

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present : Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

&

Hon'ble Mr. D. K. Kotia

-----Vice Chairman (A)

Claim Petition No. 45/NB/SB/2015

Sagar Singh, S/o Shri Pratap Singh, presently working as Head Constable,
Reporting Police Chauki Jainti, P. S. Lamgara, District Almora.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Additional Director General of Police (Administration), Head Quarter, Uttarakhand, Dehradun.
4. Deputy Inspector General of Police, Kumaon Range, Nainital.
5. Senior Superintendent of Police, Udham Singh Nagar.

..... Respondents

Present : Sri S. S. Chaudhary, Ld. counsel for the petitioner.
Sri V. P. Devrani, A.P.O. for the respondents.

JUDGMENT

DATED : JUNE 21, 2017

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

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

- “1). to quash and set-aside the order dated 17-02-2015 and 22-07-2015 (annexure no. 1 & 2 to the compilation no. 1) issued by the respondent no. 5 and 4 respectively.

- 2). to pass any other suitable order as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.
- 3). to award the cost of the application in favour of the applicant.”

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

3. The petitioner was issued a show cause notice on 10.06.2014 by the Senior Superintendent of Police, Udham Singh Nagar 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 enquiry in the show cause notice reads as under:-

कारण बताओ नोटिस

हेड कान्स0 130/08 ना0 पु0 सागर सिंह
जनपद अल्मोड़ा।

वर्ष 2013 में जब आप थाना बाजपुर, जनपद ऊधमसिंह नगर में नियुक्त थे तो थाना बाजपुर में मालखाना मोहर्रिर के पद पर नियुक्त हे0 कां0 17 ना0 पु0 मोहन सिंह रावत का स्थानान्तरण दिनांक 30-06-2013 को थाना बाजपुर से हेड मोहर्रिर थाना जसपुर के पद पर किये जाने के फलस्वरूप आपको थाना बाजपुर में मालखाना मोहर्रिर के पद पर नियुक्त किया गया। थाना बाजपुर के मालों का चार्ज देने हेतु हे0 कां0 17 ना0 पु0 मोहन सिंह रावत को दिनांक 13-7-2013 को थाना जसपुर से थाना बाजपुर रवाना किया गया था तथा दिनांक 9-10-2013 को उक्त हे0 कां0 द्वारा थाना जसपुर पर अपनी वापसी करायी गयी। उक्त अवधि में आप एवं थाना बाजपुर में मालखाना मोहर्रिर के पद पर नियुक्त रहे हे0 कां0 17 ना0 पु0 मोहन सिंह रावत के मध्य केवल वर्ष 2011 से 2013 तक के मालों के चार्ज का आदान प्रदान हुआ। जबकि आपको चाहिये था कि आप उक्त अवधि में ही समस्त मालों का चार्ज ग्रहण कर लेते, किन्तु आपके द्वारा ऐसा नहीं किया गया। तत्पश्चात दिनांक 5-12-2013 को आपके द्वारा जनपद अल्मोड़ा हेतु स्थानान्तरण पर प्रस्थान किया गया। प्रकरण में प्रारम्भिक जाँच प्रचलित किये जाने पर वर्ष 1985 से 2010 तक शेष लगभग 698 मालों का चार्ज दिनांक 9-2-2014 से 12-2-2014 के मध्य मात्र 04 दिवस के भीतर ही वर्तमान मालखाना मोहर्रिर हे0 कां0 133 ना0 पु0 मोहन सिंह द्वारा प्राप्त कर लिया गया, जिससे स्पष्ट है कि मालखाना मोहर्रिर थाना बाजपुर के पद पर नियुक्त रहते हुये आपके द्वारा मालों का चार्ज लेने में

लापरवाही एवं शिथिलता बरती गयी। इस प्रकार आपका यह कृत्य कर्तव्य के प्रति आपको घोर लापरवाही उदासीनता, अर्कमण्यता एवं स्वेच्छाचारिता का द्योतक है।

अतः आप इस नोटिस प्राप्ति के 15 दिवस के अन्दर अपना लिखित स्पष्टीकरण प्रस्तुत करें, कि क्यों न आपके इस कृत्य के लिये {उत्तराखण्ड उ० प्र० अधीनस्थ श्रेणी के पुलिस अधि०/कर्म० की (दण्ड एवं अपील) नियमावली-1991} अनुकूलन एवं उपान्तरण आदेश-2002 के नियम-14 (2) की विभागीय कार्यवाही के अन्तर्गत आपकी चरित्र पंजिका में निम्नलिखित परिनिन्दा लेख अंकित कर दिया जाये :-

