BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 100/SB/2019

Sohanbir Singh Rawat, aged about 42 years, s/o Late Sri Mahabir Singh Rawat, presently posted on the post of H.C.(P.), P.S. Lambgaon, District Tehri Garhwal.

.....Petitioner

VS.

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

.....Respondents.

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

JUDGMENT

DATED: OCTOBER 15, 2019

Justice U.C.Dhyani (Oral)

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

(i) To quash the impugned punishment order dated 20.08.2018 (Annexure No. A-1) passed by the SSP, Tehri Garhwal and impugned appellate order dated 05.02.2019((Annexure No. A-2) passed by Respondent No.3 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 to the petitioner.

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

Petitioner is a Head Constable (Promoted), posted at P.S. Lambgaon, District Tehri Garhwal. In the year 2018, when he was posted at Chowki Dhalwala, P.S. Muni-ki-Reti, he was placed under suspension *vide* order dated 29.04.2018, passed by Respondent No.3 on the basis of a news item, in

social media, which went viral on 28.04.2018, in respect of illegal realization of money from truck drivers. Subsequently, petitioner's suspension order was revoked *vide* order dated 04.07.2018. A preliminary enquiry was conducted by C.O., Narendra Nagar, who submitted his report on 24.06.2018. In PE report (Copy: Annexure- A 5), petitioner was found guilty of not stopping Home Guard Dayanand Joshi from illegally extracting money from truck drivers. Petitioner was served with a show cause notice along with draft 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), who submitted his reply on 11.08.2018, stating therein, among other things, that S.I. Aashish Kumar, Chowki Bhadra Kali was in-charge Chowki Dhalwala and although petitioner was present at duty point, but neither did he realize money nor he was directly responsible for such alleged act of Home Guard Dayanand Joshi of extracting money from truck drivers.

The disciplinary authority (S.S.P., Tehri Garhwal) was not satisfied with such reply of the petitioner. He, therefore, directed censure entry to be awarded in the character roll of the petitioner for the year 2018 *vide* order dated 20.08.2018 (Annexure; A 1).

Aggrieved against the same, petitioner preferred departmental appeal to the appellate authority, who *vide* order dated 05.02.2019(Annexure: A 2), dismissed the same.

3. Annexure: A 3, which is suspension order, has also been put to challenge by the petitioner. His services were put to suspension *vide* order dated 29.04.2018 (Annexure: A 3) of SSP, Tehri Garhwal. His suspension order was, however, revoked by order dated 04.07.2018 (Annexure: A 4) of the selfsame authority. It was stated in Annexure : A 4 that separate order will be passed regarding salary of petitioner's suspension period. According to Ld. Counsel for the petitioner, neither any order was passed on salary of the petitioner during suspension period, nor any salary has been paid to the petitioner during his suspension period.

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

4. 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. Petitioner, on the other hand, assailed orders under challenge, with vehemence.

5. 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.

6. Here the petitioner Head Constable (P) 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."

7. 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*.

8. 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.**"

9. 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.

10. 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.

11. 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.

12. 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.

13. 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."

14. '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.

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 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.

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, for which petitioner shall not be able to cope with, and for bargaining such a plea, he is ready to forego and relinquish his claim over the full salary (minus subsistence allowance) of suspension period. He has been granted only subsistence allowance during the period of suspension, and he feels contented with the same. He does 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 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 although petitioner is HC(P), but he remains a Head Constable for the purposes of Rules of 1991

and is getting the salary of Sub-Inspector only on the basis of arrangement made in Government Orders relating to ACP Scheme. It has been provided in the Rules of 1991 that the Head 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. 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. 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 case, since the petitioner is ready to relinquish his claim over full salary (minus subsistence allowance) of suspension period *w.e.f.* 29.04.2018 to 04.07.2018, therefore, his case appears to be fit case for converting 'censure entry' into 'punishment drill for 15 days' along with waiver of his claim over his salary (minus subsistence allowance) of more than two months. Petitioner's case for converting censure entry into 'other minor penalty' also becomes prominent because he himself was not involved in 'corrupt practice'. The allegation against him is that he did not stop Home Guard from illegally

extracting money. Home Guard posted there was not the subordinate of the petitioner. The Chowki In-Charge was somebody else, not the petitioner. Imputation is not that the petitioner extracted money from truck drivers. Imputation is of lack of control over Home Guard. The fact remains, that petitioner was not directly responsible for alleged act of Home Guard, although he was in a position to persuade Home Guard not to extract money from truck drivers. Corruption is intolerable, but, admittedly, the petitioner did not indulge in such practice. It was the Home Guard, who was doing it, not the petitioner.

21. 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.

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. Ld. Counsel submitted that he is not going to press his claim on merits. He is foregoing more than two months' salary minus the subsistence allowance, which has already been given to him, and is 'bargaining the plea'

for ‘other minor punishment’, which plea, in the given facts of the case, should be accepted.

24. Under sub-rule (1) (b) (iii) of Rule 4 of the Rules of 1991, Head 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 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*, ‘punishment drill’, instead of ‘censure entry’. The petitioner has ‘bargained the plea’ for ‘other minor penalty’ while relinquishing his claim for more than two months’ salary (minus subsistence allowance) therefore, the rigours of his 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’.

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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