BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Sri V.K. Maheshwari

------ Vice Chairman (J)

&

Sri D.K. Kotia

------- Vice Chairman (A)

CLAIM PETITION NO. 04/SB/2014

Sushil Kumar (Constable No.1203 CP), S/o Sri Surendra Singh presently posted as Constable in GRP Dehradun.

………Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Senior Superintendent of Police, Dehradun.
3. Dy. Inspector General of Police, Garhwal Range, Uttarakhand, Dehradun.

……Respondents

Present: Sri Jugal Tiwari, Counsel, for the petitioner

Sri U.C.Dhaundiyal, A.P.O. for the respondents

JUDGMENT

DATE: FEBRUARY 03, 2016

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed this petition for seeking the following relief:

"(i) The impugned order dated 03 January 2012 of the Senior Superintendent of Police, Dehradun awarding the punishment of censure and withholding integrity for the year 2011 may be quashed.

(ii) The appellate order dated 12 September 2013 of the Dy. Inspector General of Police, Garhwal Range may also be set aside.

(iii) The impugned order of the Senior Superintendent of Police, Dehradun may be removed from the character roll of the petitioner so that it may not mar his future career."

2. The relevant facts in brief are that the petitioner, who is a constable (No. 1203) in civil police in the State of Uttarakhand was posted in police station, Raipur (District Dehradun) and attached to the Maharana Pratap Sports College, Raipur as a coach.

3. The petitioner was issued a show cause notice on 15.12.2011 (Annexure; A3) by the Senior Superintendent of Police, Dehradun (respondent No.2) as to why a censure entry be not given to him as a minor penalty under 'The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991' (which is applicable in the state of Uttarakhand). The said Rules hereinafter referred to as Rules of 1991. The allegation against the petitioner, based on the preliminary enquiry (Annexure: A4), in the show cause notice was as under:

"वर्ष–2011 में जब आप महाराणा प्रताप स्पोर्टर्स कालेज, रायपुर जनपद देहरादून में बतौर टीम कोच नियुक्त थे तब आप दिनांक 23/11/2011 को पुलिस लाईन रेसकोर्स देहरादून गये जहॉ पर आपके द्वारा आरक्षी पुलिस/पीएसी/फायरमैन की भर्ती प्रकिया के दौरान काउन्टर नम्बर–02 पर अभ्यर्थी चेस्ट नम्बर 1230 अनुज कुमार पुत्र श्री बालेन्द्र सिंह जिसकी नाप–खोज उ0नि0स0पु0 कुन्दन लाल आर्य, द्वारा की गई थी किन्तु उक्त अभ्यर्थी की लम्बाई 164.6 से0मी0 तथा सीना 79–84 से0मी0 पाते हुए उनके द्वारा उसके सीनें

पर उक्त नाप को लाल मार्कर कलम से अंकित करते हुए एवं उक्त अभ्यर्थी की निर्धारित लम्बाई न होने के कारण उसे अनफिट कर दिया गया था । आपके द्वारा उ0नि0श्री कुन्दन लाल आर्य से उक्त अभ्यर्थी को फिट करने का अनुरोध किया गया किन्तु जब उनके द्वारा इन्कार कर दिया गया तो आपके द्वारा उसके चेस्ट पर अंकित उक्त नाप को मिटा कर उसके सीने पर लाल मोटी मार्कर कलम से 165.5 से0मी व सीना 79–84 से0मी0 अंकित कर दिया गया जिसे उक्त काउन्टर पर नाप–जोख हेतु नियुक्त किये गये उ0नि0स0पु0 श्री कुन्दन लाल आर्य द्वारा पकड़ लिया गया था। इस प्रकार आपके द्वारा एक अनुशासित पुलिस बल में नियुक्त रहते हुए भर्ती प्रकिया की निष्पक्ष कार्यवाही को प्रभावित किये जाने के कुत्सित प्रयास करते हुए उक्त घृणित कृत्य एवं आचरण किया गया है जो कि आपके स्वयं के कर्तव्य एवं आचरण के प्रति घोर अनुशासनहीनता का द्योतक है।"

4. The petitioner submitted the reply to the show cause notice on 30.12.2011 (Annexure: A5) and denied the charge levelled against him.

