

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

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

-----Vice Chairman (A)

**CLAIM PETITION NO. 39/ DB/2016**

Mohd. Ikrar S/o Sh. Akram Aliage about 30 years Constable Civil Police 1629,  
Choki Bazar, Thana Patel Nagar, Dehradun, Uttarakhand.

.....Petitioner

**Versus**

1. State of Uttarakhand through Secretary Home, Government of Uttarakhand,  
Civil Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Circle, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, District Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel  
for the petitioner.

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

**JUDGMENT**

**DATED: FEBRUARY 05 , 2018**

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

“i. To quash the impugned punishment order No. ढ -89/2014 and order No. ढ -87/2013 dated 31.10.2014 (Annexure No.A-1 and A-2) and appellate order dated 21.10.2015 (Annexure No. A-3) with its effect and operation.

- ii. To issue an order or direction to the respondents to remove the censure entry from the service records of the petitioner and pay the remaining pay and allowances of the suspension period to the petitioner.
- iii. To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- iv. To award the cost of the case."

2. The petitioner is a Constable in Civil Police and presently posted at Police Post, Patel Nagar, P.S. Patel Nagar, Dehradun.
3. The petitioner was issued a show cause notice dated 15.09.2014 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 बताओ नोटिस

आरक्षी 1629 ना0पु0 मौ0 इकरार  
द्वारा: प्रतिसार निरीक्षक

वर्ष-2013 में जब आप थाना पटेलनगर जनपद देहरादून में कार्यरत थे तो आपको थाना पटेलनगर क्षेत्रान्तर्गत बडोबाला बीट आवंटित करते हुए चीता-24, चीता-18 के साथ गस्त एवं पिकेट लगाई गई थी। आपके द्वारा थाना पटेलनगर में दिनांक 4.6.2012 से दिनांक 19.5.2013 तक की अवधि के दौरान आपने बीट क्षेत्रान्तर्गत कोई भी एन0डी0पी0एस0 एक्ट, आबकारी अधिनियम एवं अन्य किसी भी अभियोग से संबंधित माल की बरामदगी नहीं करवाई गई। गोपनीय जाचं से पाया गया कि आपका मेहूवाला में काफी आना-जाना रहा है तथा मेहूवाला गांव के खराब छवि के व्यक्तियों से सम्पर्क बना रहा है। आप चरस तस्करी के संबंध में मुखबिरी के लिए गांव में जाते थे लेकिन उक्त अवधि के दौरान कोई भी चरस बरामदगी नहीं कराई गई। मेहूवाला क्षेत्र में निवासरत एवं चरस खरीदनें / बेचने वाले अभियुक्तों से जानकारी की गई तो राशिद राव, अहमद पुत्र इल्ताफ निवासी मेहूवाला माफी शिमला रोड देहरादून तथा राशिद उर्फ तौफिक अहमद पुत्र श्री अनवर अहमद निवासी मेहूवाला मौहल्ला रांगडवाला बडी मस्जिद के पास थाना पटेलनगर द्वारा बताया गया कि वे आपको जानते थे जिनसे आपकी बातचीत होती

रहती थी तथा आपकी उक्त व्यक्ति के मोबाईल नम्बर पर भी बात होती रहती थी जिसका समर्थन चरस खरीदने / बेचने में गिरफ्तार किये गये अभियुक्त राशिद राव अहमद पुत्र इल्ताफ तथा राशिद उर्फ तौफिक अहमद पुत्र अनवर अहमद द्वारा अपने कथनो में अकिंत करवाया गया है। इस प्रकार एक जिम्मेदार पद पर नियुक्त रहते हुए आपके द्वारा अपनी बीट क्षेत्र में चरस माफियोओं के विरुद्ध कोई भी निरोधात्मक कार्यवाही नहीं करवाई गई और उनसे सांठ –गांठ बनाये रखी जिससे आम जनता में पुलिस बल की छवि खराब हुई है जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर अनुशासनहीनता , एवं उदासीनता का द्योतक 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 आपकी चरत्रि पंजिका में उक्त कृत्य एवं आचरण हेतु उत्तरांचल अधीनस्थ श्रेणो 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 लिया जाय-

#### वर्ष- 2014

वर्ष-2013 में जब यह आरक्षी थाना पटेलनगर जनपद देहरादून में नियुक्त था तो इनको थाना पटेलनगर क्षेत्रान्तर्गत बडोबाला बीट आवंटित करते हुए चीता-24, चीता-18 के साथ गस्त एवं पिकेट लागई गई थी। इनके द्वारा थाना पटेलनगर में दिनांक 4.6.2012 से दिनांक 19.5.2013 तक की अवधि के दौरान आपने बीट क्षेत्रान्तर्गत कोई भी एन0डी0पी0एस0 एक्ट, आबकारी अधिनियम एवं अन्य किसी भी अभियोग से संबंधित माल की बरामदगी नहीं करवाई गई। गोपनीय जाचं से पाया गया कि इसका मेहूवाला में काफी आना-जाना रहा है तथा मेहूवाला गांव के खराब छवि के व्यक्तियों से सम्पर्क बना रहा है साथ ही यह चरस तस्करी के संबंध में मुखबिरी के लिए गांव में जाते थे लेकिन उक्त अवधि के दौरान कोई भी चरस बरामदगी नहीं कराई गई। मेहूवाला क्षेत्र में निवासरत एवं चरस खरीदने / बेचने वाले अभियुक्तों से जानकारी की गई तो राशिद राव, अहमद पुत्र इल्ताफ निवासी मेहूवाला माफी शिमला रोड देहरादून तथा राशिद उर्फ तौफिक अहमद पुत्र श्री अनवर अहमद निवासी मेहूवाला मौहल्ला रांगडवाला बडी मस्जिद के पास थाना पटेलनगर द्वारा बताया गया कि वे इनको जानते थे जिनसे इसकी बातचीत होती रहती थी तथा इसकी उक्त व्यक्ति के मोबाइल नम्बर पर भी बात होती रहती थी जिसका समर्थन चरस खरीदने / बेचने में गिरफ्तार किये गये अभियुक्त राशिद राव अहमद पुत्र इल्ताफ तथा राशिद उर्फ तौफिक अहमद पुत्र अनवर अहमद द्वारा अपने कथनो में अकिंत करवाया गया है। इस प्रकार एक जिम्मेदार पद पर नियुक्त रहते हुए इनके द्वारा अपनी बीट क्षेत्र में चरस माफियोओं के विरुद्ध कोई भी निरोधात्मक कार्यवाही नहीं करवाई गई और उनसे सांठ –गांठ बनाये रखी जिससे आम जनता में पुलिस बल की छवि खराब हुई है जो कि इनके स्वयं के कर्तव्य एवं

