

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

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

-----Vice Chairman (A)

CLAIM PETITION NO. 44/ DB/2016

Ashok Kumar S/o Late Sh. Nand Kishore aged about 38 years Constable 1236, Civil Police Presently posted in Police Station Rajpur, District Dehradun, Uttarakhand.

.....Petitioner

Versus

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

.....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 issue an order or direction to set aside the impugned punishment order dated 09.08.2013 (Annexure No. A-1) and impugned appellate order dated 15.06.2016 (Annexure No. A-2 to the petition) passed by the Respondent Nos. 3 and 2 respectively

declaring the same as null and void along with all consequential benefits.

ii. To remove the censure entry from the character roll of the petitioner.

iii. To issue any other suitable order or direction which this Hon'ble Tribunal deem fit and proper in the circumstances of the case.

iv. To award the cost of the petition to the petitioner.”

2. The petitioner is a Constable in Civil Police in the State of Uttarakhand.
3. In the year 2013 when the petitioner was posted at Police Station, Rajpur, Dehradun, the petitioner was issued a show cause notice dated 17.07.2013 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 1236 ना0पु0 अशोक कुमार

द्वारा:- थानाध्यक्ष राजपुर

वर्ष -2013 में जब आप थाना राजपुर जनपद देहरादून में नियुक्त थे तो उत्तराखण्ड पुलिस मुख्यालय के पत्र संख्या: डीजी-एक(ए)-11 -2013(IV) दिनांकित: 7-6-2013 के द्वारा नार्थ ईस्टर्न पुलिस अकादमी, उमसाव, मेघालय में दिनांक: 24/6/2013 से 20/7/2013 तक CCTNS/Ethical Hacking & Cyber Security विषयक 04 सप्ताह का कम्प्यूटर कोर्स किय जाने के संबंध में इच्छुक कर्मियों के आवेदन पत्र मागे गये थे जिसके आधार पर पुलिस कार्यालय के पत्र संख्या: व-90/2013 दिनांक 13/6/2013 के माध्यम से समस्त थाना प्रभारियों/शाखा प्रभारियों को आर0टी0 सन्देश प्रेषित करते हुए इच्छुक कर्मियों के आवेदन पत्र दिनांक 14-6-2013 की प्रातः 10 बजे पुलिस कार्यालय को उपलब्ध कराये जाने हेतु निर्दिशित किया गया था जिसके परिपेक्ष्य में आपके द्वारा प्रश्नगत कोर्स में प्रतिभाग करने हेतु दिनांक 14-6-2013 को अपना आवेदन पत्र प्रस्तुत करते हुए एवं थानाध्यक्ष राजपुर से दिनांक: 14-6-2013 को अग्रसारित कराते हुए तददिनांक को सीधे पुलिस उप महानिरीक्षक प्रशिक्षण उत्तराखण्ड पुलिस मुख्यालय के कार्यालय में प्राप्त करा दिया गया जब कि आपको चाहिए था कि आप अपना आवेदन पत्र पुलिस कार्यालय के माध्यम से प्रेषित करवाते किन्तु आपके द्वारा ऐसा न करके सरकारी सेवक आचरण नियमावली 1956 के नियम 27(क) में निहित प्राविधानों का उल्लंघन किया गया है जो कि आपके स्वयं के कर्तव्य एवं आचरण के प्रति घोर लापरवाही, उदासीनता एवं अनुशासनहीनता का द्योतक है।

अतः आप इस कारण बताओ नोटिस प्राप्त के 15 दिवस के अन्दर उपरोक्त संबंध में अपना लिखित स्पष्टीकरण इस कार्यालय को प्रेषित करना सुनिश्चित करें कि क्यों न आपकी चरित्र पंजिका में उक्त कृत्य एवं आचरण हेतु उत्तरांचल अधीनस्थ श्रेणी के पुलिस अधिकारियों / कर्मचारियों की (दण्ड एवं अपील) नियमावली 1991, अनुकूलन एवं उपरान्तरण आदेश 2002 के नियम- 4(1)(ख) के उपनियम -4 में निहित प्राविधानों के अन्तर्गत निम्नांकित प्रस्तावित परिनिन्दा लेख अंकित कर दिया जाये:-

