

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. 28/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 21.12.2010 passed by respondent no. 5, 28.07.2011 passed by respondent no.4, order dated 28.08.2012 passed by respondent no. 3 and 23.1.2015 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.

3.1 In the year 2010, when the petitioner was posted in the office of the Senior Superintendent of Police, Udham Singh Nagar, he was assigned a task to go to the Police Headquarters, Dehradun for submitting and verifying the crime data. The petitioner was directed to move on 04.04.2010 and come back on 06.04.2010. The petitioner came back on 09.04.2010 after the delay of three days. The contention of the petitioner is that he had to stay at Dehradun and the work assigned to him was completed on 08.04.2010 and, therefore, he could come back on 09.04.2010. Respondents have not found this explanation for delay by the petitioner satisfactory and the contention of the respondents is that the crime data after verification were made available to the petitioner by the Deputy Superintendent of Police, State Crime Bureau, Dehradun on 05.04.2010 and

therefore, the petitioner should have come back on 06.04.2010. The respondents have also shown a letter of D.S.P. Crime Bureau in which it has been clearly mentioned that the petitioner was provided verified crime data on 05.04.2010 and the petitioner had also signed on the office copy of this letter on 05.04.2010 (Annexure: R-2 to the written statement). It is also a charge against the petitioner that he claimed Daily Allowance for his journey for three days while only one day D.A. was permissible. Besides this, the respondents have also alleged that the petitioner made overwriting in date of receiving the crime data. The petitioner in his contention has stated that the overwriting in date on letter given by the State Crime Bureau had occurred due to natural human error and he has further stated that he had produced D.A. bills for three days as these days were spent by him for official work.

3.2 The petitioner was also assigned another task to go to Muzaffer Nagar and Bareilly on 14.04.2010 to deliver some important 'Dak' as a special messenger. He was directed to first go to Muzaffer Nagar for delivery of 'Dak' and after delivery of 'Dak' to move from Muzaffer Nagar to Bareilly on 15.4.2010. The petitioner after delivering the Dak in Muzaffer Nagar on 15.04.2010 did not move to Bareilly on 15.04.2010 and moved to Bareilly after delay of two days on 17.04.2010. The contention of the petitioner is that he fell ill in Muzaffer Nagar on 15.04.2010 and, therefore, he could not move on 15.04.2010 and could leave for Bareilly on 17.04.2010. The respondents did not find this explanation of the petitioner satisfactory as the petitioner did not inform about his illness to the office of the S.S.P. and if the petitioner was ill he should have got treatment for the same in the local Government Hospital and he should have also submitted the medical certificates.

4. A preliminary enquiry was conducted by the D.S.P., Udham Singh Nagar against the petitioner for allegations in para 3.1 and 3.2 above. The petitioner was found guilty for dereliction of duty and also for unauthorized absence for five days.

5. The petitioner was issued a show cause notice on 20.10.2010 by the Senior Superintendent of Police, Udham Singh Nagar. The petitioner replied to the show cause notice on 26.11.2010 (Annexure: A 6).

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 21.12.2010. 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 काइम इन इण्डिया से सम्बन्धित वर्ष -2009 के अपराध ऑकड़े पुलिस मुख्यालय देहरादून में उपलब्ध कराये जाने हेतु इनको दिनांक 4-4-2010 को पुलिस कार्यालय ऊधमसिंहनगर से उपलब्ध कराये गये, जिनका मिलान दिनांक 5-4-2010 को पुलिस मुख्यालय में कराने के उपरान्त इनको दिनांक 6-4-2010 को वापस आ जाना चाहिये था, किन्तु यह समय से वापस न आकर दिनांक 9-4-2010 को 03 दिवस विलम्ब से कार्यालय में उपस्थित हुये तथा इनके द्वारा इस यात्रा का 01 दिवस के बजाय 03 दिवस का डी0ए0 भी क्लेम किया गया तथा अपराध ऑकड़े उपलब्ध कराये जाने की तिथि में ओवरराईटिंग की गयी। इसके अतिरिक्त इस उर्दू अनुवादक द्वारा पुलिस कार्यालय ऊधमसिंहनगर से दिनांक 14-4-2010 बतौर विशेष वाहक जनपद मुजफ्फरनगर एवं बरेली हेतु को प्रस्थान किया गया तथा बाद समाप्त डाक आदान-प्रदान के इनको जनपद मुजफ्फरनगर से दिनांक 15-4-2010 को जनपद बरेली हेतु प्रस्थान कर लेना चाहिये था, किन्तु इनके द्वारा उक्त तिथि को प्रस्थान न कर दिनांक 17-4-2010 को 02 दिवस विलम्ब से जनपद बरेली हेतु प्रस्थान किया गया। इस प्रकार इनका यह कृत्य कर्तव्य के प्रति घोर लापरवाही, उदासीनता एवं स्वेच्छाचारिता का द्योतक है जिसकी परिनिन्दा की जाती है।”

7. The petitioner also filed appeal on 11.03.2011 against the punishment order which was considered by the respondents and the same was rejected on 28.07.2011. The petitioner also filed a revision against the order of appellate authority on 19.10.2011 and it was also rejected on 28.08.2012. The petitioner also filed a review petition to the State Government against the orders of the punishing, appellate and revisional authorities on 02.1.2013, which was also rejected on 23.01.2015.

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 20.10.2010 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 five days as unauthorized absence of the petitioner from duty, his salary for five 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 five 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 five 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