

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. 08/NB/DB/2016**

Dharam Singh Mehra, S/o Late Sri Harak Singh Mehra, R/o Village and Post Nali, P.O. Gangolihat, District Pithoragarh.

.....Petitioner

**VERSUS**

- 1.State of Uttarakhand through Principal Secretary, Home Affairs, Dehradun.
- 2.Deputy Inspector General of Police, Kumaon Region, Nainital.
- 3.Superintendent of Police, District Champawat.

.....Respondents

Present: Sri Rajendra Arya, Ld. Counsel  
for the petitioner

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

**JUDGMENT**

**DATED: MAY 17, 2017**

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

1. The petitioner has filed this claim petition for seeking following reliefs:

*"In view of the fact mentioned in the para 4 of the petition this Hon'ble Tribunal may graciously be pleased to:-*

- i) *Set aside the impugned order dated 3.9.2015 passed by respondent no. 3 and impugned order dated 19.12.2015 passed by respondent no. 2 in appeal filed by the petitioner against the*

*punishment order dated 3.9.2015 contained in Annexure No. 5 and Annexure No. 6 respectively of this claim petition.*

- ii) Issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.*
- iii) Award the cost of the present claim petition in favour of the petitioner."*

2. The petitioner is a constable in civil police in the Uttarakhand Police.

3. The petitioner was issued a show cause notice dated 03.08.2015 by the Superintendent of Police, Champawat 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". The said Rules hereinafter have been referred to as "Rules of 1991". The allegation against the petitioner, based on the preliminary inquiry, in the show cause notice reads as under:-

" कारण बताओ नोटिस

कानि0 18 ना0पु0 धरम सिंह  
द्वारा-थानाध्यक्ष रीठासाहिब।

आप वर्ष 2015 में चौकी चल्थी में दिनांक 15-07-2015 को समय 24.00 बजे से प्रातः 06.00 बजे तक निगरानी व बैरियर ड्यूटी में नियुक्त थे। उक्त चौकी में पूर्व से ही निगरानी/बैरियर ड्यूटी पर नियुक्त कर्मचारी द्वारा उच्चाधिकारियों के आदेशानुसार प्रातः 05.00 बजे तक वाहनों का आवागमन बंद रखने, केवल विशेष परिस्थितियों में पूरी तरह जाँच पड़ताल करने के बाद चालक के आई0डी0, टेलीफोन नं0 व वाहन के कागजातों को देखने के पश्चात् वाहन को विशेष परिस्थितियों में ड्यूटी में नियुक्त कर्मचारी द्वारा चौकी प्रभारी को सूचित कर चौकी प्रभारी के आदेश पर वाहन को छोड़ा जाता है किन्तु उक्त तिथि को समय 05.00 बजे बैरियर खोलते समय आपके द्वारा 06 वाहनों को छोड़ा गया जिसमें जनपद चम्पावत से चोरी वाहन संख्या यू0ए0 .01-6795 के भी सम्मिलित था। आपके द्वारा उक्त वाहन छोड़ने से पूर्व वाहन चालक का पूर्ण विवरण मय टेलीफोन नं0 सहित/परिचय पत्र लेकर रजिस्टर में अंकित करना चाहिए था किन्तु आपके द्वारा ऐसा नहीं किया गया तथा वाहन नम्बर जनपद अल्मोड़ा का होने, चालक द्वारा वाहन के कागजात प्रस्तुत न करने तथा स्वयं को पीलीभीत का होने का कोई आई0डी0 प्रुफ न दिखाने पर सतर्कता बरतनी चाहिए थी

तथा चौकी प्रभारी के संज्ञान में लाना चाहिए था। आपके द्वारा ऐसा न कर अपने कर्तव्यों का सही प्रकार से निर्वहन एवं अपने विवेक का सही प्रयोग न करते हुए लापरवाही की गयी। आपके उपरोक्त कृत्य के सम्बन्ध में पुलिस उपाधीक्षक टनकपुर से प्रारम्भिक जाँच करायी गयी तो जाँचकर्ता अधिकारी द्वारा अपनी प्रारम्भिक जाँच आख्या में भी आपको उक्त कृत्य का दोषी पाया गया। पुलिस जैसे अनुशासित बल में रहते हुये आपका उपरोक्त कृत्य अपने कर्तव्य के प्रति स्वेच्छाचारिता एवं लापरवाही का द्योतक है।

