

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

CLAIM PETITION NO. 67/SB/2019

Pankaj Tariyal, s/o Sri Vikram Singh Tariyal, aged about 31 years, at present working and posted as Constable No. 29, Civil Police, under the respondents at Police lines, Gopeshwar, Chamoli.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary (Home), Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Gahrwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Chamoli.

.....Respondents.

Present: Sri L.K.Maithani, Counsel for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 01, 2019

Justice U.C.Dhyani(Oral)

By means of present claim petition, petitioner seeks to direct quashing of order dated 09.12.2016 (Copy: Annexure- A 1) passed by respondent no.3 and appellate order dated 28.03.2017 (Copy: Annexure- A 2) passed by respondent no.2, with all consequential benefits. A direction has also been sought to direct the respondents to pay remaining salary of the suspension period.

2. Brief facts, giving rise to present claim petition, are as follows:

Petitioner was a Constable, who was posted in P.S. Gairsain, District Chamoli, in the year 2016. On receiving certain complaints of

harassment, preliminary enquiry was conducted against petitioner. On being satisfied with the findings of preliminary enquiry, a show cause notice (Copy: Annexure- A 4) along with draft censure entry for the year 2016 was sent to the delinquent petitioner on 13.06.2016. Petitioner gave reply of the same *vide* letter dated 28.06.2016 (Copy: Annexure- A 5). The disciplinary authority was not satisfied with the same. Censure entry was given to the delinquent-petitioner *vide* order dated 09.12.2016 (Copy: Annexure- A 1). The insinuation against the petitioner was that the delinquent-Constable harassed truck drivers unnecessarily on the pretext of challans. Aggrieved against the order of the disciplinary authority, petitioner preferred departmental appeal, which appeal was dismissed by the appellate authority *vide* order dated 28.03.2017 (Copy: Annexure- A 2). In between petitioner's services were suspended *vide* order dated 16.04.2016 (Copy: Annexure- A 6). His suspension was revoked *vide* order dated 27.08.2016. The complaint of the truck drivers, which was addressed to Director General of Police, has been brought on record as Annexure- A 8. Copy of preliminary inquiry report dated 05.06.2016 has been placed on record as Annexure- A 9.

3. Sri Ravindra Kumar, C.O., Chamoli, has filed Counter Affidavit on behalf of respondents. The allegations levelled against the petitioner have been reiterated, justifying departmental action. It has been stated, *inter alia*, in the C.A. that under the garb of checking, the truck drivers were harassed unnecessarily by the petitioner. During the course of P.E., statements of Sri Kundan Ram, S.O., Gairsain and Drivers, *viz*, Sandeep, Mohd.Afzal, Kamlesh Kumar, Raees Ahmad, Subhash Chandra, Paramdeep Singh and Manoj Kumar were recorded. The statement of the petitioner was also noted by the inquiry officer during P.E.
4. Petitioner was awarded censure entry *vide* order dated 09.12.2016 (Annexure: A 1). The appellate order was passed by the appellate authority on 28.03.2017 (Annexure: A 2). Present claim petition has been filed by the petitioner on 30.05.2019. The petitioner has stated in Para 3 of the claim petition that he could not file the petition on time because of family problems and other unavoidable circumstances. There is no specific averment, to the contrary, in the W.S.

Considering the sufficiency of reasons thus furnished in support of delay in filing the claim petition, the Tribunal is inclined to condone such delay. Delay in filing the claim petition is, therefore, condoned.

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 punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority, according to Ld. A.P.O. Petitioner, on the other hand, assailed orders under challenge, with vehemence.
6. It may be made clear, in the very beginning, that the allegation of corruption has not been proved against the petitioner in P.E.. No truck driver, whose statements were taken during P.E., ever stated that the delinquent Constable took money from them. In other words, this is not the statement of the department that delinquent Constable ever took bribe from anybody, or even if there was any complaint, the same has not been proved during P.E. It is a case of harassment (of the truck drivers) simpliciter. It may also be made clear, at this stage, that P.E. was conducted by S.P., Chamoli, only to derive satisfaction, whether to proceed with the departmental action against the petitioner or not. The words 'preliminary enquiry' has not been used in the Rules. It is only meant for the satisfaction of the disciplinary authority, as to whether he or she should proceed to initiate departmental proceedings against the delinquent employee or not. This Tribunal has given a brief reference of the statements of truck drivers, in a bid to find whether the S.P. was justified in proceeding departmentally against the delinquent-Constable or not. Otherwise P.E. cannot be used against any delinquent employee. It is only meant for the satisfaction of the disciplinary authority. It is only a precursor to the disciplinary authority taking a decision, as to whether he should proceed against the delinquent with departmental action or not.
7. A Division Bench of Hon'ble High Court of Judicature at Allahabad, in *Bhupendra Singh and others vs. State of U.P. and others*, (2007)(4) ESC 2360 (ALL)(DB), held that the provisions of Rule

4(1)(b)(iv) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991) are valid and *intra vires*. Censure entry, therefore, can be awarded.

