

**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. 130/SB/2021

Shri Arun Kumar Gairola, aged about 37 years, s/o Late Sri Lalita Prasad Gairola, presently posted as Constable no. 332 CP at Uttarakhand Police at Chakrata district Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home Department, Secretariat, Subhash Road, Dehradun.
2. Dy. Inspector General of Police, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun.

.....Respondents

Present: Sri Abhishek Chamoli & Sri V.P.Sharma (online), Advocates
for the petitioner
Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: MARCH 01, 2023

Justice U.C.Dhyani (Oral)

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

“(i) The impugned order Annexure A-1 dated 27.07.2020 may kindly be declared void, illegal, against the fundamental, constitutional, civil right of the

petitioner, rules, orders and principles of natural justice and may kindly be quashed and set-aside.

(ii) The Hon'ble Tribunal may kindly be quashed and set-aside the appellate order dated 26.02.2021 (Annexure-A2 of the claim petition).

(iii) To award cost of this petition to the petitioner.

(iv) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case."

[Emphasis supplied]

2. The petitioner was issued a show cause notice on 30.03.2020. He replied to such notice, denying the charges levelled against him (Annexure A7). Disciplinary authority was not satisfied with the same. 'Censure entry' was awarded to the petitioner by S.S.P., Dehradun (respondent no. 3) for misconduct *vide* order dated 27.07.2020 (Annexur-A1). Departmental appeal was preferred by the petitioner against the said order, which was rejected by the DIG, Police, Dehradun (respondent no. 2) *vide* order dated 26.02.2021 (Annexure no. A-2). Hence, the 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 has been upheld by the appellate authority. Ld. Counsel for the petitioner, on the other hand, assailed orders under challenge with vehemence.

4. Facts, in brief, are as follows:

Constable C.P. Mukesh Sharma and Constable C.P. Mukesh Bhatt were inimical to each other. On 12.01.2020, Constable C.P. Mukesh Sharma compelled truck driver Malik Hasan r/o Nawabgarh, on telephone, to disclose giving money to the Police (read: Constable CP Mukesh Bhatt). The call was recorded. Call recording was sent by Constable Mukesh Sharma, which was made viral.

Apart from that, the imputation is that, the petitioner Constable, when he was posted in Police Station, Kalsi, district Dehradun, in connivance with Constable C.P. Mukesh Sharma, without knowledge of the Officer incharge Police Station, got his departure for the police lines recorded in CER on 12.01.2020, whereas the petitioner was fully aware that he was under transfer.

The imputation is that the petitioner did the said act in connivance with Constable C.P. Mukesh Sharma, which tarnished the image of the police department.

5. In the first limb of the censure entry, there is no imputation against the petitioner. The imputation is against Constable C.P. Mukesh Sharma and Constable C.P. Mukesh Bhatt. The only mention of the petitioner is that he was posted on 12.01.2020 in P.S. Kalsi, district Dehradun. Call recording was sent by the Constable C.P. Mukesh Sharma, which (recording) was made viral. Thus, there is nothing against the petitioner in the first limb of censure entry.

The second part (of the censure entry) relates to the fact that the departure of the petitioner was entered in CER (Civil Emergency Reserve) in connivance with Constable C.P. Mukesh Sharma without bringing the same to the knowledge of the officer-in-charge police station. It may be noted here that the entry in the G.D. was not done by the petitioner. There is no evidence that the petitioner got his departure for police line entered in CER, in connivance with Constable C.P. Mukesh Sharma.

6. Whereas, according to learned A.P.O., the petitioner has acted in a way, which is detrimental to the image of the police department, learned counsel for the petitioner refuted that the misconduct cannot be attributed in the absence of any evidence of connivance. Learned A.P.O. replied that when the petitioner was under transfer, he should not have gone to the police lines and got his departure to police lines recorded in CER. Learned Counsel for the petitioner submitted that the entry in the G.D. was not made by the petitioner and the police official who made

entry in the G.D. alone is responsible for same. According to learned Counsel for the petitioner, the petitioner was not aware that he was under transfer. Learned A.P.O. replied that since the petitioner was a beneficiary, therefore, it may be gathered from the circumstances that his departure to the police lines was entered in the G.D. at the instance of the petitioner.

7. It may be noted here that call recording was allegedly sent by Constable Mukesh Sharma, and not by the petitioner. If the call recording was sent by someone to the higher police officials through his mobile, as has been inferred by the appellate authority in internal pages 1 and 2 of the appellate order dated 26.02.2021 (Annexure: A2), it is open to question whether the same is a 'misconduct' or not. Further, at the internal page no. 3 of the appellate authority's order, the inference has been drawn that the constable clerk, Mukesh Sharma deliberately recorded the departure of constable Arun Kumar, petitioner, to the police lines. It appears that the appellate authority was under the confusion that the constable clerk Mukesh Sharma was the appellant who has filed the departmental appeal and who deliberately entered the departure of Constable Arun Kumar to the police lines. It will be worthwhile to clarify here that Constable Arun Kumar and not Constable Mukesh Sharma was the appellant before the appellate authority.

8. The petitioner has been awarded 'censure entry' for his misconduct. What is the extent of Court's power of judicial review on administrative action? This question has been replied by Hon'ble Supreme Court, in para 24 of the decision of *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, in the following words:

"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.”

‘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’.

9. Although the scope of judicial review is very limited in view of the decision in *Nirmala Jhala (Supra)*, but it is one such case in which the Tribunal feels that the Tribunal should interfere in the finding of disciplinary authority as affirmed by the appellate authority, inasmuch as there is no evidence, direct or circumstantial, against the petitioner and no legal presumption can be drawn on the basis of given facts that he connived with Constable Mukesh Sharma (*Head Moharrir*) to get his departure to police lines entered in the G.D. of the police station without bringing the said fact to the knowledge of the police-in-charge of police station concerned. No judicial or quasi-judicial authority is permitted to draw inference on the basis of surmises and conjectures.

10. The conclusion is that if the imputation levelled against the petitioner, which imputation has been made part of censure entry under

Rule 23(2) of the Uttarakhand Police Act, 2007, is accepted on its face value, impugned orders cannot sustain in the absence of any evidence on record, and are liable to be set aside. Interference is, therefore, called for in the impugned orders.

ORDER

The claim petition is allowed. The impugned order dated 27.07.2020 (Annexure- A1) passed by respondent no. 3 and appellate order dated 26.02.2021 (Annexure-A2), passed by respondent no. 2 are set aside. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 01, 2023
DEHRADUN
KNP