

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

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

----- Vice Chairman (A)

CLAIM PETITION NO. 49/SB/2016

Bhupendra Pratap Singh, S/o Late Shri Ram Pal Singh, Presently posted
Constable Crane Driver, M.T. Police Line, Race Course, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Home, Dehradun.
2. Inspector General of Police, Garhwal Range, Uttarakhand.
3. Senior Superintendent of Police, District Dehradun.

.....Respondents

Present: Sri Devesh Ghildiyal, Ld. Counsel,
for the petitioner

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

JUDGMENT

DATE: DECEMBER 15, 2017

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

"a) To issue order or direction quashing the order dated 15/05/2014 (Annexure No. 1) and order dated 24/10/2015 (Annexure No. 2).

b) To pass an order or direction to give suspension period allowance of period of 12/03/2014 to 11/04/2014.

c) To grant any relief that the Hon'ble Tribunal may deem fit and proper in the circumstances of the case. "

2. The petitioner is a crane driver in the Uttarakhand Police. The petitioner was issued a show cause notice dated 11.04.2014 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 बताओं नोटिस

आरक्षी क्रेन चालक भूपेन्द्र प्रताप सिंह

द्वारा: प्रतिसार निरीक्षक

वर्ष- 2014 में जब आप क्रेन चालक के पद पर रिपोर्टिंग पुलिस चौकी प्रेमनगर थाना- कैण्ट जनपद देहरादून में नियुक्त थे तो आपके द्वारा दिनांक: 5-3-2014 की रात्रि में शराब के नशे में मदहोश होकर चौकी परिसर में शोरगुल कर उत्पात मचाया गया । फलस्वरूप आपका स्वास्थ्य परीक्षण करवाया गया तो चिकित्सक द्वारा आपको अल्कोहल का सेवन किये हुए पाया गया इस प्रकार एक महत्वपूर्ण पद पर नियुक्त रहते हुए इनके द्वारा उक्त कृत्य किया गया है जिसके कारण आम जनता में पुलिस बल की छवि धूमिल हुई है। इस प्रकार एक अनुशासित पुलिस बल में नियुक्त रहते हुए इनका उक्त कृत्य एवं आचरण घोर निन्दनीय रहा है।

अतः आप इस कारण बताओ नोटिस प्राप्ति के 15 दिवस के अन्दर उपरोक्त संबंध में अपना लिखित स्पष्टीकरण इस कार्यालय को प्रेषित करना सुनिश्चित करें कि क्यों न उक्त कृत्य एवं आचरण हेतु आपकी चरित्र पंजिका में उत्तरांचल अधीनस्थ 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 निम्नोक्त प्रस्तावित परिनिंदा लेख अंकित करा दिया जाये:-

वर्ष- 2014

“वर्ष- 2014 में जब यह आरक्षी क्रेन चालक के पद पर रिपोर्टिंग पुलिस चौकी प्रेमनगर थाना- कैण्ट जनपद देहरादून में नियुक्त था तो इनके द्वारा दिनांक: 5-3-2014 की रात्रि में शराब के नशे में मदहोश होकर चौकी परिसर में शोरगुल कर उत्पात मचाया गया । फलस्वरूप इनका स्वास्थ्य परीक्षण करवाया गया

तो चिकित्सक द्वारा इनको अल्कोहल का सेवन किये हुए पाया गया। इस प्रकार एक महत्वपूर्ण पद पर नियुक्त रहते हुए इनके द्वारा उक्त कृत्य किया गया है जिसके कारण आम जनता में पुलिस बल की छवि धूमिल हुई है। इस प्रकार एक अनुशासित पुलिस बल में नियुक्त रहते हुए इनका उक्त कृत्य एवं आचरण घोर निन्दनीय रहा है। इनके उक्त कृत्य एवं आचरण की परिनिंदा की जाती है।”

यदि निर्धारित समायावधि के अन्दर आपका लिखित स्पष्टीकरण इस कार्यालय में प्राप्त नहीं होता है तो यह समझते हुए कि आपका उक्त संबंध में कुछ नहीं कहना है और आपके उत्तर की प्रतीक्षा किए बिना ही अन्तिम निर्णय ले लिया जायेगा।

संगलग्न: प्रारम्भिक जॉच आख्या की एक प्रति-03 वर्क

पत्रांक: द-43/2014

दिनांक: अप्रैल 11, 2014

वरिष्ठ पुलिस अधीक्षक
जनपद देहरादून।”