5. Respondent No. 2 considered the reply to show cause notice submitted by the petitioner and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of censure entry (Annexure: A1). The punishment order dated 03.01.2012 reads as under:

" :आदेशः–

मेरे द्वारा आरक्षी 1203 ना0पु0 सुशील कुमार द्वारा प्रेषित लिखित स्पष्टीकरण दिनॉकित 30/12/2011 का जो मेरे द्वारा निगत परिनिंदा लेख के कारण बताओ नोटिस संख्याः द–19/2011, दिनांकः 15/12/2011 के प्रतिउततर में दिया गया है का गहनता से अवलोकन किया गया। आरक्षी द्वारा अपने बचाव में प्रमुख रूप से निम्न तर्क प्रस्तुत किये गये हैः–

1–यह कि दिनांकः 23/11/2011 को वह महाराणा प्रताप स्पोर्ट कॉलेज देहरादून में उत्तराखण्ड पुलिस के खिलाड़ियों को अभ्यास करा रहा था। इस दिन वहीं पर मौजूद था।

2— यह कि वह अनुज नाम के लडके को नहीं जानता और न अनुज उसे जानता है उसे यह भी ज्ञात नहीं है कि उक्त अभ्यर्थी कहॉ का रहने वाला है क्यों कि प्रार्थी मूलरूप से उत्तर प्रदेश राज्य का निवासी है।

3— यह कि प्रश्नगत प्रकरण में प्रारम्भिक जॉच में उसके विरूद्ध कुन्दन लाल आदि के अलावा प्रत्यक्षदर्शी गवाह नहीं है। इसके अतिरिक्त कान्स0 संजीव कुमार, कान्स0 (एम) सुनील कुमार आदि द्वारा भी इस तथ्य की पुष्टि नहीं की है कि अभ्यर्थी अनुज के सीने पर 164.6 से0मी के स्थान पर 165.5 से0मी0 उसके द्वारा अंकित की गई है।

4— यह कि विभागीय जॉच की एक्स्ट्रा ज्यूडिशियल कॉन्फैशन साक्ष्य में गवाह नहीं है।

स्पष्टीकरण के उपरोक्त बिन्दुओं पर टिप्पणी निम्नवत अंकित की जा रही है:—

1— आरोपित आरक्षी का प्रथम तर्क कि वह दिनांक 23/11/2011 को महाराणा प्रताप स्पोर्ट कॉलेज देहरादून में उत्तराखण्ड पुलिस के खिलाडियों को अभ्यास करा रहा था तथा इस दिन वहीं पर मौजूद था भ्रामक एवं निराधार है। वास्तविकता यह है कि आरोपित आरक्षी दिनांक 23/11/2011 को अभ्यर्थी चेस्ट नं0 1230 अनुज की लम्बाई को मानक के अनुरूप पूर्ण करने हेतु उ0नि0स0पु0 श्री कुन्दनलाल आर्य के पास भर्ती काउन्टर नम्बर—2 पर गये किन्तु उक्त उ0नि0 द्वारा इन्हें अभ्यर्थी की लम्बाई बढानें से इन्कार कर दिया गया था जिसे इनके द्वारा लाल मार्कर पेन से उसके सीनें पर 164.6 से0मी0 के स्थान पर 165.5 से0मी अंकित की गई जिस पर उ0नि0 कुन्दनलाल आर्य को शक होने पर उनके द्वारा उक्त अभ्यर्थी से पूछताछ की गई तो उसके द्वारा अवगत कराया गया कि उसके सीने पर उक्त लम्बाई को आरोपित आरक्षी द्वारा अंकित किया गया है।

