

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

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

-----Vice Chairman (A)

CLAIM PETITION NO. 32/DB/2016

Birbal Singh, S/o Late Sri Ghasita Singh, Fire Services Driver Fire Service Station, Gandhi Road, Dehradun, R/o Village Shamipur, Post Najibabad, District Bijnor(U.P.).

.....Petitioner

VERSUS

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

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents.

JUDGMENT

DATE: AUGUST 17, 2017

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

“(a) the impugned order dated 24.04.2015 (Annexure- A1) and 18.06.2016 (Annexure-A2) be kindly held in violation of law, rules,

regulations, orders and principles of natural justice and be kindly quashed and set aside;

(b) 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

(c) Rs. 15,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."

2. The petitioner is a driver in the Fire Services, Uttarakhand Police.
3. The petitioner was issued a show cause notice dated 18.03.2015 by the Senior Superintendent of Police, Dehradun 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

फायर सर्विस चालक बीरबल सिंह
द्वारा:- अग्निशमन अधिकारी, मसूरी देहरादून।

वर्ष-2015 में जब आप फायर सर्विस चालक के पद पर फायर स्टेशन मसूरी में नियुक्त थे तो दिनांक 03/01/2015 को अग्निशमन अधिकारी मसूरी के तीन दिवस आकस्मिक अवकाश पर होने के कारण फायर स्टेशन मसूरी का चार्ज आपके पास था। फायर स्टेशन मसूरी में नियुक्त अनुचर आनन्द पाल द्वारा दिनांक 05/01/2015 से 01 माह का उपार्जित अवकाश हेतु आवेदन किया गया था किन्तु उक्त को अवकाश स्वीकृत न होने पर अनुचर आनन्द पाल अपने अवकाश के सम्बन्ध में देहरादून गया जहां पर उसकी आपसे मुलाकात हुई और तद् दिनांक को आपके व अनुचर आनन्द पाल के द्वारा मसूरी जाते समय रास्ते में शराब का सेवन कर समय करीब 08.00 बजे फायर सर्विस मसूरी पहुंचे। फायर सर्विस मसूरी पर नियुक्त कर्मचारी द्वारा रात्रि का खाना न बनाये जाने के सम्बन्ध में आपत्ति प्रकट की गयी जिस पर अनुचर आनन्द पाल व आपके मध्य काफी विवाद हो गया था। कर्मचारियों द्वारा आप दोनों को समझाने का काफी प्रयास किया गया किन्तु आप दोनों अपनी-अपनी बातों पर अड़े रहे और आपस में अभद्रता की गयी। इस प्रकार एक जिम्मेदार पद पर नियुक्त रहते हुये अधिनस्थ कर्मचारी के साथ शराब का सेवन कर दुर्व्यवहार किया गया, जो कि आपके स्वयं के कर्तव्य एवं आचरण के प्रति घोर लापरवाही एवं अनुशासनहीनता का द्योतक है।

अतः आप इस कारण बताओ नोटिस प्राप्ति के 15 दिवस के अन्दर उपरोक्त सम्बन्ध में अपना लिखित स्पष्टीकरण इस कार्यालय में उपलब्ध कराना सुनिश्चित करें कि क्यों न उक्त कृत्य एवं आचरण हेतु आपकी चरित्र पंजिका में उत्तरांचल अधिनस्थ श्रेणी के पुलिस अधिकारियों /कर्मचारियों की (दण्ड एवं

अपील) नियमावली 1991, अनुकूलन एवं उपान्तरण आदेश 2002 के नियम 4(1)(ख) के उपनियम 4 में निहित प्राविधानों के तहत निम्नांकित प्रस्तावित परिनिन्दा लेख अंकित करा दिया जाये:-

