

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. 25/NB/SB/2014

Constable Driver Shamshir Khan, S/o Sajjad Khan, presently serving at India Reserve Battalion 1st Bailparao, Ramnagar, Distt. Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary Home, Uttarakhand Shasan, Dehradun.
2. Inspector General of Police (P.A.C.), Uttarakhand, Dehradun.
3. Commandant India Reserve Battalion 1st Bailparao, Ramnagar, Distt. Nainital.
4. Additional Director General of Police (P.A.C.), Uttarakhand, Dehradun.

.....Respondents

Present: Sri Balwindar Singh, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: SEPTEMBER 19, 2017

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

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

“I. To set aside the impugned order dated 02.07.2012 passed by respondent no. 3 and the consequential orders dated 31.01.2013 and 07.04.2014 passed by respondent no 2.

- II. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- III. To allow the claim petition with cost.
- IV. To set aside the impugned order dated 15.10.14 passed by Additional Director General of Police (P.A.C.), Uttarakhand, Dehradun."

2. The petitioner is a driver in the India Reserve Battalion (I.R.B.), Ramnagar, District Nainital which is a police force in Uttarakhand Police.

3. The petitioner was issued a show cause notice dated 28.05.2012 by the Commandant, IRB, Ramnagar, Nainital as to why the fine of 15 days salary be not imposed upon 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 in the show cause notice reads as under:-

—कारण बताओ नोटिस—

आरक्षी चालक शमशीर खॉ
द्वारा प्रभारी परिवहन
इण्डिया रिजर्व वाहिनी प्रथम,
बैलपड़ाव रामनगर (नैनीताल)।

वर्ष—12012 में जब आप इण्डिया रिजर्व वाहिनी प्रथम के सी दल जो व्यवस्थापन डियूटी हेतु जनपद देहरादून में व्यवस्थापित था में नियुक्त थे, तब सी दल के एक प्लाटून जो रिषिकेश में व्यवस्थापित था में नियुक्त आरक्षी चालक हरीश कुमार गिरी के अवकाश पर जाने के कारण प्रभारी दलनायक सी दल दल द्वारा दिनांक 28.04.12 को आपको आरक्षी चालक हरीश कुमार गिरी के अवकाश पर जाने के कारण आपको उसके स्थान पर पोस्ट रिषिकेश जाने हेतु आदेशित किया गया था। आपने प्रभारी दलनायक सी दल के उक्त आदेश का अनुपालन न करके उनके साथ अनुशासनहीनता का प्रदर्शन किया। आईआरबी जैसे अतिअनुशासित बल में नियुक्त रहकर अपने उच्चाधिकारी के आदेश का अनुपालन न करना तथा अपने से उच्च अधिकारी के साथ अनुशासनहीनपूर्ण व्यवहार करना कर्तव्य के प्रति लापरवाही, अनुशासनहीनता एवं स्वेच्छारिता को प्रदर्शित करता है।

अतः आप इस कारण बताओ नोटिस की प्राप्ति के पन्द्रह दिवस के भीतर उक्त आरोपों के सम्बन्ध में अपना लिखित स्पष्टीकरण प्रस्तुत करें कि क्यों न आपके उक्त कृत्य हेतु आपको उत्तराखण्ड (उ0प्र0 अधीनस्थ श्रेणी के पुलिस अधि0/कर्म0 की (दण्ड एवं अपील) नियमावली-1991) अनुकूलन एवं उपान्तरण आदेश-2002 के नियम 14 (2) सपठित नियम 4 (1) (ख) (2) में प्रस्तावित पन्द्रह दिन के वेतन की धनराशि के बराबर अर्थदण्ड से दण्डित कर दिया जावे, यदि निर्धारित अवधि के भीतर आपका स्पष्टीकरण प्राप्त नहीं होगा तो यह अवधारणा कर ली जायेगी कि आपको अपने ऊपर लगाये गये आरोप स्वीकार हैं तथा आरोपों के बचाव के प्रत्युत्तर में आपके पास कोई सन्तोषजनक स्पष्टीकरण नहीं है और तदनुसार आपके स्पष्टीकरण की प्रतीक्षा किये बगैर ही आपके विरुद्ध प्रस्तावित दण्ड के एकपक्षीय आदेश पारित कर दिये जायेंगे।

