

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

CLAIM PETITION NO. 83/SB/2019

Nitin Chaudhary aged about, 29 years s/o Sri Mem Singh presently working and posted as Constable No. 211, Armed Police, Police Line, Uttarkashi, Uttarakhand.

.....Petitioner

vs.

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

....Respondents.

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

JUDGMENT

DATED: SEPTEMBER 04, 2019

Justice U.C.Dhyani(Oral)

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

“(i) To quash the impugned punishment order dated 01.02.2018 (Annexure: A 1) passed by the SSP, Dehradun and impugned appellate order dated 26.02.2019 (Annexure: A2) passed by the respondent no.3 with its effect and operation and with all consequential benefits.

(ii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.

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

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

In the year 2015, the petitioner-Constable was posted at Police Lines, Dehradun. It was noticed by the SSP, Dehradun that the petitioner was kept on 81 days' rest during the period, from 01.07.2016 to

30.06.2017. On perusal of call details of petitioner's mobile phone number 8532886567, of one year, it was noticed that during said rest/reserved period, most of the time, the petitioner, instead of living at Police Lines, was found in Roorkee, Haridwar or Saharanpur. Preliminary enquiry was got conducted by the disciplinary authority by SSP, Dehradun through A.S.P./ C.O. Rishikesh. Show cause notice 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), was served upon the petitioner on 23.11.2017. He submitted his reply, but the disciplinary authority was not satisfied with such reply of the petitioner. The disciplinary authority found it to be a case of misconduct and *vide* order dated 01.02.2018 (Annexure: A 1) he was awarded censure entry in his Annual Character Roll for the year 2018.

Aggrieved with the same, the petitioner preferred departmental appeal. The appellate authority, by elaborate order, dismissed the departmental appeal *vide* order dated 26.02.2019 (Annexure: A 2).

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

3. C.A./W.S. has been filed defending departmental action. It has been submitted by Ld. A.P.O. that the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and 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.
4. Assistant Superintendent of Police, in his preliminary investigation dated 15.11.2017 (Annexure: A 4), has recorded the statements of Constable Jal Police Deepak Chaudhary, delinquent employee Nitil Chaudhary, Sri S.P.Baloni, R.I. Police Lines, S.C.P. Yogendra Singh, Constable Deepak Sanwal and Constable AP Gaurav Kumar and concluded as follows;

- Constable Deepak Chaudhary, brother of delinquent employee, was posted at *Ganana Karyalaya*. Constable Deepak Chaudhary gave special relaxation to his brother Nitin Chaudhary (petitioner) by posting him in *Sugam* (easy) duties.
- Petitioner was given 81 days' rest during the period from 01.07.2016 to 30.06.2017. Most of the time he was posted at *Hawalat Sadar*, Juvenile Court Gate and Ground Duty. After recording 1-2 duties in the register, he was again given rest.
- The petitioner was never posted on *Kaman* duty, Quarter Guard, Escort, V.I.P. Pilot, V.I.P. Guard or as Gunner duty. He was never given tough duties. From 02.04.2015 to 11.11.2015, petitioner was given regular duties. Petitioner's brother Deepak Chaudhary joined Police Lines after that. When petitioner's brother joined, petitioner was posted on reserved/rest and *Sugam* duties.
- Call details of one year of the petitioner were called for by Sri Manjunath T.C., Assistant Superintendent of Police. During the period of one year, petitioner's phone location was found either at Haridwar, Rorkee or Saharanpur. Although the petitioner was shown to be on *Gard* duty, but according to his mobile location, most of the time, he was found to be at Haridwar, Roorkee or Saharanpur, which shows indiscipline on the part of the petitioner. Petitioner has taken defence that his mobile phone, most of the time, remains with his children. He has taken another defence that Reserved Inspector, Lines and *Ganana Moherrir* have never marked him absent. In a nutshell, he has taken plea that his mobile number remains with his children/ family members and had he remained absent from his duty, Reserved Inspector, Lines and *Ganana Moherrir* (his brother) would have marked him absent.
- His brother Constable Jal Police Deepak Chaudhary, in his statement, has stated that his brother (petitioner) was regularly given duty during the period he remained *Ganana Moherrir*. Sri Surendra Prasad Baloni, Reserved Inspector, Lines, stated during the course of preliminary enquiry, that after receiving information regarding irregularities committed by Deepak Chaudhary, he was removed as *Ganana Moherrir* and was replaced by one Deepak

Sanwal. Constable Jal Police Deepak Chaudhary was posted at Police Lines, Dehradun from November, 2015 to October, 2017. Thus, R.I., Lines has supported departmental version, leaving no room for doubt that the *Ganana Moherrir* helped his real brother (petitioner), who was given lighter duties. If location of mobile phone of the petitioner was found outside Dehradun, the same is indicative of the fact that he also did not remain present in Police Lines. Nobody will give his mobile number to his family member and children for all the times. At least, reasonable and prudent person will draw the same inference.

