

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO.95/SB/2019

Arshad Ali., aged about 29 years, s/o Mohd. Umar, at present working and posted on the post of Constable No. 1783 Civil Police at Thana Kotwali, Dehradun.

.....Petitioner

vs.

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

....Respondents

Present: Sri U.C.Dhaundiyal, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JANUARY 07,2020

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks to quash impugned punishment orders dated 04.04.2018 (Annexures: A 1 & A-2) and impugned appellate order dated 17.11.2018 (Annexure: A-3), among others.

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

An FIR was lodged under Sections 420,406, 120 B IPC in Patel Nagar, District Dehradun, against Devesh Gupta and Parul Gupta. Allegedly, the same was in the knowledge of the petitioner, who was posted as Constable in P.S. Clamentown, district Dehradun. In the year 2017, when the petitioner was posted at SOG Branch, Dehradun, a house was purchased by Smt. Shama Parveen, wife of the petitioner from Smt. Parul Gupta, through registered sale deed on 11.05.2017. Criminal case against Devesh Gupta and Parul Gupta was being investigated by SIT, by a Police Officer posted in P.S. Patel Nagar. Sarvsri Satish Agarwal and Vasudev Agarwal, rs/o Bhandari Bagh sent a complaint to P.S. Patel Nagar on 28.04.2017, which was being investigated by S.I. Shoheb Ali. The imputation was that the petitioner knowing it fully well that a criminal case regarding forged sale of a house was being investigated against Devesh Gupta and Parul Gupta, even then house was purchased by him in his wife's name (from Parul Gupta). Their presence was also concealed by the petitioner from the investigating officer.

A show cause notice along with draft censure entry (Annexure: A-4) 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 by SSP, Dehradun on 23.01.2018. Petitioner gave his reply (Annexure: A-6) to SSP, Dehradun. Before that, preliminary inquiry was conducted by Sri Manjunath T.C., I.P.S., S.P./ C.O. Rishikesh. He submitted his report (Annexure: A-5) to SSP on 02.01.2017. The SSP was not satisfied with the explanation to the show cause notice furnished by the petitioner. Hence, impugned order dated 04.04.2018 (Annexure: A-1) was passed by Respondent No.3. Censure entry was directed to be awarded to the petitioner.

The imputations, according to Annexure: A -1, were that the petitioner knowing it fully well that a criminal case of forgery and cheating was being investigated by SIT and P.S. Patel Nagar and in spite of the same, purchased a house from them and concealed their presence from the inquiry officer. The petitioner was posted in SOG at the relevant point of time. Investigating Officer Shoheb Ali, S.I. gave the telephone number of Devesh Gupta and Parul Gupta to SOG, Dehradun, where the petitioner was posted.

Aggrieved against the order directing ‘censure entry’ in his character roll, petitioner preferred a departmental appeal to the appellate authority, who, *vide* order dated 17.11.2018 (Annexure: A-3) dismissed the appeal. Hence, present claim petition.

Simultaneously, another show cause notice dated 05.03.2018 (Annexure: A-7) was given to the petitioner, withholding his integrity. The foundation of such withholding of integrity was that the petitioner, despite knowing that a criminal case of forgery and cheating was being investigated by SIT and P.S. Patel Nagar, he being a member of disciplined force, (and a Govt. Servant) struck a deal for purchase of their house. Such show cause notice was replied to by the petitioner *vide* Annexure: A-8. The appointing authority was not satisfied with the same and, therefore, petitioner’s integrity for the year 2017 was withheld *vide* order dated 04.04.2018 (Annexure: A-2). Aggrieved against the same, petitioner preferred an appeal, which was dismissed as time barred by *vide* order dated 26.07.2019. Aggrieved against the dismissal of his appeal, against withholding of integrity also, petitioner has preferred present claim petition. Thus, he has challenged four orders in present claim petition.

3. 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.

4. 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.

5. 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.

6. 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.

7. The term 'misbehaviour' has also nowhere been defined in Civil Services Rules. The term 'Misbehaviour' literally means improper, rude, or uncivil behaviour.

8. 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

9. 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.

10. 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.

11. 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.”

12. 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.*

13. 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.”

14. 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.

15. 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: A3. 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 impugned order. 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.

16. 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.

17. 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 highlight 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.”

18. ‘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.

19. This fact is under no dispute that a case crime No. 263/17 under Sections 420, 406, 120 B, 467, 468, 470 IPC was registered at P.S. Patel

Nagar against Devesh Gupta and Parul Gupta. A house was purchased by the petitioner in the name of his wife Smt. Shama Parveen. Sale deed was registered in her name. When the transaction took place, the petitioner was posted in SOG, Dehradun. The petitioner had knowledge that a criminal case was registered against the seller of 'disputed' house and her husband (delinquent). The circumstances under which such deal took place, came to the notice of Respondent No.3. He, then, gave show cause notice to the petitioner, who filed his reply. Respondent No.3 was not satisfied with the same and, therefore, passed order Annexure: A-1. An appeal was preferred against the same, without meeting any success, *vide* order Annexure: A-3. No procedural flaw has successfully been pointed out in the same.