अतः आप इस कारण बताओ नोटिस की प्राप्ति के 15 दिवस के अंदर अपना लिखित स्पष्टीकरण प्रस्तुत करें कि क्यों न निम्नलिखित परिनिन्दा प्रवृष्टि, उत्तराखण्ड अधीनस्थ सेवाओं के पुलिस अधि०/कर्म० की (दण्ड एवं अपील) नियमावली-1991 (उपान्तरण आदेश-2002) के नियम-14 (2) के अन्तर्गत कार्यवाही करते हुए आपकी चरित्र पंजिका में अंकित किये जाने के आदेश पारित कर दिये जायें। यदि आपका स्पष्टीकरण निर्धारित अवधि में प्राप्त होता है तो उस पर सहानुभूतिपूर्वक विचार किया जायेगा। अन्यथा यह समझा जायेगा कि आपको इस सम्बन्ध में कुछ नहीं कहना है और आपके स्पष्टीकरण की अधिक प्रतीक्षा किये बिना एकपक्षीय अन्तिम आदेश पारित कर दिये जायेंगे, जिसका पूर्ण उत्तरदायित्व आपका स्वयं का होगा।

#### वर्ष-2015

“जब यह आरक्षी वर्ष 2015 में चौकी चल्थी में कार्यरत थे तब दिनांक 15-07-2015 को समय 24.00 बजे से प्रातः 06.00 बजेतक चौकी चल्थी में निगरानी व बैरियर ड्यूटी में नियुक्त किया गया था। पूर्व से ही निगरानी/बैरियर ड्यूटी पर नियुक्त कर्मचारी द्वारा उच्चाधिकारियों के आदेशानुसार प्रातः 05.00 बजे तक वाहनों का आवागमन बंद रखने केवल विशेष परिस्थितियों में पूरी तरह जाँच पड़ताल करने के बाद चालक के आई०डी०, टेलीफोन नं० व वाहन के कागजातों को देखने के पश्चात वाहन को छोड़ने तथा विशेष परिस्थितियों में ड्यूटी में नियुक्त कर्मचारी द्वारा चौकी प्रभारी को सूचित कर चौकी प्रभारी के आदेश पर वाहन को छोड़ा जाता है। उक्त तिथि को समय 05.00 बजे बैरियर खोलते समय इस आरक्षी द्वारा 06 वाहनों को छोड़ा गया जिसमें जनपद चम्पावत से चोरी वाहन संख्या यू०ए० 01-6795 के भी सम्मिलित था। इस आरक्षी द्वारा उक्त वाहन छोड़ने से पूर्व वाहन चालक का पूर्ण विवरण मय टेलीफोन नं० सहित परिचय पत्र लेकर रजिस्टर में अंकित करना चाहिए था किन्तु आरक्षी द्वारा ऐसा नहीं किया गया तथा वाहन नम्बर जनपद अल्मोड़ा का होने, चालक द्वारा वाहन के कागजात प्रस्तुत न करने तथा स्वयं को पीलीभीत का होने का कोई आई०डी० प्रुफ न दिखाने पर सतर्कता बरती चाहिए थी तथा चौकी प्रभारी के संज्ञान में लाना चाहिए था। इस आरक्षी द्वारा ऐसा न कर अपने कर्तव्योंका सही प्रकार से निर्वहन एवं अपने विवेक का सही प्रयोग न करते हुए लापरवाही की गयी। इनके

उपरोक्त कृत्य के सम्बन्ध में पुलिस उपाधीक्षक टनकपुर से प्रारम्भिक जाँच करायी गयी। प्रारम्भिक जाँच आख्या में भी इन्हें उक्त कृत्य का दोषी पाया गया। पुलिस जैसे अनुशासित बल में रहते हुए इनके उपरोक्त कृत्य अपने कर्तव्य के प्रति स्वेच्छाचारिता एवं लापरवाही का द्योतक है। जिसकी कड़ी परिनिन्दा की जाती है।”

पत्रांक न-33/2015  
दिनांक 3-8-2015

ह0/-  
03/08/15  
पुलिस अधीक्षक  
चम्पावत।”

4. The petitioner submitted the reply to the show cause notice on 13.08.2015 and denied the charge levelled against him.

5. Superintendent of Police, Champawat considered the reply to show cause notice and did not find the same satisfactory and found the petitioner guilty and awarded minor penalty of censure entry on 03.09.2015.

