद्रता करने लगा फिर मैने उससे कहा डियूटी मे चला जा वह डियूटी में न जाकर बैरिक मे जाकर शोर शराबा करने लगा। एसएस आई बी सी मासीवाल मल्लीताल रिक्शा स्टैण्ड में डियूटी चौक थाने आये तो उन्हें रिक्शा स्टैण्ड में डियूटी में नियुक्त कानि0 516 सीपी सुन्दर लाल डियुटी में नही मिला थाने की वैरिक में चौक कराया तो शराब पीकर शोर शराबा करता व सोता पाया गया। एसएस आई बी सी मासीवाल द्वारा जीडी में गैर हाजिरी दर्ज कराकर चिट्ठी मजरूबी बनाकर कानि० ८७६ ना०पु० बुजमोहन व कानि० ७९९ ना०पु० प्रेम प्रकाश के साथ कानि० सुन्दर लाल को मेडिकल परीक्षण हेतु बी०डी० पाण्डे अस्पताल भेजा गया। बाद मेडिकल परीक्षण कराकर मेडिकल रिपोर्ट व सेम्पल वापसी जीडी में दाखिल कराया गया था तथा मेडिकल रिपोर्ट में डॉक्टर द्वारा शराब पीने की पृष्टि की थी यही मेरे बयान है। प्रकरण.के सम्बन्ध में निम्न प्रश्न पूछे जाते है-

आपके द्वारा कानि0 सुन्दर लाल के मेडिकल परीक्षण के दौरान लिये गये ब्लैंड सैम्पल को परीक्षण हेतु कब भेजा गया? उत्तर— कानि० सुन्दर लाल के मेडिकल परीक्षण के दौरान लिये गये ब्लैंड सैम्पल को परीक्षण हेतु भेजे जाने उक्त तिथि में हे० मोहर्रिर सुरेश राणा का मौखिक रूप से कराकर मालखाने में रख दिया गया था। यही मेरे बयान है।

The statement of Constable 876 CP Brijmohan was also recorded by the inquiry officer, which reads as under:

बयान कानि० 876 सीपी बृजमोहन कोतवाली मल्लीताल जनपद नैनीताल मोबाईल नं० —9411335258 ने बयान किया कि में मल्लीताल में माह जुलाई 2019 से तैनात हूँ। दिनांक 05.10. 2019 को ने थाना कार्यालय में था ता एसएसआई बी०सी० मासीवाल रिक्शा स्टैण्ड पर डियूटी चक कर थाने आये तो उन्हें रिक्शा स्टैण्ड में डियूटी में नियुक्त कानि० 516 सीपी सुन्दर लाल डियूटी में नही मिला थाने की वैरिक में चैक कराया तो शराब पीकर सोता पाया गया। एसएसआई बी०सी० मासीवाल द्वारा जी०डी० में गैर हाजिरी दर्ज कराकर चिटठी मजरूबी बनाकर मुझे व कानि० 799 सीपी प्रेम प्रकाश के साथ कानि० सुन्दर लाल को मेडिकल परीक्षण हेतु बी०डी० पाण्डे अस्पताल भेजा गया। मै तथा प्रेम प्रकाश कानि० सुन्दर लाल का मेडिकल परीक्षण कराकर लाये मेडिकल परीक्षण रिपोर्ट व ब्लैड सैम्पल वापसी जी०डी० में दाखिल कराया था तथा डाक्टर ने शराब पीने की मेडिकल रिपोर्ट में पुष्टि की थी। यही मेरे बयान है। पढकर हस्ताक्षर करता हूँ।

The inquiry officer also recorded the statement of Lady Constable 486 Sushma Negi, who was on duty with petitioner on 05.10.2019 at Riksha Stand, Mallital on the date of incident. During inquiry, the inquiry officer asked the question in respect of the matter, as under:

प्रश्न— क्या कानि० 516 ना०पु० सुन्दर लाल डियूटी के दौरान शराब का सेवन किये हुए थे?