वर्ष 2015

“वर्ष 2015 में जब यह फायर सर्विस चालक के पद पर फायर स्टेशन मसूरी में नियुक्त थे तो दिनांक 03/01/2015 को अग्निशमन अधिकारी मसूरी के तीन दिवस आकस्मिक अवकाश पर होने के कारण फायर स्टेशन मसूरी का चार्ज इनके पास था। फायर स्टेशन मसूरी में नियुक्त –अनुचर आनन्द पाल द्वारा दिनांक 05/01/2015 से 01 माह का उपार्जित अवकाश हेतु आवेदन किया गया था किन्तु उक्त को अवकाश स्वीकृत न होने पर अनुचर आनन्द पाल अपने अवकाश के सम्बन्ध में देहरादून गया जहां पर उसकी इनसे मुलाकात हुई और तद् दिनांक को इनके व अनुचर आनन्द पाल के द्वारा मसूरी जाते समय रास्ते में शराब का सेवन कर समय करीब 08.000 बजे फायर सर्विस मसूरी पहुंचे। फायर सर्विस मसूरी पर नियुक्त कर्मचारी द्वारा रात्रि का खाना न बनाये जाने के सम्बन्ध में आपत्ति प्रकट की गयी जिस पर अनुचर आनन्द पाल व इनके मध्य काफी विवाद हो गया था। कर्मचारियों द्वारा इन दोनों को समझाने का काफी प्रयास किया गया किन्तु यह दोनों आपनी-अपनी बातों पर अड़े रहे और आपस में अभद्रता की गयी इस प्रकार एक जिम्मेदार पर पर नियुक्त रहते हुए अधिनस्थ कर्मचारी के साथ शराब का सेवन कर दुर्व्यवहार किया गया, जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर लापरवाही एवं अनुशासनहीनता का द्योतक है। इनके उक्त कृत्य एवं आचरण की परिनिन्दा की जाती है।

संलग्न :प्रारम्भिक जांच आख्या कुल 06 बर्क

पत्रांक :द -8/15

दिनांक : मार्च 18, 2015

पुलिस उप महानिरीक्षक
वरिष्ठ पुलिस अधीक्षक,
जनपद देहरादून।”

4. The petitioner submitted the reply to the show cause notice on 26.03.2015 and denied the charge levelled against him.

5. Senior Superintendent of Police, Dehradun 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 24.04.2015.

6. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region on 18.06.2016.

7.1 The petitioner has contended in the claim petition that the Rules of 1991 are not applicable and his terms and conditions are governed by the United Provinces Fire Services (Recruitment and Conditions of Service) Rules, 1945 (hereinafter referred to as the Rules of

1945) framed under the U.P. Fire Service Act, 1944. It would be appropriate to first take up this issue for deciding as to which Rules are applicable.

7.2 The petitioner has submitted that under Rule 22 of the Rules of 1945, the disciplinary proceedings against him can be conducted under Chapter XXXII of the Police Regulations and not under the Rules of 1991. The Rule 22 of the Rules of 1945 reads as under:-

“22. Authority to grant leave and punish.- (a) Notwithstanding anything to the contrary in paragraph 477 of the Police Regulations the discipline of members of the United Provinces Fire Service and of all other persons (including police officers of subordinate ranks) holding posts in that service shall be governed by Chapter XXXII of the Police Regulations as if-

(i) references to Section 29, Police Act, were read as reference to Section 9, United Provinces Fire Service Act;

(ii) the punishments mentioned were prescribed under Section 241, Government of India Act; and

(iii) a fireman or driver were a police constable, a leading fireman were a head constable, and a station second officer and a station officer were sub-inspector.

(b) All punishments shall be awarded under these rules and the Police Regulations. No officers have been authorized by the Inspector General to punish under Section 8 of the Act.”

7.3 Learned A.P.O. has stated that the Chapter XXXII of the Police Regulations has been replaced by the Rules of 1991 and, therefore, Rules of 1991 are applicable to the petitioner.

7.4 It would be appropriate to look at the Regulation 477 which deals with the scope of the Chapter XXXII of the Police Regulations and it reads as under:

*“CHAPTER XXXII
DEPARTMENTAL PUNISHMENT AND CRIMINAL PROSECUTION OF
POLICE OFFICERS*

477. Punishment Rules.- The rules in this chapter have been made under Section 7 of the Police Act (V of 1861) and apply only to officers appointed under Section 2 Police Act (V of 1861). No officer appointed under that section shall be punished by executive order otherwise than in the manner provided in this chapter. “

7.5 Regulation 477 above provides that the RULES IN CHAPTER XXXII of the Police Regulations have been made under Section 7 of the Police Act, 1861.

