BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 52/SB/2019

Manish Kumar, s/o Sri Brijesh Kumar, aged about 34 years, Constable in Uttarakhand Police, presently posted at Police Station Manglore, District Haridwar.

WITH

CLAIM PETITION NO. 53/SB/2019

Vikteshwar, s/o Sri Ram Narain, aged about 33 years, Constable in Uttarakhand Police, presently posted at Police Station Jhabreda District Haridwar

.......Petitioners

VS.

1. State of Uttarakhand through Secretary (Home), Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Inspector General of Police, Gahrwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, District Haridwar.

....Respondents.

Present: Sri V.P.Sharma, Counsel for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JULY 29 , 2019

Per: Justice U.C.Dhyani

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, both the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience.

2. By means of above noted claim petitions, petitioners seek following reliefs:

> "(i) To quash the impugned order dated 03.12.2018 (Annexure No.A-1) by which censure entry has been awarded by the respondent no.3 in the service record of the petitioners as well as appellate order dated 15.04.2019 (Annexure No. A-2) by which appeals of the petitioners have also been rejected by the respondent no.2 along with its effect and operation also.
> (ii) To quash and set aside the suspension order dated 06.09.2018 (Annexure An-3) as well as the order dated 07.01.2019 (Annexure A-4) in which the order passed by respondent no.3 for payment of subsistence allowance only from 06.09.2018 to 14.10.2018 for the suspension period. The petitioners are entitled to full salary for the period from 06.09.2018 to 14.10.2018. The Hon'ble Court may kindly allow to pay the full salary for the suspension period.
> (iii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.
> (iv) To award cost of this petition to the petitioner."

3. Brief facts, which appear to be necessary, for proper adjudication of present claim petitions, are as follows:

Both the above noted petitioners were posted at P.S. Kotwali, Jwalapur, District Haridwar on 05.09.2018. Disciplinary proceedings were initiated against them on the report of one Sri Amarjeet Singh, Inspector In-Charge, Kotwali. Allegedly, on 05.09.2018, on receiving information regarding offence of gambling, petitioners named above, went to Peeth Bazar, Jwalapur. They went to the house of one Deepak, and got hold of gamblers. On their personal search, the petitioners grabbed a sum of Rs.40,000/-. The gamblers were let off. Show cause notices were given to the delinquents. They replied to the same. The disciplinary authority was not satisfied with their explanations and, therefore, 'censure entry' was awarded in the character roll of the year 2018 of both the delinquent Constables. By such an act of the delinquents, image of Police Force was tarnished in the estimation of public. Being aggrieved against the action of disciplinary authority, both the delinquents filed departmental appeals, without getting any success. Hence, present claim petitions.

4. In their replies, delinquents denied the charges levelled against them. Constable Vikteshwar was although on leave, but even then, without informing their superiors, petitioners went to the house of Deepak, r/o Peeth Bazar, Jwalapur. Sri Amarjeet Singh, Inspector In-Charge, Kotwali, alleged that, on receiving information of liquor haul, the delinquents went to the scene of crime. According to the Inspector In-Charge, neither any liquor was seized nor any person was found gambling. The statement of the then Inspector In-Charge is the sole basis of initiating the departmental proceedings against the delinquents and their consequential punishments. Since the delinquents were in league with each other, therefore, they, instead of nabbing the gamblers, let them off after taking money seized from them. No information was given to the senior Police Officers. According to the petitioners, Inspector In-Charge gave such statement because he was biased with them. The services of both the delinquents were put under suspension by disciplinary authority.

5. Ld. A.P.O., at the very outset, defending the departmental action, submitted that the orders impugned do not warrant any interference. The Court should not interfere with the punishments of 'censure entry' awarded to the petitioners by the appointing authority/ disciplinary authority, which have been upheld by the appellate authority, according to Ld. A.P.O. Petitioners, on the other hand, assailed orders under challenge with vehemence.

6. Let us see, what is the scheme of departmental punishments under the Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991. Minor penalties have been enumerated in Clause (b) of sub-rule (1) of Rule 4, as follows:

> **(b) Minor Penalties**:
> *(i) Withholding of promotion.*
> *(ii) Fine not exceeding one month's pay.*
> *(iii) Withholding of increment, including stoppage at an efficiency bar.*
> *(iv) Censure.*

7. Minor penalties, as mentioned in sub-rule (2) and (3) of Rule 4, have been described, as follows:

4(2) In addition to the punishments mentioned in sub-rule(1) Head Constables and Constables may also be inflicted with the following punishments—

(i) *Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty.)*
(ii) *Punishment Drill not exceeding fifteen days.*
(iii) *Extra guard duty not exceeding seven days.*
(iv) *Deprivation of good-conduct pay.*

4(3) In addition to the punishments mentioned in sub-rules (1) and (2), Constables may be punished with fatigue duty, which shall be restricted to the following tasks—

(i) *Tent pitching;*
(ii) *Drain digging;*
(iii) *Cutting grass, cleaning jungle and picking stones from parade grounds;*
(iv) *Repairing huts and butts and similar work in the lines; and*
(v) *Cleaning Arms.*

8. The procedure laid down in sub-rule (2) of Rule 14 is as below:

"**14(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."

