

**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. 103/SB/2022

Nand Lal Rudi, at present working and posted on the post of Senior Sub Inspector, P.S. Basant Vihar, District Dehradun, Uttarakhand.

.....Petitioner

versus

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

..... Respondents

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

Judgement

Dated: 25th May, 2023

Justice U.C. Dhyani (Oral)

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

“(i) To quash the impugned punishment order dated 10.02.2021 (Annexure No. A-1) passed by the respondent no. 3 and impugned appellate order dated 07.03.2022 passed by the respondent no. 2 with its effects and operation and with all consequential benefits.

(ii) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iii) Award the cost of the petition to the petitioner."

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

2.1 When the petitioner was posted as sub-inspector in P.S. Kempty, near Mussoorie, a case crime no. 30/2019 under Sections 420, 406 I.P.C. was registered against Sri Jaipal Adiwali. The imputation against the petitioner is that he, as sub-inspector/ I.O., did not make meaningful efforts for arresting the accused. Preliminary enquiry was conducted by D.S.P., Narendra Nagar, who submitted his report on 18.10.2020. According to D.S.P., Narendra Nagar, the petitioner kept the investigation pending for long without any reason. According to D.S.P., Narendra Nagar, petitioner did not make any effort to arrest the accused. It was only when the preliminary enquiry was conducted by the D.S.P., Narendra Nagar, then only there was some progress in the investigation of the case.

2.2 A notice under Section 23(2) of the Uttarakhand Police Act, 2007, was issued to the petitioner, who replied to the same on 19.12.2020. The disciplinary authority was not satisfied with the same, therefore, he directed 'censure entry' to be made in the character roll of the petitioner for the year 2020.

2.3 The censure entry was as follows:

When the petitioner was posted in P.S. Kempty, a case crime no. 30/2019 under Sections 420, 406 I.P.C. was lodged against Sri Jaipal Adiwali. The investigating officer did not make any effort to arrest the accused. Preliminary enquiry was conducted by D.S.P., Narendra Nagar, who submitted his report on 18.10.2020 that the I.O. did not make any effort to arrest the accused and kept the investigation pending

unnecessarily for long time. Only when the preliminary enquiry was submitted, the petitioner/ I.O. started further investigation. The petitioner was, therefore, careless in conducting the investigation. He was reprimanded for the same.

‘Censure entry’ was ordered *vide* order dated 10.02.2021 (Annexure: A1).

2.4 Petitioner filed departmental appeal against the order of disciplinary authority. The disciplinary authority did not find favour with the petitioner and dismissed the appeal *vide* order dated 07.03.2022 (Annexure: A2). The petitioner did not opt for filing revision. He, therefore, filed present claim petition for challenging orders of the disciplinary authority and the appellate authority, which have been enclosed with the claim petition as Annexure: A1 and Annexure: A2.

3. The Tribunal is conscious of the fact that the scope of interference in the judicial review is very limited. It is settled law of the land that the Tribunal cannot sit as a court of appeal.

4. Hon’ble Supreme Court, in a catena of decisions has dealt with the scope of judicial interference in administrative action. 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 in *Nirmala J. Jhala vs. State of Gujarat 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.”

[emphasis supplied]

5. 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 below:

“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 factors 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 supremalex 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.”

[emphasis supplied]

6. It may be noted here that when show cause notice was issued to the petitioner/ I.O., he gave a detailed reply of the same. The same has been enclosed as Annexure: A4 to the petition. Although some part of the reply to the show cause notice is not legible, but the same can be read with the help of Annexure: A5, which is the statement of the petitioner, recorded by the enquiry officer (in preliminary enquiry).

7. In his signed statement dated 16.12.2020 (Annexure: A5), the petitioner submitted that he is posted in P.S. Kempty since 09.09.2017. A complaint was received by him, in which he started investigation. The complainant, Ravindra Singh, resident of Chamiya, P.S. Kempty, District Tehri Garhwal, levelled allegations against Sri Jaipal Adiwai, s/o Samuel Adiwai, that he got Rs. 1,14,000/- transferred from the complainant's account to the account of the accused, between 16.08.2019 to 26.08.2019, on the pretext of giving employment to the complainant in Singapore. The accused did not provide employment to the complainant in Singapore. He also took his passport. Investigation of case crime no. 30/2019 under Sections 420, 406 I.P.C. was taken over by the petitioner on 28.10.2019. The investigating officer instructed the complainant to provide all the documents to him. The complainant appeared before him on 15.11.2019. I.O. recorded his statement under Section 161 Cr.P.C. The complainant also supplied documents to the I.O. The I.O. went to Axis Bank, Mussoorie, on 15.11.2019 and submitted report under Section 91 Cr.P.C. to obtain the details of the savings bank account of the accused,

