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. 126/SB/2019

Ragib Ali., s/o Shri Farukh Ali aged about 35years, Constable presently posted in the office of Sr. Supt. Of Police, Dehradun.

.....Petitioner

vs.

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

....Respondents

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

JUDGMENT

DATED: FEBRUARY 20,2020

Justice U.C.Dhyani(Oral)

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

(i) To quash the impugned punishment order dated 07.02.2019 (Annexure: A 1) passed by the S.P., Dehradun (Respondent No.2) with its effect and operation and with all consequential benefits.

(ii) To quash and set aside the impugned order Annexure A-2 of the claim petition and allow to pay full salary for the suspension period from

18.05.2018 to 27.05.2018 as only the subsistence allowance was paid for the said period and the petitioner is entitled for full salary for the suspension period as the suspension of the petitioner was illegal.

(iii) To quash and set aside the appellate order dated 19.10.2019 (Annexure: A 3) of the claim petition passed by Respondent No.2.

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

In the year 2018, the petitioner Constable 1198 C.P. was posted in the office of SSP, Dehradun. The accusation relates to demand of illegal gratification for processing and clearance of medical bills of a Constable. One Constable 381 CP of the P.S. Vikas Nagar submitted his medical bills for reimbursement on 10.08.2016. Since it was a requirement that the medical bills were to be examined by Director General, Medical Health, therefore, the same were sent to D.G., Medical Health and were transmitted to PHQ, Uttarakhand. The medical bills were sanctioned *vide* order dated 21.03.2018. Those papers were again sent to SSP Office on 22.03.2018. Medical bills were then received by Accounts Division of SSP Office on 23.03.2018. The bill voucher of Rs.2,76,175/- was then sent to Treasury, Dehradun on 17.05.2018 for payment. The petitioner although did not delay in sending the papers to Treasury, Dehradun, but talked to Constable 381 Sanjay Kumar on telephone asking him to send a sum of Rs.5,000/-, as illegal gratification, to him.

A show cause notice dated 20.08.2018 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, which was received by the petitioner on 22.08.2018. Petitioner gave his reply (Annexure: A-6) to SSP, Dehradun. Before that, preliminary inquiry was conducted by Circle Officer, Vikas Nagar ,who submitted his report (Annexure: A-7) dated 15.07.2018 to SSP, Dehradun. The SSP was not satisfied with the explanation to the show cause notice furnished by the petitioner. Hence, impugned order dated 07.02.2019 (Annexure: A-1) was passed by Respondent No.2. Censure entry was directed to be awarded to the petitioner.

Aggrieved against the order directing 'censure entry' in his character roll, petitioner preferred a departmental appeal to the appellate authority, who, *vide* order dated 19.10.2019 (Annexure: A-3) dismissed the appeal. Hence, 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. To elaborate further, 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. The inquiry officer, during PE, recorded the statement of Smt. Anju w/o Sanjay Kumar (complainant), Constable 53 CP Sanjay Kumar, Constable 1196 CP Ragib Ali (petitioner), Sangita Baloni, ASI (M), Mohd. Shakir, Inspector (M), Accounts Section of SSP, Derhadun and Anit Kumar,ASI (M) of SSP office, among others, to opine that the petitioner is guilty of asking for illegal gratification in lieu of clearance of medical bills of Sanjay Kumar. Although PE cannot be read against the delinquent employee and has not been read in the instant case also, but (it) has been used by the appointing authority only for a limited purpose– that is, whether to initiate departmental action against the delinquent or not. Recording of telephonic conversation between the delinquent Constable and Sanjay Kumar (complainant) has also been transcribed in the preliminary enquiry report, which conversation speaks in volumes against the conduct of the petitioner. Any reasonable or prudent person can draw an inference, after going through such conversation, that it was nothing but an act of corruption. We need not to reproduce the same, as the same is already part of record and reproduction of the same will only add to the length of the judgment. Although, the petitioner did not withhold the papers on account of non-payment of illegal gratification, but

asked the beneficiary Constable to ensure that a sum of Rs.5,000/- be sent to him (in lieu of clearance of his medical bills). The delinquent himself admitted that the money was demanded for dealing assistant of Treasury. The said conduct, as abettor, is simply unpardonable.

20. Ld. Counsel for the petitioner submitted that CD has not been sent to any FSL for examination. It may be noted here that only censure entry has been given to the petitioner, which is a minor punishment. Normally an act of corruption entails major punishment and then only, when the detailed inquiry is conducted by the department, the CD is expected to be sent to FSL, which is not the case in hand. While granting minor penalty, the appointing authority need not go into the details of the evidences. PE, as has been said above, is only meant for the satisfaction of the appointing authority and not for anything else. The appointing authority did not err in arriving at a decision that the departmental action should be taken against the delinquent, especially when the imputation of corruption has been levelled against him and which imputation, *prima facie*, seems to be acceptable. Whereas there is no infirmity in the order of appointing authority in awarding censure entry to the petitioner, we also see no reason to interfere in the order of the appellate authority in upholding the order of the appointing authority. The appellate authority has dealt with the grounds taken in the departmental appeal appropriately. We, therefore, do not see any reason to interfere in the order passed by the appointing authority, as affirmed by the appellate authority.

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 out 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. The relief No. (ii), as sought by the petitioner, in his claim petition for granting him full salary for the suspension period from 18.05.2018 to 27.05.2018, appears to be premature. According to the petitioner, only subsistence allowance has been paid to him, whereas he is entitled to full salary of suspension period. No document has been filed to show that any appeal has been filed against non-payment of full salary for suspension period. Law requires that the petitioner should ordinarily exhaust all his remedies before coming to the Tribunal in claim petition [Sub-section (5) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand)]. Since the petitioner has not filed any departmental appeal against non-payment of full salary for the suspension period, therefore, we hold that the said prayer is premature, leaving it open to the petitioner to file departmental appeal, but only in accordance with law.

25. We, therefore do not think it proper to comment upon the validity or otherwise of the order whereby the petitioner was denied full salary for the

suspension period, leaving it upon to the petitioner to approach appropriate forum for redressal of his grievance no.(ii).

26. The claim petition is dismissed in respect of reliefs no. (i) and (iii). In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 20, 2020
DEHRADUN

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