

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

CLAIM PETITION NO. 89/SB/2019

Jitendra Kumar, aged about 36 years s/o Sri Jai Singh, presently posted and working as Constable No. 1654, Civil Police, at P.S. Mussoorie, Dehradun, Uttarakhand.

WITH

CLAIM PETITION NO. 90/SB/2019

Devendra Singh, aged about 39 years s/o Late Kashi Ram, presently posted and working as Constable No. 897, Civil Police, at P.S. Vasant Vihar, Dehradun, Uttarakhand.

.....Petitioners

VS.

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

.....Respondents.

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

JUDGMENT

DATED: SEPTEMBER 05, 2019

Justice U.C.Dhyani (Oral)

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, both the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience.

2. By means of the above noted claim petitions, petitioners seek the following reliefs:

- (i) To quash the impugned punishment order of censure entry bearing No. D-16/18 dated 04.04.2018 (Annexure No. A-1 in both the petitions) and impugned order No. D-413/2017 of dated 04.04.2018 ((Annexure No. A-2 in both the petitions) passed by the SSP,

Dehradun and impugned appellate order dated 07.09.2019 (Annexure No. A-3 in both the petitions) passed by the respondent no.2 with its effect and operation and with all consequential benefits.

- (ii) To issue an order or direction to respondents to pay the remaining salary and allowances of the suspension period from 15.01.2018 to 15.02.2018 to the petitioners.
- (iii) To issue any other order or direction which this Court deem fit and proper in the circumstances of the case, in favour of the petitioners.
- (iv) To award the cost of petitions.

3. Brief facts, giving rise to present claim petitions, are as follows:

Petitioners are Constables, who were posted on picket duty on 13.01.2018, within the jurisdiction of P.S. Kotwali Patel Nagar, District Dehradun. On 13.01.2018, they were deputed to do picket duty from 10:00 PM to 06:00 AM at Mandi Chowk. An accident took place at Mandi Chowk between 11:00 PM-11:30 PM. Two vehicles collided with each other. When the accident took place, the petitioners were posted on picket duty within 100 meters of the place of incident. An altercation also took place between the persons manning accidental vehicles. Accused and eye witnesses informed the petitioners about the same after such accident, but, instead of going to the place of incident, they directed such accused and eye witnesses to inform Police on 100. Had the petitioners- Constables gone to the place of incident, the incident, probably, might have been averted. Not going to the place of incident and asking the people to inform about the accident to Police on 100, is indicative of the fact that the Constables are careless.

The incident was enquired by an inquiry officer, who inferred, during preliminary enquiry, that there was carelessness on the part of the delinquent Constables.

Show cause notices along with draft censure entries under Rule 14(2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991), were served upon the claim petitioners, who, on receiving such notices, submitted their replies. In their replies, they questioned the departmental version by posing a counter

question - how an accused, who was allegedly committing a crime, could come to the Police Constables at a distance of 100-150 meters, to inform about the incident? The SSP, Dehradun was not satisfied with their explanations, as a consequence of which, they were awarded 'censure entry' in their Annual Character Roll for the year 2018, *vide* order dated 04.04.2018 (Annexure: A 1 in both the files).

Their carelessness was termed as 'misconduct', which carelessness was put to censure *vide* Annexure: A 1 in both the petitions.

Aggrieved with the same, the claim petitioners preferred departmental appeals. The appellate authority, by elaborate orders, dismissed their departmental appeals *vide* orders dated 07.09.2018 (Annexure: A 3 in both the files).

Faced with no other alternative, the claim petitioners have preferred the above noted claim petitions.

Petitioners' services were suspended *w.e.f.* 15.01.2018 to 15.02.2018 *vide* order dated 04.04.2018 (Annexure: A 2 in both the files). A direction was given that the petitioners will not get any salary for the period of suspension, except the subsistence allowance of the aforesaid period. Such orders are also under challenge in present claim petitions.

