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. 147/SB/2019

Chandra Mohan Singh about 39 years, s/o Shri Krishna, presently working and posted as Sub-Inspector, P.S. Kankhal, District Haridwar, Uttarakhand.

………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. Senior Superintendent of Police, Haridwar.

….Respondents

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

JUDGMENT

DATED: MARCH 02, 2020

Justice U.C.Dhyani(Oral)

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

i. To quash the impugned punishment order dated 26.10.2018 (Annexure: A-1) and impugned order dated 31.10.2018 (Annexure: A-2) of the respondent no.2 with its effect and operation and with all consequential benefits.

ii. To issue an order or direction to the concerned respondent no.2 to pay the remaining pay and allowances of the suspension period to the petitioner dated 26.03.2018 to 12.04.2018.

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

On 05.02.2018, the petitioner was posted as Senior Sub-Inspector in P.S. Gang Nahar, District Haridwar. A rape took place on 05.02.2018 in village Pardali Gurjar, in the jurisdiction of this P.S. The victim was a minor girl (name withheld). Fact of compromise between the parties came to light. It was noticed that the victim's parents had agreed to take a sum of Rs. 2 lacs in lieu of settlement. Rs. One lac was also initially paid and the remaining amount was to be paid by 10.03.2018. To escape this payment, the opposite party wanted to bribe the Police. One Mehtab of Village Pardali Gurjar contacted Constable Prakash, who was on duty on *Chetak*. Constable Prakash introduced the petitioner to Mehtab. A sum of Rs. 25,000/- was given to one Rizwan to be given to the petitioner through Constable Prakash. Petitioner had full knowledge about this transaction, as also the incident. As a consequence of which an effort was made to hush-up the rape case illegally. The same was not brought to the knowledge of the superior Police officers. The petitioner was also going to be a beneficiary in transaction of Rs.25,000/-, which were given to Constable Prakash through Rizwan.

Preliminary enquiry was conducted by Sri Chandan Singh Bisht, Deputy S.P., Laxar, District Haridwar, for the satisfaction of disciplinary authority, whether to initiate departmental action against the petitioner or not. Preliminary enquiry report was submitted on 24.08.2018 (Annexure: A 7) to SSP, District Haridwar. The object of such PE was, as has been stated, for the satisfaction of disciplinary authority 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 to decide whether to initiate departmental action against the delinquent or not. A show cause notice (Annexure: A4) 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, Haridwar, on 05.09.2018. Petitioner gave his reply/ explanation vide Annexure: A 5 to Respondent No.3. The SSP was not satisfied with the explanation to the show cause notice furnished by the petitioner. Hence, impugned order dated 26.10.2018 (Annexure: A 1) was passed by Respondent No.3. Censure entry was directed to be awarded to the

petitioner. Services of the petitioner were also suspended *w.e.f.* 26.03.2018 to 12.04.2018. *Vide* order dated 31.10.2018 (Annexure: A 2) by Respondent No. 3, the petitioner was not paid any other allowance except subsistence allowance for the period he remained under suspension.

Aggrieved with the same, petitioner preferred a departmental appeal against orders dated 26.10.2018 & 31.10.2018, without getting success. The appellate authority (Respondent No.2) affirmed the orders passed by Respondent No.3 vide appellate order dated 01.02.2019, (Annexure: A -3). 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. The statement of delinquent was recorded in detail in the PE. Documentary evidence was also collected. In the PE the DSP Laxar, found that the petitioner was also 'involved' in illegal gratification. Several questions were put to the delinquent S.I. by DSP, Laxar, during PE. Although he denied his involvement in illegal gratification, but it was found during PE that the petitioner was instrumental in hushing up the serious crime under Sections 363, 366 A, 376 IPC and Section 3/4 of POCSO Act, in which he could not succeed and finally the accused Amir was arrested and charge sheet was submitted against him. The villagemen made an effort to settle the dispute amicably, in which the accused passed on a sum of Rs. 1lac to the victim's side and time up to 10.03.2018 was given to pay balance Rs. 1 lac. But the same was not paid by the date fixed, and effort was made to bribe the Police with a sum of Rs.25,000/- through Mehtab and Rizwan, to hush up the case. It is not a case in which the petitioner was caught red-handed, for, in that case the petitioner would have been punished with major penalty. He was let off only with censure entry. There was no evidence of his receiving the illegal gratification, rather he was indicted for his involvement in the exercise for the same and for not taking legal action before the matter came to the knowledge of superior officers. The statements of Mahmood, Smt. Munni, Gulsher, Sajid, Mehtab, Qurban, Rizwan, Constable Prakash, Constable Amar Singh Negi and Constable K.D. Rana were recorded during PE. Although, those were not used by the disciplinary authority for punishing the delinquent S.I., but were used for satisfying himself that he should proceed against the petitioner for departmental action. The case crime no. 115/2018 under Sections 363, 366 A and 376 IPC along with Section 3/4

