BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

REVIEW APPLICATION NO. 01/SB/2024
[IN CLAIM PETITION NO. 130/ SB/2021]

State of Uttarakhand and others.

.....Review applicants

Versus

Arun Kuar Gairola

.....Respondent/ O.P.

Present: Sri V.P.Devrani, A.P.O, for the review applicants
Sri Abhishek Chamoli, Advocate, for the petitioner
(Opposite Party herein).

JUDGMENT

DATED: JANUARY 03, 2024

Justice U.C.Dhyani (Oral)

Review application along with an application for condoning the delay in filing the review application has been filed on behalf of the State, supported by the affidavit of Sri Ajay Singh, Senior Superintendent of Police, Dehradun. The delay in filing the review application is not seriously opposed by Sri Abhishek Chamoli, Ld. Counsel for the opposite party (petitioner in the claim petition). Considering the sufficiency of reasons thus taken in filing the delay condonation application, delay in filing the review application is condoned.

2. Review application has been filed on behalf of the review applicants for reviewing the order dated 01.03.2023 passed by the Tribunal in

Claim Petition No. 130/SB/2021, Sri A.K. Gairola vs. State of Uttarakhand and others.

3. The claim petition was decided by the Division Bench, although the matter was cognizable by the Single Bench, hence, the review application can be decided and is, accordingly, being decided, with the consent of Ld. Counsel for the parties, by the Single Bench, inasmuch as Ld. V.C.(A) has retired and other Division Bench is not available nowadays.

4. Scope of judicial review is very limited. Five decisions of Hon'ble Apex Court have been cited in support thereof, which are as under:

(i) The decision rendered by Hon'ble Supreme Court in B.*C.Chaturvedi vs. Union of India and others, 1995 (6) SCC 749*, is on the point of proportionality and quantum of punishment. This Tribunal has not dealt with the quantum of punishment or proportionality aspect of the punishment, hence the decision of Hon'ble Supreme Court in B.C. Chaturvedi's case (*supra*) is not applicable to present review application.

(ii) In the decision of *Lalit Popli vs. Canara Bank & others [Appeal (Civil) 3961 of 2001]*, it was held by Hon'ble Apex Court that the power of judicial review conferred upon Constitutional Court or Tribunal is not of the appellate authority, but is only confined to decision making process. Only when finding recorded by disciplinary authority is not supported by an evidence or is unreasonably arrived at, writ Court can interfere with the finding of disciplinary authority.

It may be noted here that the Tribunal was conscious of its limitation that it cannot appreciate the evidence and cannot sit as an appellate Court over the decisions of disciplinary authority and appellate authority. The Tribunal, while deciding the claim petition, interfered with, not on reappreciation of evidence, but for the reasons, which are delineated in para 5 of the text of this judgment.

(iii) It has been reiterated in *State of Karnataka vs. Umesh (Civil Appeal Nos. 1763-1764 of 2022),* that the Court exercising judicial review does not act as an appellate forum over the finding of disciplinary authority and does not reappreciate the evidence on the basis of which findings of

misconduct have been arrived at in course of disciplinary enquiry. The Court, in exercise of judicial review restricts its review to determine whether (i) rules of natural justice have been complied with; (ii) finding of misconduct is based on some evidence; (iii) statutory rules governing conduct of disciplinary enquiry were followed; (iv) finding of disciplinary authority suffer from perversity; and (v) penalty is disproportionate to the misconduct.

(iv) In the decision of *Government of Tamilnadu and another vs. A. Rajapandian, (1995)1 SCC 216*, Hon'ble Supreme Court has observed that, where the Tribunal had not found any fault with the proceedings conducted by the inquiring authority, held, it had no jurisdiction to reappreciate the evidence and set aside the order of dismissal on the ground of insufficiency of evidence to prove the charges. It is further observed by the Hon'ble Court that in such a case Supreme Court would not examine the merits of appreciation of evidence by the Tribunal and inquiry authority.

(v) In the decision of *State of Karnataka vs. N. Gangaraj (Civil Appeal No. 8071 of 2014*, it has been held by Hon'ble Supreme Court that power of judicial review is confined only to decision making process. Only when finding recorded by disciplinary authority is not supported by evidence or is unreasonably arrived at, writ court can interfere with the finding of disciplinary authority.