वर्ष -2013

“वर्ष 2013 में जब यह आरक्षी थाना राजपुर जनपद देहरादून में नियुक्त था तो उत्तराखण्ड पुलिस मुख्यालय के पत्र संख्या: डी0जी-एक(ए)-11-2013(IV) दिनांकित : 7-6-2013 के द्वारा नार्थ ईस्टर्न पुलिस अकादमी, उमसाव मेघालय में दिनांक: 24/6/2013 से 20/7/2013 तक CCTNS/Ethical Hacking & Cyber Security विषयक 04 सप्ताह का कम्प्यूटर कोर्स किय जाने के संबंध में इच्छुक कर्मियों के आवेदन पत्र मागे गये थे जिसके आधार पर पुलिस कार्यालय के पत्र संख्या : व-90/2013 दिनांक 13/6/2013 के माध्यम से समस्त थाना प्रभारियों / शाखा प्रभारियों को आर0टी0 सन्देश प्रेषित करते हुए इच्छुक कर्मियों के आवेदन पत्र दिनांक 14-6-2013 की प्रातः 10 बजे पुलिस कार्यालय को उपलब्ध कराये जाने हेतु निर्देशित किया गया था जिसके परिपेक्ष्य में इनके द्वारा प्रश्नगत कोर्स में प्रतिभाग करने हेतु दिनांक 14-6-2013 को अपना आवेदन पत्र प्रस्तुत करते हुए एवं थानाध्यक्ष राजपुर से दिनांक : 14-6-2013 को अग्रसारित कराते हुए सीधे उप पुलिस महानिरीक्षक प्रशिक्षण उत्तराखण्ड पुलिस मुख्यालय के कार्यालय में प्राप्त करा दिया गया जब कि इनको चाहिए था कि यह अपना आवेदन पत्र पुलिस कार्यालय के माध्यम से प्रेषित करवाते किन्तु इनके द्वारा ऐसा न करके सरकारी सेवक आचरण नियमावली 1956 के नियम -27(क) में निहित प्राविधानों का उल्लंघन किया गया है जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर लापरवाही का, उदासीनता एवं अनुशासनहीनता का द्योतक है। इनके उक्त कृत्य एवं आचरण की परिनिन्दा की जाती है।”

यदि निर्धारित समयावधि में 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 किए बिना ही प्रकरण में अन्तिम निर्णय ले लिया जायेगा।

संलग्न: प्रारम्भिक जांच अख्या की एक प्रति कुल 03 वक

पत्रांक :द-65/2013

दिनांक :जुलाई 17,2013

वरिष्ठ पुलिस अधीक्षक
जनपद देहरादून।”

4. The petitioner did not submit the reply to the show cause notice. He also did not seek extra time to give reply to the show cause notice.
5. The S.S.P., Dehradun found the petitioner guilty in the departmental proceedings for minor punishment and vide order dated 09.08.2013 awarded punishment of “censure” to the petitioner.

6. The petitioner filed an appeal against the punishment order which was rejected by the Inspector General of Police, Garhwal Region on 15.06.2016.
- 7.1 The petitioner has contended in the claim petition that the Uttarakhand Police Headquarters invited applications from the Police Officers who were willing to go to North Eastern Police Academy, Umsav, Meghalaya for a 4-week training from 24.06.2013 to 20.07.2013 on the subject of CCTNS/ Ethical Hacking and Cyber Security. The S.S.P., Dehradun in his R.T. message informed all the Police Stations of the district on 13.06.2013 to send application of the Police Personnel who are willing to attend the training course by 10 A.M. of 14.06.2013 in the "Pradhan Lipik Branch" of the S.S.P. office. The petitioner has stated that on the night of 13.06.2013, he had patrol duty at Sai Mandir and he came back to Rajpur Police Station early morning on 14.06.2013. After that he wrote his application in Thana on 14.06.2013 and got it forwarded by the incharge of Police Station. The contention of the petitioner is that 14.06.2013 was the last date to submit the application and very little time was left, he, therefore, himself went to the Police Headquarters and directly submitted his application to the office of the D.I.G.(Training) rather than submitting it to the Pradhan Lipik Branch of the office of the S.S.P.
- 7.2 It has also been contended by the petitioner that he thought that submission of application through proper channel might delay his application to reach as the day (of 14.06.2013) was the last day for submitting the application. The petitioner has submitted that there was no ill intention, negligence or carelessness on the part of the petitioner in sending the application directly to the D.I.G. (Training).
- 7.3 The petitioner has also contended that he has been punished for violation of Rule 27 (क) of the Uttar Pradesh Government Servant Conduct Rules, 1956. The Rules of 1956 are not applicable in the State of Uttarakhand. The Government of Uttarakhand has framed its own Rules in 2002 known as Uttarakhand Government Servant Conduct

Rules. The petitioner has, therefore, pleaded that he has been punished under the Rules which do not exist.

