BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

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

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

CLAIM PETITION NO. 13/SB/16

Mukkesh Thaladi S/o Sri Girish Chandra Thaladi aged about 33 years, presently posted as Sub-Inspector, Civil Police, in the office of S.S.P., Dehradun.

With CLAIM PETITION NO. 16/SB/16

Darmyan Singh, S/o Sri Vijay pal Singh aged about 36 years, presently posted as Constable, Civil Police, Chowki Harbertpur, P.S. Vikasnagar, District Dehradun.

With CLAIM PETITION NO. 17/SB/16

Ajay Kumar Chaudhary, S/o Sri Jagpal Singh aged about 32 years, presently posted as Constable, Civil Police, Chowki Harbertpur, P.S. Vikasnagar, District Dehradun.

With CLAIM PETITION NO. 22/SB/16

Trepan Singh, S/o Sri Vijendra Singh aged about 35 years, presently posted as Constable, Civil Police, Chowki Harbertpur, P.S. Vikasnagar, District Dehradun.

……..Petitioners

VERSUS

1. State of Uttarakhand through Secretary Home, Government of Uttarakhand, Civil Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Uttarakhand, Dehradun..
3. Senior Superintendent of Police, District Dehradun.

…….Respondents.

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

JUDGMENT

DATED: FEBRUARY 06, 2017.

1. In these 4 claim petitions, there is similar cause of action and the petitioners in all these petitions have sought the similar relief from

the Tribunal. In this group of petitions, the facts and points of law are also similar. Hence, all these claim petitions are being decided together by the common judgment.

2. In all the petitions, punishment order of awarding “censure” entry by the Disciplinary Authority (Respondent No.3); rejection of appeal against the punishment order by the Appellate Authority (Respondent No.2) and the decision of non-payment of full salary for suspension period of the petitioners (by Respondent No.3) have been challenged and the petitioners have sought relief to quash all these orders.

3. All the petitioners are Police Officers in Civil Police. While the petitioners in claim petition No. 13/SB/2016 is Sub-Inspector, remaining three petitioners are Constables. All the petitioners were posted at Police Post, Naya Gaon, Police Station Patel Nagar, Dehradun in September 2013 when the incident (which led to punishment to the petitioners) took place.

4. The incident took place in the night of 26/27 September, 2013. The Circle Officer (D.S.P.), Sadar Dehradun during his routine checking, caught 17 trucks/ dumpers, carrying minerals, which were overloaded and coming towards Dehradun city from Naya Gaon, Police Post side. All these vehicles were challaned under the Motor Vehicles Act.

5. The Circle Officer reported the matter to the Senior Superintendent of Police (SSP), Dehradun that the Police Personnel of Naya Gaon, Police Post failed to check these vehicles and it is gross negligence of duties on their part. The SSP suspended the concerned Police Officers of the Police Post (including all the petitioners) on 27.09.2013.

6. A preliminary inquiry was conducted and, thereafter, show cause notices were issued to the petitioners as to why the censure entry be not given to the petitioners as a minor penalty under ‘The Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991’.

7. The petitioners submitted their replies to the show cause notices and denied the charges levelled against them.

8. Respondent No.3 considered the replies to show cause notices submitted by the petitioners and did not find the same satisfactory and found the petitioners guilty and awarded minor penalty of censure entry.

9. The petitioners filed appeals against the punishment orders to Respondent No.2 which were rejected.

10. The petitioners were reinstated and they were issued the show cause notices separately as to why only the subsistence allowances be not paid to them for the period of their suspension. Only petitioner of claim petition No.16/SB/2016 replied to the show cause notice and remaining three petitioners did not reply to the show cause notices. Respondent No.3 passed a separate order in respect of each petitioner and only subsistence allowance was decided to be paid to the petitioners for the period of their suspension.

11. The petitioners have challenged the minor punishment of “censure” mainly on the ground that the findings of inquiry officer is based only on the statement of the Circle Officer, Sadar, Dehradun and are not supported by any independent witness; the inquiry officer made the petitioners guilty on the basis of conjecture and surmise and not on the fact; the statements of drivers/ owners of the vehicles do not support the statement of complainant; the charges have been framed on wrong presumptions; the fact of illegal mining is not proved; the punishment order is a non-reasoned and non-speaking order; the owners/ drivers of the trucks/ dumpers were challaned only for overloading but no cases were registered for illegal mining; and the ground for suspension was bad in the eye of law.

12. The claim petitions have been opposed by respondents No. 1 to 3 and in their joint written statement, it has been stated that the inquiry against the petitioners had been conducted under Rule 14(2) of the Rules of 1991. The petitioners were given show cause notices. The petitioners replied to the show cause notices and their replies were duly considered by the disciplinary authority. Their replies were found unsatisfactory by the disciplinary authority. The disciplinary authority

passed an order under Rule 14(2) of the said Rules and the petitioners were awarded minor penalty of 'censure'. The petitioners have been provided due opportunity to defend themselves 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 appeals of the petitioners against the orders of the disciplinary authority were also duly considered and rejected as per Rules. The petitions are, therefore, devoid of merit and liable to be dismissed.

13. The petitioners have also filed rejoinder affidavits and the same averments have been reiterated and elaborated which were stated in the claim petitions.

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

15. 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) are given 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)……"

16. 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.

17. Learned counsel for the petitioners has argued that the petitioners have been falsely implicated. The petitioners have not committed any misconduct. Learned A.P.O. has refuted the argument and contended that the preliminary inquiry was conducted against the petitioners and allegations against them were found correct. Learned A.P.O. also referred to the original inquiry file and stated that the perusal of inquiry report makes it clear that sufficient evidences were found against the petitioners to hold them guilty. Learned counsel for the petitioners also reiterated the points which are stated in paragraph 11

of this order. 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***."

18. 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*."*

19. 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**.

20. Learned counsel for the petitioner also argued that the appeal of the petitioner in claim petition NO. 13/SB/16 has not been disposed of by the Appellate Authority properly. The point-wise discussion of various issues raised by the petitioner in his appeal has not been made by the Appellate Authority. I do not find any force in this argument. Perusal of the decision of the Appellate Authority reveals that not only the points raised in the reply to the show cause notice by the petitioner but also all the points made by the petitioner in his appeal have been duly discussed by the Appellate Authority before arriving at decision on the appeal of the petitioner.

21. 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 11 onwards, it is clear that the proceedings 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.

22. For the reasons stated above, the claim petitions are devoid of merit and the same are liable to be dismissed.

ORDER

The claim petitions are hereby dismissed. No order as to costs.

Let a copy of this judgment be kept in claim petition Nos. 16/SB/16, 17/SB/16 and 22/SB/16.

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: FEBRUARY 06 , 2017
DEHRADUN.

VM