उत्तर— डियूटी के दौरान मुझे नहीं लगा कि शराब का सेवन किये हुए थे मैं तथा उक्त कानि0 डियूटी के दौरान रिक्शा स्टैण्ड में अलग—अलग खड़े थे। जिस कारण मुझे नहीं पता िकवे शराब का सेवन किये हुए थे। यहीं मेरे बयान है।

The inquiry officer also recorded the statement of the Dr. Hasim Ansari, B.D.Pandey Hospital, Nainital, who examined the petitioner, which reads as under:

बयान डा० हासिम अंसारी बी०डी० पाण्डे अस्पताल नैनीताल ने बयान किया कि दिनांक 05.10.2019 को काव सुन्दर लाल पुत्र श्री बी आर आर्या को कानि0 बृजमोहन व का० प्रेम प्रकाश मेडिकल परीक्षण हेतु समय 3.30 बजे बी डी पाण्डे अस्पताल लाये थे उक्त कानि0 सुन्दर लाल नशे की हालत में प्रतीत हो रहा था सुन्दर लाल का ब्लड प्रेशर व प्लस नार्मल थे तथा उसके मुहँ से शराब की बदबू आ रही थी तथा व ठीक से बोल भी नहीं पा रहा था परन्तु वह बहुत ज्यादा बोल रहा था वह अपना नाम भी नहीं लिख पा रहा था, उसकी चाल भी लडखड़ा रहीं थी वह बहुत गुस्से में था उसके द्वारा परीक्षण के दौरान अपना अंगूठा भी नहीं लग रहा था तथा मेडिकल परीक्षण में काफी व्यवधान पैदा कर रहा था। उसके मेडिकल

परीक्षण में नशे में प्रतीत हो रहा था नशे की पुष्टि हेतु ब्लैड सैम्पल लिया गया जो साथ आये का० सह कर्मियों के सुपूर्द किय गया यही मेरे बयान है।

11. After completion of preliminary inquiry, show cause notice dated 04.12.2019 was issued to the petitioner, to which he has given detailed reply. In para 10 of his reply, the petitioner has stated that-

10. डाक्टर द्वारा मेडिकल रिपोर्ट में जिन तथ्यों का उल्लेख किया है उससे शराब के सेवन की पुष्टि नहीं होती है। क्योंकि एल्कोहल की बू आना शराब के सेवन की पुष्टि नहीं करता है। क्योंकि ऐलोपेथिक एवं आर्युवैदिक दवाईयों में एल्कोहल का मिश्रण होता है, तथा प्रार्थी ने अपने बीमारी से सम्बंधित दवाई उसी समय खाने से पूर्व तथा खाने के बाद की दवाई का सेवन किया जाता है। जब तक मरीज का मूत्र एवं खून की विशिष्ट जांच नहीं की जाती है तब तक एल्कोहल के सेवन की मात्रा की पुष्टि नहीं होती है। इसलिए डाक्टर द्वारा की गई मेडिकल जॉच की रिपोट से प्रार्थी के विरुद्ध कोई आरोप सिद्ध नहीं होता है।

The S.S.P., Nainital *vide* its order dated 23.01.2020, without considering the reply of petitioner and without proper application of mind, minor punishment of censure entry was imposed upon the petitioner. Thereafter, the petitioner filed appeal against the order of the S.S.P., Nainital dated 23.01.2020 before the respondent no. 2. In para 1 of the appeal, the petitioner has specifically mentioned that-

