BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT DEHRADUN

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

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

CLAIM PETITION NO. 45/ DB/2016

Ajab Singh S/o Shri Pradeep Kumar aged about 39 years presently posted as Fireman at Fire Station, Kotdwar, District Pauri Garhwal, Uttarakhand.

……Petitioner

Versus

1. State of Uttarakhand through Secretary (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Dehradun, Uttarakhand.
3. Superintendent of Police, Pauri Garhwal, Uttarakhand.

…….Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: FEBRUARY 09, 2017

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

"(a) To issue an order or direction to set aside both the impugned punishment order of same number of dated 13.02.2015 (Annexure No.A-1 & A-2 of the petition) and impugned appellate order dated 06.06.2016 (Annexure No.A-3 to the petition) passed by the respondent Nos. 3 and 2 respectively declaring the same as null and void along with all consequential benefits.

(b) To issue an order or direction to concerned respondent to pay the salary of the period 08.08.2014 to 17.08.2014 to the petitioner.

(c) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(d) To award the cost of the petition to the petitioner."

2. The petitioner is a Fireman in the Police Department, Government of Uttarakhand and posted at Fire Station, Kotdwar, District Pauri Garhwal.

3. The petitioner was issued a show cause notice on 24.10.2014 by the Superintendent of Police, Pauri Garhwal (respondent no. 3) 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:

"फायरमैन अजब सिंह,
द्वारा अग्निशमन अधिकारी, पौड़ी।

वर्ष–2014 में जब आप फायर स्टेशन कोटद्वार में फायरमैन के पद नियुक्त थे तो उप महानिरीक्षक, अग्निशमन एवं आपात सेवा उत्तराखण्ड देहरादून ने अपने आदेश संख्याः डीजी–आठ–7/2014 (7) दिनांक 23.07.2014 के द्वारा आपका स्थानान्तरण प्रशासनिक आधार पर जनपद पौडी से जनपद नैनीताल निर्गत किया गया था। आदेश के अनुपालन में आपको दिनांक 01.08.2014 को फायर स्टेशन कोटद्वार से रपट नं0 –14 समय 13:45 बजे नवनियुक्त जनपद हेतु स्थानान्तरण पर कार्यमुक्त किया गया था। आपको बाद स्थानान्तरण यात्राकाल के नियमानुसार दिनांक 08.08.2014 को अपना आगमन जनपद नैनीताल में करना चाहिए था परन्तु आपके द्वारा सम्बन्धित जनपद में आगमन न करके माननीय उच्च न्यायालय नैनीताल से स्थानान्तरण पर स्थगन आदेश प्राप्त कर दिनांक 18.08.2014 को जनपद पौडी में ही अपना आगमन किया गया जो उच्चाधिकारियों के आदेशों की अवहेलना को प्रदर्शित करता है। आपको नियमानुसार आदेश के अनुपालन में स्थानान्तरित जनपद में अपना आगमन करने के पश्चात ही मा0 उच्च न्यायालय से स्थानान्तरण के विरूद्ध स्थगन प्राप्त करने की कार्यवाही करनी चाहिए थी, अनुशासित बल में नियुक्त रहते हुये आपका यह कृत्य अपने कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीनता, अकर्मण्यता एवं स्वेच्छाचारिता का प्रतीक है।

उक्त प्रकरण के सम्बन्ध मे पुलिस उपाधीक्षक पौडी श्रीमती रेनू लोहानी से प्रारम्भिक जांच कराई गयी। पुलिस उपाधीक्षक पौडी ने अपनी जांच आख्या दिनांक 17.10.2014 में आपको उच्चाधिकारियों के आदेशों की अवहेलना करने का पूर्णतः दोषी पाया गया है। फलस्वरूप आपके उक्त कृत्य के लिये आपके विरूद्ध उत्तराखण्ड (उ0प्र0) अधीनस्थ श्रेणी के पुलिस अधिकारियों की दण्ड एवं अपील नियमावली–1991 (अनुकूलन एवं उपान्तरण) आदेश –2002 के नियम (1) के खण्ड (ख) के उपखण्ड (चार) के अर्न्तगत विभागोय कार्यवाही प्रारमभ कर आपके उपरोक्त कृत्य हेतु क्यों न आपकी चरित्र पंजिका में निम्न प्रकार से परिनिन्दा लेख अंकित कर दिया जाये, का कारण बताओ नोटिस निर्गत किया जाता है–

"22014"