2— आरोपित आरक्षी का द्वितीय तर्क कि वह अनुज नाम के लड़के को नहीं जानता और न अनुज उसे जानता है उसे वह भी ज्ञात नहीं कि उक्त अभ्यर्थी कहॉ का रहने वाला है क्योंकि प्रार्थी मूलरूप से उत्तर प्रदेश राज्य का निवासी है भ्रामक एवं निराधार है। यदि यह अभ्यर्थी अनुज को नहीं जानता था तो उसकी सिफारिश करने किन कारणों से तद् दिनांक को पुलिस लाईन देहरादून गया एवं बिना जाने उक्त के सीने की माप को मिटाकर गलत नाप क्यों अंकित की गई थी। इससे स्पष्ट होता है कि आरोपित आरक्षी अभ्यर्थी अनुज को जानता है।

3— आरोपित आरक्षी की तृतीय तर्क कि प्रश्नगत प्रकरण में प्रारम्भिक जॉच में उसके विरूद्ध कुन्दन लाल आदि के अलावा प्रत्यक्षदर्शी गवाह नहीं है। इसके अतिरिक्त कान्स0 संजीव कुमार, कान्स0 (एम) सुनील कुमार आदि द्वारा भी इस तथ्य की पुष्टि नहीं की है कि अभ्यर्थी अनुज के सीने पर 164.6 से0मी0 के स्थान पर 165.5 से0मी0 उसके द्वारा अंकित की गई

ह भ्रामक एवं निराधार है क्योकि भर्ती काउन्टर नम्बर–2 पर नियुक्त किये गये कान्स0 (एम) सुनील कुमार, आरक्षी 40 ना0पु0 संजीव कुमार द्वारा आपने कथनों में इन पर लगाये गये आरोपों की पुष्टि की गई है।

4– आरोपित आरक्षी का चतुर्थ तर्क कि विभागीय जॉच की एक्स्ट्रा ज्यूडिशियल कॉन्फैशन साक्ष्य में गवाह नहीं है भ्रामक एवं निराधार है। विस्तृत विवरण उपरोक्त प्रस्तरों में अंकित किया जा चुका है।

मेरे द्वारा दण्ड पत्राववी पर उपलब्ध समस्त अभिलेखीय साक्ष्यों एवं गवाहानों के बयानातों का गहनता से अवलोकन कर मनन किया गया तो पाया कि वर्ष– 2011 में जब आरोपित आरक्षी महाराणा प्रताप स्पोर्टस कालेज रायपुर जनपद देहरादून में बतौर टीम कोच नियुक्त था तो यह दिनांकः 23–11–2011 को पुलिस लाईन रेसकोर्स देहरादून गये जहॉ पर इनके द्वारा आरक्षी पुलिस/पीएसी/फायरमैन की भर्ती प्रकिया के दौरान काउन्टर नम्बर–2 पर अभ्यर्थी चेस्ट नम्बरः 1230 अनुज कुमार पुत्र श्री बालेन्द्र सिंह जिसकी नाप–जोख उ0नि0स0पु0 श्री कुन्दन लाल आर्य द्वारा की गई थी किन्तु उक्त अभ्यर्थी की लम्बाई 164.6 से0मी0 तथा सीना 79–84 से0मी पाते हुए उनके द्वारा उसके सीने पर उक्त नाप को लाल मार्कर कलम से अंकित करते हुए एवं उक्त अभ्यर्थी की निर्धारित लम्बाई न होने के कारण उसे अनफिट कर दिया गया था। इनके द्वारा उ0नि0स0पु0 कुन्दन लाल आर्य से उक्त अभ्यर्थी को फिट करने का अनुरोध किया गया किन्तु जब उनके द्वारा इन्कार कर दिया गया तो इनके द्वारा उसके चेस्ट पर अंकित उक्त नाप को मिटा कर उसके सीने पर लाल मार्कर कलम से 165.5 से0मी0 व सीना 79–84 से0मी0 अंकित कर दिया जिसे उक्त काउन्टर पर नाप–जोख हेतु नियुक्त किये गये उ0नि0स0पु0 कुन्दन लाल आर्य द्वारा पकड़ लिया गया था। जब अभ्यर्थी अनुज कुमार से उक्त सम्बन्ध में घटनास्थल पर पूछ–ताछ की गई तो उसके द्वारा बताया गया कि उसके सीने पर नाप–जोख इनके द्वारा अंकित किया गया था। इस प्रकार इनके द्वारा एक अनुशासित पुलिस बल में नियुक्त रहते हुए भर्ती प्रकिया की निष्पक्ष कार्यवाही को प्रभावित किये जाने के कुत्सित प्रयास करते हुए उक्त घृणित कृत्य एवं आचरण किया गया है जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर अनुशासनहीनता का द्योतक है।