6. The petitioner filed an appeal against the punishment order which was rejected by the Deputy Inspector General of Police, Kumaon Region on 19.12.2015.

7.1 The petitioner has contended in the claim petition that when he was posted as constable at Police Chowki, Chalthi Kotwali, Champawat on barrier duty on the night of 15.7.2015, he had taken all due precautions during his duty and there were orders of the senior officers that the vehicles of the emergency and press will not be detained. He has also contended that there was no written order of the police department to retain the vehicle during night time and he has further submitted that there was no information of any theft of one vehicle bearing no. UA-01-6795. Since the driver of the said vehicle had informed that vehicle was being used to bring newspapers, therefore, this vehicle was allowed to go.

7.2 The respondent no. 3 has passed the impugned order dated 03.09.2015 without considering the reply to the show cause notice

submitted by the petitioner. The disciplinary authority has totally relied upon the preliminary enquiry report submitted by the D.S.P., Tanakpur, Champawat and has passed the impugned order.

7.3 It has also been contended by the petitioner that the departmental enquiry is quasi-judicial in nature and the author of the preliminary enquiry report was not called in the witness box to prove the said preliminary enquiry report. In the absence of this, the preliminary enquiry report is not admissible evidence and no punishment can be awarded on the basis of this preliminary enquiry report. The petitioner has also stated in his claim petition that the Hon'ble Supreme Court in the case of Roop Singh Negi has held that a departmental proceeding is a quasi-judicial proceeding and since the preliminary enquiry report was not proved by the department by examining the author of the preliminary enquiry report, the punishment order based upon the said preliminary enquiry report is patently erroneous and is liable to be quashed.

7.4 It is also a plea of the petitioner that witnesses examined during the preliminary enquiry were not produced in the witness box and the petitioner was not provided opportunity to cross examine these witnesses.

7.5 It has also been pleaded by the petitioner that the respondents have not conducted proper preliminary inquiry and did not provide reasonable opportunity to the petitioner to defend himself. The preliminary inquiry was conducted in the absence of the petitioner and no opportunity was given to him to cross examine the witnesses. The preliminary inquiry has been conducted without adhering to the principles of natural justice. Further, the preliminary inquiry is merely an inquiry which is conducted to find out whether a prima facie case is made out or not and the preliminary inquiry cannot be a basis for

awarding punishment. No regular disciplinary inquiry has been conducted against the petitioner in this case.

7.6 It has also been contended that the punishing authority as well as appellate authority, without considering the submissions of the petitioner, have passed the punishment orders and rejected the appeal in a cursory manner.

8.1 The claim petition has been opposed by the respondents no. 1,2 & 3 and in their joint written statement, it has been stated that the petitioner when he was on duty in the night of 15.7.2015, he allowed to pass the vehicles while there were instructions to not allow the movement of the vehicles during night time except when there is any special circumstances/emergency and in that case also, the vehicles were to be allowed after proper enquiry of papers of the vehicles and also due enquiry of the driver and his I.D., Telephone number etc. While allowing the vehicles to pass under special circumstances, the permission of the Incharge of Chowki was required to be taken by the petitioner and all details were to be recorded in the prescribed register. The petitioner performed his duty in a gross negligent manner and without due care, he allowed to pass the vehicle in an irregular manner. For this serious allegation, the petitioner was suspended on 16.7.2015 and a preliminary enquiry was ordered. The petitioner was reinstated on 29.7.2015 pending enquiry. It has also been contended by the respondents that there are written instructions according to which due to heavy rains and bad weather, traffic was closed during night hours vide order dated 12.7.2012 (Annexure R-A annexed to written statement).

8.2 The D.S.P, Tanakpur, Champawat conducted the preliminary enquiry. During course of the enquiry, the enquiry officer recorded the statement of the petitioner, Incharge, Chowki, Chalthi Kotwali,

Champawat, Incharge Inspector, Kotwali, Champawat and other Police personnel who were concerned with the said incident.

