

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL AT DEHRADUN**

Present: Hon'ble Mr. D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 52/SB/2016

Constable CP 275 Sultan Singh, S/o Late Sri Sar Singh, Presently posted in City Kotwali, Haridwar, R/o Line Jeevangarh, Resham Bagh, Vikasnagar, District Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Principal Secretary, Department of Home, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Haridwar.

.....Respondents

Present: Sri J.P.Kansal, Ld. Counsel,
for the petitioner
Sri U.C.Dhaundiyal, Ld. A.P.O.
for the respondents

JUDGMENT

DATE: MAY 02, 2017

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

“Therefore, the petitioner most respectfully and humbly prays this Hon'ble Tribunal that;

- (a) the impugned order dated 17.12.2015 (Annexure-A1); 25.04.2016 (Annexure-A2) and 08.08.2016 (Annexure- A3) be kindly held in violation of law, rules, regulations, orders and principles of natural justice and be kindly quashed and set aside.
- (b) the respondents be kindly ordered and directed to pay to the petitioner the difference of pay and allowances due and paid as Subsistence Allowance for the period of suspension from 20.05.2015 to 5.06.2015 together with interest thereon at 12% per annum from the date of accrual till the actual date of payment to the petitioner;
- (c) any other relief, in addition to or in modification of above, as this Hon'ble Tribunal deems fit and proper, be kindly granted to the petitioner against the respondents; and
- (d) Rs. 15,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."

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

3. The petitioner was issued a show cause notice dated 21.08.2015 by the Senior Superintendent of Police, Haridwar 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”

कान्स0 275 ना0पु0 सुल्तान सिंह,

द्वारा:- प्रतिसार निरीक्षक

जब आप वर्ष 2015 में को0 मंगलौर पर नियुक्त थे, तो दिनांक 18-05-15 को स्थानीय लोगों द्वारा एक संदिग्ध व्यक्ति नफीस पुत्र सईद नि0 टाण्डा भनेडा को कोतवाली मंगलौर पर चेतक ड्यूटी पर नियुक्त कान्स0 344 ना0पु0 अमित शर्मा व एचजी (पीसी) सुखवीर के सुपुर्द किया गया। कान्स0 अमित शर्मा और एचजी सुखवीर द्वारा अभियुक्त उक्त को थाना हाजा पर नियुक्त कर्मियों के सुपुर्द किया गया, थाना हाजा पर नियुक्त ड्यूटी में का0 1213 ना0पु0 विक्रम सिंह द्वारा अभियुक्त को कां0 772 ना0पु0 मुकेश के सुपुर्द किया गया, इसके उपरान्त का0 मुकेश द्वारा एचजी 2536 सुरेन्द्र के सुपुर्द किया गया जिसके द्वारा दिनांक 19-05-15 र0नं0 02 समय 03:00 बजे पर परिवर्तन पहरा के दौरान उक्त संदिग्ध अभियुक्त को आपके सुपुर्द किया गया। आपके द्वारा दौराने सन्तरी ड्यूटी दिनांक 19-05-15 को सुबह 05.30 बजे अभियुक्त को शौच कराने ले जाया गया और स्वयं लापरवाही बरत कर कुर्सी पर बैठकर समाचार पत्र को पढ़ने लगे जबकि आपको अभियुक्त की सतर्कता से निगरानी करनी चाहिए थी। इसी समय मौका पाते ही अभियुक्त थाना हाजा से पुलिस अभिरक्षा से फरार हो गया। इस प्रकार आपके द्वारा पुलिस जैसे अनुशासित बल में रहकर अपने कर्तव्यों के प्रति घोर लापरवाही, शिथिलता एवं उदासीनता को प्रदर्शित किया गया। जिसके लिये आप पूर्ण रूप से दोषी पाये गये हैं।

अतः आप इस कारण बताओ नोटिस की प्राप्ति के 07 दिवस के अन्दर अपना लिखित स्पष्टीकरण इस कार्यालय में प्रस्तुत करें कि क्यों न आपके द्वारा बरती गयी उपरोक्त लापरवाही एवं उदासीनता के लिये उत्तराखण्ड अधीनस्थ श्रेणी के अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 के अनुकूलन एवं उपान्तरण आदेश 2002 के नियम 14 (2) के अन्तर्गत आपकी चरित्र पंजिका में निम्नलिखित परिनिन्दा लेख अंकित कर दिया जाये। यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर इस कार्यालय में प्राप्त नहीं होता है, तो यह समझा जायेगा कि आपको अपने बचाव में कुछ नहीं कहना और प्रस्तुत करना है।

