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

Present: Hon'ble Mr. Justice J.C.S.Rawat

------ Chairman

&

Hon'ble Mr. U.D.Chaube

-------Member (A)

**CLAIM PETITION NO. 26/NB/DB/2013**

Constable No. 3470 C.P. Inder Goswami (E-Company), S/o Late Shri Mahendra Nath Goswami, Presently posted at India Reserve Battalion, 1st (E) Company, Bailparao, Ram Nagar, District Nainital

...……Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary Home, Civil Secretariat, Uttarakhand Dehradun.
2. Additional Director General of Police (Administration) Police Headquarters, Dehradun
3. Commandant, India Reserve Battalion 1st, Bailparao, Ramnagar, Nainital.
4. Inspector General of Police, PAC, Haridwar.

…….Respondents

Present: Sri Vinor Tiwari, Ld. Counsel for the petitioner

Sri V.P.Devrani, Ld. A.P.O. for the Respondents

**JUDGMENT**

**DATED: NOVEMBER 04, 2015**

**HON'BLE MR. JUSTICE J.C.S. RAWAT, (ORAL)**

1. This claim petition has been filed by the petitioner against the respondents with the following reliefs:

*"i) The orders dated 24.10.2010, 07.04.2011 and 29.09.2012 passed by the authorities in disciplinary*

*proceedings against the petitioner may graciously be set aside to the extent of adverse remark made in his character roll/service record.*

*ii) Any other relief/reliefs which this Hon'ble Services Tribunal may deem fit and proper under the facts and circumstances of the case."*

2. The facts in brief are that the petitioner while posted as Constable in India Reserve Battalion Bailparao, Ramnagar, Nainital on 01.12.2007, he was sent for one month General Training Course at Bailparao, Ramnagar. After one month General Training Course, the petitioner was further sent to Gorakhpur for nine months training to undergo the Training for IRB. After completing the successful training at Gorakhpur, he was selected to undergo Training at Gray Hounds, Hydrabad for eight weeks in the year 2010. It is alleged by the petitioner that he sustained an injury on his ankle during the course of exercise and he was immediately sent to the Police Hospital where it is written on the prescription slips that the "Soft tissue swelling noted around ankle joint." Thereafter, the x-ray of ankle was also conducted to ascertain the nature of injury. It is further alleged by the petitioner that he could not obtain the passing marks in 10 km race as he was sent back to the Battalion Head Office. It is also admitted to learned counsel for the parties that the course commenced from 14.05.2010 and it had to come to an end after 8 weeks. It is further alleged that when the petitioner returned to his Headquarter, a preliminary enquiry was conducted that the petitioner has not participated in the training programme actively and he was negligent during his training period. The preliminary enquiry officer conducted the enquiry and found the petitioner guilty of negligent during the course of training. After giving show cause notice to the petitioner, the punishing authority awarded the impugned punishment.

3. The respondents contested the petition and supported the order of the punishing authority. The respondents have stated that the petitioner had not taken interest during the course of training so an adverse remark was recorded in his Character Roll. The punishing authority apart from awarding the punishment of an adverse entry awarded the penalty of Rs. 25,000/- upon the petitioner. The penalty which has been awarded by the punishing authority had been washed of by the revisional authority in the revision. At present, the only penalty which has been awarded to the petitioner remains the adverse entry awarded to him by the punishing authority. The respondents have further prayed that the petition be dismissed accordingly.
4. We have heard learned counsel for the parties and perused the record carefully. The learned counsel for the petitioner pointed out that the subjective satisfaction recorded by the punishing authority is perverse and against the record. He further pointed out that the petitioner sustained the ankle injury during the course of the training conducted by the department and the petitioner was immediately sent to the departmental hospital where the prescription slips were prepared in which it is indicated that the soft tissue on swelling noted around ankle joint is the injury on the ankle of the petitioner and the injury was classified as shown by the doctor. He further contended that due to the injury, the petitioner could not obtain the minimum marks in the 10 km race conducted by the Police Headquarters. He further contended that he had taken interest during the training and he remained as disciplined constable during the said duty. The conclusions of punishing authority are arbitrary, perverse and against the principles of natural justice. Learned A.P.O. refuted the contention and pointed out that a preliminary enquiry was conducted in which he was found guilty of the negligence during the course of the training. He further contented that copy of the enquiry report was also submitted to the petitioner while issuing the show cause notice. The enquiry report clearly provides the entire

evidence as well as findings of the enquiry officer and the satisfaction recorded by the punishing authority. Learned A.P.O. further contended that the petitioner had only submitted OPD prescription slips and the x-ray report during the course of the enquiry, whereas, rest of the constable against whom the adverse report has been given had not submitted any documentary evidence to the department. Learned A.P.O. also contended that the findings recorded by the punishing authority cannot be re-appreciated until and unless it is perverse. The court cannot substitute its own conclusion substituting the satisfaction recorded by the punishing authority.