8.3 It has been contended by the respondents that the findings of the inquiry officer are based on sufficient evidence. After due consideration of the inquiry report by the disciplinary authority, show cause notice was issued to the petitioner for imposing minor penalty of censure to the petitioner. Thus, he was given reasonable opportunity to defend himself following the principles of natural justice. His reply to the show cause notice was duly considered by the disciplinary authority and minor punishment of censure entry was awarded to the petitioner by passing a speaking order. The appeal of the petitioner against the punishment order was also considered and the appellate authority rejected the same by passing a detailed order as per rules.

8.4 It was further contended by the respondents that the petitioner has been awarded minor punishment of "censure" under Rule 14(2) of the "Rules of 1991". No departmental inquiry was required to be conducted against the petitioner for imposing a minor penalty. The rules related to awarding of minor penalty have been followed and the contention of the petitioner that he was not allowed opportunity to cross examine the witnesses is misplaced and not in accordance with the "Rules of 1991". By providing an opportunity by issuing show cause notice before awarding minor punishment of censure, the petitioner was provided reasonable opportunity to defend himself.

8.5 Respondents have contended that the preliminary inquiry has been conducted properly, the findings of the inquiry are based on evidence, the petitioner also participated in the inquiry and there is no violation of any law, rule or principles of natural justice and the punishment order as well as rejection of appeal both are valid orders.

8.6 Respondents have also pleaded that the petitioner has been awarded only minor punishment of censure entry under Rule 14(2) of

the Rules of 1991. The regular departmental enquiry was not required to be conducted against the petitioner and, therefore, there was no occasion to allow the petitioner to cross examine the witnesses. The case law of Roop Singh Negi which has been referred by the petitioner is not at all applicable in the present case as the proceedings against the petitioner are not for awarding major punishment. After the preliminary enquiry, it was decided by the disciplinary authority for minor punishment proceedings under Rule 14(2) of the Rules of 1991. The disciplinary authority after the preliminary enquiry, decided not to initiate regular departmental proceedings for awarding major punishment. The contention of the petitioner that a regular departmental enquiry was not conducted; the preliminary enquiry report was not proved; petitioner was not provided opportunity to cross examine the witnesses are irrelevant and the contentions of the petitioner in this regard are misconceived as only proceedings for awarding minor punishment of censure have been conducted against him.

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. We 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 (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 subrule (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 as well as learned A.P.O. have argued on the same lines which have been stated in paragraphs 7 and 8 of this order.

14.1 After hearing both the parties and going through the entire record of the enquiry file and also the claim petition/written statement/rejoinder, we 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 sufficient evidence, the enquiry officer has reached the conclusion that the petitioner was guilty. The petitioner was also provided reasonable 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 passed a reasoned order awarding minor punishment of censure to the petitioner.

14.2 It is settled position of law that this Tribunal 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 the case in hand, there is sufficient evidence to hold the petitioner guilty for misconduct as recorded by the enquiry officer and there is no perversity or malafide in appreciation of evidence.

14.3 From the perusal of record, it is also revealed that the show cause notice dated 03.08.2015 was issued and in his reply to this notice, 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 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. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Tribunal.

15. Learned counsel for the petitioner contended that the petitioner was not allowed to cross-examine the witnesses and, therefore, reasonable opportunity of hearing was not given to him in gross violation of the principles of natural justice. It was also contended by learned counsel for the petitioner that the author of the preliminary inquiry was also not examined/cross examined. Learned A.P.O. refuted the argument and pointed out that the proceedings against the petitioner have been conducted under Rule 14(2) of Rules of 1991 (reproduced in paragraph 11 of this order) and the procedure laid down under the said rule has been followed. Learned A.P.O. also contended

that the proceedings against the petitioner were related to the minor punishment and the petitioner was not entitled to cross examine the witnesses under Rule 14(2) of the Rules of 1991. Therefore, he argued that sufficient opportunity was provided to the petitioner to defend himself by issuing the show cause notice as per rule 14(2) of Rules of 1991. After perusal of rules and record, we agree with the contention of learned A.P.O. and we are of clear view that the proceedings for awarding minor punishment of censure are in accordance with rules adhering to the principles of natural justice.

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. For the reasons stated above, 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.

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

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

*DATE: MAY 17, 2017*  
*NAINITAL*

*KNP*