

**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. 26/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 19.09.2012 passed by respondent no. 3 and the consequential orders dated 29.04.2013 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 31.08.2012 by the Commandant, IRB, Ramnagar 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

का० चालक शमसीर खॉ
द्वारा- उप निरीक्षक परिवहन।

वर्ष 2012 में जब यह आरक्षी चालक इण्डिया रिजर्व वाहिनी प्रथम में नियुक्त था तब आपके द्वारा सशर्त त्यागपत्र दिये जाने हेतु आवेदन पत्र डी दल में प्रस्तुत किया। सशर्त त्यागपत्र पर जाँच कराने पर पाया गया कि आपके द्वारा पूर्व में दण्डित होने के कारण आपने मानसिक तनाव में आकर सशर्त त्यागपत्र प्रस्तुत किया गया था। जबकि आपको प्रभारी दलनायक एवं उप निरीक्षक परिवहन के द्वारा सशर्त त्यागपत्र स्वीकृत होने का कोई प्राविधान न होने एवं यदि किसी अन्य कारण से सशर्त त्यागपत्र प्रस्तुत कर रहे हो तो उसके लिए पृथक से अपील करने हेतु निर्देशित किया गया था। यदि आप दिये गये दण्ड से असंतुष्ट थे तो आपको उसके विरुद्ध अपने उच्चाधिकारियों को अवगत कराना चाहिए था अथवा उस आदेश के विरुद्ध उच्चाधिकारियों को अपील प्रस्तुत करनी थी, परन्तु आपके

द्वारा ऐसा न कर उच्चाधिकारियों पद दबाव बनाने हेतु नियम विरुद्ध तरीके से सशर्त त्यागपत्र प्रेषित किया गया। पुलिस जैसे अनुशासित बल में नियुक्त रहते हुए नियमों के विरुद्ध कार्यवाही करना आपके अपने कर्तव्य के प्रति घोर अनुशासनहीनता एवं स्वैच्छाचारिता को प्रदर्शित करता है।

अतः आप इस नोटिस प्राप्ति के 15 दिवस में अपना स्पष्टीकरण प्रस्तुत करें कि उक्त कृत्य के लिए उत्तराखण्ड (उ0प्र0) अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 के अनुकूलन एवं उपान्तरण आदेश-2002 के नियम -4 (1) (ख) जिसकी क्रियान्वयन की प्रक्रिया नियम-14 (2) में निहित है के प्राविधानों के आधार पर निम्नलिखित परिनिन्दा प्रविष्टि आपकी चरित्र पंजिका में अंकित किये जाने के आदेश क्यों न पारित कर दिया जाये।

2012

“वर्ष 2012 में जब यह आरक्षी चालक इण्डिया रिजर्व वाहिनी प्रथम में नियुक्त था तब इनके द्वारा सशर्त त्यागपत्र दिये जाने हेतु आवेदन पत्र डी दल में प्रस्तुत किया। सशर्त त्यागपत्र पर जाँच कराने पर पाया गया कि इनके द्वारा पूर्व में दण्डित होने के कारण मानसिक तनाव में आकर सशर्त त्यागपत्र प्रस्तुत किया गया था। जबकि इन्हें प्रभारी दलनायक एवं उप निरीक्षक परिवहन के द्वारा सशर्त त्यागपत्र स्वीकृत होने का कोई प्राविधान न होने एवं यदि किसी अन्य कारण से सशर्त त्यागपत्र प्रस्तुत कर रहे हो तो उसके लिए पृथक से अपील करने हेतु निर्देशित किया गया था। यदि ये दिये गये दण्ड से असंतुष्ट थे तो इन्हें उसके विरुद्ध उच्चाधिकारियों को अवगत कराना चाहिए था अथवा उस आदेश के विरुद्ध अपील प्रस्तुत करनी थी, परन्तु इनके द्वारा ऐसा न कर उच्चाधिकारियों पर दबाव बनाने हेतु नियम विरुद्ध तरीके से सशर्त त्यागपत्र प्रेषित किया गया। पुलिस जैसे अनुशासित बल में नियुक्त रहते हुए नियमों के विरुद्ध कार्यवाही करना इनके अपने कर्तव्य के प्रति घोर अनुशासनहीनता एवं स्वैच्छाचारिता को प्रदर्शित करता है। जिसकी घोर परिनिन्दा की जाती है।”

