

**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. 14/NB/SB/2016**

Pankaj Singh S/o Late Sri Pratap Singh, presently serving as Fireman, Fire Station, Rudrapur, District Udham Singh Nagar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Headquarters, Uttarakhand, Dehradun.
4. Deputy Inspector General of Police, Kumaon Range, Nainital.
5. Superintendent of Police, Champawat.

.....Respondents

Present: Sri S.S.Chaudhary, Ld. Counsel  
for the petitioner

Sri V.P. Devrani, Ld. 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 this claim petition for seeking following reliefs:

*“In view of the facts and grounds mentioned in paragraph no. 4 and 5 of the instant application, the applicant prays for the following reliefs:*

- 1) *To quash and set-aside the order dated 12.08.2015 and 14.10.2015 (Annexure No. 1 & 2) issued by the respondents No. 5 & 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 Fireman in the Police Department and is presently posted at Fire Station, Rudrapur.

3. The petitioner was issued a show cause notice dated 09.07.2015 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

फायरमैन पंकज सिंह  
द्वारा— अग्निशमन अधिकारी लोहाघाट,  
जनपद चम्पावत

जब आप फायर स्टेशन टनकपुर, जनपद चम्पावत में नियुक्त थे तो दिनांक 12-05-2015 की रात्रि में आपके द्वारा फोन पर अग्निशमन अधिकारी टनकपुर को बताया गया कि फायरमैन सौरभ कुंवर तथा अन्जुल पाण्डे में झगड़ा हो रहा है। उक्त की घटना की जानकारी होने पर अग्निशमन अधिकारी टनकपुर द्वारा अलार्म बजवाकर सभी कर्मचारियों की गणना ली गयी तो आपका फायरमैन सौरभ कुंवर एवं अंजुल पाण्डे के साथ लड़ाई-झगड़ा एवं मारपीट होने की जानकारी हुई। इस सम्बन्ध में पुलिस अपाधीक्षक टनकपुर से प्रारम्भिक जाँच करायी गयी तो आपको फायर स्टेशन टनकपुर में नियुक्त रहकर दिनांक 12-05-2015 की रात्रि में फायरमैन सौरभ कुंवर एवं अंजुल पाण्डे के साथ लड़ाई-झगड़ा, मारपीट, अनुशासनहीनता, कर्तव्य के प्रति लापरवाही एवं उदण्डता करने का दोषी पाया गया।

अतः आप इस कारण बताओ नोटिस की प्राप्ति के 15 दिन के अन्दर अधोहस्ताक्षरी को अपना स्पष्टीकरण प्रेषित करें कि क्यों न आपको निम्नलिखित परिनिन्दा प्रविष्टि आपकी चरित्र पंजिका में अंकित कर दी जाये। यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर प्राप्त नहीं होता है तो यह समझा जायेगा कि आपको इस सम्बन्ध में कुछ नहीं कहना है तथा पत्रावली पर उपलब्ध अभिलेखों के आधार पर अन्तिम आदेश पारित कर दिया जायेगा:-

2015

“जब यह फायरमैन फायर स्टेशन टनकपुर (जनपद चम्पावत) में नियुक्त था तो दिनांक 12-05-2015 को रात्रि में इनके द्वारा फोन पर अग्निशमन अधिकारी टनकपुर को बताया गया कि फायरमैन सौरभ कुंवर तथा अन्जुल पाण्डे में झगड़ा हो रहा है। घटना की जानकारी होने पर अग्निशमन अधिकारी टनकपुर द्वारा अलार्म बजवाकर सभी कर्मचारियों की गणना ली गयी तो इनकी फायरमैन सौरभ कुंवर एवं अन्जुल पाण्डे के साथ आपस में लड़ाई-झगड़ा एवं मारपीट होने की बात प्रकाश में आयी। इस सम्बन्ध में पुलिस अपाधीक्षक टनकपुर से प्रारम्भिक जाँच करायी गयी तो इन्हें भी फायरमैन सौरभ कुंवर एवं अन्जुल पाण्डे के साथ दिनांक 12-05-2015 की रात्रि में आपस में झगड़ा, मारपीट करने अनुशासनहीनता एवं उडण्डता फैलाने का दोषी पाया गया। इनके अनुशासित बल में नियुक्त रहकर इस प्रकार के अशोभनीय कृत्य से पुलिस विभाग की छवि धूमिल हुई है। इनके इस कृत्य की घोर परिनिन्दा की जाती है।”

संख्या- न-30/2015

पुलिस अधीक्षक  
चम्पावत”

4. The petitioner submitted the reply to the show cause notice on 22.07.2015 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 12.08.2015.
6. The petitioner filed an appeal against the punishment order which was rejected by the Deputy Inspector General of Police, Kumaon Range on 14.10.2015.
7. The petitioner has contended in the claim petition that while he was posted at Fire Station, Tanakpur, district Champawat, two other firemen, Saurabh Kunwar and Anjul Pandey, who were also posted at

Fire Station, Tanakpur, assaulted the petitioner. A preliminary enquiry was conducted by the Deputy Superintendent of Police, Tanakpur in this matter and the enquiry officer found the petitioner as well as other two firemen guilty for indiscipline. The main ground on the basis of which the petitioner has filed this claim petition are that the respondents did not consider the facts that the firemen, Saurabh Kunwar and Anjul Pandey were aggressor, put all the parties in same footing and punished the petitioner and other firemen similarly; while other two firemen had previous record of indiscipline, the petitioner has unblemished service record; whatever has been done by the petitioner is done to defend himself and right to defend is nowhere offence in any judicial system; the petitioner is a victim but the respondents punished the victim and defaulters in the same manner; the order passed by the respondents is against the evidence on record and the conclusion of the authorities is unreasonable and against the law; and punishment to a victim will lower down the moral of the police force.

8. Respondents have opposed the claim petition and in their joint written statement, it has been stated that it is revealed from the preliminary enquiry that a dispute occurred between the petitioner and two other firemen on a petty matter which accelerated and turned into scuffle. The enquiry officer after a detailed enquiry has reached the conclusion that the petitioner started the dispute. The contention of the respondents is that instead of starting fight, the petitioner should have made complaint to the higher officers in regard to his grievances. The petitioner as well as two other firemen were found guilty for the fight among them. During enquiry, the petitioner could not establish that he is innocent or he was not involved in the dispute in question. The service record of the petitioner was not found sufficient to exonerate him from the charge of the indiscipline. The minor punishment of censure entry awarded to the petitioner against

indiscipline is fully justified. 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 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. 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 09.07.2015 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 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*

*KNP*