8. Here the petitioner has been awarded minor penalty, in which the procedure prescribed is as follows;

Sub- rules (2 & 3) of Rule 5 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991

“Sub-rule (2)— The cases 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.

Sub-rule (3)— the cases in which minor penalties mentioned in sub-rule (2) & (3) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in Rule 15.”

9. The next question would be, what are the minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4? The reply is 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.*

10. Most relevant question, from the point of view of present petitioner, would be— what is the procedure laid down in sub-rule (2) of Rule 14?

“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.”

11. 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 inquiry. 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, which has been quoted above.

12. The appointing authority, after informing the delinquent 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 after giving him a reasonable opportunity of making such representation, as he wished to make against the proposal, passed the impugned order (Annexure: A 1). Thereafter, the appellate authority, after considering the contents of appeal, affirmed the view taken by the disciplinary authority and dismissed the appeal *vide* order Annexure: A2. 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 explanation furnished by the delinquent. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the order directing 'censure entry' against the petitioner.
13. 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 delinquent was also involved in it. Preliminary inquiry, in the instant case, has been used by the appointing authority only to derive satisfaction for giving show

cause notice, which is in the nature of informing the delinquent of the action proposed to be taken, imputations of the acts or omission and giving him 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.

14. Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 are important in the context of present claim petition. The said provisions read as below:

“3(1) Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;

3(2) Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behavior and conduct which may be in force.”

The word ‘devotion’, may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

15. The next question would be— what is the extent of Court’s power of judicial review on administrative action? This question has been replied in Para 24 of the decision of in *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.”

16. ‘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

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

18. 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. 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 petitioner guilty of misconduct.

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 petitioner. It has been provided in the Rules of 1991 that the Constables may be punished with ‘punishment drill’. Sub-rule (2) of Rule 4 of the Rules of 1991 reads as below:

- (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 .*

20. During the course of arguments, Ld. Counsel for the petitioner confined his prayer only to the extent that some ‘other minor penalty’, as provided in the Rules of 1991 may be awarded to the petitioner, in as much as censure entry entails serious civil consequences, for which petitioner shall not be able to cope with, and for bargaining such a plea, he is ready to forego and relinquish his claim over the full salary (minus subsistence allowance) of suspension period. He has been granted only subsistence allowance during the period of suspension, and he feels contented with the same. He does not press Relief No. (ii) and will feel satisfied if the censure entry is substituted by any ‘other minor penalty’ such as ‘punishment drill’. Ld. A.P.O. opposed such argument of Ld. Counsel for the petitioner and submitted that the procedure, as prescribed in the Rules of 1991, culminates only into major or minor penalty. 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.

21. 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 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 case, since the petitioner is ready to relinquish his claim over full salary (minus subsistence allowance) of suspension period *w.e.f.* 16.04.2016 to 27.08.2016, therefore, it appears to be a fit case for converting ‘censure entry’ with ‘punishment drill for 15 days’ along with waiver of his claim over his salary (minus subsistence allowance) of more than four months (four months eleven days) .
23. 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.
24. 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."

25. According to Ld. Counsel for the petitioner, instant case cannot be termed as corruption case in as much as, no departmental witness has levelled charge of bribe against him. But, Ld. Counsel for the petitioner submitted that he is not going to press his claim on merits. He is foregoing more than four months' salary minus the subsistence allowance, which has already been given to him, and is 'bargaining the plea' for 'other minor punishment', which plea, in the given facts of the case, should be accepted.

26. Under sub-rule (1) (b) (iii) of Rule 4 of the Rules of 1991, Constables may also be punished with 'punishment of drill not exceeding 15 days'. 'Punishment drill' 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, 'punishment drill' does not. Considering the facts of this claim petition, this Tribunal finds that rigour of censure entry should be mitigated, in the peculiar facts of the case, if the petitioner is awarded with 'other Minor Penalty', *viz*, 'punishment drill', instead of 'censure entry'. The petitioner has 'bargained the plea' for 'other minor penalty' while relinquishing his claim over more than four months' salary(minus subsistence allowance) therefore, the rigours of his 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 'punishment drill for 15 days'.

27. Order accordingly.
28. The claim petition thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 01, 2019
DEHRADUN

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