

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

CLAIM PETITION NO. 32/SB/2019

Vinod Kumar s/o Sri Sukhbir Singh, aged about 35 years, Sub Inspector, Uttarakhand Police, presently posted at Thana Raiwala, District Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Inspector General of Police, Kumaun Region, Nainital.
3. Senior Superintendent of Police, Udham Singh Nagar.

.....Respondents.

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

JUDGMENT

DATED: AUGUST 19 , 2019

Justice U.C.Dhyani(Oral)

By means of present claim petition, petitioner seeks the following reliefs:

“(i) To quash the impugned order 14.06.2018 (Annexure: A 1) by which censure entry has been awarded by the respondent no.3 in the service record of the petitioner as well as appellate order dated 26.11.2018 (Annexure: A2) by which appeal of the petitioner has also been rejected by the respondent no.2 along with its effect and operation also.

(ii) Any other order, relief, which the Hon’ble Tribunal may deem fit and proper, in the circumstances of the case.

(iii) To award the cost of the petition to the petitioner. ”

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

In the year 2017, when the petitioner was posted at P.S. Kichcha, District Udham Singh Nagar, a complaint was filed by one Sri Vinod Kumar, s/o Sri Victor against the petitioner on 26.12.2017 (Copy:

Annexure- A3). In the complaint, which was addressed to Director General of Police, following facts were stated:

Complainant/applicant Vinod Kumar s/o Sri Victor, r/o Tehsil Kichcha, District Udham Singh Nagar was married to one Sangeeta d/o Sri Nirmal Pal on 07.02.2002. One son and one daughter were begotten by the couple out of the said marriage. Complainant's wife was a Teacher in a primary school. She developed illicit relations with one Rajendra Kumar Verma, r/o Aawas Vikas Colony, Kichcha. The relations between the husband wife got strained. The Wife of the complainant started making false complaint against the applicant/husband to the Police. The petitioner Vinod Kumar, who was posted as Sub Inspector in Kotwali Kichcha, came in contact with the wife of the applicant. S.I. started calling the applicant Vinod Kumar time and again in the P.S. concerned. The applicant was being harassed by the Police. Vinod Kumar's son Anugrah disclosed to his father (applicant) on 21.09.2017 that conversation takes place between Vinod Kumar's wife and S.I. Vinod Kumar. The son of the applicant also disclosed him that S.I. Vinod Kumar and Ms. Sangeeta also developed illicit relations with each other. When the son of the applicant Vinod Kumar intended to disclose the fact to his father, then the S.I. Vinod Kumar threatened the son of the applicant with dire consequences. The S.I. talks for hours together on the mobile numbers 8909152174, 9759295705 & 8630077377 of Ms. Sangeeta. S.I. has been transferred to Dehradun and still he continues to have illicit relations with the wife of the applicant. Such action of the S.I. has tarnished image of the Police. On 01.12.2017, wife of the applicant disappeared from her house. It was found that she had gone to meet S.I. Vinod Kumar at Dehradun.

A preliminary enquiry was conducted by Additional S.P., Udham Singh Nagar. CDR of the mobile numbers was obtained. DVD was also heard. The inquiry officer, during PE, found that the S.I. continued to talk to the wife of the complainant on telephone. Once the job of the S.I. was over, he ought not to have talked unnecessarily with the wife of the applicant. Report of the inquiry officer has been brought on record as Annexure: A 7 to the claim petition. In her report, the inquiry officer has recorded the statements of the complainant Vinod Kumar,

complainant's wife Smt. Sangeeta, S.I. Vinod Kumar, S.I. Nitin Bahuguna and Anugrah Messy s/o of Vinod Kumar. When Smt. Sangeeta was confronted with the question as to whether she or S.I./petitioner continued to talk to each other, even after the dispute was resolved, she replied in negative. She told that she talked to S.I. Vinod Kumar only during the period she was in dispute with her husband. The petitioner, in his statement, given during PE, denied having met wife of the complainant, at Dehradun. Son of the complainant disclosed to the inquiry officer, during PE that his mother leaves the house for one or two days without informing any member of the family. A C.D. was supplied by the son of the complainant to the inquiry officer. The inquiry officer concluded that the S.I./petitioner ought not to have remained in contact with a married woman, which shows misconduct on his part.