5. 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.

6. 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.
7. 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.

8. 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.
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, 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.
11. 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.
12. 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.”

13. 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.*

14. 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.”

15. 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.

16. 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.

17. 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.
18. 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.”

19. ‘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.

20. 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.

21. 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 inferences drawn by the authorities below.

22. The genesis of present claim petition may be traced back to an anonymous complaint filed by the Police Personnel of Reserved Police Lines, Dehradun (Copy: Annexure- CA-R 1). In such complaint dated 06.10.2017, certain allegations of nepotism were levelled against the brother of the petitioner, who was posted as *Ganana Moherrir* (Counting Clerk) in Police Lines, Dehradun. *Ganana Moherrir* has responsibility to assign daily duties to the Police Personnel in the Police Lines. According to the complaint, Constable Deepak Chaudhary, *Ganana Moherrir* did not depute his brother Constable Nitin Chaudhary (petitioner) on any active duty. Duty roster register from 01.01.2017 to 31.07.2017 bears testimony to this fact. Constable Jal Police was posted as *Ganana Moherrir* in Police Lines, for the last two years, whereas, the normal posting in Reserved Police Lines is one year. Jal Police was never posted in Police Lines. An explanation was sought from Constable Nitin Chaudhary by C.O., Rishikesh, District Dehradun, who submitted report (Annexure: CA- R 2) to SSP, Dehradun on 25.02.2017. In his report, C.O., Rishikesh has mentioned that the petitioner remained on 77 days' rest from 01.07.2016 to 30.06.2017, but was never given hard duty. He was always posted on Ground Duty, Gate Duty, *Hawalat Sadar*, Juvenile Court etc. The petitioner was never posted on *Kaman* duty, Quarter Guard, Escort, V.I.P. Pilot, V.I.P. Guard or as Gunner duty. He was never given tough duties. Call details of delinquent's mobile phone were traced. Most of the time, the location of the mobile phone was at Haridwar, Roorkee or Saharanpur, and not at Police Lines, Dehradun. All these facts have been highlighted in the written statement and documents appended to the C.A. of Sri Arun Mohan Joshi, IPS, SSP, Dehradun. Ld. Counsel for the petitioner has placed certain Photostat copies of extracts of G.D., to show that the delinquent

was found at Dehradun. Firstly, these Photostat copies of G.D. do not relate to entire period of delinquent's duty at Reserved Police Lines, Dehradun and secondly, even if the delinquent was marked present at Police Lines, Dehradun, it was the handy work of his own real brother, who was posted as *Ganana Moherrir* in the Police Lines. Had the *Ganana Moherrir* been any person, other than real brother of petitioner, the Tribunal would have taken a different view and would have taken serious note of the extracts of the G.D., but in the instant case, since the *Ganana Moherrir* is real brother of the delinquent petitioner, therefore, presence of the petitioner at Police Lines should be accepted only with a pinch of salt on the basis of such G.D. entries (written at the instance of the brother of the petitioner). Further, call details also depict that mobile phone of the petitioner, most of the time, was found at Saharanpur, Roorkee or Haridwar and not in Police Lines, Dehradun. Police Regulations provide that no Police official shall leave the station without taking station leave. The petitioner did not do the same, before leaving Reserved Police Lines. If soft duties were given to the petitioner by his real brother, who was posted as Counting Clerk in Police Lines, the petitioner may not be blamed for the same, but his misconduct lies in the fact that instead of living in Police Lines, Dehradun, he remained out of station without obtaining leave and showing that he was doing duty in the Police Lines. Both the brothers were in league with each other and the beneficiary was none other than the petitioner. It may be noted here that this Tribunal is not sitting in appeal over the decisions taken by disciplinary authority, as affirmed by the appellate authority. This Tribunal is only exercising judicial review, while examining the legality of the orders impugned. The scope of interference in judicial review is limited to the extent of illegality, irrationality and procedural impropriety.

23. 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 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: SEPTEMBER 04,2019
DEHRADUN

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