

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present : Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 21/NB/SB/2025

Constable No. 980 Tulsi Prasad (Male) **Adhaar No. 580145940679**, aged about 40 years, S/o Set Ram, presently posted Constable, D Company, 31st Battalion P.A.C. Rudrapur, District Udham Singh Nagar.

..... Petitioner

Versus

1. State of Uttarakhand, through Principal Secretary, Home Department, Dehradun.
2. Inspector General of P.A.C. Uttarakhand, Dehradun
3. Commandant 31st Battalion P.A.C. Rudrapur, District Udham Singh Nagar

..... Respondents

Present : Sri Subhash Joshi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : 06th NOVEMBER, 2025

This claim petition has been filed seeking the following reliefs:-

- “(i). to quash the impugned order dated 13.01.2025 and order dated 22.09.2023 alongwith its effect and operation and after calling the entire record.

- (ii). to issue order or direction to expunge the adverse entry recorded in the service record of the applicant and grant all the service benefits or pass any other order direction which this Hon'ble Court may deem fit and proper under the facts and circumstances stated in the body of the claim petition.
- (iii) to issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. In brief, the facts of the case are that the petitioner was inducted in service in 31st Battalion PAC Rudrapur, District Udham Singh Nagar as Constable in the year 2007 against the substantive vacancy and by due process of law. As per the story of the Department, when the petitioner was deputed in Nainital for peace keeping at Inter National Cricket Stadium, Haldwani, then on 07.02.2023 Constable 777 Babar Shekh informed the post officer that the petitioner abused him, on his complaint the petitioner was sent for medical examination for consumption of liquor and after medical examination the doctor found that the petitioner consumed the liquor. For this incident, the Department initiated the disciplinary enquiry and for preliminary enquiry, Inquiry Officer was appointed, the Enquiry Officer after completing the enquiry submitted his report on 20.07.2023. Thereafter, pursuant to the enquiry report dated 20.07.2023 the respondent No. 3 issued a show-cause notice to the petitioner on 27.07.2023 and directed him to submit his reply within 15 days. The respondent No. 3 in its show-cause notice mentioned the punishment. The aforesaid act of the respondent No. 3 shows his

pre-mind set condition that he has made his mind to award the punishment of withholding of three days' salary to the petitioner. Thus, the reply of the petitioner is a futile exercise. The aforesaid act of the disciplinary authority is against the provisions of law laid down by the Hon'ble Apex Court in case of M.D. ECIL vs. B. Karunakaran and also its violation of the judgment and order of the Hon'ble High Court of Uttarakhand passed in WPSB No. 133 of 2015 "Mahesh Chandra Gupta vs. State of Uttarakhand". After receiving the show-cause notice, the petitioner submitted his reply to the enquiry report and denied the findings of the Enquiry Officer and requested to cancel the enquiry report. Surprisingly, the disciplinary authority in utter haste passed the impugned order on 22.09.2023. The disciplinary authority in its impugned order passed the punishment which was mentioned in show-cause notice which is not permissible in the eyes of law. Feeling aggrieved by the impugned order dated 22.09.2023, the petitioner preferred a statutory appeal before the respondent No. 2 on 28.10.2024 through proper channel and requested the respondent No. 2 to quash the punishment. Thereafter, the appellate authority without applying his mind on the legal issue raised by the petitioner rejected the appeal on 13.01.2025 in a cursory and stereo type manner. Hence this claim petition. On the date of incident the petitioner was performing the duties of Munshi (Major Assistant) and his work is depute the Constable for duty and after assigning the duty and confirming that all constables have joined the duty place he was free and rest in his tent. Thus, on that day after deputing the constable on duty the

petitioner was on rest in his tent and Constable No. 777 Babar Shekh, who always threatened the petitioner for making forge allegation being Muslim given wrong information to the post officer and on his false complaint the post officer sent the petitioner for medical examination. Thus, on that day there was no incident of quarrel between Babar Shekh and the petitioner. The enquiry report is only a piece of evidence and every employee has right to represent to the disciplinary authority against the finding of the enquiry report before the tentative view of the disciplinary authority to agree with the finding and for a proposed action on the same. This is mandate of law as laid down by the Hon'ble Apex Court in the case of M.D. ECIL vs. B. Karunakaran. The aforesaid opportunity requiring the petitioner to submit his reply to the proposed show-cause notice is mere shame show and a post decisional exercise and the mindset condition is established to punish the petitioner. The Hon'ble High Court of Uttarakhand in the case of Mahesh Chandra Gupta in WPSB No. 133 of 2015 held that:

“As far as the question relating to infirmity of the show cause notice is concerned, after the decision of the Hon'ble Apex Court in Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others reported in (1993) 4 SCC 727, the matter cannot admit any doubt that before the Disciplinary Authority takes a decision on the Inquiry Report and decides to proceed to take further action on the basis of the inquiry, it is incumbent upon the Disciplinary Authority to supply a copy of the Inquiry Report to the delinquent. We think that it is necessary to notice and extract the following paragraphs from the said judgment:

“26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer from an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer

goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then 2015:UHC:2390 7 required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

27. It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry Officer, particularly when they are not

borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry Officer's report would be considered.

Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

7. Also, we notice that in paragraph 30, the Court has, inter alia, further held as follows:

“30 (iv). In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are

silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.”

8. Therefore, the principle laid down by the Hon’ble Apex Court is law under Article 141 of the Constitution and binding on this Court irrespective of the Rules, which hold the field and irrespective of whether the employee is a government servant or the employee is a non-governmental servant, public or private.

9. A perusal of the show cause notice would leave the impression with us that the Disciplinary Authority considered the Inquiry Report and it proposed to visit the delinquent with the major punishment of removal from service. It is, thereafter, that the Inquiry Report is being made available and, thereafter, the show cause notice is directed towards securing the explanation against the proposed removal. We would think that the said procedure is in the teeth of law laid down by the Hon’ble Apex Court and cannot be approved by us.

10. In such circumstances, we cannot sustain the notice dated 04.04.2015 (Annexure No. 1 to the writ petition). The notice will stand quashed. We take notice of the fact that the Inquiry Report has already been given and it is not necessary to give the same again. The Authority will be free to issue a fresh notice seeking the reply of the petitioner on the Inquiry Report. At least two weeks’ time will be provided in the notice for the petitioner to submit his

explanation to the Inquiry Report and further action will be taken as per law. As far as the question relating to suspension is concerned, we leave it open to the petitioner, if he is so advised, to raise it before the Tribunal. In regard to his complaint against the charge sheet being not framed by the Disciplinary Authority, it will be open for him to raise the same before the Disciplinary Authority in his explanation to the Inquiry Report. The relief relating to damages is left open.

11. The writ petition will stand disposed of.”

When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise, the enquiry proceedings cannot be conducted with a closed mindset. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that the justice is done but it manifestly seen to be done. The appellate authority is duty bound to pass reasoned orders dealing with contentions of the employees, but in the instant case the appellate authority not exercised his powers conferred to him and only in a stereo type manner rejected the appeal in cursory manner. The Hon'ble Apex Court in the case of **“Deokinandan Sharma vs. Union of India & others” reported in 2001 (5) SCC 340**, has held the appellate authority is duty bound to pass reasoned order dealing with the appellant's contentions. Thus, the appellate authority not complied with the aforesaid directions of the Hon'ble Apex Court and thus kind indulgence of this Hon'ble Court is required. In the case of “Ram Chander vs. Union of India and Union of India vs. Tulsiram Patel the Hon'ble Apex Court has held that while deciding statutory appeal the

appellate authority is required to give hearing to the government servant concerned and also pass reasoned order dealing with the contentions raised in the appeal. In the case of “**State of Uttaranchal & others vs. Kharak Singh**” reported in 2008 (8) SCC the Hon’ble Apex Court has held that the appellate authority is required to support his decision with reference to enquiry records.