जांच अधिकारी की जांच आख्या के अनुसार सर्वप्रथम प्रारम्भिक जाँच निम्न कारण से अपूर्ण / मान्य नहीं हैं, कि जांच अधिकारी चिकित्याधिकारी, बी०डी० पाण्डे (पुरुष) चिकित्साल, नैनीताल की मेडिकल जांच रिपोर्ट के आधार पर कार्यावाही नहीं कि गयी, जिसमें चिकित्सक द्वारा सैम्पल परीक्षण हेतु लिखा गया है, जिसका इन्द्राज कांन्स 182 स०पु० सुनील कुमार द्वारा थाने की जी०डी० में बाद परीक्षण कराकर थाना वापस लाने व 01 किता मेडिकल रिपोर्ट मय 01 शीशी ब्लंड सैम्पल थाना कार्यालय में दाखिल किया गया, लेकिन ब्लड सैम्पल को विधि विज्ञान प्रयोगशाला परीक्षण हेतु न भेजना इस बात की पुष्टि करता है कि थाने के अधिकारी / कर्मचारी इस बात से सहमत थे कि प्रार्थी / अपीलार्थी द्वारा शराब का सेवन नहीं किया था, यदि ऐसा होता तो ब्लड सैम्पल तो परीक्षण हेत् भेजा जाता जो प्रारम्भिक जांच में मुख्य कमी है क्योंकि यदि जांच अधिकारी इस तथ्य को संज्ञान लेते तो ब्लड सैम्पल विधि विज्ञान प्रयोगशाला हेत् तत्काल न भेजे जाने में बरती गयी लापरवाही के लिये सम्बंधित अधिकारी / कर्मचारी की जिम्मेदारी भी निधारित करना अनिवार्य होता जिसे जांच अधिकारी द्वारा नजर अन्दाज कर एक तरफा प्रारम्भिक जांच की गयी। जहां तक चिकित्साधिकारी द्वारा शराब की बदबू आने का उल्लेख किया है उसके सम्बन्ध में प्रारम्भिक जांच के दौरान जांच अधिकारी को अपने कथन में बताया कि प्रार्थी / अपीलार्थी डेंगू का उपचार कराकर वापस ड्यूटी में दिनांक 01 / 10 / 2019 को आया है। स्वास्थ्य सही न होने के कारण बीमारी से सम्बंधित दवाई का सेवन किया था। शराब पीने का कोई प्रश्न नहीं था, यदि प्रार्थी / अपीलार्थी का ब्लड सैम्पल परीक्षण कराये जाने पर रिपोर्ट में इस बात की पृष्टि होती तो शराब का सेवन किया गया है वही प्रश्नगत आरोप का ठोस / मुख्य अभिलेखीय साक्ष्य होता जो नहीं है।

In respect of the aforesaid grounds mentioned by the petitioner in para 1 of the appeal, the appellate authority in his appellate order dated 11.05.2020, para 2 of page no. 2, it has been stated that-

अपलार्थी द्वारा अपील के उक्त प्रस्तर में अंकित कथन स्वीकार किये जाने योग्य नहीं है । पत्रावली पर उपलब्ध अभिलेखों से अपीलार्थी द्वारा शराब का सेवन कर डियूटी से गायब होने थाने में आकर अपशब्दो / अशोभनीय शब्दों का प्रयोग किये जाने की पूर्णतः पुष्टि होती है । प्रारम्भिक जांच में चिकित्सक द्वारा अपने बयानों में अपीलार्थी के मुंह से शराब की बदबू आने तथा उसके ठीक से बोल तक न पाने का उल्लेख किया है। इससे स्पष्ट है कि अपीलार्थी पर लगाये गये आरोप सत्य है तथा दिया गया दण्ड उचित है ।

The appellate authority dismissed the appeal vide order dated 11.5.2020 without examining the validity of the inquiry and of the punishment order and held the factum of petitioner consuming liquor is proved in the medical examination report and found the petitioner guilty of misconduct.

12. In view of the above, the Tribunal finds that no proper medical examination has been conducted. Though, blood sample was taken by the doctor but the same was not sent for chemical examination, which is also clear from the statements of the witnesses during inquiry. The contentions made by the petitioner in the reply to show cause notice or in the appeal have also not been discussed. The medical examination has been made the basis of punishment. However, the medical examination nowhere suggests or prove the petitioner to be under influence of liquor and the smell cannot be made final test for proving consumption of liquor. To substantiate the fact of consumption of the liquor can authentically be proved, after the laboratory test report. In the absence of such report, it cannot be proved that the petitioner was under intoxication, which supports the case of the petitioner. Hence, the order passed by the punishing authority is perverse. The appellate authority also did not consider the grounds taken by the petitioner in the appeal and passed an arbitrary order without appreciating the facts and examining the validity of the order passed by the punishing authority. Hence the impugned

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punishment orders are liable to be set aside and the claim petition is liable

to be allowed.

<u>ORDER</u>

The claim petition is allowed. The impugned punishment order

dated 23.01.2020 passed by the Senior Superintendent of Police

(respondent no. 3) and appellate order dated 11.05.2020 passed by the

Deputy Inspector General of Police (respondent no. 2) are hereby set

aside. The respondents are directed to expunge the censure entry

recorded in the character roll of the petitioner within 30 days from the

date of this order. No order as to costs.

(RAJENDRA SINGH)

VICE CHAIRMAN (J)

DATE: APRIL 21, 2023 DEHRADUN

KNP