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. 159/SB/2019

Ajay Kumar aged about 37 years s/o Late Sri Devi Prasad Nauriyal, presently working and posted on the post of Constable, Civil Police 517 BEAT/ Verification Cell, Police Office, Haridwear.

……Petitioner

vs.

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

….Respondents

Present: Sri L.K.Maithani, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MARCH 18, 2020

Justice U.C.Dhyani(Oral)

By means of present claim petition, the petitioner seeks to quash impugned punishment orders dated 26.09.2018 (Annexure: A 1), 26.10.2018 (Annexure: A-2) and impugned appellate order dated 10.06.2019 (Annexure: A-3), among others.

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

2.1 When the petitioner was posted as Constable in the office of Circle Officer, Sadar, District Haridwar, he was entrusted the task of maintaining files relating to special crimes since 22.06.2018. When Assistant Superintendent of Police/ C.O., Sadar inspected the files, he directed the petitioner Constable to obtain explanations of those investigating officers who submitted case diaries (C.Ds.) late. The imputation against the delinquent Constable was that he did not seek explanations of erring investigating officers. Statement in this respect to higher Police officers was submitted as 'nil'. In a meeting of Police officers, organized on 09.07.2018, senior Police officers objected to such a report.

2.2 Preliminary Enquiry was conducted by Dy. S.P., Haridwar. He submitted his report (Annexure: A 6) to SSP, Haridwar on 23.08.2018. A show cause notice along with draft censure entry (Annexure: A 7) dated 05.09.2018 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 the selfsame day, i.e., on 05.09.2018. Petitioner gave his reply dated 11.09.2018 *vide* Annexure: A 8. The SSP was not satisfied with the explanation to the show cause notice furnished by the petitioner. Hence, impugned order dated 26.09.2018 (Annexure: A 1) was passed by Respondent No.3. Censure entry was directed to be awarded to the petitioner. Petitioner's services were placed under suspension from 18.07.2018 to 22.07.2018. It was directed *vide* order dated 26.10.2018 (Annexure: A-2) that he will not be given any salary except the subsistence allowance paid during his suspension period.

2.3 Aggrieved with the same, petitioner preferred a departmental appeal without getting success. The appellate authority (Respondent No.2) affirmed the order dated 26.09.2018 passed by Respondent No.3, placed as Annexure: A-1, *vide* order dated 10.06.2019. No appeal was filed against the order dated 26.10.2018 (Annexure: A-2), although the same is also subject matter of present claim petition.

2.4 The charge levelled against the petitioner is that in the year 2018, when he was posted in the office of C.O. City, Haridwar, he was the custodian of the Special Crime files since 22.06.2018. On inspection by the then ASP/C.O., City Haridwar, a direction was given to him to take the

explanation of concerned Investigating Officers, who sent these crime files late, but the petitioner has not received the explanation of those I.Os, due to which, the status report of S.R. cases was dispatched in 'zero', against which higher police official expressed their displeasure in the circle-meeting, held on 09.07.2018, which shows that the petitioner was careless in performing his duty.

2.5 According to the petitioner, he had informed the concerned investigating officers of the direction of ASP/ C.O. City, but they did not follow the direction, nor sent the report on time [(para 4j) of the claim petition]. The Investigating Officers were the senior officers to the petitioner. He was not in a position to force them to submit the report. In para 4.k of the claim petition, it has been submitted that the delay in submitting the reports was caused by the concerned Investigating officers, but the entire responsibility has been fastened upon the petitioner. No action was taken against the I.Os as to why did they send the files late. In special crime matters, the duty is fastened upon the Head Constable/HCP or S.I. The petitioner was deputed temporarily due to transfer of the then HCP Sushil Baloni. S.R. cases, along with his own work, was handed over to the petitioner. Except S.R. cases, no negligence or indiscipline was found by the higher authorities, which shows that during entire period, the petitioner performed his duties with due diligence and honesty. In S.R. cases, the delay was not on account of the petitioner. The delay is attributed to the investigating officers of S.R. cases.

2.6 These pleas have also been taken by the petitioner under the head 'grounds', which are supported by his affidavit. In his memo of appeal, the petitioner has reiterated the above noted facts in detail. Since such memo is part of record (Annexure: A9), therefore, this Tribunal does not think it necessary to reproduce those submissions, to avoid repetition and for the sake of brevity

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 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 behaviour 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. In short, 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 behaviour 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: 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. A reasonable prudent person can never disagree with the inference drawn by appointing authority, as affirmed by appellate authority that sending official papers late is not a misconduct. Although the delinquent Constable has given an explanation, but the same can, at the most, be a mitigating factor in reducing the departmental punishment.

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. Having faced daunting task in succeeding in the claim petition, in view of facts stated in Paras 2.4 & 2.5 of this judgment, Ld. Counsel for the petitioner submitted, during the course of arguments, that petitioner could not send letters to investigating officers seeking their explanations, because of non availability of sufficient time inasmuch as either he was, most of the time, on VVIP duty and for some days, on casual leave, therefore it was not intentional, it was 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], in the given facts of the case. Ld. Counsel for the petitioner also submitted that the petitioner does not press quashing of order dated 26.10.2018, enclosed as Annexure A-2, which pertains to prayer of full salary during suspension period.

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. Ld. Counsel for the petitioner also submitted that the petitioner does not press quashing of order dated 26.10.2018, enclosed as Annexure A-2, which pertains to prayer of full salary during suspension period.

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

23. 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.

24. 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.