3. प्रतिवादी संख्या—1, 2 एवं 3 की ओर से श्री किशोर कुमार, सहायक प्रस्तुतकर्ता अधिकारी द्वारा लिखित विवेचन—पत्र दाखिल किया गया, जो इस प्रकार है:—

3.1. यह कि याचिका के प्रस्तर संख्या—1 में वर्णित कथन अभिलेखीय है परन्तु याची के कथन वास्तविक तथ्यों से विपरीत होने के कारण अस्वीकार है। इसके अतिरिक्त यह कहना है कि याची द्वारा उपरोक्त प्रस्तर में किये गये कथन विधि एवं तथ्यों के विपरीत है इसलिए याची द्वारा प्रस्तुत याचिका किसी भी प्रकार से सुनवायी हेतु अंगीकृत किये जाने योग्य नहीं है तथा याची याचिका में किये गये कथनों के आधार पर किसी प्रकार का अनुतोष प्राप्त करने का अधिकारी नहीं है और याची की याचिका सव्यय निरस्त किये जाने योग्य है।

याची के विरुद्ध जनपद नैनीताल के गौलापार हल्द्वानी स्थित अन्तर्राष्ट्रीय क्रिकेट स्टेडियम में दिनांक 07.02.2024 की सांयकाल में मेजर सहायक के कार्य का निर्वहन करते हुए कैम्प परिसर में शराब का सेवन किया हुआ पाये जाने के सम्बन्ध में सम्पादित प्रारम्भिक जाँच में याची को दोषी पाते हुये उसके विरुद्ध नियम 14 (2) के अन्तर्गत विभागीय कार्यवाही के अन्तर्गत प्रस्तुत स्पष्टीकरण को सन्तोषजनक न पाते हुये तथा याची को प्रारम्भिक जाँच में ड्यूटी के दौरान शराब का सेवन करने का दोषी पाया

गया है चूँकि याची 24 घण्टे के लिये ड्यूटी पर नियुक्त है जिसे आपातकाल स्थिति में ड्यूटी में तैनात जवानों के अलावा अन्य कार्मिकों को (कार्यालय में तैनात मेजर, मुन्शी/अन्य कान्स0) भी किसी भी समय ड्यूटी पर जाने हेतु तैयारी की स्थिति में रहने के लिये समय-समय पर उच्चाधिकारियों द्वारा निर्देशित किया जाता है। उत्तराखण्ड पुलिस एक्ट के प्रस्तर-42 के अनुसार प्रत्येक पुलिस अधिकारी निरन्तर ड्यूटी पर समझा जायेगा और किसी भी समय राज्य के किसी भाग में या राज्य के बाहर पुलिस अधिकारी के रूप में उसे तैनात किया जा सकता है। इस प्रकार याची के पुलिस/पीएसी जैसे अनुशासित बल में नियुक्त रहकर नशे का सेवन करना अपने कर्तव्य के प्रति घोर लापरवाही अनुशासनहीनता को परिलक्षित करता है जिसके लिये याची को आदेश संख्या-द-11/2023 दिनांक 22.09.2023 के द्वारा 03 दिवस के वेतन के बराबर के अर्थदण्ड से दण्डित किया गया था।

3.2. यह कि याचिका के प्रस्तर संख्या-4.5 में किये गये कथन सत्य नहीं हैं क्योंकि याची के विरुद्ध जनपद नैनीताल के गौलापार हल्द्वानी स्थित अन्तर्राष्ट्रीय क्रिकेट स्टेडियम में दिनांक 07.02.2024 की सांयकाल में मेजर/मुन्शी के कार्य सम्पादन के पश्चात् याची द्वारा शराब का सेवन किया हुआ पाये जाने सम्बन्धो प्रकरण में सम्पादित की गयी प्रारम्भिक जाँच में याची को दोषी पाते हुये तदोपरान्त उसके विरुद्ध प्रचलित नियम 14 (2) की विभागीय कार्यवाही में नियमानुसार दिनांक 27.07.2023 को कारण बताओ नोटिस निर्गत किया गया था जिसके प्रतिउत्तर में उसके द्वारा प्रस्तुत स्पष्टीकरण को सन्तोषजनक न पाते हुये तथा याची को प्रारम्भिक जाँच में ड्यूटी के दौरान शराब का सेवन करने का दोषी पाया गया है जो कि याची के पुलिस/पीएसी जैसे अनुशासित बल में नियुक्त रहकर नशे का सेवन करना अपने कर्तव्य के प्रति घोर अनुशासनहीनता को परिलक्षित करता है जिसके लिये याची को आदेश संख्या-द-11/2023 दिनांक 22.09.2023 के