5. We have gone through the record produced by the respective parties. It is well settled principles of law that preliminary enquiry report is only for the satisfaction of the punishing authority as to whether the departmental enquiry should be conducted against the delinquent or not. There is no provision in the law that the preliminary enquiry in a complaint should be ordered to be held by the punishing authority. It is a rule of prudence to protect the public servant from the false and frivolous complaints to scrutinise it before proceedings in the departmental enquiry against the public servant. If it is found in the departmental enquiry that the complaint was frivolous, the public servant would merely be harassed by such enquiry. To prevent such harassment of the public servant, the punishing authority used to hold the preliminary enquiry. The purpose of the preliminary enquiry is only to ascertain the truth on which the punishing authority can record the satisfaction to proceed further in the departmental enquiry. The respondents had already given the copy of the enquiry report on the basis of which the punishing authority has recorded his satisfaction. During the course of the enquiry, this fact came to the notice of the enquiry officer that during the course of the training, the petitioner sustained ankle injury and it was supported by a prescription issued by the Police Hospital as well as x-ray report. It was the document of the police

department which cannot be challenged by the respondents. It is amply established that the petitioner had sustained the injury in his ankle during the course of the training. The enquiry officer has not recorded any other evidence to record his satisfaction that this fact is wrong. The enquiry officer has not recorded the statement of the incharge of training. As a matter of fact, this departmental evidence, could not have been rebutted by the respondents. In the case of **Nirmala Jhala vs. State of Gujrat (2013)4 SCC, 301**, the Hon'ble Apex Court has held as under:

> "*52.3. The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was the delinquent in the enquiry.*
> *52.4 The onus lies on the department to prove the charge and it failed to examine any of the employees of the court i.e. stenographer, Bench Secretary or peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17.8.1993.*"

6. In the case in hand, the punishing authority recorded his satisfaction on the basis of the preliminary enquiry and thereafter, a show cause notice was given to the petitioner and he was punished by minor punishment as stated above. No charge sheet has been served for the major punishment. Here the satisfaction has been recorded by the punishing authority on the basis of the preliminary enquiry report. Thus, the preliminary enquiry report at this stage can be seen by the court as to whether there was any evidence against the petitioner or not. In the case of **Noor Aga V. State of Panjab (2008)16 SCC, 417** has as under:

> "*88.....17. The departmental proceeding being a quasi-judicial one the principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration*

*and irrelevant facts have been excluded thereform. Inference on facts must be based on evidence which meet the requirements of legal principles."*

7. The Hon'ble Apex Court in **Nirmala Jhala Vs. State of Gujrat (Supra)** has held as under:

*"17. In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are qashi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahald Saran Gupta does not apply in this case as the case was of professional misconduct, and not of the delinquency by the employee."*

8. In view of the above judgments, it has clearly been established that the court has to see whether there is any evidence on record to reach the conclusion that the delinquent had committed the misconduct. The said conclusion should be reached on the basis of what prudent person would have done.

9. It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings.

10. The Hon'ble Supreme Court, in case of **B.C.Chaturvedi v. Union of India, 1995(5) SLR, 778** has held as under:

*"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or* ***conclusions are based on some evidence,*** *the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be* ***based on some evidence****. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

11. In case of **Nirmla Jhala Vs. State of Gujrat and another (Supra),** the Hon'ble Apex Court has held as under:

*"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 malafides, 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. In the case of **Veer Pal Singh Vs. Secretary, Ministry of Defence (2013)8 SCC, 83,** the appellant was enrolled in the Army (Corps of Signals). After completion of training, the appellant was posted in the 54 Infantry Division of the Army Regiment. After two years, he was admitted in the hospital for the treatment of 'intestinal colic' as diagnosed by the doctor. Between March 1976 to October 1977, he was treated in different hospitals of the Army. Meanwhile, the Army headquarters downgraded his category. For a period of six months w.e.f. 3.1.1977 he was referred to the medical board for its recommendations as to whether he should be discharged from the

services and he was discharged from the Army on the ground that he had been suffering from 'schizophrenic' reaction and due to such cause he was discharged. He claimed pension from the department as he suffered the disease during military service but his claim was rejected. The petitioner preferred a writ petition before the High Court and thereafter it was transferred to Arms Force Tribunal. The Tribunal rejected the claim and held that the claim of the petitioner cannot be scrutinised by the Tribunal as it does not come within the purview of the judicial review. The matter came up before the Hon'ble Apex Court while allowing the appeal held as under**:**

