

**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. 122/SB/2019

Deepak Rawat s/o Shri Balbir Singh Rawat, aged about 47years, presently working and posted on the post of Sub-Inspector under the respondent department at Kotwali, Dehradun.

.....Petitioner

vs.

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

....Respondents

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

JUDGMENT

DATED: FEBRUARY 28, 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 20.07.2018 (Annexure: A 1) passed by Respondent No.3 and impugned appellate order dated 05.01.2019 (Annexure: A 2), passed by Respondent No.2 with its effect and operation and with all consequential benefits.
- (ii) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.

(iii) To award the cost of the petition.”

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

Delinquent petitioner's present case relates to going out of the District without permission and his misbehaviour with Line Director of a film. After preliminary enquiry when show cause notice along with draft censure entry was issued to the delinquent petitioner, he gave an explanation that he was conducting investigation of a case crime no. 158/17 under Sections 420, 467, 468, 471 IPC, pertaining to P.S. Vasant Vihar. While chasing accused (Brijpal) of the said case crime number, the petitioner travelled to Muni-ki-Reti, which is adjacent to Rishikesh. In fact, according to the petitioner, one informer namely, Ashwani Garg, committed cheating with him and the said informer was seen standing with one HCP Shanti Prasad Dimri. Petitioner castigated the informer. HCP Dimri opposed the same, saying that the person standing beside him was not Ashwani Garg. Appointing authority was not satisfied with the explanation furnished by the delinquent petitioner. According to SSP, Dehradun, misleading facts were placed by the petitioner (while furnishing an explanation). According to the disciplinary authority, the story of chasing accused Brijpal by the petitioner, while investigating the case, has been advanced only to save him. Entries in the Case Diary. were made by the petitioner only to get rid of the imputation of present disciplinary proceeding. Detailed reasons have been given by SSP, Dehradun in Annexure A-1 while awarding censure entry to the petitioner. The censure entry which was communicated to the petitioner, was that in the year 2018, when the petitioner S.I. was posted in Investigation Cell, in District Dehradun, he went to a place within the jurisdiction of Muni-ki-Reti, District Tehri Garhwal, without the permission of senior officers. In Muni-ki-Reti he slapped Sri Ravi Shankar Tripathi, Line Director of a film, namely, '*Batti Gul Meter Chalu*'. Petitioner slapped the Line Director while he was busy in shooting of the film. The petitioner did not introduce the Line Director before doing so, (nor did he say as to why the Line Director was being slapped). The said act of the petitioner has tarnished the image of Police, which is a disciplined force.

A show cause notice dated 07.05.2018 (Annexure: A 4) 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. Petitioner gave his reply (Annexure: A-7) to SSP, Dehradun. Before that, preliminary inquiry was conducted by S.P. Rural, who submitted his report (Annexure: A-5) dated 26.04.2018 to SSP, Dehradun. The SSP was not satisfied with the explanation to the show cause notice furnished by the petitioner. Hence, impugned order dated 20.07.2018 (Annexure: A-1) was passed by Respondent No.3. 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 05.01.2019 (Annexure: A-2) 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: 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.

16. Preliminary enquiry was conducted by Ms. Sarita Dobhal, S.P.Rural, Dehradun, for the satisfaction of disciplinary authority, whether to initiate departmental action against the petitioner or not. Preliminary enquiry report was submitted on 26.04.2018 (Annexure: A 5). The object of such PE was, as has been stated, that whether to proceed with departmental action against the delinquent or not. The PE was not used by disciplinary authority for punishing the delinquent petitioner. It was only aimed at, whether to initiate departmental action against the delinquent or not. S.P., Rural, in her report dated 26.04.2018 has mentioned the statements of the delinquent, HCP Shanti Prasad Dimri, Inspector Manish Upadhyay and S.I. Natthi Lal Uniyal. She has also collected some documentary evidence. S.P., Rural, while recording the statement of delinquent, submitted that the delinquent S.I. admitted giving a slap on the face of Sri Ravi Shankar Tripathi, Line Director of a film. The other insinuation against the petitioner is that he travelled beyond jurisdiction of his district without permission and did a shameful act.

17. 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.

18. 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.”

19. '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.

20. It is the submission of Ld. Counsel for the petitioner that it was an unintentional act on the part of the petitioner. The petitioner had slapped the Line Director of the Film under some misconception. Firstly, slapping anybody much less Line Director of a film, without any reason, was unpardonable. No one can deny the fact that it is a misconduct. Secondly, even if the petitioner did the same under some misconception, the same is also misconduct, inasmuch as the petitioner ought to have satisfied with the identity of the person who was being slapped. The story advanced by the petitioner in his defence, appears to be concocted one. The disciplinary authority as well as the appellate authority have disbelieved the same.

21. The disciplinary authority has recorded reasons for awarding censure entry to the petitioner. This Tribunal has also perused the appellate authority's order dated 05.01.2019 (Annexure: A 2) and has noticed that the appellate authority has appropriately dealt with the submissions of the delinquent-appellant and has recorded finding that the said act of the delinquent S.I. has tarnished the image of Police Department

22. Since this Tribunal is exercising the jurisdiction only under 'judicial review' and not under 'appeal', therefore, re-appreciation of evidence is not permitted to us under law. If misconduct has been committed, as has been proved, the petitioner is bound to face its consequences. The petitioner has been awarded minimum minor punishment, which is available to him under Rules. A Sub-Inspector cannot be granted 'other minor penalty' so as to give us occasion to think over minimizing the punishment, although no reason would have occasioned for us to mitigate the punishment even if the same would have been available to the petitioner under law.

23. 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.

24. 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.

25. The order displayed under Annexure: A-1, as also appellate order Annexure: A-2 are neither illegal nor irrational and nor do they suffer from procedural propriety. The claim petition is devoid of merits and deserves to be dismissed.

26. The claim petition is dismissed. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 28, 2020
DEHRADUN

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