

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

**CLAIM PETITION NO.41/SB/2019**

Praveen Kumar, Senior Sub Inspector, Civil Police, Presently posted at Kotwali Rudra Prayag, District Rudra Prayag, Uttarakhand.

.....Petitioner

**VS.**

1. State of Uttarakhand through Principal Secretary, Home, Uttarakhand Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Range, Uttarakhand.
3. Senior Superintendent of Police, District Haridwar.

.....Respondents.

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

**JUDGMENT**

**DATED: AUGUST 21, 2019**

**Per: Justice U.C.Dhyani**

By means of present claim petition, petitioner seeks following principal reliefs, among others:

“(a) This Hon’ble Tribunal may be pleased to quash the impugned orders No. D-397/2017/16 dated 21.03.2018 (Annexure No. A-1) by which censure entry has been made in the service record of the petitioner.

And

(b) To quash the order No. C.O.G.-C.A.-Appeal-08 (Haridwar)/17 dated 28.07.2018 (Annexure No. A-2) by which the appeal made by the petitioner has been rejected.

And

(c) To direct the respondent to grant sanction of 50% salary which has been illegally confiscated/ denied for the period w.e.f. 01.10.2017 to 19.10.2017 during which petitioner was put illegally under suspension but after 10 days the suspension the same order was revoked.”

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

On 30.09.2017, when the petitioner was posted as Senior Sub Inspector at P.S. Kotwali, Roorkee, District Haridwar, an information regarding cow slaughtering at Village Belada near Roorkee, was received by Inspector In-Charge, Kotwali, Roorkee from LIU Constable, Devendra Rod, at about 8:45 AM. The petitioner was instructed, on phone, by Inspector In-Charge to look into the incident, when he was taking a round to see Police arrangements in the market area of Roorkee city, where a procession of *Ram Navami* was to be organized on 30.09.2017 itself. Petitioner along with Police force reached Village Belada. On reaching such village, petitioner informed Inspector In-Charge, on telephone, that the information of cow slaughtering was fake. After 45 minutes, petitioner informed Inspector In-Charge on telephone that 30 Kg. of beef was recovered from the house of one Naeem. An FIR was lodged against the said accused. A sum of Rs.37500/- was recovered from the possession of the accused. Seizure memo was got written by the petitioner through a Sub Inspector. The facts that a sum of Rs.37500/- was recovered from the possession of the accused and seizure memo was written, were not disclosed to the Inspector In-Charge.

A show cause notice under Rule 14(2) of the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (For short, Rules of 1991), along with draft censure entry was issued to the petitioner on 29.01.2018. 30 days' time was given to the delinquent Sr. Sub Inspector to furnish his reply. On request, 30 days' further time was granted. Petitioner denied the allegations levelled against him. Disciplinary authority was not satisfied with the explanation of the petitioner. 'Censure entry' was, therefore, directed to be recorded in the ACR of the petitioner for the year 2018. This was done *vide* order dated 21.03.2018 (Annexure: A1 ).

Aggrieved with the same, petitioner preferred a departmental appeal before the appellate authority. His departmental appeal was dismissed *vide* order dated 28.07.2018 (Annexure: A 2). Faced with no

other alternative, petitioner was compelled to file present claim petition.

Besides the above, petitioner's services were also suspended from 01.10.2017 to 10.10.2017 *vide* order dated 05.04.2018 (Annexure: A 3), which is also under challenge in present claim petition. Petitioner was denied salary for the suspension period, except the subsistence allowance, which he had already received.

3. W.S./C.A. has been filed on behalf of respondents, justifying departmental action. R.A. thereto has been filed by the petitioner.

4. The insinuations against the petitioner, which constitute the backbone of the case, are as follows:

In the year 2017, when he was posted as Senior Sub Inspector at P.S. Kotwali, Roorkee, District Haridwar, an information regarding cow slaughtering at Village Belada near Roorkee, was received by Inspector In-Charge, Kotwali, Roorkee on 30.09.2017. On receiving such information, the Inspector In-Charge directed the petitioner /S.S.I. to look into the matter. Petitioner along with Police force reached Village Belada, whereupon Inspector In-Charge was informed, on telephone, that the information of cow slaughtering was wrong. After 45 minutes, petitioner again informed Inspector In-Charge, on telephone, that 30 Kg. of beef was recovered from the house of one Naeem, against which an FIR has been lodged. Seizure memo was got written by a Sub Inspector to show that a sum of Rs.37500/- was recovered from the possession of the accused. Inspector In-Charge was not informed of the same, which shows that the petitioner had inclination to keep that money with him. The money was got recovered by S.I. Kuldeep Kandpal. Not only that, the petitioner reached the place of incident late. The said action of the petitioner showed laxity, carelessness and indiscipline on his part. Such an action of petitioner was put to censure.