25. 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. 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 non-sending the letters to the investigating officers seeking their explanations, is not intentional. It does not appear to be advertent either. There seems to be no *mala fide* in it. Although not sending the letters to the investigating officers seeking their explanations is a misconduct, which this Tribunal has held that the same is certainly a 'misconduct', but, at this stage, we are only on the point of proportionality. 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'.

26. Constable alone is not to blame for the same. It was the duty of the I.Os. to have submitted the extracts of C.Ds. to the C.O. well on time. Although it should not be an excuse for the petitioner, but nevertheless the fact remains that no departmental action was initiated against erring I.Os.

> APPLICATION OF DOCTRINE OF PROPORTIONALITY: EXTENT- Quite often it is argued by Ld. A.P.O., in such cases, that once it is found by the Tribunal that delinquent is guilty and misconduct is established, then it should not use its discretion by substituting 'other minor penalty' for 'minor penalty'. It is, therefore, desirable to examine the concept of proportionality, as perceived in administrative law. England has a unitary unwritten Constitution in which Parliament is sovereign and supreme so that no act of Parliament can be held *void* by a Court of law. In India, neither Parliament nor State Legislature can take away jurisdiction of Hon'ble Supreme Court or Hon'ble High Courts to issue the writs mentioned in Articles 32 and 226 of the Constitution of India. The rule as to judicial review on the limited ground of patent error of law has been adopted in India from England. It is true that discretion maybe exercised reasonably. A person who is entrusted with the discretion must direct himself properly in law. He must call his own attention to the matter which he is bound to consider. He must exclude from his consideration, matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it was within the powers of the authority. in Short vs. Poole Corporation, 1925 All Er Rep 74 (CA), example of a red-haired teacher was given, who was dismissed because she had red hair. That is unreasonable in one sense. In another sense, it is taking into consideration extraneous matters.

It was only in the year 1985 that Lord Diplock identified the ingredients of the concept of judicial review in Council of Civil Service Union vs. Minister for the Civil Service, 1985 AC 374. According to him, judicial review could be possible under three heads, namely, illegality, irrationality and procedural impropriety. . The doctrine of proportionality was also relevant.

The principle of proportionality ordains that administrative measures must not be more drastic than is necessary for attaining the desired reason. The principles of reasonableness and proportionality cover a great deal of common grounds. 'Proportionality', it is held by House of Lords, requires the Court to judge whether the action taken was really needed, as well as whether it was without the range of courses of action that could reasonably be followed. Proportionality is, therefore, a more exacting test in some situations and is then to be rejected as requiring the Court to substitute its own judgment for that of the proper authority. In R. vs. Secretary of State for the Home Department, ex p brind, (1991) 1 AC 696, it was observed that the doctrine of proportionality may require a review Court to assess the balance which the decision maker has struck not merely whether it is within the range of rational or reasonable decisions. Secondly, proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations.

In M.A. Rashid vs. State of Kerala, (1974) 2SCC 687, the Hon'ble Apex Court, considering the test of reasonableness and the scope for Court's interference held as below:

"8. Where powers are conferred on public authorities to exercise the same when 'they are satisfied' or when 'it appears to them', or when 'in their opinion' a certain state of affairs exists; or when powers enable public authorities to take 'such action as they think fit' in relation to a subject matter, the Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

9. Where reasonable conduct is expected the criterion of reasonableness is not subjective, but objective.....

10..... The standard of reasonableness to which the administrative body is required to conform may range from the court's own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis."

In Ranjeet Thakur vs. Union of India, (1987) 4 SCC 611, Hon'ble Supreme Court relied upon Lord Diplock in Council of Civil Service Union Case (*supra*), as below:

"...Judicial Review has, I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. the second, 'irrationality' and the third, 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community."

In Union of India vs. G.Ganayutham , (1997) 7 SCC 463, the Hon'ble Apex Court responded to the question as to whether power of judicial review permits the High Courts or Administrative Tribunals to apply the principle of proportionality thus:

"The position pertaining in the year 1997, of proportionality in administrative law in England and India was summarized:

(a) To find out if an administrative order was illegal or was one which no sensible decision-maker could have arrived at. The Court would consider whether relevant matters had been taken into account and not the irrelevant.
The court would not go into the correctness of the choice made by the administrator of several alternatives which may be available. Nor will the Court substitute its own decision for that of the administrator. This is the Wednesbury test.
(b) The Court would interfere on grounds of illegality, procedural impropriety or irrationality.
The possibility of including proportionality being brought into English administrative law was not ruled out.
These are the principles laid down in the CCSU case.
(c) The English courts merely exercise a secondary judgment only to examine whether the decision-maker could have arrived at the primary judgment in the manner he has.
(d) Only if the European Convention is incorporated in England would the English Courts render primary judgment on the validity of administrative action. Since the Convention has incorporated the doctrine of proportionality.
(e) The position in India is that where no fundamental freedom are involved the Courts will play a secondary role only. However, where fundamental freedoms are affected by any administrative or executive action, whether the Courts would assume a primary role and apply the principle of proportionality only if freedoms under Article 19, 21, etc. are involved and not Article 14, was left open for consideration."

The limited scope of judicial review has also been assigned by Hon'ble Supreme Court in Johri Mal's case, (1974) 4 SCC 3, as follows:

"28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant fact ors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
(ii) A petition for a judicial review would lie only on certain well-defined grounds.
(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to

seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

In M.P. Gangadharan vs. State of Kerala, (2006) 6 SCC 162, Hon'ble Apex Court observed:

"The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a strait-jacket formula. It must be considered keeping in view, the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of Wednesbury Unreasonableness, the court is leaning towards the doctrine of proportionality. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted".

26. Order in terms of Para 25.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 18,2020
DEHRADUN

VM/ KNP