अतः उपरोक्त वर्णित तथ्यों के आधार पर आरक्षी 1203 ना0पु0 सुशील कुमार को विभागीय कार्यवाही मं पूर्णरूपेण दोषी पाते हुए इनकी चरित्र पंजिका में उत्तरॉचल अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 अनुकूलन एवं उपान्तरण आदेश 2002 के नियम 4(2)(ख) के उपनियम–4 में निहित प्राविधानों के तहत निम्नॉकित प्रस्तावित परिनिंन्दा लेख अंकित किये जानें की आदेश पारित किये जाते हैः–

वर्ष– 2011

"वर्ष– 2011 में जब यह आरक्षी महाराणा प्रताप स्पोर्टस कालेज रायपुर जनपद देहरादून में बतौर टीम कोच नियुक्त था तो यह दिनांकः 23–11–2011 को पुलिस लाईन रेसकोर्स देहरादून गये तद् दिनांक को पुलिस लाईन देहरादून में प्रचलित आरक्षी पुलिस/पीएसी/फायरमैन की भर्ती प्रकिया के दौरान काउन्टर नम्बर–2 पर अभ्यर्थी चेस्ट नम्बरः 1230 अनुज कुमार पुत्र श्री बालेन्द्र सिंह जिसकी नाप–जोख उ0नि0स0पु0 श्री कुन्दन लाल आर्य द्वारा की गई थी किन्तु उक्त अभ्यर्थी की लम्बाई 164.5 से0मी0 तथा सीना 79–84 से0मी0 पाते हुए उनके द्वारा उसके सीने पर उक्त नाप को लाल मार्कर कलम से अंकित करते हुए एवं अभ्यर्थी की निर्धारित लम्बाई न होने के कारण उसे अनफिट कर दिया गया था। इनके द्वारा उ0नि0स0पु0 कुन्दन लाल आर्य से उक्त अभ्यर्थी को फिट करने का अनुरोध किया गया किन्तु जब उनके द्वारा इन्कार कर दिया गया तो इनके द्वारा उसके चेस्ट पर अंकित उक्त नाप को मिटा कर उसके सीने पर लाल मोटी मार्कर कलम से 165.5 से0मी0 व सीना 79–84 से0मी0 अंकित कर दिया जिसे उक्त काउन्टर पर नाप–जोख हेतु नियुक्त किये गये उ0नि0स0पु0 कुन्दन लाल आर्य द्वारा पकड़ लिया गया था। जब अभ्यर्थी अनुज कुमार से उक्त सम्बन्ध में घटनास्थल पर पूछ–ताछ की गई तो उसके द्वारा बताया गया कि उसके सीने पर नाप–जोख इनके द्वारा अंकित किया गया था। इस प्रकार इनके द्वारा एक अनुशासित पुलिस बल में नियुक्त रहते हुए भर्ती प्रकिया की निष्पक्ष कार्यवाही को प्रभावित किये जाने के कुत्सित प्रयास करते हुए उक्त घृणित कृत्य एवं आचरण किया गया है जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर अनुशासनहीनता का द्योतक है। इनके उक्त कृत्य की परिनिंदा की जाती है।"

पत्रॉकः द–19/2011

दिनांकः जनवरी 03, 2012 — वरिष्ठ पुलिस अधीक्षक
जनपद देहरादून"

6. The petitioner filed an appeal to respondent No. 3 against the punishment order which was rejected (Annexure: A2). Hence, the petition.