यह भी स्पष्ट किया जाता है कि यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर प्राप्त होता है तो उस पर सम्यक विचारोपरान्त ही निर्णय लिया जायेगा अन्यथा स्पष्टीकरण के अभाव में एक पक्षीय आदेश पारित कर दिये जायेगे। इस सम्बन्ध में यदि आप पत्रावली मय जांच का अवलोकन करना चाहते हैं तो इसी अवधि में कर सकते हैं।

“2015

जब आप वर्ष 2015 में को0 मंगलौर पर नियुक्त थे, तो दिनांक 18-05-15 को स्थानीय लोगों द्वारा एक संदिग्ध व्यक्ति नफीस पुत्र सईद नि0 टाण्डा भनेडा को कोतवाली

मंगलौर पर चेतक ड्यूटी पर नियुक्त कान्स0 344 ना0पु0 अमित शर्मा व एचजी (पीसी) सुखवीर के सुपुर्द किया गया। कान्स0 अमित शर्मा और एचजी सुखवीर द्वारा अभियुक्त उक्त को थाना हाजा पर नियुक्त कर्मियों के सुपुर्द किया गया, थाना हाजा पर नियुक्त ड्यूटी में का0 1213 ना0पु0 विक्रम सिंह द्वारा अभियुक्त को कां0 772 ना0पु0 मुकेश के सुपुर्द किया गया, इसके उपरान्त का0 मुकेश द्वारा एचजी 2536 सुरेन्द्र के सुपुर्द किया गया जिसके द्वारा दिनांक 19-05-15 र0नं0 02 समय 03:00 बजे पर परिवर्तन पहरा के दौरान उक्त संदिग्ध अभियुक्त को आपके सुपुर्द किया गया। आपके द्वारा दौरान सन्तरी ड्यूटी दिनांक 19-05-15 को सुबह 05.30 बजे अभियुक्त को शौच कराने ले जाया गया और स्वयं लापरवाही बरत कर कुर्सी पर बैठकर समाचार पत्र को पढ़ने लगे जबकि आपको अभियुक्त की सतर्कता से निगरानी करनी चाहिए थी। इसी समय मौका पाते ही अभियुक्त थाना हाजा से पुलिस अभिरक्षा से फरार हो गया। इस प्रकार आपके द्वारा पुलिस जैसे अनुशासित बल में रहकर अपने कर्तव्यों के प्रति घोर लापरवही, शिथिलता एवं उदासीनता को प्रदर्शित किया गया। “कान्स0 के इस कृत्य की कड़ी परिनिन्दा की जाती है।”

पत्रांक:- न-20/2015

दिनांक:-अगस्त 21, 2015

वरिष्ठ पुलिस अधीक्षक,
हरिद्वार।”

4. The petitioner submitted the reply to the show cause notice on 01.09.2015 and denied the charge levelled against him.
5. Senior Superintendent of Police, Haridwar 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 17.12.2015.
6. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region on 08.08.2016.
- 7.1 The petitioner has contended in the claim petition that the charge against him is false. It is wrong to say that the petitioner was careless in his duty and as a result the suspected accused had absconded from the Police Station. Neither the Home Guard 2536

Surendra or anyone else had given the alleged accused in the custody of the petitioner nor such accused was present in the Kotwali Manglore when the petitioner had taken over charge of duty at 03:00 hours on 19.05.2015. The allegation that the suspected accused had run away during the duty of the petitioner is false and baseless.

7.2 It has further been contended by the petitioner that there is no record to prove that the suspected accused was in the custody and he was handed over to the petitioner as there is no entry in the General Diary relating to the custody of the alleged accused or about his presence in Kotwali.

7.3 It is also the plea of 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.

7.4 It has also been stated by the petitioner that the respondents did not provide copy of the preliminary inquiry report, statements of the witnesses and other documents relied upon in the said inquiry alongwith the "show cause notice".