> *"10. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release / discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.*
>
> *13. National Institute of Mental Health, USA has described "schizopherenia"□ in the following words:*
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> *"schizopherenia is a chronic, severe, and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices other people "don't hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated. People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Sometimes people with schizophrenia seem perfectly fine until they talk about what they are really thinking. Families and society are affected by schizophrenia too. Many people with schizophrenia have difficulty holding a job or*

*caring for themselves, so they rely on others for help. Treatment helps relieve many symptoms of schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities."*

13. The Hon'ble Supreme Court while interpreting the sufficiency of evidence held that if there is some evidence to prove that the petitioner was guilty for the misconduct, he must be punished even that evidence was not sufficient. The Hon'ble Apex Court has further held that if the findings are perverse, the court can interfere with the findings recorded by the punishing authority. In the case in hand, as we have pointed out that the punishing authority came to the conclusion on the basis of the preliminary enquiry as indicated in the show cause notice that the petitioner did not take any interest during the course of the training. We have gone through the entire record in which the preliminary enquiry officer has taken the statement of different persons and all the witnesses have stated that the petitioner has taken interest during the course of exercise. There is no iota of oral evidence or any other evidence that the petitioner had not taken interest in exercise during training. If there is no such oral evidence or documentary evidence, it cannot be held that petitioner prima facie found guilty of the misconduct or not discharged his duties properly. Whereas preponderance and the circumstances of the case are not in favour of the respondents, whereas the medical reports further fortify the stand of the petitioner that he was ill during the course of the exercise and he had sustained an injury in his ankle during the course of exercise. Apart from that it is proved by the documentary evidence as well as statement of the petitioner before the enquiry officer that he sustained injury during the course of the training. After completion of the training, the trainee would have to undergo on written as well as physical test of 300 marks which is given as below:

"1. Written Examination - 100 marks

2. 10 K.M. race - 50 marks

3. PPT:

i. 3.2 K.M. Race ii. Nickel Dips

iii. Abdominal- 30 iv. Beem-10

v. Fireman Lift

4. BOAC (Obstacle ): 50 marks

5. Firing : 50 marks

Total 300 marks"

14. We have also summoned the original file from the department. The original file reveals that the petitioner has obtained '17' marks in PPT out of 50; PPT includes short race and cross obstructions likewise other exercises; '0' marks in BOAC out of 50; '0' marks in 10 km. race out of 50; the petitioner obtained 25 marks in firing out of 50; in written test, he has obtained 61 ½ out of 100 marks. Thus, he obtained 103.5 marks in total. In view of the above chart of the marks obtained by the petitioner reveals that the petitioner could not qualify the training in respect of race and BOAC test where he obtained '0' marks. In BOAC test, the petitioner had to cross obstacles which specifically require the use of ankle during the course of exercise, and for the crossing of obstructions also require fitness of ankle during the course of exercise. It is apparent that there is an evidence that the petitioner had been suffering from ankle injury (Soft tissue swelling noted around ankle joint) and as such he could not qualify these two tests, whereas, written examination and firing is concerned, he has obtained above 50% marks. We can explain the term "Soft tissue swelling noted around ankle joint" according to the medical jurisprudence that the ankle is a weight bearing joint, where three bones meet; the Titia, Febula of lower leg and talus of the foot which sits on the top of the leg bone (calcareous), ligaments, Strong bands of Fibrons Tissue capable of only slight stretch holds the bones together. Tendons attached muscular to the bones to move the ankle joint, and one soften and more stretchy. Any of these structures, bones, ligaments

and tendons can be injured. A damaged ankle ligament cause inflammation, swelling and sometimes bleeding also around the affected ankle. Most of such injuries take few weeks to recover. Generally in ankle injury the doctor may advise to avoid putting weight or strain on the leg. Thus, undergoing any such exercise like race, jumping would further cause injury to the ankle. There is no evidence before the punishing authority to ascertain that the petitioner had not sustained any ankle injury. It can be taken as judicial notice of the fact and according to medical jurisprudence, if any injury is received in the ankle particularly in a ligament, the person who has come under training to complete the obstacle race or any such minor races or exercises, he cannot perform properly such exercises. The punishing authority has at all no evidence that he was fit to qualify the physical exercise as has been prescribed in the curriculum. In view of the above, we find that the satisfaction recorded by the punishing authority is perverse and without evidence and liable to be set aside.

15. In view of the above, the findings recorded by the punishing authority are perverse. The petition is liable to succeed and is liable to be allowed.

**ORDER**

The claim petition is allowed. The impugned orders dated 24.10.2010, 07.04.2011 and 29.09.2012 are hereby quashed. No order as to costs.

*Sd/-* *Sd/-*

**U.D. CHAUBE** **JUSTICE J.C.S.RAWAT**
MEMBER (A) CHAIRMAN

*DATE: NOVEMBER 04, 2015*
*BENCH AT NAINITAL*
*KNP*