संख्या : ज-01/2012

दिनांक : मई 28, 2012

ह0/-
सेनानायक
इण्डिया रिजर्व वाहिनी,
बैलपड़ाव रामनगर, नैनीताल।

4. The petitioner submitted the reply to the show cause notice on 12.06.2012 and denied the charge levelled against him. The disciplinary authority considered the reply to show cause notice and did not find the same satisfactory and found the petitioner guilty and awarded fine of 15 days salary on 02.07.2012. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police on 31.01.2013. The petitioner also filed the revision against the punishment and appellate order which was found time barred and, therefore, rejected on 15.10.2014.

5.1 The petitioner has contended in the claim petition that when on 28.04.2012 around 10 AM, he came after performing his another duty, the Company Commander asked the petitioner to go to Rishikesh for duty. The petitioner informed the Company Commander that he had just come back from another duty and, therefore, some other driver may be sent in his place. The Company Commander again directed the petitioner to proceed to Rishikesh for duty. The petitioner then requested Company Commander that an order from incharge of the M.T. section be obtained and provided to him regarding handing over of the charge of the vehicle which was with him and for taking over the new charge for Rishikesh but the Company Commander did not provide him order of the incharge M.T. section and, therefore, the

petitioner was not in a position to go to Rishikesh without handing over charge of the vehicle which was with him.

5.2 The main grounds on the basis of which the minor punishment order has been challenged are that the disciplinary authority did not consider the reply to the show cause notice given by the petitioner; the punishment order has been passed in a mechanical manner with pre-determination; the disciplinary authority did not provide opportunity of hearing to the petitioner; the appellate authority also rejected the appeal without considering the material facts; the revisional authority also overlooked the matter and cursorily rejected the revision; the petitioner was not given any opportunity of hearing and cross-examination of witnesses during the preliminary inquiry; and the orders passed by the punishing authority as well as appellate and revisional authority suffer from manifest error of both law and facts.

6.1 The claim petition has been opposed by the respondents No. 1 to 4 and in their joint written statement, it has been stated that the petitioner was directed to go to Rishikesh for duty by the Company Commander who was competent to order the petitioner in the interest of work but the petitioner did not follow the order given to him and did not proceed to Rishikesh for duty thereby, showing indiscipline by disobeying the order of the Company Commander and this act of the petitioner in a disciplinary force is clearly a misconduct for which a minor punishment was imposed upon him. It has further been contended by the respondents that the plea of the petitioner that the order of the incharge of M.T. section was not provided to him for handing over/taking over charge and, therefore, he could not go to Rishikesh for duty is not tenable as the Company Commander was empowered to issue direction to the petitioner to go to Rishikesh as urgent work was required to be performed in Rishikesh. The explanation of the petitioner was unsatisfactory and unacceptable as he clearly disobeyed the order of the competent authority to proceed to Rishikesh for duty.

6.2 The Commander of another company was entrusted the preliminary inquiry. During the course of the inquiry, the inquiry officer recorded the statement of the petitioner and others who were concerned with the said subject matter and reached the conclusion that the petitioner was guilty for

not obeying the order of the concerned Company Commander for not going to Rishikesh to do his duty.

6.3 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 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. His revision was also rejected as it was time barred.

6.4 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, the petitioner was provided reasonable opportunity to defend himself.

6.5 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 and revision are valid orders.

7. 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.

8. We have heard both the parties and perused the record including the inquiry file carefully.

9. 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).....”

10. 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.

11. Learned counsel for the petitioner as well as learned A.P.O. have argued on the same lines which have been stated in paragraphs 5 and 6 of this order.

12. 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 to the petitioner. 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. From the perusal of record, it is also revealed that the show cause notice dated 28.05.2012 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.

13. 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 9 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 imposing fine is in accordance with rules adhering to the principles of natural justice.

14. In the case in hand, after careful examination of the whole process of awarding minor punishment 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.

15. 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: SEPTEMBER 19, 2017
NAINITAL

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