4. Annexure: A 4 in both the files is the report of inquiry officer, who, after conducting preliminary enquiry, submitted his report to SSP, Dehradun on 13.02.2018. During PE, the statements of delinquents and Sri Ritesh Shah, Inspector In-Charge, Kotwali Patel Nagar were recorded. An inference was drawn, during PE, that the petitioners were although deputed on picket duty, but they did not intervene the disputants, who caused the accident at a distance of 100 mt. from the place where petitioners were standing. When the eyewitness told the petitioners about the incident, they, instead of going to the spot, asked them to inform Police on 100. One person died in the incident. These circumstances are indicative of the facts that the petitioners were careless in discharging their duties.

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 petitioners by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority. Petitioners, on the other hand, assailed orders under challenge, with vehemence.

6. Learned A.P.O. submitted that 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)*, has 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.

7. Here the petitioners have 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.”

8. 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.*

9. Most relevant question, from the point of view of present petitioners, 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.”

10. 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 cases, 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.

11. The appointing authority, after informing the delinquents of the action proposed to be taken against them and of the imputations of acts or omission on which it is proposed to be taken and after giving them a reasonable opportunity of making such representation, as they wished to make against the proposal, passed the impugned orders (Annexure: A1 in both the files). Thereafter, the appellate authority, after considering the contents of appeals, affirmed the view taken by the disciplinary authority and dismissed the appeals *vide* orders Annexure: A2 in both the files. 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 delinquents. 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 petitioners.

12. 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 punishment(s) 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.

13. Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 are important in the context of present claim petitions. 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.

14. 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.”

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. If the penalty is disproportionate, the same can always be cured in judicial review.

16. This Tribunal does not find these cases to be the cases of judicial review, in holding that the delinquents are guilty of misconduct, 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 conclusions. This Tribunal is of the view that ‘due process of law’ has been followed while holding the delinquents guilty of misconduct. No legal infirmity has successfully been pointed in the same.

17. Any allegation against the delinquent Police officials, 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 delinquents. 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 cases are 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 petitioners guilty of misconduct.

18. 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.

19. 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 petitioners, in as much as censure entry entails serious civil consequences, for which petitioners shall not be able to cope with, and for bargaining such a plea, they are ready to forego and relinquish their claim over the full salary (minus subsistence allowance) of suspension period. They have been granted only subsistence allowance during the period of suspension, and they feel contented with the same. They do 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 petitioners 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.

20. 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.”

21. 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 cases, since the petitioners are ready to relinquish their claim over full salary (minus subsistence allowance) of suspension period *w.e.f.* 15.01.2018 to 15.02.2018, therefore, these cases appear to be fit cases for converting ‘censure entry’ with ‘punishment drill for 15 days’ along with waiver of their claim over their salary (minus subsistence allowance) of one month.

22. This Tribunal is unable to agree to such contention of Ld. A.P.O. also because the rule 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.

23. 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.”

24. Ld. Counsel for the petitioner underlined the fact that the incident in question cannot be attributed to the inaction of the petitioners and a criminal case relating to death of a person is probably pending before the court, and therefore, this Tribunal should refrain from commenting

upon the merits of a criminal case, which might be pending before another court. Ld. Counsel submitted that they are not going to press their claim on merits. They are foregoing one month's salary minus the subsistence allowance, which has already been given to them, and are 'bargaining the plea' for 'other minor punishment', which plea, in the given facts of the case, should be accepted.

25. 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 these claim petitions, this Tribunal finds that rigour of censure entry should be mitigated, in the peculiar facts of the cases, if the petitioners are awarded with 'other Minor Penalty', *viz*, 'punishment drill', instead of 'censure entry'. The petitioners have 'bargained the plea' for 'other minor penalty' while relinquishing their claim for one month's salary (minus subsistence allowance) therefore, the rigours of their 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'.

26. Order accordingly.

27. The claim petitions thus stand disposed of. No order as to costs.

28. Let a copy of this judgment be placed in the file of connected claim petition.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 05,2019
DEHRADUN

VM/KNP