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. 129/SB/2019

Devendra Kumar s/o Shri Mahak Singh, aged about 39 years, presently posted at Thana Pokhari, District Chamoli.

……Petitioner

vs.

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

….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 to quash impugned punishment order dated 08.04.2019 (Annexure: A 1) passed by SSP, Dehradun, (Respondent No.3) and impugned appellate order dated 15.10.2019 (Annexure: A-2) passed by Respondent No.2, among others.

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

When the petitioner was posted as Constable in P.S. Rishikesh, District Derhadun, he was assigned the task of exchange of *Dak* . In a case pertaining to accused Rajeev Sharma, Proprietor Akshita Engineering Works,

Village Gumaniwala, opposite NDS School, Rishikesh, who was involved in case crime no. 578/16 under Section 138 Negotiable Instrument Act, his bailable warrant was issued and was got received in P.S. Rishikesh by *Dak Pairokar* Constable Satish Tyagi on 12.09.2017. The said bailable warrant was stated to have been sent by the petitioner to Chowki Shyampur on 16.09.2017, but he could not furnish sufficient explanation as to how and through whom the bailable warrant was sent to Chowki Shyampur. As a result thereof, the bailable warrant was not received in Chowki Shyampur and, therefore, the same was not served upon accused Rajeev Sharma. Ld. Magistrate, having jurisdiction, expressed his displeasure over the same.

Preliminary Enquiry was conducted by S.P., Rural, Dehradun. He submitted his report (Annexure: A 4) to SSP, District Dehradun on 14.03.2019. A show cause notice ((Annexure: A 5) 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 by SSP, Dehradun on 17.03.2018. Petitioner gave his reply dated 15.03.2019 *vide* Annexure: A 6. The SSP was not satisfied with the explanation to the show cause notice furnished by the petitioner. Hence, impugned order dated 08.04.2019 (Annexure: A 1) was passed by Respondent No.3. Censure entry was directed to be awarded to the petitioner.

Aggrieved with the same, petitioner preferred a departmental appeal without getting success. The appellate authority (Respondent No.2) affirmed the order passed by Respondent No.3. Hence, present claim petition.

3. 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 petitioner by the appointing authority/ disciplinary authority, which have been upheld by the appellate authority, according to Ld. A.P.O. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

4. 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.

5. 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.

6. 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.

7. 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.

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

9. 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

10. 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.

11. 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.

12. 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."

13. 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.*

14. 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."

15. 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.

16. 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: 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 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.

17. Petitioner has taken a ground in para 'D' of the grounds of appeal that, in preliminary enquiry, important witnesses and evidences were not

called for. It was also stated in the petition that no full-fledged inquiry was conducted. It may be stated here, at the very outset, that preliminary enquiry is conducted by the inquiry officer in order to place the facts before the appointing authority for his satisfaction as to whether he should proceed with departmental proceedings or not. Preliminary enquiry, in the instant case, has never been used for holding the petitioner guilty. PE has only been used by the appointing authority whether he should proceed with the departmental action against the petitioner or not. The appellate authority, in his order dated 15.10.2019 has elaborately dealt with the issue regarding non-submission of warrant of accused Rajeev Sharma to Chowki Shyampur. The petitioner was admittedly working as *Dak Munshi* (Dak Clerk) in P.S. Rishikesh. The warrant of the accused was although received by him, but he could not explain satisfactorily as to when and how did he send the bailable warrant to Chowki Shyampur. It is because of this reason that the bailable warrant could not be executed or served upon the accused. Ld. Magistrate, having jurisdiction, also expressed displeasure over the action of the Police in not executing the bailable warrant. There seems to be no infirmity in appellate authority's order, affirming the order passed by the appointing authority, directing censure entry to be awarded to the petitioner. Annexure A-3 has been brought on record to show how the papers were received by the petitioner in P.S.Rishikesh, but were not sent for execution to Chowki Shyampur.

