BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 93/SB/2019

Kamlesh Chandra Sati aged about 36 years s/o Late Sri Geeta Ram Sati, Constable 32 A.P., presently working and posted in the office of Senior Superintendent of Police, Dehradun.

…….Petitioner

VS.

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

.....Respondents.

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

JUDGMENT

DATED: OCTOBER 15, 2019

Justice U.C.Dhyani (Oral)

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

> To quash the impugned punishment order dated 22.07.2016 (Annexure No. A-1) passed by the SSP, Dehradun and impugned appellate order dated 19.07.2017((Annexure No. A-2) passed by Respondent No.3 with its effect and operation and with all consequential benefits.

2. Ld. A.P.O., at the very outset, opposed the maintainability of present claim petition by arguing that the claim petition is time barred. According to him, there is two years' delay in filing the claim petition. The order of the appellate authority is of 19.07.2017 and the claim petition has been filed on 01.08.2019.

3. Considering the facts of the case, which have been delineated in the subsequent paragraphs of this judgment, delay in filing the claim petition is condoned, in the interest of justice

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

Petitioner is a Constable, who is and was posted at Police Lines, Dehradun in January, 2016 as well. He moved an application for 30 days' Earned Leave, which was not forwarded by Reserved Inspector (Lines). Compelling family circumstances of the petitioner were such that he was required to attend his family. He approached In-Charge C.O., Traffic, Senior Officer to Reserved Inspector (Lines) and got his E.L. sanctioned. The allegation is also that he made an attempt to erase the signatures of R.I., Lines, on his application. The incident was got inquired into by C.O. City, who, after conducting preliminary inquiry, submitted his report on 20.03.2016 (Copy: Annexure- A 4).

A show cause notice (Copy: Annexure- A 3) 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), in which he admitted his mistake and submitted that there will be no repetition of such mistake.

Departmental authority was not satisfied with such reply. He directed censure entry in the Annual Character Roll of the petitioner for the year 2016, *vide* order dated 22.07.2016 (Copy: Annexure- A 1).

Aggrieved with the same, petitioner preferred departmental appeal, which appeal was dismissed vide order dated 19.07.2017 (Annexure: A 2).

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

5. 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.

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 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."

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 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."

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 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.

11. 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 orders (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 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 petitioner.

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. It is the duty of every Government servant much less a Police official to get his leave application forwarded through his/ her immediate superior. When the R.I., Lines refused to forward the E.L. application of the petitioner, the petitioner ought not to have gone to the next superior officer and got his E.L. sanctioned, howsoever compelling the circumstances might be. This is indiscipline, which is not expected from a Government servant. Had the C.O., Traffic, been aware of the fact that petitioner's application has not been forwarded by R.I., Lines, he, probably, would not have, sanctioned petitioner's E.L. No one can say, in the backdrop of such facts, that the petitioner has not committed misconduct. He has admitted his mistake while filing the reply (Annexure: A 5) to the show cause notice. He has, although been able to show the compelling circumstances, under which he was required to attend his family. Had those compelling circumstances been brought to the notice of R.I., Lines, he too, probably, would have forwarded his application. The petitioner has, however, not admitted applying whitener on the signatures of R.I.

On a perusal of the original record, it is revealed that the whitener was although applied, but not on the signatures of the then R.I.. The then R.I. never made a complaint that whitener was applied on his signatures. When C.O. Traffic sanctioned E.L. of the petitioner, the application came to R.I. on the next day. It is the practice in the Police Department that whenever any earned leave is sanctioned by sanctioning authority, the same is marked in

Hindi Order Book. Although, the R.I. instructed the official concerned to make an endorsement on the Hindi Order Book, but he never complained that whitener was applied on his signatures. In fact, he never put his signatures on a previous day, therefore, the question of applying whitener on R.I.'s signatures does not arise. There are two fold insinuations against the petitioner, *viz*, (i) he appeared before In-Charge C.O. Traffic on his own and got his E.L. sanctioned (ii) made interpolation in his E.L. application and made an attempt to erase the signatures of R.I. by applying whitener.

So far as the first imputation is concerned, he has admitted his guilt in show cause notice (of censure entry) [Annexure: A 5]. So far as the second imputation is concerned, since the R.I. never put his signatures while forwarding or not forwarding the E.L. application, therefore, the question of erasing his signatures by applying whitener does not arise, although there is clear evidence that whitener was applied by the petitioner on the E.L. Application, but not on the signatures of R.I., who, on the next day of sanction of E.L. application (by In-Charge C.O. Traffic), instructed the official concerned to make an endorsement (of sanction of E.L.) in Hindi Order Book.

17. 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.

18. 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 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. 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 the appellate authority. No interference is, therefore, called for in holding the petitioner guilty of misconduct.

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 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.

20. Ld. Counsel for the petitioner submitted that in sub-rules (2) & (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.*

21. 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."

22. 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.

23. 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.

24. 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. 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'.

25. Order accordingly.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 15, 2019
DEHRADUN

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