द्वारा नियमानुसार 03 दिवस के वेतन के बराबर के अर्थदण्ड से दण्डित किया गया था।

3.3. यह कि याचिका के प्रस्तर संख्या-4.6 में किये गये कथन सत्य नहीं है क्योंकि याची के विरुद्ध जनपद नैनीताल के गौलापार हल्द्वानी स्थित अन्तर्राष्ट्रीय क्रिकेट स्टेडियम में दिनांक 07.02.2024 की सांयकाल में शराब का सेवन किया हुआ पाये जाने के सम्बन्ध में सम्पादित प्रारम्भिक जॉच में याची को दोषी पाते हुये उसके विरुद्ध नियम 14 (2) के अन्तर्गत प्रचलित विभागीय कार्यवाही में दिनांक 27.07.2023 को कारण बताओ नोटिस निर्गत किया गया था जिसके प्रतिउत्तर में याची द्वारा प्रस्तुत स्पष्टीकरण को सन्तोषजनक न पाते हुये तथा प्रारम्भिक जॉच में ड्यूटी के दौरान शराब का सेवन करने का दोषी पाया गया है जो कि याची के पुलिस/पीएसी जैसे अनुशासित बल में नियुक्त रहकर नशे का सेवन करना अपने कर्तव्य के प्रति घोर अनुशासनहीनता को परिलक्षित करता है जिसके लिये याची को आदेश संख्या-द-11/2023 दिनांक 22.09.2023 के द्वारा नियमानुसार 03 दिवस के वेतन के बराबर के अर्थदण्ड से दण्डित किया गया था।

3.4. यह कि निर्देश याचिका के प्रस्तर संख्या-4.7 में किये गये कथन स्वीकार नहीं है क्योंकि याची के विरुद्ध जनपद नैनीताल के गौलापार हल्द्वानी स्थित अन्तर्राष्ट्रीय क्रिकेट स्टेडियम में दिनांक 07.02.2024 की सांयकाल में शराब का सेवन किया हुआ पाये जाने के सम्बन्ध में सम्पादित प्रारम्भिक जॉच में याची को दोषी पाते हुये उसके विरुद्ध प्रचलित नियम 14 (2) की विभागीय कार्यवाही में दिनांक 27.07.2023 को कारण बताओ नोटिस निर्गत किया गया था जिसके प्रतिउत्तर में याची द्वारा प्रस्तुत स्पष्टीकरण पर अंकित तथ्य सन्तोषजनक न पाते हुये एवं प्रारम्भिक जॉच में दोषी पाये जाने के फलस्वरूप याची को आदेश संख्या-द-11/2023 दिनांक 22.09.2023 के

द्वारा 03 दिवस के वेतन के बराबर के अर्थदण्ड से दण्डित किया गया था। इसके अतिरिक्त प्रारम्भिक जाँच में उपलब्ध साक्ष्य के अनुसार कानि0 777 बाबर शेख द्वारा एक सीडी उपलब्ध कराते हुये बताया कि याची द्वारा दिनांक 07.02.2023 को मेडिकल परीक्षण से बचने का प्रयास किया गया तथा पोस्ट छोड़कर भागने की कोशिश की गयी तत्समय कानि0 777 बाबर शेख द्वारा याची की वीडियो रिकार्डिंग की गयी है। उपलब्ध सीडी में 02 वीडियो हैं। वीडियो रिकार्डिंग के अवलोकन करने पर पाया कि वॉट्सएप्प वीडियो-2023-04-03 एट 15-04-14 में याची साफ-साफ कहीं भागता हुआ दिखाई दे रहा है तथा भागते हुये एक कार में बैठने का प्रयास कर रहा है। इसके अतिरिक्त दूसरी वीडियो में वॉट्सएप्प वीडियो-2023-04-03 एट 14-04-26 में याची स्वयं को टैण्ट में विचित्र रूप से ढकते हुये दिखायी दे रहा है, जो सामान्य रूप से उचित प्रतीत नहीं हो रहा है। इस सम्बन्ध में यह भी अवगत कराना है कि उक्त आरक्षी ने शराब पीकर हल्ला-गुल्ला करते हुये अभद्रता व गाली-गलौच की जो कि अनुशासित पुलिस बल में मान्य नहीं है। उक्त के अतिरिक्त याची के दिनांक 07.02.2023 कराये गये मेडिकल परीक्षण में चिकित्सक द्वारा अपनी राय में अंकित किया गया कि “No external injury at the time of examination patient taken alcohol and might under influence of alcohol not intoxicated” तथा मेडिकल परीक्षण के दौरान एकत्रित किये गये ब्लड सैम्पल की जाँच क्षेत्रीय विधि विज्ञान प्रयोगशाला रुद्रपुर धमसिंह नगर में करायी गयी है जिसमें REFSL No. 238/23 दिनांक 16-05-2023 में उप-निदेशक, विधि विज्ञान प्रयोगशाला द्वारा अंकित किया गया है कि Ethyl Alcohol has been detected in Exhibit No. 1” इस प्रकार याची द्वारा दिनांक 07.02.2023 को शराब का सेवन किये जाने की पुष्टि की गयी है। याची से जब उससे बयान में पूछा

