

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 27/NB/DB/2015**

Mohd. Anees Miya Ansari, S/o Sri Iqbal Hussain, presently posted as Urdu Translator/Junior Clerk, P.S. Kotwali Kichha, Udham Singh Nagar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Additional Director General of Police, Administration, Police Headquarters Uttarakhand Police, Dehradun.
4. Inspector General of Police, Kumaun Division, Nainital.
5. Senior Superintendent of Police, Udham Singh Nagar.

.....Respondents

Present: Sri D.S.Mehta, Ld. Counsel  
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: APRIL 26, 2017**

**(HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A))**

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

“ a) In view of facts and grounds as mentioned above the applicant prays that this Hon'ble Tribunal may

graciously be pleased to call the entire records and quash the impugned orders dated 29.09.2010 passed by respondent no. 5, order dated 06.07.2011 passed by respondent no.4, order dated 31.07.2012 passed by respondent no. 3 and order dated 24.01.2015 passed by respondent no. 1 (Annexure: 1 to 4).

b) To issue an order or direction directing the respondents to pay/grant the salary of the petitioner and other consequential benefits which have been illegally withheld pursuant to impugned order.

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

d) To award cost of the petition."

2. The petitioner is working in the Police Department as Urdu Translator/Junior Clerk. He is an employee of the Police Department in clerical cadre and he is not a part of the Police Force.

3. In the year 2010, when the petitioner was posted in the office of the Senior Superintendent of Police, Udham Singh Nagar, he applied for casual leave for 5 days due to illness on 21.04.2010. The petitioner did not join his duty back after 5 days and sent an application by post to extend the leave due to his illness. Thereafter, the petitioner came back on 18.05.2010 and joined his duty. The contention of the petitioner is that due to illness and diabetic problem, he had gone to his home in Badaun, U.P. and he also submitted medical certificate when he joined his duty back on 18.05.2010. The respondents have contended that the petitioner

should not have gone home without getting his leave sanctioned alongwith permission to leave station. Respondents have further contended that the petitioner left an application of leave on the table of the head clerk on 21.04.2010 and gone to his native place without sanction of leave and came back on his duty on 18.05.2010 though he had applied for leave for 5 days. The petitioner should have got his leave sanctioned first and then he should have gone to his home town. Further, if the petitioner was ill, he should have taken treatment from the Government Hospital, Rudrapur which was only 200 yards away from the Police Office. The petitioner has stated that the head clerk of the Police Office has ill will against him and he used to harass him regularly. The respondents are not convinced by this reasoning of the petitioner as the petitioner had never made any complaint or brought to the notice of the higher authorities in this regard. Moreover, if the petitioner was really ill, he should have approached the higher authorities for sanction of his leave rather than leaving his leave application on the table of the head clerk. Respondents have also not found the medical certificates of private nursing home of Badaun submitted by the petitioner reliable. According to respondents, the petitioner has acted in an indisciplinary manner and his unauthorized absence for 27 days is a misconduct for which action has been taken against him.

4. A preliminary enquiry was conducted by the D.S.P., Udham Singh Nagar against the petitioner for allegations in para 3 above. The petitioner was found guilty for dereliction of duty and also for unauthorized absence for 27 days.

5. The petitioner was issued a show cause notice on 13.08.2010 by the Senior Superintendent of Police, Udham Singh

Nagar. The petitioner replied to the show cause notice on 09.09.2010.

6. The Senior Superintendent of Police, Udham Singh Nagar after due consideration of reply to the show cause notice found it unsatisfactory and awarded a minor punishment of censure entry to the petitioner on 29.09.2010. The censure entry awarded to the petitioner reads as under:

“वर्ष-2010

वर्ष 2010 में जब आप उर्दू अनुवादक/ सह कनिष्ठ लिपिक, पत्र व्यवहार शाखा, पुलिस कार्यालय ऊधमसिंहनगर में नियुक्त थे तो दिनांक 21-4-2010 को यह सह कनिष्ठ लिपिक दिनांक 22-4-2010 से 05 दिवस आकस्मिक अवकाश स्वीकृत करने सम्बन्धी प्रार्थना-पत्र प्रधान लिपिक की टेबिल पर रखकर अवकाश स्वीकृत कराये बिना अपने घर चले गये तथा दिनांक 18-5-2010 को कुल 27 दिवस अनधिकृत रूप से अनुपस्थित रहकर अपने कर्तव्य पर उपस्थित हुये। प्रकरण में प्रचलित प्रारम्भिक जाँच के मध्य इस सह कनिष्ठ लिपिक द्वारा अपने कथनों में अंकित कराया गया कि इन्होंने अपनी अस्वस्थता के कारण अवकाश प्रार्थना-पत्र स्वीकृति हेतु प्रधान लिपिक को दिया गया, किन्तु प्रधान लिपिक द्वारा इनकी बात नहीं सुनी गयी। यदि यह वास्तव में बीमार थे ता इनको अपना उपचार स्थानीय जिला चिकित्सालय रुद्रपुर में कराना चाहिये था तथा प्रधान लिपिक द्वारा अवकाश स्वीकृत न कराने की दशा में यह उच्चधिकारियों के समक्ष उपस्थित होकर अपना अवकाश स्वीकृत करा सकते थे, जो कि इनके द्वारा नहीं किया गया तथा यह स्वेच्छाचारी ढंग से अपना अवकाश प्रार्थना-पत्र प्रधान लिपिक के टेबिल पर रखकर अपने घर चले गये तथा कुल 27 दिवस अनधिकृत रूप से अनुपस्थित रहकर वापस आये। इस प्रकार सह कनिष्ठ लिपिक का यह कृत्य कर्तव्य के प्रति घोर लापरवाही, उदासीनता एवं स्वेच्छाचारिता का द्योतक है, जिसकी परिनिन्दा की जाती है।

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7. The petitioner also filed appeal on 22.12.2010 against the punishment order which was considered by the respondents and the same was rejected on 06.07.2011. The petitioner also filed a revision against the order of appellate authority on 19.10.2011 and it was also rejected on 31.07.2012. The petitioner also filed a

review petition to the State Government against the orders of the punishing, appellate and revisional authorities on 23.11.2012, which was also rejected on 24.01.2015.

