

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

**CLAIM PETITION NO. 80/SB/2019**

Raj Kumar s/o Shri Bhopal Singh, aged about 56 years posted as head Constable  
01 CP Police Kotwali, Manglore, District Haridwar.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Director General of Police, Garhwal Region Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Haridwar..

.....Respondents.

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

**JUDGMENT**

**DATED: AUGUST 21, 2019**

**Justice U.C.Dhyani(Oral)**

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

“(i) To quash the impugned order 15.02.2019 (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 14.06.2019 (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) Suspension order dated 24.10.2018 (Annexure: A3) may kindly be allowed to quash and set aside.

(iii) Order dated 23.03.2019, Annexure: A 4 may kindly be quashed and set aside and allow to pay full salary for the suspension period. ”

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

Petitioner was posted as *Head Moherrir* at P.S. Kotwali Manglore, District Haridwar, in the year 2018. On the direction of Police Headquarters (PHQ), Dehradun, a meeting of all the *Head Moherrirs* of District Haridwar was convened by S.P. (Crime) at Haridwar, on 24.10.2018 at 8:00 AM. Information was given to all the *Head Moherrirs* through proper channel. Petitioner reached at the committee hall at 11:30 AM. When S.P. (Crime) inquired from him, as to why has he come late, the delinquent petitioner misbehaved with the officer concerned and spoke loudly in presence of senior Police officers, threw register in the committee room and left the venue without prior permission of those Police officers.

Sri Manjunath T.C., IPS, S.P. (Crime), District Haridwar wrote a complaint (Copy: Annexure R 1 to the C.A.), to S.S.P., Haridwar, regarding misconduct and misbehaviour of the petitioner. Preliminary enquiry was conducted by Circle Officer, Sadar, Haridwar. C.O., Sadar submitted his report on 16.11.2018 (Copy: Annexure R 1 *colly*, to the C.A.). In PE, C.O. City recorded the statement of Head Constable Raj Kumar (present delinquent), took note of the conversation with S.P.(Crime) and found it to be a case of indiscipline and misconduct. S.S.P., Haridwar, after satisfying himself that the departmental action should be initiated against the delinquent petitioner, sent a show cause notice to him along with draft censure entry under Rule 14 (2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991), on 17.01.2019, which was served upon the petitioner on 23.01.2019. Delinquent employee submitted his reply on 24.01.2019.

In his reply (Annexure: A 6 to the claim petition), petitioner tendered apology for coming to the venue of meeting late. He pleaded that such incident will not be repeated in future. He, however, denied misbehaving with S.P.(Crime).

The disciplinary authority was not satisfied with the explanation furnished by the petitioner. 'Censure entry' was directed to

be awarded in his Annual Confidential Report (ACR) of the year 2019, *vide* order dated 15.02.2019 (Annexure: A 1).

Aggrieved with the same, a departmental appeal was preferred by the petitioner to the appellate authority, who, by an elaborate order dated 14.06.2019 (Copy: Annexure- A 2), dismissed the appeal.

Faced with no other alternative, petitioner has filed present claim petition.

3. The basis of the orders passed by the disciplinary authority, as affirmed by the appellate authority ( Annexure: R 1 R 2 colly), is the complaint written by S.P.(Crime), Haridwar to S.S.P., Haridwar, on 24.10.2018.
4. It will be apposite to reproduce the substance of such complaint sent by S.P.(Crime), Haridwar to S.S.P., Haridwar, herein below for convenience:

A meeting was convened on 23.10.2018 as per the directions of PHQ, Dehradun. It was decided that all the *Head Moherrirs* should be called at Police Office, Roshanabad, along with documents, on 24.10.2018 at 8:00 AM.

All the Station Officers, Addl. S.P. and Circle Officers were sent radiograms, Delta, C.C.R and the Police Officers were contacted to ensure prompt compliance. All the Police stations were informed through C.Q. and R.G.. S.P.(Crime) personally informed all the C.Os. on telephone and instructed that all the *Head Moherrirs* should reach Police office on 24.10.2018 at 8:00 AM.

On 24.10.2018, at 9:00 AM, S.P.(Crime) took update. He was informed that only a few *Head Moherrirs* have reached Police office. All the *Head Moherrirs* were informed to come to Police office through Delta & C.C.R..

At 10:30 AM, it was found that almost all the *Head Moherrirs* have arrived. However, some of the *Head Moherrirs* of some Police Stations were not present.