7. The petitioner has challenged the minor punishment of 'censure' mainly on the grounds that the enclosures of the preliminary inquiry report (which was enclosed with the show cause notice) were not provided to the petitioner; he was deprived of

a reasonable opportunity to defend himself as he was not given full material of the preliminary inquiry report; the inquiry officer did not record the statements of the witnesses in the presence of the petitioner and he was not given an opportunity to cross examine them; the finding of the preliminary inquiry is based only on the statement of Shri Kundan Lal Arya, Sub Inspector; the most important witness was Anuj and his statement was not recorded; the finding of the preliminary inquiry was based on hearsay evidence; there was no direct evidence to show that it was the petitioner who had changed the marking on the chest of the candidate Anuj Kumar; and the inquiry officer acted as a prosecutor with a particular mind set.

8. The claim petition has been opposed by the respondents No. 1,2 & 3 and in their joint written statement it has been stated that the inquiry against the petitioner has been conducted under Rule 14(2) of 'The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991' (applicable in the state of Uttarakhand) which deals with minor penalties. As per provisions of Rules 14(2) of the Rules of 1991, the petitioner was given a show cause notice. The petitioner replied to the show cause notice. His reply was duly considered by the disciplinary authority. His reply/explanation was found unsatisfactory by the disciplinary authority. The disciplinary authority passed a reasoned order and the petitioner was awarded minor penalty of 'censure'. The petitioner has been provided due opportunity to defend himself adhering to Rules and the principles of natural justice. The contention of the respondents is that the Rule 14(2) of the Rules of 1991 has been fully complied with. The appeal of the petitioner against the order of the disciplinary authority was also duly considered and rejected as per Rules. The petition is, therefore, devoid of merit and liable to be dismissed.

9. The petitioner has also filed rejoinder affidavit and the same averments have been reiterated and elaborated which were stated in the claim petition.

10. We have heard both the parties and perused the record including the inquiry file carefully.

11. Before we discuss the arguments of the parties, it would be appropriate to look at the rule position related to the minor punishment in Police Department. We reproduce the relevant rules of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (as applicable in the state of Uttarakhand) below:-

> ***"4. Punishment*** *(1)The following* ***punishments*** *may, for good and sufficient reasons and as hereinafter provided, be imposed upon a* ***Police Officer****, namely:-*
> *(a) Major Penalties :-*
> *(i) Dismissal from service,*
> *(ii) Removal from service.*
> *(iii) Reduction in rank including reduction to a lower scale or to a lower stage in a time-scale,*
> ***(b) Minor Penalties :-***
> *(i) With-holding of promotion.*
> *(ii) Fine not exceeding one month's pay.*
> *(iii) With-holding of increment, including stoppage at an efficiency bar.*
> ***(iv) Censure.***
> *(2)……………..*
> *(3)……………..”*
>
> ***"5. Procedure for award of punishment****- (1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.*
> *(2)****The case 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.
(3)................................"

"14. Procedure for conducting departmental proceedings- *(1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I.*
(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***.
(3)..........................."

12. The above rule position makes it clear that in order to impose minor penalty, it is mandatory to inform 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 to give him a reasonable opportunity of making such representation as he may wish to make against the proposed minor penalty.

13. Learned counsel for the petitioner has argued that the preliminary inquiry report is based only on the statement of Kundan Lal Arya, Sub-Inspector and the most important witness Anuj was not examined and his statement was not recorded. He has also contended that the inquiry officer did not record the statements of the witnesses in the presence of the petitioner and he was not given an opportunity to cross examine them. He also contended other points which are stated in paragraph 7 of this order. All these issues were raised by the petitioner in his reply to the show cause notice

which were duly considered by the disciplinary authority before passing the order of punishment. This Tribunal is making a judicial review and not sitting as appellate authority. **It is settled principle of law that in judicial review, re-appreciation of evidence as an appellate authority is not made. The adequacy or reliability of the evidence is not the matter which can be permitted to be argued before the Tribuna**l. The Hon'ble Supreme Court, in case of **B.C.Chaturvedi vs. Union of India, 1995(5) SLR, 778 in para 12 & 13** 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.

13 ***The disciplinary authority is the sole judge of facts***. *Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant.* ***Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal****. In Union of India v. H.C. Goel (1964) I LLJ 38 SC , this Court held at page 728 that* ***if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued***."

