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

**CLAIM PETITION NO. 109/SB/2019**

Sandeep Rawat s/o Shri Laxman Rawat aged about 33 years, presently posted as Court Moherrir (Constable), in the office of J.M.-1st , Joshimath under the Control of Prosecution Office, Gopeshwar.

…….Petitioner

**VS.**

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

……Respondents.

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

**JUDGMENT**

**DATED: OCTOBER 14, 2019**

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

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

> "To quash the impugned punishment order dated 17.12.2018 (Annexure No. A-1) passed by the Superintendent of Police, Chamoli (Respondent No.3) and impugned appellate order dated 01.05.2019 (Annexure No. A-2) with the effect and operation and with all consequential benefits."

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

On 30.05.2018, when the petitioner Constable was posted at P.S. Sri Badrinath, he along with his fellow Constables left his duty point and, on receiving information regarding illicit liquor and without informing his superiors, went to GRIFF Camp in plain clothes and had an altercation with the GRIFF personnel. Agitating employees of GRIFF assembled at Mana

trisection, as a consequence of which, law and order situation got deteriorated and the image of Police Department was tarnished. The Police Constable ought to have brought to the knowledge of his superiors that some persons were carrying illicit liquor. The delinquent Police Constable acted on his own, along with his fellow Constables, without bringing anything to the knowledge of his superiors.

A show cause notice (Copy: Annexure- A 4) 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. He filed his reply (Annexure: A 5) denying the charges levelled against him. The disciplinary authority was not satisfied with such reply of the petitioner and found it to be a case of carelessness and indiscipline on the part of the petitioner and *vide* order dated 17.12.2018 (Annexure: A 1), he was awarded censure entry in his Annual Character Roll for the year 2018.

Aggrieved with the same, petitioner preferred departmental appeal, which appeal was dismissed *vide* order dated 01.05.2019 (Annexure: A 3).

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

3. Ld. A.P.O., defending the action of the department, at the very outset, submitted 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. 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, 1991(for short, Rules of 1991) are valid and *intra vires.* Censure entry, therefore, can be awarded.

5. Here the petitioner Constable 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."

6. 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.*

7. 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."

8. 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.

9. 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: A1). 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.

10. 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.

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

12. 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 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."

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

14. The insinuation against the petitioner is that he left duty point and went to GRIFF Camp, in plain clothes, on receiving an information of import of illicit liquor, without informing his superiors. The petitioner, in his reply to show cause notice, submitted that he received information that some people were importing illicit liquor in GRIFF Camp. In the explanation offered by him, he submitted that he tried to inform his superiors, but could not contact for want of connectivity. Had he waited for the orders of superior officers, it was possible that the persons carrying illicit liquor might have vanished by the time the petitioner gave proper information to his superiors. Had he not gone to the place of incident, even then he would have been taken to task for not apprehending the suspects on time. He would have been castigating that he would have informed his superiors subsequently, he ought to have apprehended the culprits first. So far as his being in the plain clothes is concerned, an explanation has been forwarded on behalf of delinquent Constable that he was putting in warm clothes outside and, therefore, his inner clothes could not be seen. Moreover, he went to GRIFF Camp after (his) duty hours. The suspected person was not a privileged person so as not to interrogate him. The altercation took place because the person carrying illicit liquor was a GRIFF employee. Reference of the statement of Sri Sunil Topo, Junior Engineer (Civil) GRIFF, Mana can be had in this regard. Sri Topo has stated, during preliminary enquiry, that the GRIFF persons have no complaint against the Police. The incident was the outcome of misunderstanding. The statement of Sri Topo suggests that the incident is culmination of misunderstanding between Police personnel and GRIFF employee. The inquiry officer has given a finding that the erring Constable did not consume liquor. The only insinuation was that the Police Constable acted on his own without informing his superiors. This Tribunal finds substance in such insinuation against the delinquent Constable. The Tribunal, at the same time, also finds that the altercation with GRIFF employees was the result of misunderstanding between the employees of two respectable organizations. None of the employees had consumed liquor. Sri Reno, Junior Engineer (Civil) 75 RCC, also stated in the preliminary

enquiry that they have no complaint against the Police personnel. The incident was the result of misunderstanding between the employees of two organizations. Sri Anil Kumar, In-Charge Inspector, Kotwali, also stated that none of the Police Constables consumed liquor, therefore, there was no question of their medical examination. On the entire conspectus of facts, this Tribunal finds that although the delinquent Constable committed mistake in not informing his seniors, but at the same time, he did not consume liquor and he went to interrogate the person, who was carrying liquor, only on suspicion. Misconduct is although proved, but the magnitude of such misconduct is not that serious which might entail civil consequences against the delinquent employee. Mitigating circumstances suggest that although the delinquent Constable should be held guilty, as has been held by the appointing authority, as affirmed by the appellate authority, but the rigour of penalty should be mellowed down to bring him within the periphery of punishment which does not carry civil consequences.

15. This Tribunal does not find this case to be the case of judicial review, in holding that the delinquent is 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 delinquent guilty of misconduct. No legal infirmity has successfully been pointed in the same.

16. 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. The orders

under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety . This Tribunal, therefore, is unable to take a view different from what was taken by the appointing authority, as upheld by two authorities below. No interference is, therefore, called for in holding the petitioner guilty of misconduct.

17. 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 petitioner, in as much as censure entry entails serious civil consequences, and he will feel satisfied if the censure entry is substituted by any 'other minor penalty', such as 'fatigue duty'. Ld. A.P.O. opposed such argument of Ld. Counsel for the petitioner 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.

18. Ld. Counsel for the petitioner submitted that **in sub-rule (3) of Rule 4** it has been provided that the **Constables may be punished with fatigue duty, which shall be restricted to the following tasks—**

> *(i) Tent pitching;*
> *(ii) Drain digging;*
> *(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;*
> *(iv) Repairing huts and butts and similar work in the lines; and*
> *(v) Cleaning Arms.*

19. 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."

20. 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.

21. This Tribunal is not agreeable 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.

22. 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".

23. Under sub-rule (3) of Rule 4 of the Rules of 1991, Constables may also be punished with 'fatigue duty'. 'Fatigue duty' 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, 'fatigue duty' does not. Considering the facts of this claim petition, this Tribunal finds that rigour of censure entry should be mitigated, in the peculiar facts of the case, if the petitioner is

awarded with ‘other Minor Penalty’, *viz*, ‘fatigue duty’, instead of ‘censure entry’. This Tribunal has been persuaded to interfere, only to this extent, on the ground of emerging ‘doctrine of proportionality’, substituting ‘censure entry’ with ‘fatigue duty’.

24. Order accordingly.

25. The claim petition thus stands disposed of. No order as to costs.

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

*DATE: OCTOBER 14, 2019*
*DEHRADUN*

*VM*