- 7.4 The petitioner has also contended that the punishment awarded to the petitioner is very harsh and disproportionate to the act of the petitioner. Only a warning should have been sufficient under the circumstances. Even if the act of the petitioner construed any misconduct, it was of petty nature.
- 7.5 It has further been contended by the petitioner that though the respondents have awarded punishment of "Censure" which is a minor penalty but it has major adverse effect on the service benefits of the petitioner in future and, therefore, proper inquiry should have been held.
- 7.6 The petitioner has also contended that the petitioner has not done the act willfully and deliberately and, therefore, finding of the inquiry officer in the preliminary inquiry report is perverse and without any basis.
- 7.7 The petitioner has also stated that the punishment order is a non-reasoned and non-speaking order. The appellate authority has also failed to consider the points raised by the petitioner in his appeal and his appeal was rejected in a mechanical manner without applying judicial mind.
8. Respondent Nos. 1 to 3 have opposed the claim petition and it has been stated in their joint written statement that the petitioner should have sent his application to participate in the training through proper channel and by sending application directly to the D.I.G. (Training), the petitioner violated the Conduct Rules and he has, therefore, been rightly punished for his misconduct. The minor punishment of censure entry awarded to the petitioner against indiscipline is fully justified. 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. The petitioner did not reply to the show cause notice. The inquiry report 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. 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. 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. 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 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. 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 the 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 enquiry, the petitioner was issued a show-cause notice by the disciplinary authority. The petitioner did not reply and after considering the inquiry report the disciplinary authority has passed the order awarding minor punishment of censure entry to the petitioner.
15. 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. It is well settled principle of law that judicial review is not akin to adjudication on merit by re-appreciating 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.

16. The petitioner has also contended that he has been punished for violating Government Servant Conduct Rules of 1956 which are not applicable in the State of Uttarakhand as in the State of Uttarakhand the Government Servant Conduct Rules, 2002 are applicable. After perusing the relevant Rules of 1956 and Rules of 2002, I find that the relevant Rule in both the rules is identical as reproduced below:-

Rule 27-‘क’ of the Conduct Rules of 1956

“नियम- 27 क – सरकारी सेवकों द्वारा अभ्यावेदन- कोई सरकारी कर्मचारी सिवाय उचित माध्यम से और ऐसे निदेशों के अनुसार जिन्हें सरकार समय-समय पर जारी करे, व्यक्तिगत रूप से या अपने परिवार के किसी सदस्य के माध्यम से सरकार अथवा किसी अन्य प्राधिकारी को कोई अभ्यावेदन नहीं करेगा ।”

Rule 24- ‘क’ of the Conduct Rules of 2002

“24-क – सरकारी सेवकों द्वारा अभ्यावेदन –
कोई सरकारी कर्मचारी सिवाय उचित माध्यम से और ऐसे निर्देशों के अनुसार जिन्हें सरकार समय-समय पर जारी करे, व्यक्तिगत रूप से या अपने परिवार के किसी सदस्य के माध्यम से सरकार अथवा किसी अन्य प्राधिकारी को कोई अभ्यावेदन नहीं करेगा ।”

As Rule 27-‘क’ of 1956 Rules and Rule 24-‘क’ of the Rules of 2002 are exactly same, the error of mentioning 1956 Rules in place of 2002 Rules by the respondents does not affect the conclusion drawn by the respondents regarding conduct of the petitioner. The petitioner cannot take advantage of mentioning the Rules of 1956 by the respondents in

place of the Rules of 2002 when the relevant Rule regarding conduct of the petitioner is identical under both the Rules.

17. 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.
18. 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: FEBRUARY 05, 2018
DEHRADUN.

VM