BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

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

-------Vice Chairman (A)

CLAIM PETITION NO. 45/SB/2018

Puneet Dhanoshi S/o Late Ram Chandra aged about 32 years at presently working and posted on the post of Sub-Inspector, Civil Police under the respondent department at Thana Sonprayag, District Rudraprayag, Uttarakhand.

………Petitioner

VERSUS

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

…………….Respondents

Present: Sri L.K.Maithani, Ld. Counsel for the petitioner
Sri U.C.Dhaundiyal, Ld. A.P.O. for the Respondents

JUDGMENT

DATED: DECEMBER 07, 2018

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

" i. To quash the impugned punishment order dated 21.06.2017 (Annexure No. A-1) passed by the respondent No. 3 and impugned appellate order dated 06.02.2018 (Annexure No. A-2) passed by the respondent no. 3 along with its operation & effects with all consequential benefit.

ii. To issue an order or direction to the respondents to delete the endorsement of censure entry from the character roll of the petitioner.

iii. To award the cost of the petition to the petitioner.

iv. To award the cost of petition."

2. The petitioner is a Sub-Inspector in civil police in the Uttarakhand Police.

3. The petitioner was issued a show cause notice dated 18.05.2017 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 show cause notice proposed the minor punishment of "censure" as under:-

" <u>वर्ष–2017</u>

''वर्ष– 2016 में जब यह उपनिरीक्षक थाना सहसपुर में नियुक्त थे तो दिनांकः 08–08–2016 को वादी श्री गजेन्द्र सिंह बिष्ट की माता को मो0साई0 नं0ः HP 17A-5663 के चालक नाम पता अज्ञात द्वारा टक्कर मारकर गम्भीर रूप से घायल करने संबन्ध में थाना सहसपुर पर मु0अ0सं0–180/16 धारा 279/338 भादवि का अभियोग पंजीकृत हुआ था, जिसकी प्रारम्भिक विवेचना उपनिरीक्षक सुनील पंवार द्वारा संपादित की गयी। उपनिरीक्षक सुनील पंवार के स्थानान्तरण पर चले जाने पर उक्त अभियोग की विवेचना इनके सुर्पुद की गयी। उक्त अभियोग की विवेचना में पूर्व विवेचक द्वारा वादी, पीडिता एवं डॉक्टर के कथन अंकित नही किये गये थे तो इनका दायित्व था कि वादी से पीडिता के संबन्ध में जानकारी करते हुये घटना से संबन्धित मेडिकल साक्ष्य एकत्रित कर विवेचना में सम्मिलित करते। यदि वादी द्वारा मेडिकल साक्ष्य उपलब्ध नहीं कराये गये थे तो इनको महन्त इन्द्रेश अस्पताल में जाकर मेडिकल साक्ष्य एकत्र करने चाहिये थे किन्तु इनके द्वारा बिना मेडिकल साक्ष्य के दिनांक 20–01–2017 को अभियुक्त प्रभुजी यादव के विरूद्ध धारा 279/338 भादवि में आरोप पत्र संख्याः 27/17 प्रेषित किया गया, जिसे पर्यवेक्षणकर्ता अधिकारी द्वारा रोकते हुए इनको पुनः विवेचना किये जाने हेतु निर्देशित किया गया, जिस पर इनके द्वारा वादी से सम्पर्क कर वादी द्वारा उपलब्ध कराये मृत्यु प्रमाण पत्र के आधार पर अभियुक्त प्रभुजी यादव के विरूद्ध पुनः दिनांक 27.02.2017 को आरोप पत्र संख्याः 27ए/17 धारा 279 /304ए भादवि प्रेषित किया गया।

इनके द्वारा धारा 279/338 भादवि के अन्तर्गत पूर्व में आरोप पत्र प्रेषित किया गया था तो इनको चाहिए था कि पुनः धारा 279/304ए भादवि में आरोप पत्र प्रेषित करने से पूर्व, पूर्व प्रेषित आरोप पत्र को सक्षम अधिकारी से निरस्त करवाते या धारा 304ए भादवि में ही पूरक आरोप पत्र प्रेषित करते किन्तु इनके द्वारा ऐसा नही किया गया। इस प्रकार इनके द्वारा उपरोक्त अभियोग की विवेचनात्मक कार्यवाही में जानबूझकर लापरवाही बरती गयी है जो कि इनके स्वयं के कर्तव्य एवं आचरण के प्रति घोर लापरवाही एवं उदासीनता का द्योतक है । इनके उक्त कृत्य एवं आचरण की परिनिन्दा की जाती है।''

4. The petitioner submitted the reply to the show cause notice 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 21.06.2017.

6. The petitioner filed an appeal against the punishment order which was rejected by the Deputy Inspector General of Police, Garhwal Region on 06.02.2018.