वर्ष-2014

“वर्ष 2013 में जब यह हे०का० थाना बाजपुर, जनपद ऊधमसिंह नगर में नियुक्त था तो थाना बाजपुर में मालखाना मोहर्रिर के पद पर नियुक्त हे०का० 17 ना०पु० मोहन सिंह रावत का स्थानान्तरण दिनांक 30-06-2013 को थाना बाजपुर से हेड मोहर्रिर थाना जसपुर के पद पर किये जाने के फलस्वरूप इस हे०का० को थाना बाजपुर में मालखाना मोहर्रिर के पद पर नियुक्त किया गया। थाना बाजपुर के मालों का चार्ज देने हेतु हे०का० 17 ना०पु० मोहन सिंह रावत को दिनांक 13-7-2013 को थाना जसपुर से थाना बाजपुर रवाना किया गया था तथा दिनांक 9-10-2013 को उक्त हे०का० द्वारा थाना जसपुर पर अपनी वापसी करायी गयी। उक्त अवधि में इस हे०का० एवं हे०का० 17 ना०पु० मोहन सिंह रावत के मध्य केवल वर्ष 2011 से 2013 तक के मालों का चार्ज का आदान प्रदान हुआ। जबकि इस हे०का० को चाहिये था कि यह उक्त अवधि में ही समस्त मालों का चार्ज ग्रहण कर लेता, किन्तु इसके द्वारा ऐसा नहीं किया गया। तत्पश्चात् दिनांक 5-12-2013 को इस हे०का० के द्वारा जनपद अल्मोड़ा हेतु स्थानान्तरण पर प्रस्थान किया गया। प्रकरण में प्रारम्भिक जांच प्रचलित किये जाने पर वर्ष 1985 से 2010 तक शेष लगभग 698 मालों का चार्ज दिनांक 9-2-2014 से 12-2-2014 के मध्य मात्र 04 दिवस के भीतर ही वर्तमान मालखाना मोहर्रिर हे०का० 133 ना०पु० मोहन सिंह द्वारा प्राप्त कर लिया गया, जिससे स्पष्ट है कि मालखाना मोहर्रिर थाना बाजपुर के पद पर नियुक्त रहते हुये इस हे०का० के द्वारा मालों का चार्ज लेने में लापरवाही एवं शिथिलता बरती गयी। इस प्रकार हे०का० का यह कृत्य कर्तव्य के प्रति इसकी घोर लापरवाही, उदासीनता, अर्कमण्यता एवं स्वेच्छाचारिता का द्योतक है, जिसकी परिनिन्दा की जाती है।”

यदि आपका लिखित स्पष्टीकरण निर्धारित अवधि के अन्दर इस कार्यालय में प्राप्त नहीं होता है तो यह समझा जायेगा कि आपको उक्त सम्बन्ध में कुछ नहीं कहना है और स्पष्टीकरण के अभाव में अग्रिम आदेश पारित कर दिये जायेंगे। आपको यह भी आश्वस्त किया जाता है कि आपके द्वारा प्रस्तुत लिखित स्पष्टीकरण पर गहनता एवं गम्भीरता से अध्ययन एवं मनन करने के पश्चात् सहानुभूतिपूर्वक विचार करते हुये अन्तिम आदेश निर्गत किये जायेंगे। प्रकरण से सम्बन्धित जाँच आख्या की प्रति संलग्न है।

संख्या : द-17/2014
दिनांक : जून 10, 2014

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10/06/
वरिष्ठ पुलिस अधीक्षक
ऊधमसिंह नगर

4. The petitioner submitted the reply to the show cause notice on 10.07.2014 and denied the charge levelled against him.

5. Senior Superintendent of Police, Udham Singh Nagar 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 17.02.2015.

6. The petitioner filed an appeal against the punishment order which was rejected by the Deputy Inspector General of Police, Kumaon Range on 22.07.2015.

7. The petitioner has challenged the punishment of censure entry mainly on the grounds that the petitioner was not at fault in taking over the charge of Malkhana; the petitioner had additional work as Kar Sarkar and this was not taken into consideration; had the petitioner delaying taking over charge, the Head Constable (who was handing over the charge) would have complained to the higher authorities; the inquiry officer did not consider the statement of Incharge Inspector of Police Station who had stated that delay was on the part of Head Constable handing over the charge; as per Regulation 165 (7) of the Police Regulations, the Malkhana Moharrir should have 15 years of service while the petitioner had only 11 years of service; the punishment order is against the Doctrine of Proportionality; the unblemished service record of the petitioner has not been considered; and the impugned orders dated 17.02.2015 and 22.07.2015 have been passed in a mechanical manner without application of mind.

8. The claim petition has been opposed by respondents and in their joint written statement, it has been stated that the petitioner while working on the post of Malkhana Moharrir did not take charge of concerned material for a long period. The Additional Superintendent of Police, Kashipur conducted the preliminary inquiry. During the course of the inquiry, the inquiry officer recorded the statement of the

petitioner, Head Constable Mohan Singh Rawat (who had to hand over the charge), Incharge Inspector, P.S. Bajpur, Incharge Inspector, P.S. Jaspur and other concerned personnel. After the detailed inquiry, the inquiry officer found the petitioner (who had to take over the charge) and Head Constable Mohan Singh Rawat (who had to hand over the charge) guilty for their carelessness and negligence in performing their duties and both were punished. 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. 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. 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 conducted against the petitioner for imposing any major penalty. The rules related to awarding of minor penalty have been followed. By providing an opportunity by issuing show cause notice before awarding minor punishment of censure, the petitioner was provided reasonable opportunity to defend himself. Respondents have also 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.

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 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 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. 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 required opportunity to defend himself. After the preliminary enquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The reply of the petitioner to the show cause was also duly

examined and considered and after that the disciplinary authority has passed the order awarding minor punishment of censure entry to the petitioner.

15. 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.

16. From the perusal of record, it is also revealed that the show-cause notice dated 10.06.2014 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 re-appreciating 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

misconduct. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Tribunal.

17. 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.

18. 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: JUNE 21, 2017
NAINITAL

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