When the discussion was going on, Raj Kumar (petitioner), *Head Moherrir* of P.S. Kotwali, Manglore, reached Police office around 11:30 AM in the midst of discussion. S.P.(Crime) inquired the reason from the delinquent employee as to why has he come late? The delinquent petitioner, replied very rudely that he has to change 3 to 4 buses and he cannot come to Police office so

early. Such a rude reply was given by the *Head Moherrir* in presence of all the officers and employees in the committee hall.

S.P.(Crime), thereafter told the petitioner that when the *Head Moherrirs* of Gang Nahar, Luxar, Buggawala, have reached Police office on time, why has he not reached here (on time)? The petitioner replied that he came to know only at 4:00 AM that day. When S.P.(Crime) made a reference of R.G., C.Q. and message sent by Delta, the petitioner replied rudely and arrogantly that he can come only at this time and cannot come earlier than that. He has no concern with such drives (by the Police), you can do whatever you want to do. He does not want to work and he does not want to remain posted as such. He will come only at this hour. Rudely and loudly, he threw the *Head Moherrir's* register and left the committee hall without seeking permission, which is an example of utter insubordination.

S.P.(Crime), has thereafter apprised S.S.P., Haridwar, as to what steps were taken to intimate the *Head Moherrirs* through their superiors, to attend the meeting. Thereafter, the S.P.(Crime) has apprised S.S.P. as to what misconduct has been committed by the petitioner.

5. According to S.P.(Crime), the delinquent employee has no respect for the department, showed indiscipline and arrogance, which is unbecoming to the behaviour of a member of Police Force. The documents were also filed by S.P. in support of his letter/ complaint, which was addressed to S.S.P., Haridwar.
6. Whereas S.S.P., Haridwar, in his C.A., has justified departmental action, petitioner has denied the same. Petitioner has, however, during the course of PE, tendered unconditional apology for coming to the venue of meeting late. He has, however, denied misbehaving with anybody.
7. This Tribunal has reproduced the substance of the letter written by S.P.(Crime), Haridwar to S.S.P., Haridwar, herein above, which, on the face of it, shows gravity of the incident. In normal circumstances, had it be trivial matter, the S.P. would have let off the delinquent employee with a warning, but in the instant case, the delinquent *Head Moherrir*, not only misbehaved with the S.P., but has also subjected him to indignation in presence of his colleagues and other senior Police officers. Nobody can justify such misbehaviour,

much less his misconduct. S.S.P. and S.P. are the senior most Police officers in a district. If such behavior is meted out to the Police Chief of the district, one can anticipate what type of behavior will the delinquent give to ordinary people. S.P.(Crime) had no grudge against the delinquent employee. Delinquent was his subordinate. Undisputedly, he came late when the meeting was going on. The petitioner should have politely tendered apology to say that he has come late because he had to change 3 to 4 buses to come to Police office. He should not have used such language, which is attributed to him in the complaint sent by S.P.(Crime). To err is human. Nobody is infallible. No man has ever born on this earth who has not committed mistake. It is an attribute of great to say sorry. It is arrogant only who refuses. One can take care of the fact that the petitioner is not only a Government servant, he is also a member of disciplined force. The members of Police force are to be extra courteous and extra disciplined, which was lacking on the part of the petitioner, in the instant case. The gravity of the incident lies that the S.P.(Crime) was compelled to write a letter to S.S.P., Haridwar.

8. Ld. Counsel for the petitioner submitted that only the statement of the petitioner has been recorded, during PE ,and there is no other witness in support of such incident. It is settled law that PE is not used during disciplinary proceedings. It is only meant for the satisfaction of the disciplinary authority, whether to initiate departmental action against delinquent or not. It is only a precursor to initiate departmental action to disciplinary authority.
9. Had the statements of all the *Head Moherrirs* and Police officers been recorded by the inquiry officer, during PE, the petitioner would have advanced counter argument that the statement of such Police witnesses has no value in as much as they are subordinates and 'yes men' of Police Chief in the district. Anyway, the written complaint sent by S.P.(Crime) to S.S.P., Haridwar, itself speaks in volumes against the

conduct and behavior of the petitioner *Res ipsa loquitur* (facts speak for themselves) in the instant case.

10. Before dealing with a few legal aspects of such departmental inquiry, the Tribunal is *prima facie*, of the opinion that 'misconduct' has been committed by the petitioner.

11. 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.

12. 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.

13. 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.

14. 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.

15. The term 'misbehaviour' has also nowhere been defined in Civil Services Rules. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.
16. 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
17. The Conduct Rules, therefore, stipulate 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.
18. 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.
19. 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.”

20. 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.*

21. 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.”

22. 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.

23. 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.
24. 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.

25. 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.”

26. ‘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.

27. 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.

28. 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.
29. 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 21, 2019*  
*DEHRADUN*