18. 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.

19. 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."

20. '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.

21. The delinquent Constable was admittedly posted as Dak Clerk in P.S. Rishikesh. Documents have been filed to show that although he received

the bailable warrant of accused Rajeev Sharma, but could not account for satisfactorily as to how and through whom the said bailable warrant was transmitted to Chowki Shyampur for execution, which resulted in displeasure of Ld. Magistrate, having jurisdiction. The extract of *Dak Bahi* of the relevant dates have been filed by the department concerned that although other documents were got received by different Police Stations and Chowkies, but it has not been indicated as to how and through whom the bailable warrant of accused Rajeev Sharma was got received in Chowki Shyampur. There is, admittedly, lapse on the part of the petitioner . He ought to have ensured that the bailable warrant received from the Court ought to have been dispatched and sent to Chowki Shyampur for execution, but he failed to do so. Admittedly, it is a misconduct on the part of the petitioner. No one can dispute the inference that if any Police Personnel receives the summons or warrant and does not sent it to Police Chowki or Police Station for its execution, is a misconduct. The same is definitely carelessness on the part of anybody who so ever is dealing with such papers. Ld. Counsel for the petitioner submitted, during the course of arguments that carelessness on his part was not deliberate and intentional, it is inadvertent *sans mala fide* and censure entry entails civil consequences, therefore, ends of justice will be met if the petitioner is awarded 'other minor penalty', instead of minor penalty [of censure entry].

22. 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.

23. 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 in so far as holding the petitioner guilty of misconduct is concerned.

24. The orders under challenge, in the instant case, are neither illegal nor irrational, nor do they suffer from procedural impropriety, but there is a case for interference on the limited ground of 'doctrine of proportionality', as has been argued by Ld. Counsel for the petitioner. It has been provided in the Rules of 1991 that the Constables may be punished with 'fatigue duty', a description of which shall be given, in the following paragraph of this judgment.

25. Under sub-rule(1)(b)(iii) of Rule 4 of the Rules of 1991, the Constables may also 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.

26. '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.

27. It is apparent on the basis of facts culled out from the record that it was not a deliberate lapse on the part of the petitioner in not sending the document to Chowki Shyampur. It was definitely a careless act on his part but not an advertent one. 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, on the ground that it was not a deliberate lapse on the part of the petitioner in not sending the document to Chowki Shyampur. There is nothing on record to show that he was ever found guilty of such a

lapse in past. The petitioner himself has admitted in his letter dated 15.03.2019 (Annexure: A 6), addressed to SSP, Dehradun that he did not do it deliberately. The petitioner has pleaded that the carelessness on his part was not deliberate one. He was although posted as *Dak Clerk* in P.S. Rishikesh, yet he has extended his services in maintaining law and order situation and detection of crime pertaining to P.S. concerned. There seems to be no *mala fide* in it, although this is an act of carelessness on the part of the petitioner, which this Tribunal has held that the same is certainly a 'misconduct'. We are only on the point of proportionality at this stage. The Tribunal feels that considering the insinuation levelled and proved against the petitioner, ends of justice will be met, if the petitioner, in the peculiar facts of the case, is awarded with 'other minor penalty', instead of 'censure entry'. This Tribunal is, therefore, inclined to interfere, only to this extent, on the ground of emerging 'doctrine of proportionality', substituting 'censure entry' with 'fatigue duty'.

> **[**Civil Service Unions vs. Minister for the Civil Service, 1985 AC 374: (1984) 3 All ER 935;
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> R vs. Secretary of State for the Home Department, exp. Brind (1991) 1 AC 696: (1991) ALL ER 720;
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> Union of India vs. K.G. Soni, (2006) 6 SCC 794;
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> Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain, (2005) 10 SCC 84;
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> Commissioner of Police vs. Syed Hussain, (2006) 3 SCC 173 (paras 12-13)**]**

28. Order accordingly.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 20,2020
DEHRADUN

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