यहाँ यह भी स्पष्ट किया जाता है कि निर्धारित अवधि में स्पष्टीकरण प्राप्त होने पर उस पर सहानुभूतिपूर्वक विचारोपरान्त ही अंतिम आदेश पारित किये जावेंगे। स्पष्टीकरण प्राप्त न होने पर अभिलेखों के आधार पर अंतिम आदेश पारित कर दिये जावेगे।

संख्या : ज-08/2012

दिनांक : 31/8/2012

ह0/-

सेनानायक

इण्डिया रिजर्व वाहिनी,

बैलपड़ाव रामनगर, नैनीताल।”

4. The petitioner submitted the reply to the show cause notice on 08.09.2012 and denied the charge levelled against him.

5. The disciplinary authority 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 19.09.2012.

6. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police on 29.04.2013. The petitioner also filed the revision against the punishment and appellate order which was found time barred and, therefore, rejected on 15.10.2014.

7.1 The perusal of show cause notice (reproduced in paragraph 3 of this order) reveals that the charge which was levelled against the petitioner is that he submitted conditional resignation against the rules to put a pressure on higher authorities and his this act was highly indisciplined and, therefore, he was found guilty of misconduct and awarded a minor punishment of censure entry.

7.2 It would be appropriate to look at the reply to the show cause notice given by the petitioner which reads as under:

“ सेवा में,

श्रीमान सेनानायक महोदय,
आई0आर0बी0 प्रथम बैलपड़ाव,

द्वारा
उचित माध्यम
महोदय,

निवेदन इस प्रकार है कि प्रार्थी को नियम की जानकारी न होने के कारण त्याग-पत्र दे दिया था।

जब कि जॉच अधिकारी महोदय द्वारा नियम से अवगत कराया गया और बताया गया कि तुम त्याग पत्र पर कार्यवाही बन्द करने के लिये श्रीमान सेनानायक महोदय से गुजारीश करो और अपील करो। महोदय प्रार्थी ने वैसा ही किया। आप महोदय से त्याग पत्र पर कार्यवाही बन्द करने के लिये गुजारीश किया।

अतः महोदय से गुजारीश है कि प्रार्थी को नियम की जानकारी नहीं थी माफ करने की मेहरबानी करें।

महोदय की बहुत ही मेहरबानी होगी।

प्रार्थी

शमशीर खॉ
आई.आर.बी.आई. रामनगर नैनीताल
दिनांक 08.09.2012”

7.3 The reply to show cause notice above clearly reveals that the petitioner accepted his mistake and he also stated that he had no knowledge of rules and requested to forgive for his act.

7.4 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; the punishment order has been passed in a mechanical manner; the disciplinary authority did not provide opportunity of hearing to the petitioner; the appellate authority rejected the appeal without considering the material facts; the revisional authority also overlooked the matter and cursorily rejected the revision; and the Rules of 1991 regarding minor punishment are ultravires the Police Act, 1861.

8.1 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 submitted his conditional resignation against the prescribed rules to build up pressure on the higher authorities and he also admitted his mistake in this regard and apologized for his this conduct.

8.2 The Commandant, IRB was entrusted the preliminary inquiry. During the course of inquiry, the inquiry officer recorded the statements of the petitioner and others who were concerned with the said subject matter and reached the conclusion that the petitioner accepted his mistake and prayed to forgive him for his conduct.

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. 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.

8.4 It has also been contended by the respondents that the Rules of 1991 are applicable for awarding minor punishment. These Rules have been framed under rule making power under the Police Act, 1861. After the Police Act, 1861, new Uttarakhand Police Act, 2007 has come into force and according to the Section 86 of the Uttarakhand Police Act, 2007 under "Repeal and Saving", the Rules of 1991 continue to be in force. The petitioner has not demonstrated how the Rules of 1991 are ultravires the Police Act. Moreover, the petitioner has not challenged and sought relief to declare the Rules of 1991 as ultravires the Police Act.

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. 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. 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 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 31.08.2012 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. 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.

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. contended that the proceedings against the petitioner were related to the minor punishment and the petitioner was not entitled to the copy of the preliminary inquiry report and 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 are 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, 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: SEPTEMBER 19, 2017
NAINITAL

BK