गया तो उसके द्वारा जॉच को गुमराह करने के उद्देश्य से बताया गया कि उसने पेट के कीड़े मारने की दवा Albendazole का सेवन किया गया था जिससे स्पष्ट होता है कि याची द्वारा झूठ बोला गया है।

3.5. यह कि निर्देश याचिका के प्रस्तर संख्या-4.8 में किये गये कथन सत्य नहीं है क्योंकि याची के विरुद्ध जनपद नैनीताल के गौलापार हल्द्वानी स्थित अन्तर्राष्ट्रीय क्रिकेट स्टेडियम में दिनांक 07.02.2024 की सांयकाल में शराब का सेवन किया हुआ पाये जाने के सम्बन्ध में सम्पादित प्रारम्भिक जॉच में याची को दोषी पाते हुये उसके विरुद्ध प्रचलित नियम 14 (2) की विभागीय कार्यवाही में दिनांक 27.07.2023 को कारण बताओ नोटिस निर्गत किया गया था जिसके प्रतिउत्तर में याची द्वारा प्रस्तुत स्पष्टीकरण को सन्तोषजनक न पाते हुये तथा याची को प्रारम्भिक जॉच में ड्यूटी के दौरान शराब का सेवन करने का दोषी पाया गया है जो कि याची के पुलिस/पीएसी जैसे अनुशासित बल में नियुक्त रहकर नशे का सेवन करना अपने कर्तव्य के प्रति घोर अनुशासनहीनता को परिलक्षित करता है जिसके लिये याची को आदेश संख्या-द-11/2023 दिनांक 22.09.2023 के द्वारा नियमानुसार 03 दिवस के वेतन के बराबर के अर्थदण्ड से दण्डित किया गया था।

3.6. यह कि प्रतिवाद पत्र के उपरोक्त कथनों के आधार पर याची की याचिका सब्यय अस्वीकार होने योग्य है। मा0 न्यायाधिकरण से प्रार्थना है, कि याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जिस कारण उक्त याचिका खारिज होने योग्य है। अतः मा0 न्यायाधिकरण से अनुरोध है, कि उक्त याचिका को शासन/विभाग के पक्ष में खारिज/निरस्त करने का कष्ट करें।

4. Rejoinder affidavit has also been filed reiterating the facts mentioned in the present claim petition.

5. I have heard the learned Counsels for the parties and perused the records. Learned Counsel for the petitioner has argued as follows:-

- (i). The incident under question in the instant matter took place between the petitioner and one Constable No. 777 Babar Shekh during the late evening hours of 07.02.2023, at 1930 hours, when both the PAC Personnels were off duty; the alleged venue of this quarrel being outside the campus of the duty; and this was in relation to sanctioning of leave application submitted by the complainant Constable Babar Shekh. It is noteworthy here that the petitioner was officiating at that time as Major Munshi, whose official duty was to put up the leave applications of his colleagues before the Sanctioning Officer. By the very nature of this work he was bound to come in the bad books of his colleagues whose leave applications were not sanctioned on time, altered, or rejected altogether. This is the reason as per the record why Constable 777 Babar Shekh (Complainant) and two other colleagues, viz. Head Constable 12 Dinesh Bhatt and Constable 724 Ved Prakash had hot