5. The Tribunal found that the principles of natural justice have been complied with, statutory rules governing conduct of disciplinary enquiry were followed, but found that findings of disciplinary authority and appellate authority suffer from perversity and were unreasonably arrived at. The Tribunal did not touch the point of proportionality. The Tribunal found that- "if the imputation levelled against the petitioner, which imputation has been made part of censure entry under Rule 23(2) of the Uttarakhand Police Act, 2007, is accepted on its face value, impugned orders cannot sustain in the absence of any evidence on record, and are liable to be set aside. Interference is, therefore, called for in the impugned orders'. The Tribunal did not interfere with the findings of disciplinary authority and appellate authority on the ground of violation of principles of natural justice or on the ground that the statutory rules have not been followed. Instead, the Tribunal found that the departmental story itself is not acceptable on the face of it, inasmuch as there are inherent

contradictions in it. It is unreasonable on the face of it. Findings recorded by the Tribunal are as follows:

> ‘‘Constable C.P. Mukesh Sharma and Constable C.P. Mukesh Bhatt were inimical to each other. On 12.01.2020, Constable C.P. Mukesh Sharma compelled truck driver Malik Hasan r/o Nawabgarh, on telephone, to disclose giving money to the Police (read: Constable CP Mukesh Bhatt). The call was recorded. Call recording was sent by Constable Mukesh Sharma, which was made viral.
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> Apart from that, the imputation is that, the petitioner Constable, when he was posted in Police Station, Kalsi, district Dehradun, in connivance with Constable C.P. Mukesh Sharma, without knowledge of the Officer incharge Police Station, got his departure for the police lines recorded in CER on 12.01.2020, whereas the petitioner was fully aware that he was under transfer.
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> The imputation is that the petitioner did the said act in connivance with Constable C.P. Mukesh Sharma, which tarnished the image of the police department.
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> 5. In the first limb of the censure entry, there is no imputation against the petitioner. The imputation is against Constable C.P. Mukesh Sharma and Constable C.P. Mukesh Bhatt. The only mention of the petitioner is that he was posted on 12.01.2020 in P.S. Kalsi, district Dehradun. Call recording was sent by the Constable C.P. Mukesh Sharma, which (recording) was made viral. Thus, there is nothing against the petitioner in the first limb of censure entry.
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> The second part (of the censure entry) relates to the fact that the departure of the petitioner was entered in CER (Civil Emergency Reserve) in connivance with Constable C.P. Mukesh Sharma without bringing the same to the knowledge of the officer-in-charge police station. It may be noted here that the entry in the G.D. was not done by the petitioner. There is no evidence that the petitioner got his departure for police line entered in CER, in connivance with Constable C.P. Mukesh Sharma.
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> 6. Whereas, according to learned A.P.O., the petitioner has acted in a way, which is detrimental to the image of the police department, learned counsel for the petitioner refuted that the misconduct cannot be attributed in the absence of any evidence of connivance. Learned A.P.O. replied that when the petitioner was under transfer, he should not have gone to the police lines and got his departure to police lines recorded in CER. Learned Counsel for the petitioner submitted that the entry in the G.D. was not made by the petitioner and the police official who made entry in the G.D. alone is responsible for same. According to learned Counsel for the petitioner, the petitioner was not aware that he was under transfer. Learned A.P.O. replied that since the petitioner was a beneficiary, therefore, it may be gathered from the circumstances that his departure to the police lines was entered in the G.D. at the instance of the petitioner.
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> 7. It may be noted here that call recording was allegedly sent by Constable Mukesh Sharma, and not by the petitioner. If the call recording was sent by someone to the higher police officials through his mobile, as has been inferred by the appellate authority in internal pages 1 and 2 of the appellate order dated 26.02.2021 (Annexure: A2), it is open to question whether the same is a

'misconduct' or not. Further, at the internal page no. 3 of the appellate authority's order, the inference has been drawn that the constable clerk, Mukesh Sharma deliberately recorded the departure of constable Arun Kumar, petitioner, to the police lines. It appears that the appellate authority was under the confusion that the constable clerk Mukesh Sharma was the appellant who has filed the departmental appeal and who deliberately entered the departure of Constable Arun Kumar to the police lines. It will be worthwhile to clarify here that Constable Arun Kumar and not Constable Mukesh Sharma was the appellant before the appellate authority.

....

'Judicial review of the administrative action' is possible under three heads, viz;

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

9. Although the scope of judicial review is very limited in view of the decision in *Nirmala Jhala (Supra)*, but it is one such case in which the Tribunal feels that the Tribunal should interfere in the finding of disciplinary authority as affirmed by the appellate authority, inasmuch as there is no evidence, direct or circumstantial, against the petitioner and no legal presumption can be drawn on the basis of given facts that he connived with Constable Mukesh Sharma (*Head Moharrir*) to get his departure to police lines entered in the G.D. of the police station without bringing the said fact to the knowledge of the police-in-charge of police station concerned. No judicial or quasi-judicial authority is permitted to draw inference on the basis of surmises and conjectures.