as also the IFS Code. The investigating officer again went to the Axis Bank, Mussoorie, on 14.01.2020 and obtained the details, which were necessary for investigation of the case. An application was moved by the I.O. for going to Punjab, Delhi and other states, but no such permission could be granted by the higher officers. On 06.03.2020, the petitioner went to Punjab and made efforts to search out the accused in P.S. Cantt., Amritsar. Accused was not found. On 07.03.2020, the petitioner, along with constable Pankaj Rawat, went to the main branch of the Axis Bank in Punjab and obtained KYC of the savings bank account of the accused, but nothing was found about the payment done to the accused. It was found that he has only opened the account. No further transaction was entered in it. It was also found that soon after opening the account, he got his account transferred to Axis bank, Fatehgarh, Churiyan, District Gurdaspur (Punjab). The petitioner, thereafter, went to Gurdaspur. He gave application under Section 91 Cr.P.C. to the Branch Manager and requested for description of the account of the accused. It was found that on 26.08.2019, the complainant has transferred a sum of Rs. 25,000/- in the account of accused Jaipal Adiwali. It was also found that on 30.08.2019, he has transferred Rs 25,000/- and Rs. 14,000/- in the account of accused Jaipal Adiwali. Again on 26.08.2019, the complainant transferred Rs. 25,000/- and again Rs. 25,000/- was transferred on 12.09.2019. The address, which was mentioned in the documents was –Jaipal Adiwali, s/o Samuel Adiwali, retired Principal of Govt. College. When he went to the residential address of the accused at 10, Rajasansi Ajnala Road, Gandhinagar, the people told him that accused Jaipal has not visited his home for the last ten months. He was a divorcee. Father of the accused did not disclose anything about the accused. Thereafter, the petitioner I.O. went to Baba Nanak Dera, Village Shahpur Jhanjhal and visited the Church where it was found that he has not visited the Church for the last three months. One of the attendants in Church told the I.O.

that the accused does not visit the Church. He is a fraudster. I.O. then went to visit in-laws of the accused, where it was found that the accused is a divorcee and does not visit his in-laws. An effort was made to trace the accused in District Gurdaspur, District Batala, District Amritsar, where it was found that the accused Jaipal has cheated many persons. On 11.03.2020, the I.O. visited District Gurdaspur, District Batala, District Amritsar but nothing fruitful was found against the accused. On 10.06.2020, the I.O. recorded the criminal history of the accused. From March, 2020 onwards, the country suffered from covid-19 pandemic. The judicial courts were also closed, therefore, the I.O. was not able to obtain NBW and process under Section 82 Cr.P.C. When the situation became normal, then only the petitioner started further investigation of the case. The I.O. supplied the documents in support of his statement to the enquiry officer during preliminary enquiry and has also stated such facts to S.S.P., Tehri Garhwal, in response to the show cause notice, which was issued to him. The response of the I.O., as has been stated earlier, has been enclosed as Annexure: A4 to the claim petition.

8. The accused had no permanent address. He kept on changing his address and his mobile number after every incident of cheating. The I.O. made sincere efforts to trace the accused, but to no avail. Finally, accused was arrested from P.S. 32/33 Sector Karnal by Haryana Police. Such information was given to present I.O. on 29.09.2020. In order to procure the attendance of the accused in his case, pertaining to District Tehri Garhwal, the I.O. obtained the warrant. He further stated that the investigation of the case shall be completed very soon.

9. After perusal of the aforesaid statement of the I.O., which was made before the enquiry officer in preliminary enquiry, coupled with the reply to the show cause notice, issued to him by the disciplinary authority (supported by documents),

the Tribunal is of the view that such reply of the petitioner-I.O. ought to have been considered by the disciplinary authority before awarding him any punishment (censure entry). Although, normally, it is not necessary for disciplinary authority to give detailed reasons in each and every case, but the instant case is one such case in which the cogent reasons were required to be given after considering the reply to the show cause notice.

10. The Tribunal, as has been stated above, cannot sit as an appellate authority, as per the law, laid down by the Hon'ble Supreme Court, but, in specific cases, direct the disciplinary authority (and appellate authority) to reconsider their decisions.

11. This Tribunal is, therefore, of the view that this is one such case in which the disciplinary authority (and appellate authority) should be directed to reconsider their decision in the light of the statement given by the petitioner before the enquiry officer during preliminary enquiry and the reply to the show cause notice to the S.S.P., Tehri Garhwal (disciplinary authority).

12. It is on account of the aforesaid reasons that the case is remitted to the disciplinary authority for taking fresh decision in accordance with law. Impugned orders shall be kept in abeyance till fresh decision is taken by the authority concerned in this matter.

13. The claim petition is disposed of by directing learned Authorities below (firstly disciplinary authority and, if need be, appellate authority) to take a fresh decision in the matter after considering the reply of the petitioner to the show cause notice given to S.S.P., Tehri Garhwal and the statement given by the petitioner to the enquiry officer during preliminary enquiry, which are supported by the documents. Till such decision is taken, the impugned orders, passed by the

disciplinary authority as affirmed by the appellate authority (Annexure: A1 and Annexure: A2), shall be kept in abeyance.
No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
[virtually from Nainital]

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 25th May, 2023
DEHRADUN
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