BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

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

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

**CLAIM PETITION NO. 25/SB/2015**

Pradeep singh Bisht S/o late Sri Dayal Singh Bisht aged about 43 years, ASI(M) Police Office, Pauri R/o Village and Post Gopeshwar, District Chamoli, Uttarakhand.

……Petitioner.

**VERSUS**

1. State of Uttarakhand through Principal Secretary (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Additional Director General of Police (Crime and Law Order) Uttarakhand, Police Head Quarter, Dehradun.
3. Inspector General of Police, Garhwal Range, Uttarakhand, Dehradun.
4. Superintendent of Police, Pauri Garhwal.

……Respondents

Present: Sri L.K. Maithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

**JUDGMENT**

**DATED: OCTOBER 04, 2016.**

**(SRI D.K.KOTIA, VICE CHAIRMAN(A))**

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

"(i) To issue an order or direction to set aside the impugned punishment order dated 26.10.2009, appellate order dated 07.07.2010, revisional order dated 02.11.2010 and review order dated 11.08.2014 (Annexure Nos. A-1, A-2, A-3 and A-4) passed by the Respondent Nos. 4,3,2 & 1 with their effect and operation declaring the same as against the law.

(ii) To issue an order or direction to the respondents to remove the censure entry of the year 2008 from the character roll of the petitioner.

(iii) To issue a suitable order or direction to the respondents which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Cost of the petition be awarded to the petitioner."

2.1 The petitioner is a Police Officer and in 2008-09, he was posted as an ASI (M) in the Police Office, Pauri Garhwal.

2.2 The petitioner was issued a show cause notice on 13.06.2009 by the Superintendent of Police, Rural, 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 are 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

ए0एस0आई(एम)श्री प्रदीप सिंह बिष्ट,
द्वारा प्रधान लिपिक, पुलिस कार्यालय पौड़ी।

वर्ष–2008 में जब आप प्रधान लिपिक शाखा पुलिस कार्यालय पौड़ी में नियुक्त थे तो आपको आरक्षी पुलिस/पीएसी एवं फायर सर्विस की भर्ती हेतु अनुसूचित जाति /अनुसूचिज जनजाति के पुरूष अभ्यर्थियों के प्राप्त आवेदन पत्रों की जांच करने हेतु नियुक्त किया गया था । भर्ती सम्बन्धी निर्देश में स्पष्ट था कि सेवायोजन पंजीयन प्रमाण–पत्र नवीनीकरण विज्ञप्ति के दिनांक 04.12.08 के बाद का नही होना चाहिए, स्पष्ट निर्देश होने के बावजूद आपके द्वारा आवेदन पत्रों की जांच लापरवाही से की गयी। फलस्वरूप अनुसूचित जाति का 01 आवेदन पत्र सेवायोजन पंजीकरण दिनांक 04.12.2008 के बाद के होने पर भी स्वीकार कर लिया गया, जिस कारण उक्त अभ्यर्थी लिखित परीक्षा हेतु सफल घोषित हो गया। आपका यह कृत्य अपने कर्तव्य के प्रति घोर लापरवाही ,अनुशासनहीनता एवं स्वेच्छाचारिता का परिचायक है।

उक्त प्रकरण के सम्बन्ध में पुलिस उपाधीक्षक पौड़ी स प्रारिम्भक जांच करायी गयी। पुलिस उपाधीक्षक पौड़ी ने अपनी जांच आख्या में आपको आवेदन पत्रों की जाचं लापरवाही से करने का दोषी पाया गया है। फलस्वरूप आपके विरूद्ध उत्तराखण्ड (उ0प्र0) अधीनस्थ श्रेणी के पुलिस अधिकारियों की दण्ड एवं अपील नियमावली–1991 (अनुकूलन एव उपान्तरण ) आदेश –2002 के नियम 4(1) के खण्ड (ख) के उपखण्ड (चार) के अर्न्तगत विभागीय कार्यवाही प्रस्तावित कर आपके उपरोक्त कृत्य हेतु क्यों न आपकी चरित्र पंजिका में परिनिन्दालेख अंकित कर दिया जायेः–

2009

'' वर्ष– 2008 में इस ए0एस0आई(एम) को आरक्षी पुलिस /पीएसी एवं फायर सर्विस की भर्ती हेतु अनुसूचित जाति/ अनुसूचित जनजाति के पुरूष अभ्यर्थियों के प्राप्त आवेदन पत्रों की जांच करने हेतु नियुक्त किया गया था। भर्ती सम्बन्धी निर्देश में स्पष्ट था कि सेवायोजन पंजीयन प्रमाण –पत्र नवीनीकरण विज्ञप्ति के दिनांक 04.12.08 के बाद नही होना चाहिए, स्पष्ट निर्देश होने के बावजूद इनके द्वारा आवेदन पत्रों की जाचं लापरवाही से की गयी। फलस्वरूप अनुसूचचित जाति का 01 आवेदन पत्र सेवायोजन पंजीकरण दिनांक 04.12.08 के बाद का होने पर भी स्वीकार कर लिया गया, जिस कारण उक्त अभ्यर्थी लिखित परीक्षा हेतु सफल घोषित हो गया। आपका यह कृत्य अपने कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीनता एवं स्वेच्छाचारिता का परिचायक है, जिसकी घोर परिनिन्दा की जाती है''