9. The petitioners, in the instant case, have been awarded 'censure entry'. A perusal of the files reveals that the procedure laid down in sub-rule (2) of Rule 14 has been adopted. Sub-rule has already been quoted above. The petitioners were informed in writing of the action proposed to be taken against them and of the imputations of act of omission on which it was proposed to be taken, reasonable opportunity of making such representation, as they wished to make against the proposal, was given. What else was required to be done by the department, in such case? Due procedure has been followed.

10. The inquiry contemplated under the Police Regulations is in the nature of preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice, he or she should be in

a position to see whether there is any truth in such imputation. The inquiry, is therefore, meant only for personal satisfaction of the Superintendent of Police to enable him or her to come to a decision as to whether the matter is to be dropped or whether any action is necessary. No punishment can be imposed as a result of inquiry itself. In the instant case, the appointing authority has not awarded punishment to the petitioners on the result of preliminary inquiries. On the basis of such preliminary investigation, the appointing authority, foreseeing that it is a case of minor punishment, followed the procedure laid down in sub-rule (2) of Rule 14.

11. The appointing authority, after informing the delinquents of the action proposed to be taken against them and of the imputations of acts or omission on which it is proposed to be taken and after giving them a reasonable opportunity of making such representations, as they wished to make against the proposal, passed the impugned order (Annexure: A 1 in both the files). Thereafter, the appellate authority, after considering the contents of appeals, affirmed the view taken by the disciplinary authority and dismissed the appeals *vide* orders Annexure: A2, in both the files. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. There is no reference of preliminary inquiry in the same. There is, however, reference of the explanations furnished by the delinquents. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the orders directing 'censure entry' against the petitioners. The impugned orders, therefore, do not suffer from any infirmity.

12. There is no reference of 'preliminary inquiry' in sub-rule (2) of Rule 14 of the Rules of 1991. Such sub-rule only prescribes that minor punishments may be imposed after informing the Police Officer in writing, of the action proposed to be taken against him, and of the imputations of acts 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. Such preliminary inquiry is merely a fact finding inquiry. It is only meant for the satisfaction of the appointing authority, notwithstanding the fact that the delinquents were

also involved in it. Preliminary inquiry, in the instant cases, has been used by the appointing authority only to derive satisfaction for giving show cause notices, which are in the nature of informing the delinquents of the action proposed to be taken, imputations of the acts or omission and giving them a reasonable opportunity of making representation. Preliminary inquiry has not been used in arriving at a finding. It is only a precursor to the action proposed to be taken.

13. The extent of Court's power of judicial review on administrative action has been replied in Para 24 of the decision of *Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301*, as follows:

> "24.The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."

14. This Tribunal, therefore does not find it to be a case of judicial review, in the absence of any material on record, to hold that formation of belief/ opinion by the appointing authority, as upheld by the appellate authority, suffers from *malafide* or there is anything, on record, to hold that there was procedural error resulting in manifest miscarriage of justice and violation of principles of natural justice. There were reasonable grounds before the authorities below to have arrived at such conclusions.

15. This Tribunal is of the view that due process of law has been followed while holding the delinquents guilty of misconduct. No legal infirmity has successfully been pointed in the same.

16. Any allegation against the delinquent Police official, may not be treated as true, but when such insinuation is fortified by some substance, on record, the court may draw an adverse inference against the delinquent. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present case is adjudged from the aforesaid yardstick, this Tribunal finds no reason to interfere in the inference drawn by the Disciplinary Authority, as upheld by the Appellate Authority.

17. This Tribunal, therefore, is unable to take a view different from what was taken by the appointing authority as upheld by the appellate authority. No interference is, therefore, called for in holding the petitioners guilty of misconduct.

18. 'Judicial review of the administrative action' is possible under three heads, *viz:*

(a) illegality,
(b) irrationality and
(c) procedural impropriety.

Besides the above, the 'doctrine of proportionality' has also emerged, as a ground of 'judicial review', of late.

19. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety, but there is a case for interference on the limited ground of 'doctrine of proportionality', as has been argued by Ld. Counsel for the petitioners. It has been provided in the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991 that the Constables may be punished with 'fatigue duty', a description of which has been given above, in para 7 of this judgment.