3. The petitioner submitted the reply to the show cause notice on 11.05.2014 and denied the charge levelled against him. 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 15.05.2014. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region on 24.10.2015.
4. The petitioner has mainly challenged the punishment order on the ground that the petitioner was not provided the copy of the preliminary inquiry report and the copies of the statements recorded by the inquiry officer; no independent witnesses were examined by the inquiry officer for proving alleged incident; and medical examination of the petitioner has been conducted without taking sample of blood and urine.
- 5.1 Respondent Nos. 1, 2 and 3 have opposed the claim petition and it has been stated in their joint written statement that in the night of 05.03.2014, the petitioner came to the Reporting Police Chowki,

Premnagar, Dehradun and created an ugly scene by making noise/ created misbehavior under the influence of alcohol. A medical examination of the petitioner was got conducted at Government Combined Hospital, Premnagar, Dehradun and in the opinion of doctor, the petitioner had consumed alcohol and he was under the influence of alcohol. The petitioner was placed under suspension on 12.03.2014. The S.P. (City) Dehradun was appointed the inquiry officer to conduct the preliminary inquiry. During the course of inquiry, enquiry officer recorded the statements of the petitioner, incharge of Police Chowki, Premnagar and two Constables who were relevant to the incident. After conducting a detailed inquiry and after analyzing the proceedings of inquiry, the inquiry officer reached the following conclusion in his inquiry report submitted by him to the S.S.P., Dehradun on 07.04.2014:-

“निष्कर्ष :- उक्त प्रकरण में की गई प्रारम्भिक जाँच के दौरान अंकित कराये गये कथनों, तथा पत्रावली पर उपलब्ध अभिलेखों से स्पष्ट है कि दिनांक 5.3.14 की रात्री में चौकी प्रेमनगर, थाना कैण्ट में नियुक्त कान्स चालक भूपेन्द्र प्रताप नशे शराब में चौकी परिसर में हो हल्ला करता पाया गया । इस पर चौकी प्रभारी द्वारा चालक का मेडिकल करवाया गया, जिसमें कि चालक का शराब के नशे में होने की पुष्टि हुयी । आरोपित आरक्षी द्वारा अपने कथनों में अंकित कराया कि दिनांके 05.03.14 की सायं को उसके परिचितों द्वारा प्रेमनगर में स्थित ढाबे में पार्टी में बुलाया था, जिस परी वह पार्टी में गया था, उसे याद नहीं है कि उसने शराब पी थी, उसके दोस्तों द्वारा काल्ड्रिंक में शराब मिलायी थी, जिसका उसे बाद में पता चला

उल्लेखनीय है कि चिकित्सा अधिकारी राजकीय संयुक्त चिकित्सालय प्रेमनगर द्वारा किये गये मेडिकल से स्पष्ट है कि आरोपित आरक्षी नशे के प्रभाव में था । चौकी प्रभारी प्रेमनगर द्वारा भी उक्त घटना का उल्लेख दिनांक 06.03.14 के रो0आम0 रपट संख्या 2 व 03 पर स्पष्ट रूप से किया गया है । अतः उपरोक्तानुसार आरक्षी केन चालक भूपेन्द्र प्रताप सिंह नशे में चौकी परिसर में हो हल्ला करने का पूर्ण रूपेण दोषी पाया गया, जो कि कर्तव्यां के प्रति घोर लापरवाही एवं अनुशासनहीनता कर परिचायक है ।”

- 5.2 It has been contended by the respondents that the findings of the inquiry officer are based on sufficient evidence. After due consideration of the preliminary inquiry report by the disciplinary authority, show cause notice was issued to the petitioner for imposing minor penalty of censure to the petitioner. The copy of the inquiry report (which contains statements of the witnesses) was provided to the petitioner along with show cause notice. 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. 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 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.
6. No rejoinder was filed by the petitioner though sufficient opportunity was provided. In spite of sufficient opportunity, none appeared on behalf of the petitioner at the time of hearing also. Learned A.P.O. was heard on behalf of respondents and the record (including the inquiry file) was perused by me. Learned A.P.O. has argued on the line of W.S. filed on behalf of the respondents.
7. 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).....”

8. 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.
9. After hearing Learned A.P.O. and going through the enquiry file and also the claim petition/written statement, 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. 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 11.04.2014 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 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.

10. 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 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.
11. In the relief clause, the petitioner has also prayed for suspension period allowance (salary) from 12.03.2014 to 11.04.2014. Perusal of inquiry file reveals that the petitioner was given a separate show cause notice by the S.S.P., Dehradun, as to why only the subsistence allowance be not paid to the petitioner for the suspension period. The petitioner did not reply to the show cause notice. The S.S.P., Dehradun thereafter, passed an order on 17.05.2014 that the petitioner will be paid only that amount which was paid to him during the suspension period. The decision regarding payment of salary/ allowances has been made by the

appointing authority by adopting the due process, and, therefore, I do not find any reason to interfere in this regard.

12. 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 15, 2017

DEHRADUN

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