5. Documents have been filed to show that an FIR was lodged against accused Naeem, Iliyas and Bisarat under the Uttarakhand Prevention of Cow Slaughter Act, 2007, on 30.09.2017. 30 kg beef was allegedly recovered from the possession of accused persons. A sum of

Rs.37500/-, which was recovered from the personal search of accused Naeem, were handed over to Naseem s/o Yamin and Mohd. Rizwan (Copy of Affidavit: Annexure A6). Naseem has also filed an affidavit (Annexure: A 7) to show that the aforesaid sum of Rs.37500/- was handed over to him and his brother-in-law Mohd. Rizwan, by Police, on 30.09.2017. Receipt of such money was obtained from Naseem and Rizwan, and has been brought on record as Annexure: A 7 colly. Extract of G.D. entry (Annexure: A 8) has been filed to show that Naeem was released on bail.

6. The same SSP, who is disciplinary authority in the instant case, had given appreciation letter (Annexure: A 14), to the petitioner for successfully conducting *Kanwar Mela, 2017*. His predecessor in office, had also given appreciation letter to the petitioner for successfully performing the role of Sector Officer in *Panchayat Elections, 2015* (Annexure: A 14 colly). In the year 2015, SSP, Haridwar had given yet another appreciation letter to the petitioner for successfully performing duties in *Kanwar Mela, 2015*, (Annexure: A 14 colly). In the year 2011 also, petitioner was given appreciation letter by the then SSP, Haridwar for successfully performing his duties in *Kanwar Mela, 2011*. An attempt has, therefore, been made to show that previous conduct of the petitioner was commendable.
7. In the instant case, preliminary enquiry (PE) was conducted by Assistant Superintendent of Police/ Circle Officer Sadar, Haridwar. PE is not used as part of inquiry in the case of minor penalties. It is used by disciplinary authority only to satisfy himself or herself as to whether he or she should proceed against the delinquent employee with departmental action or not. Let this Tribunal, therefore, examine, as to whether the disciplinary authority was justified in proceeding with departmental action against the delinquent SI or not?
8. Inquiry officer, during PE, has recorded the statements of Inspector In-Charge, Kotwali, Roorkee, petitioner, S.I. Kuldeep Kandpal (who accompanied the petitioner to the scene of incident), S.I. Vinod

Singh Rawat, accused Naseem & Mohd. Rizwan. The inquiry officer, during PE, did not find involvement of the petitioner with the accused of cow slaughtering. No substantial facts came to fore, before her, during PE. She has noted this fact at the last page of her inquiry report, which was addressed to SSP, Haridwar on 11.01.2018 (Annexure: A 15). The inferences, thus drawn by the inquiry officer, are as follows;

- (i) S.I. Kuldeep Kandpal took personal search of accused Naeem. The facts, that a sum of Rs.37500/- and a mobile phone were recovered from the search of accused Naeem, were only in the knowledge of S.I. Kuldeep Kandpal and S.I. Praveen Kumar (petitioner). This fact was not brought to the knowledge of Inspector In-Charge.
- (ii) The search was conducted by a party, led by the petitioner, who was a senior Police officer, but he did not prepare *Fard* (recovery memo). He did not depict his return in G.D. either.
- (iii) The factum of recovery of Rs.37500/- and mobile phone was not shown in the recovery memo. The same was kept by S.I. Kuldeep Kandpal. Such fact was in the knowledge of the petitioner. Legally, such facts of recovery ought to have been recorded in the recovery memo and should also have been mentioned in the G.D., even though the money along with mobile phone were restored to Naseem, who is real brother of accused Naeem, in the same evening, but this fact was not disclosed to Inspector In-Charge, Roorkee.