20. During the course of arguments, Ld. Counsel for the petitioners confined his prayer only to the extent that some other minor penalty, as provided in the Rules of 1991 may be awarded to the petitioners, in as much as censure entry entails serious civil consequences, for which petitioners shall not be able to cope with, and for bargaining such a plea, they are ready to forgo and relinquish their claim over the full salary of suspension period. They have been granted only subsistence allowance, and they feel contented with the same. They do not press Relief No. (ii) and will feel satisfied if the censure entry is substituted by any other minor penalty such as 'fatigue duty'. Ld. A.P.O. opposed such argument of Ld. Counsel for the petitioners and submitted that the procedure, as prescribed in the Rules of 1991, culminates only into major and minor penalties. The procedure, as prescribed, does not culminate into 'other minor penalties' as provided under sub-rules (2) & (3) of Rule 4 of the Rules of 1991. This Tribunal is unable to accept such contention of Ld. A.P.O. that the disciplinary authority or appellate authority or the Tribunal cannot award punishment as prescribed under sub-rules (2) & (3) of Rule 4 of the Rules of 1991 merely because the procedure of minor penalties [Rule 4 (1)(b)] has been followed. Censure Entry, as per clause (b) of sub-rule (1) of Rule 4 has been categorized *at par* with 'fine not exceeding one month's pay'. In the instant cases, since the petitioners are ready to relinquish their claim over full salary of suspension period *w.e.f.* 06.09.2018 to 14.10.2018 minus subsistence allowance, therefore, it is a fit case of converting 'censure entry' with 'fatigue duty' along with waiver of their claim over their salary (minus subsistence allowance of more than a month (one month eight days) .

21. It is the submission of Ld. A.P.O. that once the procedure for 'minor penalty' has been followed in departmental proceedings, the Tribunal should not convert the same into 'other minor penalty'. Ld. A.P.O. drew attention of this Tribunal towards Rule 15 of the Rules of 199. Procedure prescribed in Orderly room punishment is, as follows:

> "**15- Orderly room punishment**— Reports of petty breaches of discipline and trifling cases of misconduct by a Police Officer, not above the rank of Head Constable, shall be enquired into and disposed of in orderly room by the Superintendent of Police or other Gazetted Officer of the Police Force. In such cases punishment may be awarded in a summary manner after informing the Police Officer verbally of the act or omission on which it is proposed to punish him and giving him an opportunity to make verbal representation. A Register in Form 2 appended to these rules shall be maintained for such cases. In this Register, text of the summary proceeding shall be recorded."

22. This Tribunal is unable to agree to such contention of Ld. A.P.O.. The law is that the procedure adopted for comparatively minor punishment cannot be used to give punishment for graver misconduct, but the converse is not true. The procedure adopted for comparatively minor punishment, cannot be used to give bigger penalty, but the procedure adopted for bigger penalty may be used to give 'orderly room punishment' or comparatively minor penalty. Law is clear on the point.

23. There is difference between 'technical justice' and 'substantial justice'. The primary function of the Court is to adjudicate dispute between the parties and to advance substantial justice. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of non deliberate act. It has been observed by Hon'ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others, AIR 1987 SCC 107*, although in different context, that "it must be grasped that judiciary is respected not on account of its' power to legalize injustice on technical grounds, but because it is capable of removing

injustice and is expected to do so." Again, in *State of Nagaland vs. Lipok Ao and others, (2005) 3 SCC 752*, albeit in a different backdrop, the Hon'ble Apex Court was pleased to observe that "a pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other, the former has to be preferred."

24. According to Ld. Counsel for the petitioners, instant cases cannot be termed as corruption cases in as much as, as per the statement of Sri Amarjeet Singh, Inspector In-Charge, Kotwali himself, at whose behest disciplinary proceedings have been initiated against petitioners, no gambling activities were going on the spot. When no gambling activities were going on, then how can it be inferred that the petitioners took Rs.40,000/- from the gamblers? But, Ld. Counsel for the petitioners submitted that they are not going to press their claims on merits. They are foregoing more than one month's salary minus the subsistence allowance, which has already been given to them, and are 'bargaining the plea' for other minor punishment, which plea, in the given facts of the case, should be accepted.

25. 'Fatigue duty' is also a type of minor penalty, which finds place in the statute book and appears to be *at par* with 'censure entry' *minus* civil consequences. In other words, whereas 'censure entry' entails civil consequences, 'fatigue duty' does not. Considering the facts of these claim petitions, this Tribunal finds that rigour of censure entry should be mitigated, in the peculiar facts of the case, if the petitioners are awarded with 'other Minor Penalty', *viz,* 'Fatigue Duty', instead of 'censure entry'. Had the forum of appeal been available to the delinquents in a Court of Law, the petitioners would have succeeded in the same only on the ground that when no witness (what to talk of eyewitness) is available to show that gambling was taking place there, then how could it be inferred that the petitioners took money from the gamblers? Adverse inference could not have been drawn against them on mere conjectures and surmises. Since appreciation of evidence is not permissible to the Tribunal in judicial review and these findings cannot be termed as 'perverse', therefore, no interference is possible in the findings of both the authorities below, but it is certainly a case of

limited interference on the quantum of punishment, in the peculiar facts of the case. The Tribunal is alive to the situation that although there is no evidence of taking money against the delinquents and the Inspector In-Charge used his personal information of their letting off the gamblers, to initiate departmental action against them, but they have 'bargained the plea' for 'other minor penalty' while relinquishing their right over more than a month's salary therefore, the rigours of their punishment should be mitigated. This Tribunal has been persuaded to interfere, only to this extent, on the ground of emerging 'doctrine of proportionality', substituting 'censure entry' with 'fatigue duty'.

26. Order accordingly.

27. The claim petitions thus stand disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 29, 2019
DEHRADUN

VM