POCSO Act is pending adjudication before the Court. The petitioner denied the imputation levelled against him, but since this Tribunal is adjudicating the issue in 'judicial review' and not in an 'appeal', therefore, it cannot re-appreciate the evidence, as also the inference drawn by the disciplinary authority so long as it is not found that they are perverse and due procedure has not been followed. The scope of interference in judicial review is limited to the extent given by this Tribunal in the body of the judgment. .

17. Much emphasis was laid on behalf of the petitioner that the satisfaction of the disciplinary authority, the premise for initiating departmental action against the petitioner by disciplinary authority was wrong inasmuch as there was no evidence against the petitioner and entire proceedings were based on conjunctures and surmises. Let us see whether the satisfaction derived by the disciplinary authority for initiating departmental proceedings against the petitioner was based on wrong premise or on some solid foundation. However, we are not entering into the question whether such satisfaction of the disciplinary authority is justiciable or not. Whether the Tribunal can lift the veil and peep through? Mahmood, father of the victim, gave a statement, during PE that he heard that Mehtab had sent Rs. 25,000/- to some Policeman. Sajid gave statement that he went to meet the petitioner, along with Mehmood and victim. The petitioner asked them to meet SHO. When he met Mehmood, he accepted that he is in receipt of Rs. 1 lac for settlement and the balance Rs. One lac was to be paid after one month. Mehtab told Aamir that remaining Rs. One lac would not be required to be paid and got Rs.40,000/- from Aamir to bribe the Police to hush up the case. Out of this, Rs.25,000/- was sent to the petitioner through some Constable. All this has not taken place in front of him and is what he has heard. Mehtab gave the statement, during PE, that he sent a sum of Rs. 25,000/- to Constable Prakash and the petitioner through Rizwan. Subsequently, Rizwan told Mehtab that he has given Rs. 25,000/- to Constable Prakash. Dy. S.P., Laxar, in his preliminary enquiry report dated 24.08.2018 (Annexure: A 7) found the complicity of the petitioner in the incident. The omission on the part of present petitioner not to initiate legal action, before this incident came in the knowledge of senior Police Officers, shows his complicity in the matter. We, therefore, hold that the action of the disciplinary authority in initiating departmental action against the petitioner was not ill founded.

18. In a similar matter (facts may be different) Hon'ble High Court had dismissed the Writ Petition No. 714/2015 (S/S) on 19.09.2018 in CP 06 Puran Singh vs. State of Uttarakhand & others.

19. 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.

20. 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."

21. '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.

22. 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. The disciplinary authority has recorded reasons for awarding censure entry to the petitioner. This Tribunal has also perused the appellate authority's order dated 01.02.2019 (Annexure: A 3) and has noticed that the appellate authority has appropriately dealt with the submissions of the delinquent-appellant and has correctly dismissed the appeal, against both the impugned orders (Annexures; A-1 and A-2) , the same being devoid of merit and against the facts.

24. 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.

25. 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.

26. 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.

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

(RAJEEV GUPTA) VICE CHAIRMAN (A)	**(JUSTICE U.C.DHYANI)** CHAIRMAN

DATE: MARCH 02,2020

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