वर्ष –2014 में जब यह फायर स्टेशन कोटद्वार में फायरमैन के पद नियुक्त था तो उप महानिरीक्षक, अग्निशमन एवं आपात सेवा उत्तराखण्ड देहरादून ने अपने आदेश संख्याः डीजी–आठ––7/2014 (7) दिनांक 23.07.2014 के द्वारा फायरमैन का स्थानान्तरण प्रशासनिक आधार पर जनपद पौडी से जनपद नैनीताल निर्गत किया गया था। आदेश के अनुपालन में फायरमैन को दिनांक 01.08.2014 को फायर स्टेशन कोटद्वारा से रपट नं0–14 समय 13:45 बजे नवनियुक्त जनपद हेतु स्थानान्तरण पर कार्यमुक्त किया गया था। फायरमैन को बाद स्थानान्तरण यात्राकाल के नियमानुसार दिनांक 08.08.2014 को अपना आगमन जनपद नैनीताल में करना चाहिए था परन्तु इस फायरमैन के द्वारा सम्बन्धित जनपद में आगमन न करके माननीय उच्च न्यायालय नैनीताल से स्थानान्तरण पर स्थगन आदेश प्राप्त कर दिनांक 18.08.2014 को जनपद पौडी में ही अपना आगमन किया गया जो उच्चाधिकारियों के आदेशों की अवहेलना को प्रदर्शित करता है। फायरमैन को नियमानुसार आदेश के अनुपालन में स्थानान्तरित जनपद में अपना आगमन करने के पश्चात ही मा0 उच्च न्यायालय से स्थानान्तरण के विरूद्ध स्थगन प्राप्त करने की कार्यवाही करनी चाहिए थी। अनुशासित बल में नियुक्त रहते हुये इस फायरमैन का यह कृत्य अपने कर्तव्य के प्रति घोर लापरवाही, अनुशासनहीनता ,अकर्मण्यता एवं स्वेच्छाचारिता का प्रतीक है, जिसकी घोर परिनिन्दा की जाती है।"

अतः आप इस कारण बताओ नोटिस प्राप्ति के 15 दिवस के अन्दर अपना स्पष्टीकरण प्रस्तुत करें कि आपको उपरोक्त सम्बन्ध में क्या कहना है। आपको यह स्पष्ट किया जाता है कि नियत अवधि के अन्दर आपका स्पष्टीकरण प्राप्त होने पर उस पर सहानुभूतिपूर्वक विचार करने के पश्चात ही अग्रिम आदेश पारित किये जायेंगे, यदि आपका स्पष्टीकरण निर्धारित अवधि में प्राप्त नही होता है तो आपके स्पष्टीकरण के अभाव में एक पक्षीय आदेश पारित कर दिये जायेंगे, जिसके लिये आप स्वयं जिम्मेदार होंगे। प्रकरण से सम्बन्धित जांच आख्या भी संलग्न की जा रही है।

संलग्नकःजांच आख्या :03 वर्क

पत्रांक :–द–15/2014
दिनांक :– अक्टूबर,24,2014

पुलिस अधीक्षक
पौड़ी गढ़वाल।

4. The petitioner submitted the reply to the show cause notice on 19.11.2014 and denied the charge levelled against him.

5. Respondent No. 3 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 13.02.2015 (Annexure: A1).

6. The petitioner filed an Appeal against the punishment order to respondent No. 2 which was rejected on 06.06.2015 (Annexure: A 3).

7. The petitioner has challenged the minor punishment of "censure" mainly on the grounds that points raised by the petitioner in his reply to the show cause notice have not been considered; the punishment order has been passed only on the basis of the preliminary inquiry report; findings of the preliminary inquiry report were perverse and without any basis; the act of the petitioner does not construct any misconduct; the punishment order is bad in the eye of law and it was right of the petitioner to approach the Hon'ble High court against his transfer.

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 of the petitioner 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 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 after the transfer of the petitioner to Nainital, he was relieved from Kotdwar on 01.08.2014. After that he had approached the Hon’ble High court and got stay order against his transfer order on 08.08.2014. The petitioner could get the certified copy of the Court’s order on 11.08.2014. The petitioner thereafter made efforts to join at Kotdwar. He presented the copy of the stay order at Police Headquarters on 13.08.2014 and then his transfer to Nainital was stayed on 14.08.2014 by the Police Headquarters and he was asked to report at Pauri District. Thereafter, he joined at Pauri on 18.08.2014. Learned counsel for the petitioner has also argued on some other points which are mentioned in paragraph 7 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****."*

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. 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.

17. The petitioner has also challenged the order of respondent No.3 dated 13.02.2015 (Annexure: A 2) by which treating the period from 08.08.2014 to 17.08.2014 as unauthorized absence of the petitioner from duty, his salary for 10 days was decided not to be paid on the basis of ' no work no pay' principle. Before passing this order, a show cause notice was given to the petitioner by respondent No. 3 on 24.10.2014 (Annexure: A 8). The petitioner replied to this show cause notice on 19.11.2014 (Annexure: A 12). The Respondent No.3 considered the representation of the reply to the show cause notice given by the petitioner and found it unsatisfactory and passed a reasoned order for non-payment of salary to the petitioner for 10 days on 13.02.2015. After perusing show cause notice, reply to the show cause notice and the order of Respondent No.3, I find no illegality in this order dated 13.02.2015 (Annexure: A 2) and, therefore, the Tribunal has no reason to interfere.

18. For the reasons stated in the preceding paragraphs, 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: FEBRUARY 09, 2017
DEHRADUN.

VM