7.6 After careful examination, I find that the Rules in Chapter XXXII of the Police Regulations have been replaced by the Rules of 1991. The preamble of the rules of 1991 reads as under:

*“THE UTTAR PRADESH POLICE OFFICERS OF THE SUBORDINATE RANKS
(PUNISHMENT AND APPEAL) RULES, 1991*

The Governor is pleased to order publication of the following English Translation of Notification No. 551/VI-P-2-91-1000(15)/72, dated March 21, 1991, for general information

*No. 551/VI-P-2-91-1000(15)/72
Dated Lucknow March 21, 1991*

In exercise of the powers under sub-sections (2) and (3) of Section 46 read with Sections 2 and 7 of the Police Act, 1861 (Act No. 5 of 1861) and all other power enabling him in this behalf and in supersession of all existing rules issued in this behalf, the Governor is pleased to make the following rules with a view to regulating the departmental proceedings, punishment and appeals of the Police Officers of the subordinate ranks of the Uttar Pradesh Force:”

7.7 It is pertinent to note that the Rules in Chapter XXXII of the Police Regulations were framed under Section 7 of the Police Act, 1861 and the Rules of 1991 have also been framed under Section 7 of the Police Act, 1861 and the Rules of 1991 have been made in supersession of all existing rules.

7.8 Thus, it is clear that the Rules of 1991 replace the Chapter XXXII of the Police Regulations and after the Rules of 1991 came into existence, the Chapter XXXII of the Police Regulations ceases to exist.

7.9 In Uttarakhand State, the new Act known as the Uttarakhand Police Act, 2007 has come into force in place of the Police Act, 1861. Section 86 of the new Police Act, 2007 which deals with the “Repeal and Saving” provides that the Rules made under the Police Act, 1861 shall continue to be in force till new Rules are framed under the Police Act, 2007. Section 86 of the Uttarakhand Police Act, 2007 reads as under:

“86. Repeal and savings-

(1) The Indian Police Act, 1861 (Act 5 of 1861) is hereby repealed in its application to the State of Uttarakhand.

(2) The repeal under sub-section (1) shall not affect the previous operation of the enactments so repealed and anything done or action taken or deemed to have been done or taken earlier (including any appointment or delegation made or notification, order, direction or notice issued). Rules or Regulations made under the provisions of the said Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made under the corresponding provisions of this Act, and shall continue to be in force unless and until superseded by anything done or action taken under this Act.”

The Uttarakhand State has not framed any new Rules/Regulations in place of the Rules of 1991 and, therefore, the Rules of 1991 continue to be in force.

7.10 In view of discussion from para 7.1 to 7.9, it is held that the petitioner who is an employee of the Fire Services, Uttarakhand Police is covered under the Rules of 1991 and, therefore, disciplinary proceedings conducted against him under the Rules of 1991 are in order. The contention of the petitioner that the Chapter XXXII of the Police Regulations (and not the Rules of 1991) are applicable to the petitioner is misconceived and cannot be accepted.

7.11 Even if it is assumed that the disciplinary action could be taken against the petitioner under Chapter XXXII of the Police Regulations

(and not under the Rules of 1991), there will not be any difference in so far as minor punishment proceedings conducted against the petitioner are concerned. It would be pertinent to note Regulation 478 and 478A of the Chapter XXXII of the Police Regulations which reads as under:

“478. All Police Officers appointed under Section 2 of the Police Act are liable to the following departmental punishments-

(a) Dismissal or removal from the force, as defined in paragraph 481;

(b) Reduction as defined in paragraph 482;

(ba) Withholding of promotion;

(bb) Withholding of increments including stoppage at an efficiency bar;

(bc) misconduct entry in the character roll [U.P. Gazette dated 6th April, 1968];

.....”