A show cause notice along with draft censure entry was given to the petitioner on 23.04.2018. The delinquent S.I. submitted his explanation on 15.05.2018. He denied the allegations levelled against him. SSP, Udham Singh Nagar obtained CDR of mobile numbers of the delinquent petitioner and wife of the complainant. SSP heard the DVD. Having considered the allegations and the explanation furnished by delinquent S.I., the SSP, Udham Singh Nagar, was not satisfied with the reply of the petitioner. He, therefore, awarded 'censure entry' in his character roll of 2018 under Rule 14 (2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991(for short, Rules of 1991). The sum and substance of such censure entry was that, the S.I. should have remained in contact with the married woman only during the pendency of the dispute, but not after that. Even after the dispute was over, at the level of S.I., he continued to remain in touch with the married woman, which tarnished image of Police in public. The order dated 14.06.2018, passed by SSP, which is also one of the orders impugned, has been brought on record as Annexure: A 1.

Aggrieved with the orders of the disciplinary authority, petitioner preferred departmental appeal before the appellate authority, who affirmed the order of the disciplinary authority and dismissed the appeal *vide* order dated 26.11.2018 (Copy: Annexure- A 2). Hence, present claim petition.

3. The appellate authority in its order dated 26.11.2018 has concluded that the very fact that the appellant (petitioner herein) continued to have interaction with the wife of the complainant, shows misconduct on his part. It was unbecoming to the conduct of a Police officer to have remained in touch with a married woman, even after the matter was over. Such action of the delinquent has tarnished image of the Police. It was also inferred that there is no procedural error in the order impugned.
4. What is misconduct? The same finds mention in Rule Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 , 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.

5. Discipline is the foundation of any orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public is safeguard.

6. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and in all times, conduct himself in accordance with specific or implied order of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.
7. The term misconduct has not been defined in any of the conduct rules or any other enactment. The dictionary meaning of the word 'misconduct' is nothing but bad management, malfeasance or culpable neglect of an official in regard to his office. Shortly it can be said that misconduct is nothing but a violation of definite law, a forbidden act.
8. The term 'misbehaviour' has also nowhere been defined in Civil Services Rules. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.
9. The word 'misconduct' covers any conduct which in any way renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term 'misconduct' usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty cannot be excused
10. The Conduct Rules, therefore, stipulates that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behavior and conduct which may be in force.
11. The petitioner is a Sub Inspector. Dispute came to him in due discharge of his official duty. What occasion, then, was for the delinquent S.I. to continue to have interaction, even on telephone, unnecessarily, when the matter was over? The married woman was at the receiving hand. Even if she was interested in having interaction with the petitioner, he should have discouraged such attitude. Even if the married woman was interested in talking to the S.I., he should not

have encouraged such move of that married woman. The petitioner had no personal friendship with that married woman, before he came in contact with her, in a dispute between her and her husband. The petitioner has also not come to the disciplinary authority and appellate authority with clean hands. He denied having interacted with that married woman, whereas the facts – voice recording, CDR & DVD revealed that he continued to have interaction on telephone with that married woman. This Tribunal is conscious of the fact that it is not deciding a criminal matter. It is not deciding as to whether the petitioner committed an 'offence' or not? 'Adultery' has already been abolished, as penal offence, from the statute book. The same, however, still entails civil consequences. This Tribunal is also conscious of the fact that it is not deciding a matrimonial dispute. In other words, this Tribunal is neither deciding a matrimonial dispute, nor is seized of a criminal trial for adjudging whether the petitioner has committed any offence or not? This Tribunal is only into service jurisprudence. Whenever any Government servant, much less a Police officer behaves in a manner, not recognized and approved in society, it is misconduct. Unbecoming behavior of a Government servant is a misconduct. The selfsame act may not be an offence, but, still it may be a misconduct. 'Offence' and 'misconduct' operate in different realms. Conduct does not necessarily mean an ideal conduct. Behaviour and conduct, under the Conduct Rules, are accepted forms of behavior and conduct by society and expected from a Government servant impliedly. They may not be specific, but even if there is implied defiance of settled norms of behavior and conduct, it is misconduct. There may not be evidence of committing adulterous act by the petitioner, for nobody has witnessed such an incident. There cannot be any witness to such an incident either, unless the married woman herself makes a complaint against the adulterer, which has not been done in the instant case. The disciplinary authority, as also the appellate authority has not found the petitioner guilty of committing adulterous act. They have only found that the petitioner talked to the married woman and interacted with

