

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

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

----- Vice Chairman (A)

**CLAIM PETITION NO. 15/SB/2017**

Harish Chandra Shah, S/o Late Sri Kailiram, Presently posted as Constable Clerk, 23/1042, 34 Imlikhera, Thana Piran Kaliyer, District Haridwar..

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Range, Uttarakhand, Subhash Road, Dehradun.
3. Senior Superintendent of Police, Tehri Garhwal.

.....Respondents

Present: Sri Chandra Mohan, Ld. Counsel,  
for the petitioner

Sri U.C.Dhaundiya, Ld. A.P.O.  
for the respondents

**JUDGMENT**

**DATE: DECEMBER 04, 2017**

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

“(1) यह कि याची के विरुद्ध निर्गत “अन्तिम आदेश” दिनांक 16.06.2016 जो आवेदक की चरित्र पंजिका में उ0प्र0/उत्तराखण्ड अधीनस्थ पुलिस कर्मचारियों की दण्ड एवं अपील नियमावली 1991 के “परिनिन्दा लेख” अंकित किये जाने के आदेश (अनुलग्नक अ1) प्रतिवादी संख्या 3 द्वारा दिए गए हैं को

निरस्त करने के आदेश या निर्देश प्रतिवादी संख्या 1 और 3 को देने की कृपा करें।

(2) यह कि याची के अपीलीय प्रार्थना पत्र दिनांक 16.08.2016 को अस्वीकार करने के पुलिस महानिरीक्षक, गढ़वाल परिक्षेत्र उत्तराखण्ड के आदेश संख्या सीओजी-सीए-अपील- (टिहरी-03)/2016 दिनांक 13.10.2016 को (अनुलग्नक अ6) भी निरस्त करने के आदेश या निर्देश प्रतिवादी संख्या 1 और 02 को देने की कृपा करें।

(3) यह कि वाद का व्यय भी दिलाया जाए।

(4) यह कि अन्य जो भी प्रतिकर, माननीय अधिकरण उचित समझे दिलाया जाय।”

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

3. The petitioner was issued a show cause notice dated 23.05.2016 by the Senior Superintendent of Police, Tehri Garhwal 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 बताओं नोटिस

कान्स0 35 ना0पु0 हरीश चन्द्र शाह

द्वारा-थानाध्यक्ष नरेन्द्रनगर।

जब आप वर्ष 2016 में थाना मुनिकीरेती की चौकी ढालवाला में नियुक्त थे, तो आपको चौकी ढालवाला में आवास सं0 12 आवंटित किया गया था। उक्त आवास पर आये दिन आपकी विवाहिता पत्नी एवं आपके द्वारा रखी गयी दूसरी महिला के साथ झगड़ा, फसाद, मारपीट, गाली गलौज किये जाने की शिकायत प्राप्त हुई। प्रकरण की प्रा0जांच श्रेत्राधिकारी नरेन्द्रनगर द्वारा की गयी तो जांच में आपके द्वारा अपनी विवाहिता पत्नी श्रीमती गीता को साथ न रखने एवं अन्य महिला श्रीमती सुषमा (तलाक शुदा वर्ष 2003) व उसके 4-5 वर्षीय बेटे को संदिग्ध स्थिति

में सरकारी आवास पर रखा हुआ है जो आपस में लड़ाई झगड़ा कर सरकारी आवास/आवासीय परिसर ढालवाला का माहौल खराब कर विभागीय नियमों की अनदेखी कर अनुशासनहीनता एवं स्वैच्छाचारिता व विभाग को गुमराह किये जाने का दोषी पाया है।

अतः आप इस कारण बताओ नोटिस की प्राप्ति के 08 दिवस के अन्दर अपना लिखित स्पष्टीकरण इस कार्यालय में प्रस्तुत करें, कि क्यों न उक्त कृत्य हेतु उ0प्र0/उत्तराखण्ड अधीनस्थ पुलिस कर्मचारियों की दण्ड एवं अपील नियमावली 1991 के उपरान्तरण आदेश 2002 के नियम 14(2) के अन्तर्गत आपकी चरित्र पंजिका में निम्न परिनिन्दा लेख प्रदान किये जाने के आदेश पारित कर दिये जायें।

वर्ष –2016

“जब आप वर्ष 2016 में थाना मुनिकीरेती की चौकी ढालवाला में नियुक्त थे, तो आपको ढालवाला में आवास सं0 12 आवंटित किया गया था। उक्त आवास पर आये दिन आपकी विवाहिता पत्नी एवं आपके द्वारा रखी गयी दूसरी महिला के साथ झगड़ा, फसाद, मारपीट, गाली गलौज किये जाने की शिकायत प्राप्त हुई। प्रकरण की प्रा0 जांच श्रेत्राधिकारी नरेन्द्रनगर द्वारा की गयी तो जांच में आपके द्वारा अपनी विवाहिता पत्नी श्रीमती गीता को साथ न रखने एवं अन्य महिला श्रीमती सुषमा (तलाक शुदा वर्ष 2003) व उसके 4-5 वर्षीय बेटे को संदिग्ध स्थिति में सरकारी आवास में रखा हुआ है जो आपस में लड़ाई झगड़ा कर सरकारी आवास/आवासीय परिसर ढालवाला का माहौल खराब कर विभागीय नियमों की अनदेखी कर अनुशासनहीनता एवं स्वैच्छाचारिता व विभाग को गुमराह किये जाने का दोषी पाया है। आप एक अनुशासित पुलिस बल के सदस्य हैं आपके द्वारा इस प्रकार का किया गया कृत्य आपके अपने कर्तव्यों के प्रति घोर लापरवाही एवं अनुशासनहीनता को परिलक्षित करता है, जिसकी कड़ी परिनिन्दा की जाती है।

