

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

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

----- Vice Chairman (A)

CLAIM PETITION NO. 28/SB/2014

Mahipal Singh, S/o Sri Bishamber Singh, presently posted as Sub-Inspector, Thana Kotwali, Kotdwar, District Pauri.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home, Civil Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Police Headquarters, Dehradun.
3. Deputy Inspector General of Police, Garhwal Region, Dehradun.
4. Senior Superintendent of Police, Haridwar.

.....Respondents

Present: Sri V.P.Sharma, Counsel,
for the petitioner

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

JUDGMENT

DATE: MAY 13, 2016

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

“(i) To issue order or direction to quash the impugned orders dated 31.3.2011 (Annexure No. A-1), appellate order dated 01.10.2013 (Annexure No. A-2) and expunge the adverse remark from the service record of the petitioner along with all consequential benefits.

(ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) to award cost of this petition to the petitioner.”

2. The relevant facts in brief are that the petitioner is a Sub-Inspector in civil police in the State of Uttarakhand and in 2010 he was posted as Sub-Inspector in Thana Gang Nahar, District Haridwar.

3. The petitioner was issued a show cause notice on 28.02.2011 by the Senior Superintendent of Police, Haridwar (respondent no. 4) 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

“ उ०नि० ना०पु० महिपाल सिंह
द्वारा:—पुलिस अधीक्षक, पौड़ी गढ़वाल।

जब आप वर्ष 2010 में थाना गंगनहर हरिद्वार पर नियुक्त थे, तो दीपावली पर्व के दौरान दिनांक 4-11-2010 को आपके द्वारा तत्कालीन प्रभारी चौकी सोत-ए, उ०नि० श्री बी० एल० भारती के साथ हनुमान कालोनी स्थित दुकानदार श्री देवकी नन्दन गोयल की दुकान पर जाकर पटाखे रखने तथा दुकानदार के विरुद्ध कोई कार्यवाही न करने के परिपेक्ष्य में दुकानदार उपरोक्त श्री देवकी नन्दन गोयल से अवैध धनराशि रू० 60,000/- लिये गये, तथा उक्त धनराशि के सम्बन्ध में गणमान्य व्यक्तियों के बढ़ते दबाव के कारण दिनांक 8-1-2010 को सभासद रूडकी श्री धीरजपाल के कार्यालय में जाकर आपके द्वारा दुकानदार उपरोक्त को उक्त धनराशि वापस की गयी। आपके द्वारा अवैध तरीके से पटाखे कय कराये जाने के सम्बन्ध में अवैध धनराशि प्राप्त किये जाने के कृत्य से आम जनता में पुलिस विभाग की छवि धूमिल हुयी है। जिसके लिये आप पूर्ण रूप से दोषी पाये गये है।

अतः आप इस कारण बताओ नोटिस की प्राप्ति के 07 दिवस के अन्दर अपना लिखित स्पष्टीकरण इस कार्यालय में प्रस्तुत करें कि क्यों न आपके द्वारा बरती गयी उपरोक्त लापरवाही एवं उदासीनता के लिये उत्तराखण्ड अधीनस्थ श्रेणी के अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 के अनुकूलन एवं उपान्तरण आदेश 2002 के नियम 14 (2) के अन्तर्गत आपकी चरित्र पंजिका में निम्नलिखित परिनिन्दा लेख अंकित कर दिया जाये। यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर इस कार्यालय में प्राप्त नहीं होता है, तो यह समझा जायेगा कि आपको अपने बचाव में कुछ नहीं कहना और प्रस्तुत करना है।

स्पष्ट किया जाता है कि यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर प्राप्त होता है तो उस पर सम्यक विचारोपरान्त ही निर्णय लिया जायेगा अन्यथा स्पष्टीकरण के अभाव में एक पक्षीय आदेश पारित कर दिये जायेंगे। इस सम्बन्ध में यदि आप पत्रावली का अवलोकन करना चाहते हैं तो इसी अवधि में कर सकते हैं।

2011

“जब यह उ०नि० वर्ष 2010 में थाना गंगनहर हरिद्वार पर नियुक्त थे, तो दीपावली पर्व के दौरान दिनांक 4-11-2010 को इस उ०नि० के द्वारा तत्कालीन प्रभारी चौकी सोत-ए, उ०नि० श्री बी०एल० भारती के साथ हनुमान कालोनी स्थित दुकानदार श्री देवकी नन्दन गोयल की दुकान पर जाकर पटाखे रखने तथा दुकानदार के विरुद्ध कोई कार्यवाही न करने के परिपेक्ष्य में दुकानदार उपरोक्त श्री देवकी नन्दन गोयल से अवैध धनराशि रू० 60,000/- लिये गये, तथा उक्त धनराशि के सम्बन्ध में गणमान्य व्यक्तियों के बढ़ते दबाव के कारण दिनांक 8-11-2010 को सभासद रूडकी श्री धीरजपाल के कार्यालय में जाकर इस उ०नि० के द्वारा दुकानदार उपरोक्त को उक्त धनराशि वापस की गयी। इस उ०नि० के द्वारा अवैध तरीके से पटाखे कय कराये जाने के सम्बन्ध में अवैध धनराशि प्राप्त किये जाने के कृत्य से आम जनता में पुलिस विभाग की छवि धूमिल हुयी है। उप निरीक्षक के इस कृत्य की कड़ी परिनिन्दा की जाती है।”

पुलिस उप महानिरीक्षक/
वरिष्ठ पुलिस अधीक्षक
हरिद्वार

पत्रांक : न-113/2010
दिनांक :- फरवरी 28, 2011”