8. The petitioner has challenged the punishment of censure entry mainly on the grounds that the charges against the petitioner are highly improper and without any cogent evidence; the charges are against the real facts and based on no evidence as the charges cannot sustain merely on conjectures; the respondents have not followed the provisions of U.P. Police Regulations and the U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991; the petitioner is having unblemished service career of about 15 years; and the Director General of Police, Uttarakhand vide letter dated 13.09.2010 had written to all the Superintendent of Police that the Police personnel should not be punished for minor reasons so that their morale is not adversely affected.

9. The claim petition has been opposed by respondents and in their joint written statement, it has been stated that the enquiry against the petitioner for minor punishment has been conducted under the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003. The petitioner belongs to clerical cadre and is a member of ministerial staff being a Urdu Translator/Junior Clerk as such he is not a police officer and not a part of disciplinary police force, hence the U.P. Police Regulations and Police Officers and Subordinate Rank (Punishment & Appeal) Rules, 1991 are not applicable in the case of the petitioner. The essential ingredients of awarding minor punishment have been duly followed. After the misconduct of the petitioner came to the notice, a preliminary enquiry was conducted by the D.S.P., Udham Singh Nagar. Statements of the witnesses including the petitioner were duly

recorded. After the petitioner was found guilty for misconduct in the preliminary enquiry report, the disciplinary authority issued the show cause notice and the reply of the petitioner to the show cause notice was duly examined and the disciplinary authority awarded minor punishment of censure entry by passing a speaking order. The petitioner has been provided due opportunity to defend himself adhering to the rules and the principles of natural justice. The appeal, revision and review of the petitioner were also duly considered and the same were rejected by the competent authorities.

10. 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.

11. We have heard both the parties and perused the record including the original enquiry file carefully.

12. Learned counsel for the petitioner as well as learned A.P.O. both have argued on the same lines which have been stated in the claim petition/ written statement as mentioned in the earlier paragraphs of this order.

13. We have gone through the entire record of the enquiry file summoned by the Tribunal and also the claim petition/written statement/rejoinder and find that a preliminary enquiry was conducted in a fair and just manner. The petitioner participated in the preliminary enquiry. The enquiry officer has taken statements of all the relevant witnesses including the petitioner. The preliminary enquiry is based on statements and documents related to the allegations. On the basis of the concrete evidence, the enquiry officer has reached the conclusion that the petitioner was

guilty. The petitioner was also provided required opportunity to defend himself. After the preliminary inquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The reply of the petitioner to the show cause notice was also duly examined and considered and after that the disciplinary authority has awarded minor punishment of censure entry by passing a well reasoned order.

14. It is settled position of law that this Court cannot interfere in the findings of the enquiry officer recorded after the conclusion of the enquiry unless it is based on the malafide or perversity. The perversity can only be said when there is no evidence and without evidence, the enquiry officer has come to the conclusion of the guilt of the delinquent official. In this case, there is no averment or pleading of malafide. There is sufficient evidence to hold the petitioner guilty for misconduct as recorded by the enquiry officer. In the case in hand, there is no perversity and there is no malafide in appreciation of evidence.

15. From the perusal of record, it is also revealed that the show cause notice dated 13.08.2010 was issued and in his reply to this notice, the petitioner has not challenged it and nowhere it has been averred that show cause notice is bad in the eyes of law. Learned 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. It is well settled principle of law that judicial review is not akin to adjudication on merit by reappreciating of the evidence as an appellate authority. The Tribunal does not sit as a court of appeal as the scope of judicial review is limited to the process of making the decision and not against the decision itself. Power of judicial review is meant to

ensure that the delinquent receives fair treatment. The Tribunal is concerned to determine that the enquiry was held by a competent officer, that relevant rules and the principles of natural justice are complied with and the findings or conclusions are based on some evidence. The authority entrusted to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. The Disciplinary Authority is the sole judge of facts. In case of disciplinary enquiry, 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 a misconduct.

16. In the case in hand, after careful examination of the whole process of awarding minor punishment of censure to the petitioner, we find that the minor punishment was awarded to the petitioner after an enquiry. The enquiry was based on evidence and there is no malafide and perversity. The petitioner was given reasonable opportunity to defend himself. There is no violation of any rule, law or principles of natural justice in the enquiry proceedings conducted against the petitioner.

17. The petitioner has also challenged the order of respondents by which treating the period of 27 days as unauthorized absence of the petitioner from duty, his salary for 27 days was decided not to be paid on the basis of "No work no Pay" principle. Before passing this order for non-payment of salary for 27 days, a separate show cause notice was given to the petitioner by the respondent no. 5. The petitioner replied to this show cause notice. The respondent no. 5 considered the reply to the show cause notice and found it unsatisfactory and passed a reasoned



order for non-payment of salary to the petitioner for 27 days. The appeal, revision and review of the petitioner in this regard were also considered and the same were rejected by the competent authorities. We find no illegality in the order for non-payment of salary and, therefore, the Tribunal has no reason to interfere in this regard.

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

Order

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

**(RAM SINGH)**  
VICE CHAIRMAN(J)

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

*DATE: APRIL 26, 2017*  
*NAINITAL*

*KNP*