7.5 The respondents, without conducting proper inquiry, giving opportunity to the petitioner to defend himself and considering the submissions made by the petitioner in reply to the show cause notice, in gross violation of law and principles of natural justice, have wrongfully imposed minor punishment of censure entry.

7.6 The appellate authority had also not given any hearing to the petitioner and he had also not considered submissions made in the appeal and summarily rejected the appeal.

8.1 The claim petition has been opposed by respondents No. 1 to 3 and in their joint written statement, it has been stated that a suspected accused was handed over to Kotwali Manglore on 18.05.2015 by two constables who were on patrol duty. The suspected accused had run away from Kotwali at 5.30 AM on 19.05.2015 during the duty of the petitioner (from 03:00 to 06.00 hours) due to his negligence. For this serious allegation, the petitioner was suspended on 20.05.2015 and a preliminary inquiry was ordered. The petitioner was reinstated on 05.06.2015 pending inquiry.

8.2 The Deputy Superintendent of Police, Laksar, Haridwar conducted the preliminary inquiry. During the course of the inquiry, the inquiry officer recorded the statement of the petitioner, the Incharge of Kotwali and 10 other personnel who were on duty at various time period from 18th May, 2015 till morning of 19th May, 2015 when the suspected accused had run away. After the detailed inquiry, the inquiry officer found guilty (i) incharge Kotwali for lack of supervision; (ii) 3 police personnel for not recording the events related to the suspected accused in General Diary; and (iii) the

petitioner for his negligence in running away of the suspected accused.

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. In the show cause notice, it was specifically mentioned that the petitioner, if he so desires, may inspect the relevant file and the inquiry report. The petitioner inspected the inquiry file and obtained the inquiry report and after that he replied to the show cause notice. 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.

8.4 Respondents have also contended that the inquiry officer after the statements of all the witnesses and finding sufficient evidence reached the conclusion that the petitioner is guilty and the plea of the petitioner that there is no entry in the General Diary relating to custody of the suspected accused cannot absolve him of the negligence when the inquiry officer has found the petitioner responsible for the running away of the alleged accused on the basis of other evidence and statements of relevant witnesses. Further, the inquiry officer has also found three other personnel of Kotwali guilty of not recording the custody of the suspected accused.

8.5 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 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.

8.6 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.

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. I 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.

14.1 After hearing both the parties and going through the entire record of the enquiry file and also the claim petition/written statement/rejoinder, I 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 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 the order awarding minor punishment of censure entry 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 21.08.2015 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 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. 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 provided the copy of the preliminary inquiry report and copies of other documents used against the petitioner and the petitioner was also 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. 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 pointed out that in the show cause notice issued to the petitioner (reproduced in paragraph 3 of this order), it was made clear that the petitioner may inspect the file and inquiry report, if he so desires. 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 and by allowing the petitioner to inspect the record of inquiry. After perusal of rules and record, I agree with the contention of learned A.P.O. and I am of clear view that the proceedings 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, I 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 respondent No. 3 dated 25.04.2016 by which it has been decided that for the period of suspension of the petitioner (20.5.2015 to 05.06.2015), only salary/allowances which were paid during the suspension period shall be payable to the petitioner and no amount other than this shall be paid to him. Before passing this order, a separate show cause notice was given to the petitioner by respondent No. 3 on 04.04.2016. The petitioner replied to this show cause notice. The respondent No. 3 considered the reply to the show cause notice given by the petitioner and found it unsatisfactory and passed a separate order for non-payment of any other amount other than the amount of salary/allowances paid

during the period of suspension. I find no illegality in this order dated 25.04.2016 and the Tribunal has no reason to interfere.

18. Learned counsel for the petitioner has referred to the case laws **SCLJ-2012-Supreme Court-page 328, S.R. Tiwari vs. UOI and another** and **(2011) 1 SCC (L&S), Supreme Court, page 64, Indu Bhushan Dwivedi Vs. State of Jharkhand**. I have gone through these cases and find that in the facts and circumstances of the case in hand, these cases are of no help to the petitioner.

19. 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.

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: MAY 02, 2017
DEHRADUN

KNP