BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. D.K. Kotia

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

CLAIM PETITION NO. 05/SB/2015

Kumpal Singh (Constable CP/04), S/o Sri Dewan Singh, presently posted in GRP, Haridwar, R/o Village Bansu Lakhwar, District, Dehradun.

……Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home Department, Subhash Road, Dehradun.
2. Principal Secretary to the Government of Uttarakhand, Department of Home, Subhash Road, Dehradun.
3. Additional Director General of Police (Administration), Uttarkahand, Dehradun.
4. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
5. Superintendent of Police, Rural, Haridwar.

……Respondents

Present: Sri J.P.Kansal, Counsel,
for the petitioner.

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

JUDGMENT

DATE: APRIL 19, 2016

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

"(A) That the above impugned orders Annexure- A1, Annexure- A2, Annexure-A3 and Annexure-A4 to this claim petition be kindly held against fundamental, constitutional, civil rights of the petitioner, wrong, illegal, against law, rules and

principles of natural justice and accordingly the same be kindly quashed and set aside;

(b) That the respondents be kindly ordered and directed to allow to the petitioner all the benefits that would have been admissible to him had the punishment of Censure would not have been imposed on him together with interest thereon @12% per annum from the date of accrual till the actual date of payment to the petitioner;

(c) the petitioner be kindly allowed against the respondents jointly and severally any other relief, in addition to, modification or substitution of the above relief, which the Hon'ble Tribunal deem fit and proper in the circumstances of the case and facts on record; and

(d) Rs. 10,000/- as costs of this petition be allowed to the petitioner against the respondents."

2. The relevant facts in brief are that the petitioner, who is a constable in civil police in the state of Uttarakhand was posted in the police post, Lakhnota, Police Station, Jhabrera, district Haridwar.

3. The petitioner was issued a show cause notice on 01.05.2008 by the Superintendent of Police, Rural, Haridwar (respondent no. 5) as to why the 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 in the show cause notice was as under:

"कारण बताओ नोटिस"

कान्स0 4 ना0पु0 कुम्भपाल

थाना कोतवाली ज्वालापुर, हरिद्वार।

वर्ष 2007 में जब आप थाना झबरेडा पर नियुक्ति थे तो दिनांक 15.11.2007 को लखनौता चौराहे पर प्रातः 7 बजे के लगभग वाहन संख्याः टाटा– यूपी–12–0851 को रोककर उसके चालक से अभद्रता करने एवं रूपये 2 हजार की मॉग की गई। उक्त कृत्य के सम्बन्ध में आदेश पत्र संख्याः ज–448/2007 दिनांक 18.11.2007 के माध्यम से आपको निलम्बित भी किया गया। उक्त प्रकरण की

जॉच कराई गई जिसमें आपको पूर्ण रूप से दोषी पाया गया है। उक्त कृत्य आपकी डयूटी/कर्तव्यों के प्रति घोर लापरवाही, उदासीनता एवं अनुशासनहीनता का परिचायक है।

अतः इस कारण बताओ नोटिस प्राप्ति के 07 दिवस के अन्दर अपना स्पष्टीकरण प्रस्तुत करें अन्यथा आपके द्वारा बरती गयी लापरवाही के लिये उत्तरांचल अधीनस्थ श्रेणी के पुलिस अधिकारियों/कर्मचारियों की दण्ड एवं अपील नियमावली 1991 के अनूकूलन एवं उपांतरण आदेश 2002 के नियम 14(2) के अर्न्तगत आपकी चरित्र पंजिका में निम्नलिखित परिनिन्दालेख क्यों न अंकित किया जाये।

स्पष्ट किया जाता है कि यदि आपका स्पष्टीकरण निर्धारित अवधि के अर्न्तगत प्राप्त होता है तो उस पर सम्यक विचारोपरान्त निर्णय लिया जायेगा अन्यथा स्पष्टीकरण के अभाव में एक पक्षीय कार्यवाही कर दी जायेगी। इस सम्बन्ध में यदि आप पत्रावली का अवलोकर करना चाहें तो इस अवधि में कर सकते हैं।

वर्ष 2007

''वर्ष 2007 में जब ये आरक्षी थाना झबरेडा पर नियुक्ति था तो इनके द्वारा दिनांक 15.11.2007 को लखनौता चौराहे पर प्रातः 7 बजे के लगभग वाहन संख्याः टाटा– यूपी–12–0851 को रोककर उसके चालक से अभद्रता करने एवं रूपये 2 हजार की मॉग की गई। उक्त प्रकरण की जॉच कराई गई जिसमें इनको पूर्ण रूप से दोषी पाया गया है। इस प्रकार इनके द्वारा अपने डयूटी/कर्तव्यों के प्रति घोर लापरवाही, उदासीनता एवं अनुशासनहीनता का प्रदर्शन किया गया। इनके उक्त कृत्य की घोर परिनिन्दा की जाती है।''

4. The petitioner submitted the reply to the show cause notice on 06.05.2008 and denied the charge levelled against him.

5. Respondent No. 5 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 on 24.05.2008 (Annexure: A1).

6. The petitioner filed an Appeal against the punishment order to respondent No. 4 which was rejected on 01.12.2008 (Annexure: A2). The petitioner filed the Revision Petition to respondent No. 3 and the same was also rejected on 20.04.2009 (Annexure: A3). The Review Petition of the petitioner against the orders Annexure: A1, A2 and A3 was also rejected by respondent No.2 on 11.08.2014 (Annexure: A4). Hence, the petition.

7. The petitioner has challenged the minor punishment of 'censure' mainly on the grounds that the petitioner was neither present at the

alleged place of incident nor he had committed any misconduct and he has been falsely implicated; copy of the preliminary inquiry report and copies of the documents used against the petitioner were not provided to him; the petitioner has been denied reasonable opportunity of hearing in violation of the principles of natural justice; and the respondent No. 5 was not competent authority to impose punishment of censure on the petitioner.