आपको यह भी स्पष्ट किया जाता है कि यदि आपका स्पष्टीकरण निर्धारित अवधि के अन्दर प्राप्त होता है तो उस पर सहानुभूतिपूर्वक विचार किया जायेगा, अन्यथा स्पष्टीकरण के अभाव में एक पक्षीय अन्तिम आदेश पारित कर दिये जायेंगे, जिसके आप स्वयं उत्तरदायी होंगे। उक्त अवधि में यदि आप पत्रावली का अवलोकन करना चाहें तो किसी कार्य दिवस में कर सकते हैं।

पत्रांक –ज-016

दिनांक: मई 23, 2016

वरिष्ठ पुलिस अधीक्षक  
टिहरी गढवाल।”

4. The petitioner submitted the reply to the show cause notice on 28.05.2016 and denied the charge levelled against him.

5. Senior Superintendent of Police, Tehri Garhwal 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 16.06.2016.

6. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region on 13.10.2016.

7. The petitioner has contended in his claim petition that he has been wrongly punished for minor punishment of censure entry under Rule 14(2) of the Rules of 1991 and the Punishing Authority has misused his power to harm the petitioner. The petitioner has submitted that he used to live in his government accommodation and his sister-in-law occasionally visited his house for her treatment at Rishikesh. He had got his own house constructed but as there was less accommodation in his house, his sister-in-law used to live in his official accommodation during her visit for the treatment. The petitioner has denied the incident of fighting, beating, abusing etc with her sister-in-law at his official residence. He has also stated that there was only a minor incident which took place on 26.1.2016 because the son of his sister-in-law received the electric shock when he was heating the water by using the electric heater. The contention of the petitioner is that the incident of fighting etc. with his sister-in-law has been exaggerated. The petitioner has also stated that he was asked to vacate the official house as he had been transferred and got his own house and later on he had also vacated the official accommodation. The petitioner has also contended that the statements of his sister-in-law, his wife, husband of his sister-in-law and his own statement before the enquiry officer who conducted the preliminary enquiry clearly reveal that the allegations of fighting etc. are not correct and they are far from

proved. Apart from this, many police officers' statements were recorded by the enquiry officer also show that they have no knowledge regarding any fighting between him and his sister-in-law. The petitioner has also submitted that other eight police constables on whose statements, the enquiry officer has relied, had given statements under the influence of their superiors. The enquiry officer has relied on the statements of the witnesses which are merely hearsays and the allegations against him are not proved. The punishment has been awarded only on the basis of the doubt in the mind of the enquiry officer which was relied upon by the punishing authority. The petitioner has also stated that the incident is purely personal and related to his family and he has not committed any misconduct or indiscipline in performing his official duties. The petitioner has also stated that while replying to the show cause notice, he had apologized for the incident and requested to consider his case sympathetically. The petitioner has also stated that he had made an appeal against the punishment order to the appellate authority, but that was also not considered properly and the same was rejected.

8.1 Respondents No. 1, 2 and 3 have opposed the claim petition and it has been stated in their joint written statement that for the allegations against the petitioner, Senior Superintendent of Police ordered a preliminary enquiry and the preliminary enquiry was conducted by the Circle Officer, Narendra Nagar, Tehri Garhwal. During the course of the enquiry, enquiry officer recorded the statements of the petitioner, his wife, his sister-in-law, husband of his sister-in-law, Incharge Inspector, Police Station, Munikireti, two Sub-Inspectors, two Head Constables and eight Constables of Police who were relevant to the incident which was enquired into. After conducting a detailed enquiry and after analyzing the proceedings of the enquiry, the enquiry officer reached the following conclusion in his enquiry report submitted by him on 12.05.2016:

“निष्कर्ष:-

उपरोक्त विश्लेषण से यह प्रमाणित है कि कानि0 35 ना0पु0 हरीश शाह द्वारा चौकी ढालवाला के सरकारी आवास संख्या 12 को अपने परिवार को साथ रखने के लिए आवंटित कराये जाने के उपरान्त अपनी पत्नी श्रीमती गीता/परिवार को साथ न रखकर गली नं0 15 गुमानीवाला (अमितग्राम) थाना ऋषिकेश, जनपद देहरादून में रखा हुआ है, जबकि अन्य महिला श्रीमती सुषमा (तलाकशुदा वर्ष 2003) व उसके 4-5 वर्षीय बेटे को संदिग्ध स्थिति में सरकारी आवास में रखा हुआ है, जो आपस में लड़ाई, झगड़ा कर सरकारी आवास/आवासीय परिसर ढालवाला का माहौल खराब कर विभागीय नियमों की अनदेखी कर अनुशासनहीनता एवं स्वैच्छारिता व विभाग को गुमराह किये जाने का द्योतक है जिसके लिए वह दोषी है।”

8.2 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 the disciplinary authority. 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.

8.3 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. 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. 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 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.

14.1 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 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.

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 23.05.2016 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.

15. 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 or 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.

**(D.K.KOTIA)**  
VICE CHAIRMAN (A)

*DATE: DECEMBER 04, 2017*  
*DEHRADUN*

*KNP*