20. It is the submission of Ld. Counsel for the petitioner that it is a case of 'no evidence' and the findings are perverse. We have highlighted the facts of the case and the circumstances under which the 'deal' took place between the seller, her husband and the petitioner, who got the sale deed of the house registered in the name of his wife. The petitioner has done something which was prohibited to a Government servant under Government Servants Conduct Rules. The petitioner has simply been given 'censure entry'. Procedure adopted for minor penalty has been adopted. The appointing authority took the decision on the basis of fact finding inquiry and the explanation offered by the petitioner. No regular inquiry was conducted, which is not essential in minor punishment. Regular departmental inquiry is required only when the appointing authority thinks it appropriate to give major punishment, which was not the position in the instant case. S.I. Shoheb Ali gave the mobile number to SOG, Dehradun, where petitioner was posted, and thereby the petitioner grabbed an opportunity to strike a deal with the owner of house and her husband, whose role was under investigation in a criminal case.

21. 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.

22. 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. This Tribunal, therefore, is unable to take a view different from what was taken by the appointing authority as upheld by the appellate authority.

23. The order displayed under Annexure: A-1, as also appellate order Annexure: A-3 are neither illegal nor irrational and nor do they suffer from procedural propriety. The claim petition is devoid of merits in respect of impugned orders Annexure: A-1 & Annexure: A-3

*

*

*

24. Now we will discuss the implications and legality of Annexure: A-7, Annexure: A-8, Annexure: A-2 and appellate order dated 26.07.2019 (Annexure: A-3 *colly*). Ld. Counsel for the petitioner has placed a judgment dated 06.11.2019, rendered by Coordinate Bench of this Tribunal in Claim Petition No. 07/NB/DB/19. Integrity of the petitioner was withheld for the year 2017. It is argued by Ld. Counsel for the petitioner that integrity cannot be withheld by way of punishment, in as much as such punishment is nowhere prescribed in the Rules of 1991 or in the Uttarakhand Police Act, 2007.

25. It is submitted by Ld. Counsel for the petitioner that the integrity of a person can although be withheld, for sufficient reasons, at the time of writing the Annual Confidential Report, but the same cannot be withheld as a punishment. It will be appropriate to quote the relevant paragraphs of judgment rendered by Hon'ble Apex Court in Vijay Singh vs. State of U.P and others, (2012)5SCC,242 herein below for convenience:

"11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules, 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded.

"14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one (Vide: Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395; Union of India v. H.C. Goel, AIR 1964 SC 364; Mohd. Yunus Khan v. State of U.P. & Ors., (2010)10 SCC 539; and Chairman-cum-Managing Director, Coal India Ltd. & Ors vs. Ananta Saha & Ors., (2011)5SCC 142.).

15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules. Thus, the order of punishment being outside the purview of the statutory rules is a nullity and cannot be enforced against the appellant."

26. Relevant provisions of the Rules of 1991 and Uttarakhand Police Act 2007 are also reproduced herein below for Convenience:

Rule 4 of the Rules of 1991

"4. Punishment- (1) The following punishments may, for good and sufficient reasons and as hereafter provided, be imposed upon a Police Officer, namely—

(a) Major Penalties—

- (i) Dismissal from service.*
- (ii) Removal from service.*

(iii) *Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.*

(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.*

Section 23 of the Uttarakhand Police Act, 2007

"23(1) Disciplinary Penalties- An officer of the rank of Superintendent of Police or above may award any of the following punishments to a police officer or a rank for which he is the Appointing Authority-

(a) *Reduction in Rank,*

(b) *Compulsory retirement,*

(c) *Removal from service,*

(d) *Dismissal,*

(e) *Reduction in salary,*

(f) *Withholding of increment, and*

(g) *Withholding of promotion.*

(2) *Any police officer of the rank of Superintendent of Police or above may award any of the following punishments to any non-gazetted police officer subordinate to him, namely-*

(a) *fine not exceeding one month's salary.*

(b) *reprimand or censure.*

(3) *A Deputy Superintendent of Police or any officer of equivalent rank may award the punishment of reprimand or censure to a Police Inspector or Sub-Inspector of Police or an officer below its rank.*

(4) *Any officer of and above the rank of Inspector may award minor punishments to Constables and Head Constables.*

(5) *Any punishment, mentioned in sub-section (1), (2) (3) or (4) above, awarded to an officer, will not affect his liability for prosecution for any criminal offence, committed by him in the same transaction, for which departmental action has led to the award of punishment to him for any transgression of departmental rules. "*

27. This Tribunal finds substance in the submission of Ld. Counsel for the petitioner that the integrity of the petitioner can be withheld, for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be awarded, by way of punishment, in as much as such punishment is nowhere prescribed either in the Rules of 1991 or in the Uttarakhand Police Act, 2007. Even if appellate authority has not decided the appeal against the impugned order (Annexure: A-2), on merits, holding the same to be time barred, but assuming that the same was dismissed on merits, the result of present claim petition challenging Annexure: A-2 and

Annexure: A-3 *colly*, would have been no different, inasmuch as the integrity of a Police Officer of the subordinate rank could not be withheld by way of punishment. It may be stated, at the cost of repetition, that the integrity of the petitioner can be withheld, for sufficient reasons, at the time of filling up the Annual Confidential Report, but the same cannot be awarded by way of punishment. The result of the aforesaid discussion is that Annexure: A-2 and Annexure: A-3 *colly* should be set aside.

28. The claim petition is partly allowed and partly dismissed. Whereas Annexure: A-1 and Annexure: A-3 would sustain and are affirmed, Annexure: A-2 and Annexure: A-3 *colly* are hereby set aside. In the circumstances, there shall be no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 07, 2020
DEHRADUN

VM