7. The main grounds on the basis of which the punishment order has been challenged are that there is no evidence that the petitioner committed misconduct intentionally or deliberately; there is no dereliction in the duty of the petitioner; there is nothing against the petitioner that the statements of doctors and Smt. Mithuni Devi were not taken by the petitioner intentionally or deliberately; there is no finding against the petitioner that due to non-cancellation of the previous charge sheet, the said criminal case was adversely decided; in absence of the element of intention, the conduct of the petitioner cannot be construed as misconduct; the charges framed against the petitioner is on the basis of conjecture and surmises; the punishment is harsh and disproportionate to the act of the petitioner; the appellate authority acted in a mechanical manner without applying judicious mind and the act of the respondents is highly arbitrary,

discriminatory, malafide and violative to the Article 14 and 16 of the Constitution of India.

8.1 Respondents No. 1 to 3 have vehemently opposed the claim petition and have stated in their written statement that the contentions of the petitioner in his claim petition are misconceived and against the facts on record. It was the duty of the petitioner that as Investigating Officer, he must have recorded the statement of the victim as well as doctors. He must also have collected necessary documents and evidence from the hospital. The petitioner filed a charge sheet U.S. 279/338 IPC and when the supervisory officer found deficiencies in the charge sheet, the petitioner was asked to re-investigate the case. The petitioner, thereafter, filed the second charge sheet U.S. 279/304A IPC. It is the contention of the respondents that it was lawfully wrong to file the second charge sheet U.S. 279 IPC. The petitioner either should have got first charge sheet U.S. 279/338 cancelled or he should have filed a supplementary charge sheet only U.S. 304A IPC. The petitioner has, thus conducted the investigation in a careless and negligent manner and was found guilty in the preliminary inquiry. Learned A.P.O. on behalf of the respondents has also pointed out the conclusion of the inquiry officer in the preliminary inquiry report, which is reproduced below:-

> "निष्कर्ष
>
> निष्कर्ष –जांच से पाया कि दिनांक 08.08.16 को वादी श्री गजेन्द्र बिष्ट द्वारा प्रतिवादी वाहन संख्या HPI7A-5663 (स्टार सिटी) के चालक नाम पता अज्ञात के विरूद्ध वादी को माताजी को टक्कर मारकर गम्भीर रूप से घायल करने के संबंध में थाना सहसपुर में मु0अ0सं0 180/16 धारा 279/338 भादवि पंजीकृत कराया गया । जिसकी विवेचना उ0नि0 सुनील पंवार के सुपुर्द की गयी। वादी द्वारा अपनी माताजी को श्री महन्त इन्द्रेश अस्पताल में इलाज हेतु भर्ती कराया गया था, जिसका इन्द्राज एफ0आई0आर0 में अंकित है तथा घटना के दूसरे दिन अर्थात दिनांक 09.08.2016 को पीडिता श्रीमती मिथुनी देवी की मृत्यु हो गयी।
>
> विवेचक उ0नि0 सुनील पंवार द्वारा दिनांक 09.08.16 को अभियुक्त मो0सा0 चालक प्रभुजी यादव को गिरफ्तार किया गया व दुर्घटना करने वाले

वाहन मो0सा0 HPI7A-5663 की दिनांक 21.08.2016 को टैक्नीकल मुआयना रिपोर्ट प्राप्त, अवलोकन कर संलग्न सीडी किया गया। उ0नि0 सुनील पंवार/विवेचक का स्थानान्तरण होने के उपरान्त उक्त अभियोग की विवेचना उ0नि0 पुनीत दनोषी के सुपुर्द की गयी।

उ0नि0 पुनीत दनोषी द्वारा दिनांक 06.11.16 को उक्त अभियोग की विवेचना ग्रहण की गयी। विवेचक द्वारा वादी की निशानदेही पर निरीक्षण घटनास्थल किया गया। तथा वादी के कथन अंकित किये गये, जिनके द्वारा समर्थन एफ0आई0आर0 किया गया तथा बताया कि मैंने अपनी माताजी का इलाज महन्त इन्द्रेश अस्पताल में कराना व सारे मेडिकल कागजात आपने गांव में छोड देना व काफी ढूंढने पर भी मिल न पाने के कारण मेडिकल संबंधी कागजात उपलब्ध नहीं कराये । विवेचक / उ0नि0 पुनीत दनोषी द्वारा दिनांक 20.01.17 को अभियुक्त प्रभुजी यादव के विरूद्ध धारा 279/338 भादवि मे आरोप पत्र संख्या 27/17 प्रेषित किया गया धारा 338 भादवि के संबंध में कोई साक्ष्य एकत्र न होने व विवेचना में कमी पाये जाने के कारण क्षेत्राधिकारी विकासनगर द्वारा आरोप पत्र रोकते हुए उक्त अभियोग की पुर्न विवेचना कराने के आदेश दिये गये।