arguments with the petitioner regarding their leave applications. Learned Counsel for the petitioner asserted that this duty of the petitioner was a thankless and dirty task, causing severe anguish and bickerings of his unhappy colleagues quite often, due to which the petitioner was always under mental stress and irritation resulting frequently into such hot arguments. Therefore, the presumption of the petitioner's superiors that the petitioner deliberately quarreled and humiliated the complainant 777 Babar Shekh was a wrong conclusion. This assertion of the learned Counsel is evident in the recorded statement of the witness No. 06 PC Sri Anand Singh Rana, D Platoon stating that the petitioner was looking after the work of Major Munshi with whom three PAC Personnels had hot arguments regarding their leave applications, namely, Head Constable 12 Dinesh Bhatt and Constable 724 Ved Prakash and Constable 777 Babar Shekh. Apart from these three PAC Personnels, the general conduct and behaviour of the petitioner was perfectly normal. This fact has been recorded in the statements of other witnesses also in the enquiry report dated 20.07.2023. This is the reason why the Enquiry Officer found the petitioner guilty only of liquor

consumption during the evening of 07.02.2023, though the Enquiry Officer erroneously mentioned that the petitioner had consumed liquor within the campus. There is no conclusion that the petitioner behaved roughly towards the complainant Constable 777 Babar Shekh. Therefore, the censure entry awarded to the petitioner by the respondent No. 3, i.e., the Commandant 31st Battalion, Rudrapur, District Udham Singh Nagar was *ab-initio null and void*, reason being that the censure entry has suo-moto added the charge of misbehaviour under the influence of liquor consumption against the petitioner, which is beyond the conclusion of enquiry report dated 20.07.2023. It clearly manifests that the Punishing Officer acted under a false belief that the petitioner misbehaved with the complainant Constable 777 Babar Shekh deliberately, voluntarily and advertently under the influence of liquor consumption within the duty campus. This presumption is not substantiated by the enquiry report, and, therefore, is not sustainable in the eyes of law.

6. Learned Counsel for the petitioner also emphasized upon the fact that as per the enquiry report the conduct of even the

complainant Babar Shekh was not above the Board, in the sense, that he too was equally involved not only in the quarrel with the petitioner but also was drunk possibly, which is apparent from the statement of the complainant Constable himself “7— बयान कानि0

777 बाबर शेख, डी दल, 31 वीं वाहिनी पीएसी, रुद्रपुर, ऊधमसिंह नगर।

ने बयान किया कि मैं वर्ष 2012 का भर्ती हूँ। वर्तमान में डी दल हाईकोर्ट नैनीताल में नियुक्त हूँ। महोदय डी दल मुख्यालय के अन्तराष्ट्रीय क्रिकेट स्टेडियम गोलापार हल्द्वानी नैनीताल में व्यवस्थापित रहने के दौरान दि० 07.02.2023 को ड्यूटी से आने के उपरान्त समय 1930 बजे कानि० तुलसी प्रसाद मेजर मुंशी (तत्समय) द्वारा मुझे बाहर बुलाया और अपशब्द व गाली-गलौच करने लगा, और विभागीय सम्बन्धी धमकी देने लगा और तेरी छुट्टी भी समय से नहीं कराउँगा, तथा हाथापाई करने लगा तथा उसके द्वारा मेरे आँख में चॉबी मारने की भी कोशिश की गयी, जिसकी मेरे पास वीडियो भी उपलब्ध है, जिसे मैं प्रस्तुत कर दूँगा। तत्पश्चात् मेरे द्वारा प्रभारी दलनायक को उक्त सम्बन्ध में टेलीफोनिक माध्यम से अवगत कराया गया, **प्रभारी दलनायक द्वारा मुझसे कहा गया कि मेजर से बात कराओ, तत्पश्चात् मेरे द्वारा प्रभारी दलनायक की मेजर से बात करायी तो मेजर द्वारा प्रभारी दलनायक को मेरे बारे में ही उल्टा-सुल्टा कहा गया और मुझ पर झूठा आरोप लगाया कि मैंने शराब पी है, और मैं इसके खिलाफ लिखकर दूँगा, मेजर द्वारा कानि० तुलसी प्रसाद का पक्ष लेते हुए उसे कुछ नहीं कहा, प्रभारी दलनायक द्वारा मेजर को दोनों का मेडिकल परीक्षण कराने का आदेश दिया, मैं कभी भी शराब का सेवन नहीं करता हूँ। यह समस्त दल के कर्म० को पता है। महोदय मैं मेडिकल परीक्षण कराने के लिए तैयार था, किन्तु कानि० तुलसी प्रसाद द्वारा मेडिकल परीक्षण न कराने के डर से 04**