*“478A. The punishment noted at (a) and (b) in paragraph 478 may be awarded only after departmental proceedings, vide paragraphs 490 to 494. Orders concerning (ba) may also be passed under Chapter XXX and those concerning (bb) may be passed as provided for in paragraph 463 or paragraph 482-A as the case may be. **The punishment noted at (bc) may be awarded after giving an opportunity to the officer concerned to show cause why a misconduct entry as may be proposed should not be made in his character roll.....”***

It would be clear from the above Regulations of Chapter XXXII of the Police Regulations that the minor punishment of misconduct entry can be awarded after giving an opportunity to show cause why a misconduct entry as may be proposed should not be made in Character Roll. In the case in hand, minor punishment proceedings of censure entry for misconduct were conducted and the petitioner has been awarded punishment of censure entry after the show cause notice. In fact, I will see at later stage of this order that there is hardly any difference in the Rules of 1991 and Chapter XXXII of the Police Regulations for conducting disciplinary proceedings in regard to minor punishment.

8. The petitioner has also contended in his claim petition that on 03.01.2015, he was the incharge of the Fire Station, Mussoorie. The food was not prepared by the follower on duty for cooking the food and when the petitioner asked Anand Pal (follower) the reason for not preparing the food at the Mess in the night around 8 P.M., Anand Pal was in drunken condition, lost his temper and misbehaved with the petitioner. Fireman Shakti Ram, who is an old enemy of the petitioner joined Anand Pal and both of them misbehaved and beat the petitioner. The Circle Officer, Mussorie conducted the Preliminary Inquiry. It has been contended by the petitioner that the inquiry officer did not conduct thorough inquiry and the petitioner was not given opportunity of hearing and submit true facts. The inquiry report is illegal, against the rules and in violation of the principles of natural justice. The petitioner was not given the charge sheet and detailed inquiry has also not been conducted. The petitioner was not given opportunity for cross examination of the witnesses. The disciplinary authority has failed to consider the submissions made by the petitioner in his reply to the show cause notice and the punishment order is illegal and in violation of rules and the principles of natural justice. The rejection of Appeal against the punishment order by the Appellate Authority is also illegal as the submissions of the petitioner were not considered and the Appellate Authority rejected the Appeal without giving opportunity of hearing to the petitioner.

9.1 The claim petition has been opposed by the respondents No. 1,2 and 3 and it has been stated in their joint written statement that after the preliminary inquiry, it was found that on 03.01.2015 in the night, the petitioner in drunken state misbehaved with the follower Anand Pal and he conducted himself in an irresponsible and indisciplined manner. The D.S.P., Mussoorie conducted the inquiry and during the course of the inquiry, the inquiry officer recorded the statement of the petitioner, 9 Firemen and the follower Anand Pal who were concerned with the incident. After the inquiry, it was found

by the inquiry officer that the petitioner by indulging in dispute with the follower Anand Pal in drunken state is guilty of indisciplined behaviour.

9.2 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 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.

9.3 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 of censure, the petitioner was provided reasonable opportunity to defend himself.

9.4 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.

10. 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.

11. I have heard both the parties and perused the record including the inquiry file carefully.

12. 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).....”

13. 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.

14. Learned counsel for the petitioner as well as learned A.P.O. have argued on the same lines which have been stated in paragraphs 8 and 9 of this order.

15. 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 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 of censure to the petitioner.

16. 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.

17. From the perusal of record, it is also revealed that the show cause notice dated 18.03.2015 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 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.

18. 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. 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 12 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, I agree with the contention of learned A.P.O. and I am of clear view that the proceedings for awarding minor punishment of censure are in accordance with rules adhering to the principles of natural justice.

19. 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.

20. Learned counsel for the petitioner has referred the following case-laws in support of his case:-

- (i) Indu Bhushan Dwivedi Vs. State of Jharkhand and another (2010) 11 Supreme Court Cases 278

- (ii) S.R.Tiwari Vs. Union of India and another, Supreme Court Civil Appeal Nos. 4715-4716 of 2013
- (iii) Bhupendra singh Vs. State of Uttarakhand and others 2014 (2) UAD 770.

I have gone through each of above cases and find that facts and circumstances of these cases are different as compared to the case in hand and above case-laws are of no help to the petitioner in the present case.

21. 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: AUGUST 17, 2017

DEHRADUN.

KNP