10. The conclusion is that if the imputation levelled against the petitioner, which imputation has been made part of censure entry under Rule 23(2) of the Uttarakhand Police Act, 2007, is accepted on its face value, impugned orders cannot sustain in the absence of any evidence on record, and are liable to be set aside. Interference is, therefore, called for in the impugned orders."

SCOPE OF JUDICIAL REVIEW

In India, neither Parliament nor State Legislature can take away jurisdiction of Hon'ble Supreme Court or Hon'ble High Courts to issue the writs mentioned in Articles 32 and 226 of the Constitution of India. The rule as to judicial review on the limited ground of patent error of law has been adopted in India from England. It is true that discretion maybe exercised reasonably. A person who is entrusted with the discretion must direct himself properly in law. He must call his own attention to the matter which he is bound to consider. He must exclude from his consideration, matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it was within the powers of the authority. in Short vs. Poole Corporation, 1925 All England Reports 74 (CA), example of a red-haired teacher was given, who was dismissed because she had red hair. That is unreasonable in one sense. In another sense, it is taking into consideration extraneous matters.

It was only in the year 1985 that Lord Diplock identified the ingredients of the judicial review in Council of Civil Service Union vs. Minister for the Civil Service, 1985 AC

374. According to him, judicial review could be possible under three heads, namely, illegality, irrationality and procedural impropriety.

In M.A. Rashid vs. State of Kerala, (1974) 2SCC 687, the Hon'ble Apex Court, considering the test of reasonableness and the scope for Court's interference held as below:

"8. Where powers are conferred on public authorities to exercise the same when 'they are satisfied' or when 'it appears to them', or when 'in their opinion' a certain state of affairs exists; or when powers enable public authorities to take 'such action as they think fit' in relation to a subject matter, the Courts will not readily refer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

9. Where reasonable conduct is expected the criterion of reasonableness is not subjective, but objective.....

10..... The standard of reasonableness to which the administrative body is required to conform may range from the court's own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis."

In Ranjeet Thakur vs. Union of India, (1987) 4 SCC 611, Hon'ble Supreme Court relied upon Lord Diplock in Council of Civil Service Union Case (*supra*), as below:

"...Judicial Review has, I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. the second, 'irrationality' and the third, 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds."

6. The limited scope of judicial review has 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.

7. In *M.P. Gangadharan vs. State of Kerala, (2006) 6 SCC 162*, Hon'ble Apex Court has observed that:

> "The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a strait-jacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review."

8. **There should be some evidence against the wrongdoer before crucifying him. The Tribunal interfered, in the instant case, because it was found that the discretion exercised by the administrative authority is perverse/illegal. The Tribunal found that there was no evidence against the petitioner. No misconduct can be attributed in the absence of any evidence, direct or circumstantial. No legal presumption could be drawn, on the basis of given facts, that the petitioner connived with Constable Mukesh Sharma (*Head Moharrir*) to get his departure to police lines entered in the G.D. of the police station without bringing the said fact to the knowledge of In-charge of police station concerned. No judicial or quasi-judicial authority is permitted to draw inference on the basis of surmises and conjectures.**

WHETHER ORDER UNDER REVIEW IS AMENABLE TO SUCH JURISDICTION?

9. A student of Law is well aware of the difference between writ jurisdiction, appellate jurisdiction, revisional jurisdiction and review jurisdiction. They operate in different situations and are governed by different statutory provisions. At present, the review applicants pray that order dated 01.03.2023 should be reviewed by this Tribunal in review jurisdiction. The scope of review jurisdiction too is very limited. Review is permissible only when (i) there is an error apparent on the face of record, (ii) there is clerical or arithmetical mistake or (iii) for any other sufficient reason. None of these three is attracted in this case. There is no manifest error on the face of record. There is no clerical mistake. There is no other sufficient reason to indicate that the order sought to be reviewed should be reviewed in the interest of justice.

10. Granting the relief, as prayed for in the review application, is beyond the jurisdiction of a Review Court.

11. Applying the principles of law, as discussed above, to the facts of the present case, irresistible conclusion would be that the review application lacks merits and should be dismissed. The review application, therefore, fails and is dismissed.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 03, 2024.
DEHRADUN

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