अतः आप इस कारण बताओ नोटिस प्राप्ति के 15 दिवस के अन्दर अपना स्पष्टीकरण प्रस्तुत करें, कि इस सम्बन्ध में आपको क्या कहना है। आपको स्पष्ट किया जाता है कि नियत अवधि के अर्न्तगत आपका स्पष्टीकरण प्राप्त होने पर उस पर सहानुभूतिपूर्वक विचार करने के पश्चात ही अग्रिम आदेश पारित किये जाएगें। यदि आपका स्पष्टीकरण निर्धारित अवधि में प्राप्त नही होता है तो आपके स्पष्टीकरण क अभाव में यह माना जाएगा कि आपको कोई स्पष्टीकरण नही देना है और आपको प्रस्तावित दण्ड स्वीकार है जिसको दृष्टिगत रखते हुये इस विभागीय कार्यवाही में एक पक्षीय आदेश पारित कर दिये जायेगें। जिसके लिये आप स्वयं जिम्मेदार होगें । यदि आप सम्बन्धित पत्रावली का अवलोकन करना चाहते है तो किसी भी कार्यालय दिवस में निर्धारित अवधि के अन्दर पत्रावली का अवलोकन कर सकते है।

संख्याः 34/09
दिनांक :जून 13, 2009

पुलिस अधीक्षक
पौड़ी गढ़वाल।"

2.3 The petitioner submitted the reply to the show cause notice on 19.06.2009 (Annexure: A-7) and denied the charge levelled against him.

2.4. Respondent No. 4 considered the reply to the 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 26.10.2009 (Annexure: A1).

2.5 The petitioner filed an Appeal against the punishment order to respondent No. 3 which was rejected on 07.07.2010 (Annexure: A2). The petitioner filed the Revision Petition to respondent No. 2 and the same was also rejected on 02.11.2010 (Annexure: A3). The Review Petition of the petitioner against the orders Annexure: A-1, A-2 and A-3 was also rejected by respondent No.1 on 11.08.2014 (Annexure: A4). Hence, the petition.

3. The petitioner has challenged the minor punishment of 'censure' mainly on the following grounds:-

(i) The punishment order has been passed without considering the reply of the petitioner and it is a non-speaking and non-reasoned order.

(ii) The petitioner was busy due to the annual inspection of the S.P. on 28.01.2009 and 29.01.2009 and because of this the forms could not be checked by the petitioner.

(iii) Preliminary inquiry has not been conducted in the proper manner. The findings of the inquiry officer are based on conjecture and surmise.

(iv) The petitioner has not done any wrong deliberately and intentionally. He has been punished on the basis of circumstantial evidence.

(v) The act of the respondents is arbitrary, discriminatory, illegal and against the principles of natural justice and in violation of Article 14 and 16 of the Constitution of India.

4. The claim petition has been opposed by respondents No. 1 to 4 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.

5. No rejoinder affidavit has been filed on behalf of the petitioner. However, some documents have been filed by the petitioner relating to inspection report of the S.P. on 29.01.2009 and casual leave for 3 days from 30.01.2009 (Annexure: A-11 and A-12).

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

7. 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)……..”

8. 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.

9. Learned counsel for the petitioner has argued that the petitioner has not committed any misconduct and he has been falsely implicated. The application form, which was wrongly entertained in the recruitment process and for which the petitioner was charged and punished, was not checked by the petitioner as in the afternoon of 28.01.2009, the petitioner was busy in the preparation of annual inspection of the S.P. which was done by the S.P. on 29.01.2009. Thereafter, the petitioner has proceeded on casual leave on 30.01.2009 for 3 days. The said application form was checked by another staff and, therefore, the petitioner cannot be held guilty for the wrong done by another person. 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 petitioner was given opportunity to defend himself and the statement of the petitioner was also recorded by the inquiry officer. Ld. A.P.O. also referred to the original inquiry file and stated that the perusal of inquiry report makes it clear that sufficient evidence was found against the petitioner to hold him guilty. While perusing the original record of inquiry by me, it was found that the explanation of the petitioner has been duly considered not only by the inquiry officer during the preliminary inquiry but it has also been found unsatisfactory by the disciplinary authority while considering the petitioner's reply to the show cause notice.

10. **Here, it would be pertinent to mention that this Tribunal is making a judicial review and not sitting as appellate authority**.

11. 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) 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***."

12. 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****."*

13. 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.**

14. In view of above, I find that in the case in hand, this Tribunal has no reason to interfere. From the perusal of record, it is revealed that the show cause notice dated 13.06.2009 (Annexure:-A-6) 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 and he raised the same plea which he has raised before the Tribunal. The Ld. Counsel for the petitioner could not demonstrate any illegality in the show cause notice or in the procedure for awarding punishment of the censure entry by the competent authority. The competent authority has passed the punishment

order after due consideration of petitioner's reply. The findings in inquiry are based on evidence and there is no malafide or perversity. The provisions of the Uttar Pradesh Police Officers of the Subordinate Ranks( Punishment & Appeal) Rules, 1991 in regard to awarding of minor punishment have been fully complied with by the competent authority. After perusing the record of inquiry, I have reached the conclusion that the proceedings of imposing 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, the case of the petitioner is not made out.

15. For the reasons stated above, I find the claim petition 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)

DATED: OCTOBER 04, 2016
DEHRADUN

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