आचरण के प्रति घोर अनुशासनहीनता , एवं उदासीनता का द्योतक है। इनके उक्त कृत्य एवं आचरण की परिनिन्दा की जाती है।

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

पत्रांक: द- /2014  
दिनांक : सितम्बर 15/2014

वरिष्ठ पुलिस अधीक्षक  
जनपद देहरादून”

4. The petitioner submitted the reply to the show cause notice 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 31.10.2014. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region on 21.10.2015.
5. It has been mainly contended by the petitioner that the charges levelled against the petitioner in the show cause notice do not construct any misconduct on the part of the petitioner. Nor some phone calls or meetings with said criminal type persons make the petitioner guilty of any crime or misbehavior. No witness gave any statement against the petitioner in the preliminary inquiry that the petitioner in collusion with criminal type persons indulged in criminal activity and any wrong or criminal or illegal act has been committed by the petitioner. It has also been contended by the petitioner that in the preliminary inquiry, the petitioner was not provided opportunity to cross examine the witnesses by the inquiry officer and, therefore, the principles of natural justice have been violated. It has also been stated by the petitioner that the punishment awarded to the petitioner has the same effect as major penalty of reversion to the lower post or pay scale. Hence, the punishment of censure entry cannot be awarded

without proper inquiry and procedure prescribed for major penalty. The petitioner has also contended that the punishment order is non-reasoned and non-speaking order and in deciding the appeal of the petitioner the appellate authority failed to apply his judicious mind. The suspension of the petitioner was wrong and illegal and the petitioner is entitled to get full pay and allowances of the suspension period.

6.1 The claim petition has been opposed by Respondent Nos. 1 to 3 and it has been stated in their joint written statement that the petitioner during his posting in Bodawala Beat in Police Station, Patel Nagar, Dehradun from 04.06.2012 to 19.05.2013, the petitioner did not perform his duties in a careful manner. The petitioner did not take any preventive action under NDPS Act, Excise Act etc. and there was no search/ seizure done by him. The petitioner remained in contact with persons of dubious character. The petitioner was also in touch with criminal type persons on mobile phone. The petitioner is a Police Officer of a disciplined force and his conduct affected the image of Police Department adversely. The petitioner was suspended on 18.05.2013 and later on he was reinstated on 01.08.2013. The Deputy Superintendent of Police, City-II, Dehradun conducted the preliminary inquiry and in his inquiry report dated 30.01.2014, he found the petitioner guilty for his inaction and also for his contacts with the persons of criminal nature.

6.2 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. 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.

- 6.3 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 conducted against the petitioner for imposing any major 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. 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.
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. Additionally, it has been stated by the petitioner that the inquiry officer amended his inquiry report dated 30.01.2014 on 22.05.2014 but the same has not been substantiated. The averment made by the petitioner in this regard is not duly explained and, therefore, as per the record available, it is not worthy of taking any cognizance.

8. In spite of sufficient opportunity, none appeared on behalf of the petitioner at the time of hearing. I have heard learned A.P.O. on behalf of the respondents and perused the record including the inquiry file carefully. The petitioner was also provided an opportunity to file written submission, if any, but the same were not filed by the petitioner.
9. It would be appropriate at this stage 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).....”

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.



- 11.1 After hearing Ld. A.P.O. 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 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. The appeal of the petitioner against the punishment order was also rejected after due consideration by the appellate authority.
- 11.2 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.
- 11.3 From the perusal of record, it is also revealed that the show cause notice dated 15.09.2014 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 re-appreciating of 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.

12. The petitioner has contended that 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 plea 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, I agree with the contention of learned A.P.O. and I am of clear view that the proceedings are in accordance with rules adhering to the principles of natural justice.

13. 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.
14. The petitioner has also challenged the order of respondent No. 3 dated 31.10.2014 by which it has been decided that for the period of suspension of the petitioner (18.05.2013 to 31.07.2014), only salary/allowances which were paid during the suspension period shall be payable to the petitioner and no amount other than this shall be paid to him. Before passing this order, a separate show cause notice was given to the petitioner by respondent No. 3 on 15.09.2014. The petitioner replied to this show cause notice. The respondent No. 3 considered the reply to the show cause notice given by the petitioner and found it unsatisfactory and passed a separate order for non-payment of any other amount other than the amount of salary/allowances paid during the period of suspension. I find no illegality in this

order dated 31.10.2014 and the Tribunal has no reason to interfere.

15. For the reasons stated above, the claim petition is devoid of merit and the same is liable to be dismissed.

**ORDER**

The claim petition is hereby dismissed. No order as to costs.

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

*DATE: FEBRUARY 05, 2018*  
*DEHRADUN.*

*VM*