8. The claim petition has been opposed by respondents No. 1 to 5 and it has been stated in their joint written statement that the inquiry against the petitioner has been conducted under Rule 14(2) of the Rules of 1991. The petitioner was given a show cause notice. The petitioner replied to the show cause notice and his reply was duly considered by the disciplinary authority. His reply/explanation was found unsatisfactory by the disciplinary authority. The disciplinary authority passed an order under Rule 14(2) of the said Rules 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, revision and review of the petitioner were 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 in it which were stated in the claim petition.

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

11. Before the arguments of the parties are discussed, it would be appropriate to look at the rule position related to the minor punishment in Police Department. Relevant rules of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 are reproduced 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 petitioner has been falsely implicated. The petitioner was not present at the place of incident. The petitioner has not committed any misconduct. Learned A.P.O. has refuted the argument and contended that the preliminary inquiry was conducted against the petitioner and allegations against him were found correct. The findings of the preliminary inquiry are based on the statements of persons (including the petitioner) who were present at the place of incident. Learned A.P.O. also referred to the original inquiry file and stated that the perusal of inquiry report makes it clear that sufficient evidence were found against the petitioner to hold him guilty. While perusing the original record of inquiry by me, it was also found that in reply to the show cause notice, the petitioner has not denied his presence at the place of incident. However, the petitioner in his reply has pointed out some contradiction in the statements of various witnesses. Here, it would be pertinent to mention that 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 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. Learned counsel for the petitioner has also contended that the petitioner was not provided the copy of the preliminary inquiry report and copies of other documents used against the petitioner and, therefore, reasonable opportunity of hearing was not given to him in gross violation of the principles of natural justice. Learned A.P.O. refuted the argument and pointed out that the proceedings against the petitioner have been conducted under Rule 14(2) of Rules of 1991 (reproduced in paragraph 11 of this order) and the procedure laid down under the said rule has been followed. Learned A.P.O. also pointed out that in the show cause notice issued to the petitioner (reproduced in paragraph 3 of this order), it was made clear that the petitioner may inspect the file, if he so desires. Therefore, he argued that sufficient

opportunity was provided to the petitioner to defend himself by issuing the show cause notice as per rule 14(2) of Rules of 1991 and by allowing the petitioner to inspect the record of the inquiry. Perusal of original record of inquiry by me also reveals that the petitioner before replying to the show cause notice had not asked the respondents to supply him the copy of the preliminary inquiry report or copies of other documents. The petitioner had replied to the show cause notice without any objection. In his reply to the show cause notice also, he has not said anything in this regard. Under these circumstances, it is difficult to agree with the contention of learned counsel for the petitioner that the reasonable opportunity of hearing according to the principles of natural justice had not been provided to the petitioner.

17. Learned counsel for the petitioner has also argued that the Superintendent of Police, Rural, Haridwar (respondent No. 5) was not a competent authority to issue the show cause notice and pass the punishment order as he was not the disciplinary authority to award a minor punishment of 'censure'. Only the Superintendent of Police who is incharge of the Police District and who is the disciplinary authority in respect of a constable in civil police can issue the show cause notice and award the punishment of 'censure'. The contention of the petitioner is that since the Superintendent of Police, Rural Haridwar was not the incharge of the district police, he was not competent to issue the show cause notice and award the punishment of 'censure'. Learned A.P.O. contended that under the Uttarakhand Police Act, 2007, a subordinate officer (below the rank of Superintendent of Police in charge of the district police) is empowered to award a minor punishment. It would be appropriate to look at the relevant provision of the Uttarakhand Police Act, 2007 in this regard. Section 23 of the said Act is reproduced below:

"23- Disciplinary Penalties—

(1) An officer of the rank of Superintendent of Police or above may award any of the following punishments, to a police officer of a rank for which he is the Appointing Authority-

(a) Reduction in rank,

(b) Compulsory retirement,

(c) Removal from service,

(d) Dismissal,

(e) Reduction in salary,

(f) Withholding of increment, and

(g) Withholding of promotion.

(2) Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely-

(a) fine not exceeding one month's salary,

(b) reprimand or censure.

(3) A Deputy Superintendent of Police or any officer of equivalent rank may award the punishment of reprimand or censure, to a Police Inspector or Sub-Inspector of Police or an officer below its rank.

(4) Any Officer of and above the rank of Inspector may award minor punishments to Constables and Head Constables.

(5)……"

Perusal of sub-section 4 of section 23 of the Uttarakhand Police Act above makes it clear that an Inspector of Police and any officer above the rank of Inspector can award minor punishment to a constable. It is, therefore, clear that the award of minor punishment of 'censure' to the petitioner was within the competence of the Superintendent of Police, Rural, Haridwar. Thus, the contention of learned counsel for the petitioner in regard to 'competent authority' to award the minor punishment of 'censure' cannot be accepted.

18. After careful examination of the whole process (including original file of inquiry) of awarding minor punishment of 'censure' to the petitioner, I reach a conclusion that the case of the petitioner is not made out. The minor punishment was awarded to the petitioner after an inquiry. The inquiry was based on evidence and there is no malafide or perversity. 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."

In view of analysis in paragraph 13 onwards, it is clear that the proceedings of imposing minor punishment were conducted in a just and fair manner and there is no violation of any law, rule or principle of natural justice and, therefore, this Tribunal has no reason to interfere in the minor penalty of 'censure' awarded to the petitioner.

19. For the reasons stated above, the claim petition is devoid of merit and the same is liable to be dismissed.

ORDER

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

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: APRIL 19, 2016
DEHRADUN

KNP