14. The Hon'ble Apex Court in para 24 of **Nirmala J. Jhala Vs. State of Gujrat 2013(4) SCC 301** has also held as under:-

"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 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****."*

15. It is clear from the above judgments that the scope of the judicial review is very limited. The Court or the Tribunal would not interfere with the findings of the fact arrived in the departmental enquiry proceedings excepting the cases of malafide or perversity or where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity would have arrived at that finding. The Court or Tribunal cannot re-appreciate the evidence like an appellate Court so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. While exercising the power of judicial review, the Tribunal cannot substitute its own conclusion with regard to

the misconduct of the delinquent for that of the departmental authority. **In case of disciplinary inquiry, the technical rules of evidence and the doctrine of 'proof beyond doubt' have no application. "Preponderance of probabilities" and some material on record would be enough to reach a conclusion whether or not the delinquent has committed misconduct**.

16. It is also well settled law that the judicial review is directed not against the 'decision' but is confined to the examination of the 'decision making process'. Hon'ble Supreme Court in **S.R. Tewari Vs. Union of India 2013 (6) SCC 602** has held as under:-

> "The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, **as the scope of judicial review is limited to the process of making the decision and not against the decision itself** and in such a situation the court cannot arrive on its own independent finding."

17. Learned counsel for the petitioner has referred **Chandrama Tiwari Vs. Union of India (AIR 1988, Supreme Court, 117), State of U.P. & others Vs. Saroj Kumar Sinha (2010) 1 Supreme Court Cases (L&S), 675 and M/s Bareilly Electricity Supply Company Ltd. Vs. The Workmen and others (AIR 1972 Supreme Court, 330)** in support of his contentions. After careful perusal, we find that these cases have dealt with the regular departmental inquiry intended for the imposition of major penalties and the facts and circumstances in above cases are entirely different compared to the case in hand and, therefore, these are not relevant and of no help to the petitioner. In the case in hand, the proceedings against the petitioner have been

conducted to impose minor penalty. The procedure to conduct the proceedings for minor punishment as noted earlier has been laid down under Rule 14(2) of the Rules of 1991 and the only requirement under the said Rule is to inform 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 give him a reasonable opportunity of making such representation as he may wish to make against the proposed punishment.

18. Counsel for the petitioner has also referred to the judgment of this Tribunal in Claim Petition No. 66 of 2009, Rajendra Shah Vs. State of Uttarakhand and others. We have perused the judgment carefully and find that the facts and circumstances of the case are different compared to the case in hand. Moreover, in the above referred case, the preliminary inquiry report was not provided to the petitioner alongwith the show cause notice issued to the petitioner under Rule 14(2) of the Rules of 1991. In the case in hand, the copy of the preliminary inquiry report (containing the statements of the witnesses recorded while conducting the preliminary inquiry) was provided to the petitioner by enclosing it with the show cause notice.

19. We have carefully examined the whole process of awarding 'censure' entry and also gone through the inquiry file in the case in hand. From the perusal of record, it is revealed that the show cause notice (Annexure: A3) was issued and nowhere it has been averred that the show cause notice was bad in the eye of law. The petitioner replied to the show cause notice (Annexure: A5) and he raised the same plea which he has raised before the Tribunal. The petitioner was also provided copy of the report of the preliminary inquiry (Annexure: A4). The statements of witnesses recorded while

conducting the preliminary inquiry were also reproduced in the preliminary inquiry report itself. The competent authority has duly considered the reply to the show cause notice given by the petitioner and he then passed a reasoned order for imposing minor penalty of 'censure' (Annexure: A1). The provisions of Rules of 1991 in regard to awarding of minor punishment have been fully complied with by the competent authority. In view of legal position as described in para 11 to 16 of this order, we are of clear opinion that the proceedings of imposing censure entry were conducted in a just and fair manner and we do not find violation of any rule, law or principle of natural justice and, therefore, this Tribunal has no reason to interfere in the minor penalty of 'censure' awarded to the petitioner.