बार कैम्प से भागने की कोशिश की गयी। तत्पश्चात् पीसी श्री आनन्द सिंह राणा द्वारा कानि० तुलसी प्रसाद का मेडिकल परीक्षण कराया गया। महोदय मैं भी मेडिकल परीक्षण कराने हेतु अस्पताल गया किन्तु वहाँ मेरा मेडिकल परीक्षण नहीं कराया गया।”

7. As per the learned Counsel of the petitioner, the complainant Constable 777 Babar Shekh has been let free by the superior officers despite his falsehood, and counter allegation against the superior. The underlying psychological reason, between the lines, seems that most of the superiors were apprehensive of the counter allegation as played up by the complainant 777 Babar Shekh. Of course, this fact is not so clearly mentioned in the enquiry report, nevertheless a careful and in depth reading of the statements recorded in the enquiry report reveals this fact undoubtly. Therefore, punishing only one party to the quarrel, and letting scot-free the other party due to the aforesaid psychological apprehension is against the natural justice and the established rulings. Here, learned Counsel for the petitioner relied upon Hon’ble Supreme Court’s judgment in the case of Civil Appeal No. 1334 of 2013 (Arising out of SLP (Civil) No. 2070 of 2012, Rajendra Yadav Vs. State of M.P. & others, decided on 13 February, 2013, which has also been followed by this Tribunal in Claim Petition No. 09/NB/SB/2021 Deewan Singh Negi vs. State of Uttarakhand and others.

8. Learned A.P.O. during his argument has reiterated the facts and pleadings of the Counter Affidavit and said that the censure entry awarded to the petitioner is procedurally correct in the

eyes of law. However, he meekly conceded to the fact that though the punishment of withholding of three days' salary against the petitioner apparently looks a minor punishment, but its subsequent repercussions are serious, later on.

9. The Tribunal has gone through the records and the arguments of the learned Counsel for the parties in detail and has concluded as follows:

- (a) The petitioner was officiating as Major Munshi wherein the nature of duty is such that the person holding this charge would always be in the bad lights in the eyes of his colleagues. This is a very common occurrence within the Civil Police, Armed Constabulary and the Armed Forces, giving rise to hot arguments by the aggrieved Personnels quite often. So much so that person holding such a post is routinely under mental stress and fatigue.
- (b) The impugned incidence took place off the duty campus, off the duty hours, after the sunset at 0730 hours in the late evening. At this juncture, it is a point of consideration and hard thinking as to whether a mere consumption of liquor was really an act of indiscipline in this instant case, or it was just

a co-incidence that the petitioner had consumed liquor after his duty hours in the late evening outside the duty campus when the complainant 777 Babar Shekh approached him inquiring about his leave application and it took an ugly turn ironically. The petitioner does not seem to deserve a punishment for this co-incidental quarrel.

- (c) It is evident that for this incidence the complainant 777 Babar Shekh was equally responsible and he too might have been under the influence of liquor as is evident by his own statement during the enquiry. It is another matter that his medical test was not got conducted by the superiors. Thus, letting the complainant go scot-free and punishing only the petitioner is against the spirit of natural justice, wherein, central idea of the earlier judgments as relied upon by the learned Counsel for the petitioner comes into play.

10. Thus, the punishment order is not in consonance with the enquiry report, *prima facie*, and beyond the scope of punishment rules, as a mere presumption of a deliberate misbehaviour with a colleague Constable, and an apparent indiscipline under the

influence of liquor consumption seem more in the imagination of the Punishing Officer than the realities of day-to-day life. Therefore, the impugned orders dated 13.01.2025 and 22.09.2023 lack force and deserve to be quashed.

ORDER

Accordingly, the claim petition is allowed. The impugned orders dated 13.01.2025 and 22.09.2023 are, hereby, set-aside. The respondents are directed to expunge the entry of censure from the service record of the petitioner within a period of 30 days from the date of receipt of the certified copy of this judgment. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: 06th NOVEMBER, 2025
NAINITAL
BK