9. The Court has been apprised by Ld. A.P.O. that S.I. Kuldeep Kandpal has been awarded with censure entry. It is true that the factum of recovery of Rs.37500/- and mobile phone has not been recorded in the recovery memo. Legally, such fact ought to have been depicted, even if it was from personal search of any accused. But the recovery memo has been prepared and signed by S.I. Kuldeep Kandpal of P.S.Kotwali, Roorkee, District Haridwar, and not the present petitioner. The signatures of some other Police Personnel are also there. The petitioner has not prepared the recovery memo. His name also does not find mention in the Police party, who conducted the search. The other members of Police party were- S.I. Vinod Singh, Constable Yogendra Bhandari, Constable Sachin and Constable-Driver Neeraj

Rana. If these are the facts, then what wrong is committed by the petitioner?

10. Petitioner has already been exonerated, during PE, of his complicity with the accused persons of the crime in question. The recovery memo was prepared and signed by S.I. Kuldeep Kandpal, who has already been awarded censure entry. This Court is in agreement with the submission of Ld. A.P.O. that the fact of recovery of Rs.37500/- and mobile phone, from personal search of accused, ought to have been recorded in the recovery memo, which has not been done in the instant case. But the question is- how the petitioner is to be blamed for the same? Only because present petitioner is said to have knowledge of the fact that a sum of Rs.37500/- and mobile phone was recovered from the accused? What is the basis of arriving at such conclusion? PE only suggested that the same was based on discrete inquiry, which should not be the basis of holding a delinquent guilty, when there is nothing concrete against him, which fact has been affirmed by the inquiry officer, during PE. If, the fact that a sum of Rs.37500/- and mobile phone was recovered from the personal search of the accused, was not brought to the notice of Inspector In-Charge, the question is, who owed a duty to inform such fact to such Inspector In-Charge? Petitioner has been held guilty only on account of the fact that he had knowledge of certain things, which S.I. Kuldeep Kandpal did not do. Such knowledge, in the given facts of the case, should not fasten the petitioner with departmental action, in the considered opinion of this Tribunal. Petitioner cannot be penalized for in-action or omission of his colleague, who has already been awarded censure entry.

11. Now, let us have a relook at the contents of the censure entry awarded to the petitioner. The censure entry has been awarded to the petitioner on the insinuation that he took search of the accused, which he did not. A sum of Rs.37500/- were recovered from the possession of the accused, which is a fact. Recovery of money from personal search

was not mentioned in the recovery memo, which is a fact, but how can petitioner be held responsible for the same, when he did not prepare such a recovery memo. He is not a signatory to such recovery memo either. The recovery memo was not prepared under his supervision. The next insinuation is that the petitioner did not inform Inspector In-Charge, Roorkee, regarding recovery of money from personal search of the accused. Who was to give such information to the Inspector In-Charge? The reply would be, the S.I., who conducted the search, and not the one who was not even signatory to such search memo. How can an inference be drawn that the petitioner had intention to keep the money recovered from personal search of the accused, whereas, in fact, that money was not with the petitioner, but was lying with some other S.I. ?

12. Inference can also be drawn that there might be delay on the part of the petitioner in arriving at the place of the incident late, but it was so caused, because he was busy in supervising Police arrangements in the market area of Roorkee city where a procession of *Ram Navami* was to be organized on 30.09.2017. Another insinuation that seizure memo was got written by petitioner through a S.I., was without basis. When another S.I., who was colleague of the petitioner, recovered money from the possession of the accused and wrote seizure memo, the duty was cast upon the colleague of the petitioner and not on the petitioner to have disclosed the facts to the Inspector In-Charge.

13. 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 awarded punishment to the petitioner on the result of preliminary enquiry. PE is also based upon some discrete inquiry, but even if the contents of PE are taken to be true, there appears to be nothing against the petitioner to have given occasion to the disciplinary authority to proceed against him with departmental action.

14. 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.”

15. '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.

16. This Tribunal, therefore, finds it to be a case of judicial review. An order can be set aside, if it is based on extraneous grounds, or when there is no ground, at all, for passing it or when grounds are such that no one can reasonably arrive at the opinion. Although the Court or Tribunal does not sit as a Court of appeal and it merely reviews the manner in which the decision was made, but, in the instant case, the whole citadel on which present edifice has been built, has collapsed, like pack of cards.
17. Irresistible conclusion would, therefore, be that the claim petition must succeed, and should be allowed. It is, accordingly, allowed. Impugned orders call for interference and are set aside. No order as to costs .
18. It is made clear that this Tribunal has not gone into other legal aspects of the claim petition.

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: AUGUST 21, 2019*  
*DEHRADUN*

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