20. Counsel for the petitioner has also argued that there is no provision of withholding the integrity in the Rules of 1991 and in the Police Act, 2007 and, therefore, the integrity of a Police Officer cannot be withheld. We are not convinced by this argument. The State Government has a system of maintenance of the record of the performance of all employees of the Government including Police Officers working in Police Department through the Annual Confidential Report in which the integrity of the employee is also recorded. The Government has issued various Government Orders from time to time with regard to 'integrity' to be essentially recorded in the Annual Confidential Report of employees.

21. The Government of Uttarakhand has issued a consolidated Government Order dated 18.12.2003 regarding various issues related to Annual Entries (including integrity) in respect of all the employees of the State Government. The relevant extract of the G.O. is given below:

"**संख्या 1712/कार्मिक–2/2003**

प्रेषक,

नृप सिंह नपलच्याल,
प्रमुख सचिव,
उत्तरांचल शासन।

सेवा में,

1–समस्त प्रमुख सचिव/सचिव, उत्तरांचल शासन।
2–समस्त विभागाध्यक्ष/कार्यालयाध्यक्ष, उत्तरांचल।
3–मण्डलायुक्त, गढ़वाल/कुमायूँ मण्डल, उत्तरांचल।
4–समस्त जिलाधिकारी, उत्तरांचल।

कार्मिक अनुभाग–2 देहरादून : दिनांक 18 दिसम्बर, 2003

विषय–चरित्र पंजिकाओं में वार्षिक प्रविष्टियां, सत्यनिष्ठा प्रमाण–पत्र, प्रतिकूल प्रविष्टि संसूचित करना, उसके विरुद्ध प्रत्यावेदन और प्रत्यावेदन निस्तारण की प्रक्रिया।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि राज्याधीन सेवाओं में लोक सेवकों की वार्षिक प्रविष्टियाँ अंकित किये जाने, सत्यनिष्ठा प्रमाणित किये जाने, प्रतिकूल प्रविष्टि संसूचित किये जाने और उनके विरुद्ध प्राप्त प्रत्यावेदनों के निस्तारण किये जाने के सम्बन्ध में समय–समय पर निर्देश निर्गत किये गये हैं परन्तु प्रायः यह देखने में आया है कि लोक सेवकों की वार्षिक प्रविष्टियों के प्रकरणों में इस सम्बन्ध में जारी दिशा निर्देशों का पालन नहीं किया जाता है। इस सम्बन्ध में समय–समय पर जारी किये गये दिशा निर्देशों को एकजाई करते हुए वार्षिक प्रविष्टियाँ अंकित करने, सत्यनिष्ठा प्रमाणित करने, प्रतिकूल प्रविष्टियों को संसूचित करने और उनके विरुद्ध प्राप्त प्रत्यावेदनों का निस्तारण करने के सम्बन्ध में निम्नलिखित प्रक्रिया निर्धारित की जा रही है:–

1. (1) सरकारी सेवाओं की वार्षिक गोपनीय प्रविष्टियां देने के नियमों का प्राविधान एम0जी0ओ0 के अध्याय 140 में है। एम0जी0ओ0 में प्रविष्टियों को देने की प्रक्रिया, प्रविष्टियों को देने की सीमा अर्थात् सत्यनिष्ठा प्रमाण–पत्र रोकने व प्रतिकूल प्रविष्टियो को संसूचित करने, उनके विरुद्ध प्रत्यावेदन देने और प्रत्यावेदन पर निर्णय लेने की अवधि सीमा के प्रावधान हैं। इसके अलावा प्रतिकूल वार्षिक गोपनीय रिपोर्टों के विरुद्ध प्रत्यावेदन एवं सहबद्ध मामलों के निपटारों के लिए संविधान के अनुच्छेद 309 के अन्तर्गत उत्तरांचल सरकारी सेवक (प्रतिकूल वार्षिक गोपनीय रिपोर्टों के विरुद्ध प्रत्यावेदन एवं सहबद्ध मामलों का निपटारा) नियमावली, 2002 बनाई गई है।"

....