4. The petitioner submitted the reply to the show cause notice on 28.3.2011 and denied the charge levelled against him.

5. Respondent No. 4 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 31.03.2011 (Annexure: 1). The punishment order reads as under:

“आदेश

उ०नि०ना०पु० महिपाल सिंह जब वर्ष 2010 में थाना गंगनहर, हरिद्वार पर नियुक्त थे, तो दीपावली पर्व के दौरान दिनांक 4-11-2010 को इस उ०नि० के द्वारा तत्कालीन प्रभारी चौकी सोत-ए, उ०नि० श्री बी० एल० भारती के साथ हनुमान कालोनी स्थित दुकानदार श्री देवकी नन्दन गोयल

की दुकान पर जाकर पटाखे रखने तथा दुकानदार के विरुद्ध कोई कार्यवाही न करने के परिपेक्ष्य में दुकानदार उपरोक्त श्री देवकी नन्दन गोयल से अवैध धनराशि रू0 60,000/- लिये गये, तथा उक्त धनराशि के सम्बन्ध में गणमान्य व्यक्तियों के बढ़ते दबाव के कारण दिनांक 8-11-2010 को सभासद रूडकी श्री धीरजपाल के कार्यालय में जाकर इस उ0नि0 के द्वारा दुकानदार उपरोक्त को उक्त धनराशि वापस की गयी। इस उ0नि0 के द्वारा अवैध तरीके से पटाखे कय कराये जाने के सम्बन्ध में अवैध धनराशि प्राप्त किये जाने के कृत्य से आम जनता में पुलिस विभाग की छवि धूमिल हुयी है।

उपरोक्त लापरवाही एवं उदासीनता के लिये उ0नि0 श्री महिपाल सिंह को उत्तराखण्ड अधीनस्थ श्रेणी के अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 के अनुकूलन एवं उपान्तरण आदेश 2002 के नियम 14 (2) के अन्तर्गत परिनिन्दा लेख का कारण बताओ नोटिस सं0सम दिनांक 28-2-2011 इस आशय से निर्गत किया गया कि नोटिस प्राप्ति के 07 दिवस के अन्दर अपना लिखित स्पष्टीकरण इस कार्यालय में प्रस्तुत करें, जिसके प्रतिउत्तर में उ0नि0 श्री महिपाल सिंह द्वारा अपना लिखित स्पष्टीकरण दिनांकित 28-3-2011 मेर समक्ष उपस्थित होकर प्रस्तुत किया गया। मेरे द्वारा उ0नि0 श्री महिपाल सिंह द्वारा प्रेषित स्पष्टीकरण का गहनता पूर्वक अवलोकन किया गया। उ0नि0 द्वारा अपने स्पष्टीकरण में अपर्याप्त तथ्य अंकित करते हुये गुमराह करने के असफल प्रयास किये गये है।

अतः उ0नि0 श्री महिपाल सिंह द्वारा प्रस्तुत स्पष्टीकरण को असंतोषजनक एवं भ्रामक पाते हुये कारण बताओ नोटिस सं0सम दिनांक 28-2-2011 में प्रस्तावित निम्नलिखित परिनिन्दा लेख इनकी चरित्र पंजिका में अंकित किये जाने के आदेश पारित किये जाते है।

2011

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कृत्य से आम जनता में पुलिस विभाग की छवि धूमिल हुयी है। उप निरीक्षक के इस कृत्य की कड़ी परिनिन्दा की जाती है।”

पुलिस उप महानिरीक्षक/
वरिष्ठ पुलिस अधीक्षक
हरिद्वार

पत्रांक : न-113/2010

दिनांक :- 31-3-2011”

6. The petitioner filed an Appeal against the punishment order which was rejected on 01.10.2013 (Annexure: 2).

7. The petitioner has challenged the minor punishment of ‘censure’ mainly on the grounds that complaint against the petitioner is false. No illegal amount of Rs. 60,000 was collected from the shopkeeper. The complainant has not produced any evidence. The preliminary enquiry was not conducted in proper manner. The petitioner was not provided opportunity to cross-examine the witnesses and, therefore, the principle of natural justice has been violated.

8. The claim petition has been opposed by respondents No. 1 to 4 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 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 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. 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 (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 petitioner has been falsely implicated. 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 incidence. 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. Learned counsel for the petitioner has also contended that on the day of festival of Diwali on 4.11.2010, the petitioner along with the Chowki Incharge went to Hanuman Colony and the allegation that from a shopkeeper, he illegally took Rs. 60,000 and on

the intervention of some respectable persons of the locality, the said money was returned by him on 8.11.2010 is false. The petitioner had not collected any money and, therefore, the question of returning the money does not arise. Learned counsel for the petitioner has also contended that while the incident took place on 4.11.2010, the complaint was lodged quite late on 7.11.2010. 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 Tribunal.** 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) 1 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 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 the petitioner was also not allowed to cross-examine the witnesses 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. Learned A.P.O. also contended that the proceedings against the petitioner were related to the minor punishment and the petitioner was not entitled to cross examine the witnesses under Rule 14(2) of the Rules of 1991. 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 asked more time on 14.3.2011 to reply to the show cause notice so that he could inspect the file. Thereafter, he finally replied to the show cause notice on 28.03.2011. It is clear that the procedure prescribed under Rule 14(2) of the Rules of 1991 has been followed and, therefore, 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 cannot sustain.

17. After carefully 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 11 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

18. 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: MAY 13, 2016
DEHRADUN

KNP