her unnecessarily even after the matter was over, and such act of the petitioner has tarnished the image of the Police in public. What interest the petitioner had in the married woman when the dispute ended and the petitioner was not seized with the matter any more. Caesars wife must be above suspicion. The facts, as reflected in the instant case, revealed that the caesars wife was not above suspicion.

12. Some documents have been filed on behalf of petitioner in R.A.. Annexure: A 9 is copy of statement given by the son of the complainant, which has been addressed to Director General, School Education, Dehradun. *Vide* such application dated 02.01.2019, the son of the applicant has stated that the statement given by him in the SSP Office, was wrong. He has never seen his mother in the company of any man. Indirectly, he is denying the relationship between his mother and S.I. Petitioner. It may be noted here that a matter under Section 13 of Hindu Marriage Act is pending between mother and father of such child witness. The orders impugned were passed on 14.06.2018 and 26.11.2018. Annexure: A 9 was given by son of the complainant to Director General, School Education on 02.01.2019. What is relevance of such piece of document which appears to be an afterthought, but this Tribunal will not say anything on the validity of such an application, for divorce suit and other parallel proceedings may be pending between estranged husband and wife and this Tribunal has no business to give it's opinion on those issues which may be *sub-judice*. Every Court or Tribunal has different jurisdiction and a Tribunal or Court should not unnecessarily enter into jurisdiction of other judicial forum. Moreover, the disciplinary authority as well as the appellate authority has not drawn inference only on account of the statement of Anugrah s/o Vinod Kumar.

13. 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.

14. 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.”

15. 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.*

16. 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.”

17. 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 petitioner 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.

18. 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.

19. 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.

20. 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.”

21. '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.

22. 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.
23. 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.
24. The sweep and ambit of misconduct is very wide. Anything, which is unbecoming of behavior and conduct of a Government servant, is misconduct in view of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002. To help somebody, as a Government servant, is desirable, but when that help is directed for personal gains, tangible or intangible, the same may trench into the realm of misconduct.
25. There is no evidence, in the instant case, either before the disciplinary authority or the appellate authority to show that the complaint filed by husband of the woman was false. Why husband of a

woman will file a false complaint against a Police officer unnecessarily? The husband had no grudge against him. At least, the same is not reflected from the record. If the husband was, and is not in good terms with his wife, the same does not mean that he will file a false complaint against the Police officer. Normally, the same would not happen. At least a reasonable prudent person would only think that nobody will file a false complaint against a Police officer, unless he has really done something, which is objectionable. This Tribunal, while observing the same, does not mean that the petitioner has committed some 'offence'. Ingredients of some offence are not made out against the petitioner. Also, the same is beyond the domain of this Tribunal.

26. A Government Servant's talking unnecessarily to a woman, which is evident from CDR of mobile numbers, CD and DVD, even if she likes it, appears to be a misconduct, especially when the husband of that woman has objected to the same and when the woman is neither petitioner's personal friend nor an old acquaintance. She came into contact with the petitioner only because she had matrimonial dispute with her husband. Petitioner came into her contact only professionally, and he should not have given any occasion to anybody to arouse suspicion on his behavior and conduct by maintaining his personal relations, after he was ceased with the matter. The arguments that CDR, DVD and CD were not sent to Forensic Science Laboratory, holds no ground. These were not criminal proceedings. The DVD, CD and CDR were only relied upon during the course of departmental inquiry, and where is the evidence to show that the delinquent SI made such request to the disciplinary authority (to send the same to FSL) ?
27. When we talk of 'spoken integrity' of any Government servant, normally, there is no evidence for or against the same. It is the overall reputation of a Government servant, which matters. Reputation may be spoiled after a solitary bad incident, but it takes years for a Government servant to build his reputation.

28. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety. The claim petition is devoid of merits. The same, therefore, fails and is dismissed. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 19, 2019
DEHRADUN

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