उ0नि0 पुनीत दनोषी द्वारा उक्त अभियोग का पुर्न विवेचना कर वादी से जानकारी की गयी तो वादी द्वारा बताया गया कि मेरी माताजी का दिनांक 08.08.16 को एक्सीडैन्ट हो गया था , जिसके बाद हम उन्हें अपने गांव ,सकनी कालसी लेकर चले गये थे, जहां पर दिनांक 09.08.16 को उनकी मृत्यु हो गयी । वादी द्वारा अपनी माता की मृत्यु होने के संबंध में पुलिस को सूचित नहीं किया व न ही पंचायतनामा व पोस्टमार्टम कराया गया । वादी द्वारा अपनी माताजी का मृत्यु प्रमाण पत्र उपलब्ध कराया। जिस पर विवेचक द्वारा अभियुक्त प्रभुजी यादव के विरूद्ध पुनः दिनांक 27.02.17 को आरोप पत्र संख्या 27ए/17 धारा 279/304ए भादवि प्रेषित किया गया।

पूर्व विवेचक उ0 नि0 सुनील पंवार का दायित्व था कि यदि वादी नही मिला था तो वह श्री महन्त इन्द्रेश अस्पताल में जाकर तत्काल पीडिता मिथुनी देवी व उपचार कर्ता डॉक्टर के कथन अंकित करते व मेडिकल अभिलेख एकत्र करते क्योंकि वादी द्वारा अपनी एफ0आई0आर0 में अंकित किया गया था कि उसके द्वारा अपनी माताजी का इलाज महन्त इन्द्रेश अस्पताल में कराया जा रहा है किन्तु विवेचक द्वारा महन्त इन्द्रेश अस्पताल में जाकर पीडिता व डाक्टर के कथन अंकित नहीं किये गये व न ही अस्पताल से अभिलेख एकत्र किये गये व विवेचना को अनावश्यक लम्बित रखा गया । यदि विवेचक अस्पताल में जाकर डाक्टर से सम्पर्क करता व वादी से सम्पर्क करता व पीडिता के संबंध में जानकारी करता तो विवेचक को यह जानकारी हो जाती कि घटना के दूसरे दिन दिनांक 09.08.16 को पीडिता श्रीमती मिथुनी देवी की मृत्यु हो गयी है व विवेचना में धारा 304ए भादवि की बढौतरी हो जाती । परन्तु विवेचक द्वारा ऐसा नहीं किया गया।

नवनियुक्त विवेचक उ0नि0 पुनीत दनोषी का भी दायित्व था कि जब पूर्व विवेचक द्वारा वादी, पीडिता व डाक्टर के कथन अंकित नही किये गये है व घटना से संबंधित मेडिकल साक्ष्य एकत्रित नही किये गये है तो उन्हें वादी से पीडिता के संबंध में जानकारी करनी चाहिए थी व मेडिलकल साक्ष्य एकत्र कर विवेचना में सम्मिलित करना चाहिए था। यदि वादी द्वारा मेडिकल साक्ष्य उपलब्ध नहीं कराये गये थे तो विवेचक को श्री महन्त इन्द्रेश अस्पताल में जाकर मेडिकल साक्ष्य एकत्र करने चाहिए थे किन्तु उनके द्वारा धारा 338 भादवि के संबंध में बिना मेडिकल साक्ष्य के दिनांक 20.01.17 को अभियुक्त प्रभुजी यादव के विरूद्ध धारा 279/338 भादवि में आरोप पत्र संख्या –27/17 प्रेषित किया गया। उक्त आरोप पत्र को रोककर जब उक्त अभियोग की पुनः विवेचना उ0नि0 पुनीत दनोषी द्वारा की गयी तथा उनके द्वारा वादी से सम्पर्क करने पर वादी द्वारा बताया गया कि उनकी माता का देहान्त दिनांक 09.08.16 को हो गया है व मुत्यृ प्रमाण पत्र उपलब्ध कराया तो उ0नि0 पुनीत दनोषी द्वारा अभियुक्त प्रभुजी यादव के विरूद्ध पनुः दिनांक 27.02.17 को आरोप पत्र संख्या 27ए/17 धारा 279/304ए भादवि प्रेषित किया गया जबकि धारा 279/338 भादवि में विवेचक द्वारा पूर्व में आरोप पत्र प्रेषित किया गया था। विवेचक को पुनः धारा 279 /304A भादवि में आरोप पत्र प्रेषित करने से पूर्व, पूर्व प्रेषित आरोप पत्र को सक्षम अधिकारी से निरस्त कराना चाहिए था या धारा 304ए भादवि में ही पूरक आरोप पत्र प्रेषित करते किन्तु विवेचक द्वारा पूर्व प्रेषित धारा 279/338 भादवि में प्रेषित आरोप पत्र को निरस्त न कराते हुए पुनः धारा 279/304ए भादवि में अरोप पत्र प्रेषित किया गया। जो विवेचक उ0नि0 सुनील पंवार व उ0नि0 पुनीत दनोषी की उक्त विवेचना के प्रति लापरवाही का द्योतक है जिसके लिए उ0नि0 सुनील पंवार व उ0नि0 पुनीत दनोषी, दोषी हैं।"

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 reasoned 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 not filed any rejoinder affidavit.

10. I have heard both the parties and perused the record.

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. The appeal of the petitioner was also duly considered and the same was rejected by the Appellate Authority by passing a reasoned order.

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 18.05.2017 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 convassed 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, 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.

16. 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 07, 2018
DEHRADUN.

KNP