"वार्षिक गोपनीय प्रविष्टियाँ अंकित करने की प्रक्रिया उसके लिये निर्धारित समय–सारिणी, प्रतिकूल प्रविष्टियों का संसूचित करने, उसके विरुद्ध प्रत्यावेदन देने तथा प्रत्यावेदन के निस्तारण की समय–सारिणी, प्रतिकूल प्रविष्टियों से सम्बन्धित नियमावली का सारांश और सत्यनिष्ठा प्रमाण–पत्र रोकने के सम्बन्ध में प्रक्रिया का विवरण नीचे दिया जा रहा हैः–"

....

"19. (1) सत्यनिष्ठा प्रमाण–पत्र वार्षिक गोपनीय प्रविष्टि का अटूट अंग है।"

....

"(7) जिस वर्ष की घटना हो, उस वर्ष की सत्यनिष्ठा जाँच पूरी होने पर रोकी जानी चाहिए–जैसे वर्ष 2003 की घटना के सम्बन्ध में जाँच 2003 में प्रारम्भ हुई परन्तु जाँच 2005 में समाप्त होती है तो ऐसी दशा में सत्यनिष्ठा प्रमाण–पत्र केवल वर्ष 2003 का ही रोका जायेगा।"

....

"2. आपसे अनुरोध है कि कृपया लोक सेवकों की वार्षिक प्रविष्टियाँ अंकित करने, सत्यनिष्ठा प्रमाण– पत्र अंकित करने, प्रतिकूल प्रविष्टियों को संसूचित करने, प्रतिकूल प्रविष्टियों के विरुद्ध प्राप्त प्रत्यावेदनों के निस्तारण के सम्बन्ध में उपरोक्त दिशा निर्देशों का कड़ाई से अनुपालन सुनिश्चित करने का कष्ट करें।

भवदीय,

नृप सिंह नपलच्याल,
प्रमुख सचिव।"

22. The State Government has also framed Rules in exercise of the power conferred by the proviso to Article 309 of the Constitution of India which are known as "The Uttarakhand Government Servant (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002. It would be appropriate to reproduce relevant Rules of the said Rules below:-

1. (1) ....

(2)..............................

(3) **<u>They shall apply to all Government Servants</u>**.

2. These Rules shall have effect notwithstanding anything to the contrary contained.

3. Unless there is anything repugnant in the subject or context, the expression.

(**e) Reports means Annual Confidential Reports regarding the work, conduct and integrity of Government Servant for each year………………."**

In the light of above, it is clear that the "integrity" in respect of a Police Officer is also recorded-- it is either certified on withheld. Therefore, we cannot agree with the contention of the counsel for the petitioner that the integrity of a Police Officer cannot be withheld.

23. The counsel for the petitioner also contended that the minor penalty of 'censure' and withholding of integrity amounts to 'double jeopardy'. Learned A.P.O., on behalf of the respondents, has stated that the disciplinary authority has passed separate orders for minor punishment of 'censure' under the Rules of 1991 and the 'integrity' was withheld separately to be recorded in the Annual Confidential Report of the petitioner for the year 2011.

24. By perusing the record, we find that two separate actions-- minor punishment of 'censure' and 'withholding integrity'-- have been taken against the petitioner. Separate show cause notices were issued and after considering the replies to the show cause notices, the disciplinary/appointing authority has passed separate orders. The minor penalty of 'censure' has been imposed upon the petitioner under Rule 4(1)(b)(iv), Rule 5(2) and Rule 14(2) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. The integrity of the petitioner for the year 2011 has been withheld as per assessment of the appointing authority for the purpose of Annual Confidential Report. Since both orders have been passed separately under different sets of rules governing the service conditions of the employees, we do not find any illegality or violation

of any rules. Admittedly, withholding of integrity is not a punishment. Therefore, we do not agree with the contention of the learned counsel for the petitioner that as the petitioner has already been given 'censure' entry, his integrity could not be withheld. In fact, 'withholding of integrity' of the petitioner was the consequence of the misconduct for which he was found guilty and a punishment of 'censure' was imposed upon him. We are, therefore, of the opinion that there is not case of 'double jeopardy'.

25. For reasons stated above, we find the petition devoid of merit and the same is liable to be dismissed.

ORDER

The petition is, hereby, dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: FEBRUARY 03, 2016
DEHRADUN

KNP