

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (S/B) No.434 of 2020

Sunil Panwar

.....Petitioner

Vs.

The Public Services Tribunal Uttarakhand, Dehradun and others

.....Respondents

Present :

Shri Nalin Saun, learned counsel for the petitioner.

Shri Pradeep Joshi, learned additional chief standing counsel for the State.

31st December, 2020

Coram : Hon'ble Ravi Malimath, A.C.J.

Hon'ble Alok Kumar Verma, J.

Alok Kumar Verma, J. (Oral)

This writ petition is filed seeking a writ of certiorari to set aside the judgment and order dated 07.12.2018 passed by the Public Services Tribunal, Uttarakhand at Dehradun (hereinafter referred to as, "Tribunal") in Claim Petition No.46/SB/2018, "Sunil Panwar vs. State of Uttarakhand and others" along with order dated 14.10.2020 in Review Application No.06/SB/2020, order dated 21.06.2017 passed by the respondent no.4 and order dated 06.02.2018 passed by the respondent no.3.

2. In order to appreciate the issues involved in this writ petition, the relevant facts need mentioned *infra*.

3. The facts, to the limited extent necessary, are that the petitioner is a Sub-Inspector in civil police in the Uttarakhand Police. In the year, 2016, when the petitioner was posted at Police Station Sahaspur, a Case Crime No.180 of 2016 under Section 279 and Section 338 I.P.C. was registered against unknown driver of the motorcycle, bearing registration number HP17A-5663. The investigation was handed over to the petitioner. The accused was arrested on 09.08.2016 and the technical inspection of the said vehicle was conducted on 21.08.2016. The petitioner was transferred from the Police Station Sahaspur to the Police Station Vikasnagar on 07.10.2016. The petitioner was Investigating Officer of that case till 07.10.2016, but, during this period, he never attempted to record the statements of the informant, his injured mother and the doctor, whereas, the F.I.R. disclosed that the treatment of the injured, mother of the informant, was going on in Mahant Indresh Hospital. The injured died on the next day of the incident. But, the petitioner did not add the relevant Section 304A I.P.C.

4. After preliminary enquiry, a show cause notice dated 18.05.2017 was issued by the Senior Superintendent of Police, Dehradun, respondent no.4, to the petitioner as to why the censure entry be not given to him as a minor penalty under "The Uttar Pradesh Police Officers Of The Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as, "the Rules, 1991")(as applicable

in the State of Uttarakhand under provisions of the U.P. Reorganization Act, 2000).

5. The petitioner submitted the reply to the show cause notice on 12.06.2017 and denied the said charge.

6. Senior Superintendent of Police, Dehradun, respondent no.4, considered the reply to show cause notice and did not find the same satisfactory. He found the petitioner guilty and awarded minor penalty of censure entry on 21.06.2017.

7. The petitioner filed an appeal against the punishment order, which was rejected by the Deputy Inspector General of Police, Garhwal Region, respondent no.3, on 06.02.2018.

8. The petitioner filed the claim petition before the Tribunal for seeking the following relief: -

(i) To quash the impugned punishment order dated 21.06.2017 (Annexure No.A-1) passed by the respondent no.3 and impugned appellate order dated 06.02.2018 (Annexure No. A-2) passed by the respondent no.3 along with its operation & effects with all consequential benefit.

(ii) To issue an order or direction to the respondents to delete the endorsement of censure entry from the character roll of the petitioner.

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

(iv) To award the cost of petition.

9. After hearing both the parties, the Tribunal dismissed the claim petition and held that the enquiry was

based on evidence and there was no mala fide or perversity. The petitioner was given reasonable opportunity to defend himself and there is no violation of any rule, law or principles of natural justice in the enquiry proceedings conducted against the petitioner. The Tribunal observed that the petitioner participated in the preliminary enquiry. The Enquiry Officer has taken statements of all the relevant witnesses including the petitioner. The preliminary enquiry was based on statements and documents related to the allegations. On the basis of substantial evidence, the Enquiry Officer had reached the conclusion that the petitioner was guilty. The petitioner was also provided reasonable opportunity to defend himself. After the preliminary enquiry, the petitioner was issued a show cause notice by the disciplinary authority. The reply of the petitioner to the show cause notice was also duly examined and considered and after that the disciplinary authority has passed a reasoned order awarding minor punishment of censure to the petitioner. The appeal of the petitioner was also duly considered and the same was rejected by the Appellate Authority by passing a reasoned order. The Tribunal further observed that it is settled position of law that the Tribunal cannot interfere in the findings of the enquiry officer recorded after the conclusion of the enquiry unless it is based on the mala fide or perversity. The perversity can only be said when there is no evidence and without evidence, the enquiry officer has come to the conclusion of the guilt of the delinquent official. In the case in hand, there is sufficient evidence to hold the petitioner guilty for misconduct as recorded by the enquiry officer and there is no perversity or mala fide in appreciation of evidence.

10. The Tribunal observed that from the perusal of record, it is also revealed that the show cause notice dated 18.05.2017 was issued and in his reply to that notice, the petitioner could not demonstrate any illegality in the show cause notice or in the procedure for awarding punishment of the censure entry. It is well settled principle of law that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. In case of disciplinary enquiry, the technical rules of evidence and the doctrine of "Proof beyond doubt" have no application. "Preponderance of probabilities" and some material on record are adequate to reach a conclusion whether or not the delinquent has committed misconduct.

11. The petitioner moved a review application before the Tribunal for reviewing the judgment and order dated 07.12.2018. The Tribunal dismissed the said Review Application No.06/SB/2020 on 14.10.2020.

12. Heard learned counsel for parties through video conferencing.

13. Learned counsel for the petitioner submitted that the finding of the enquiry officer was wrong and perverse. There was no dereliction in duties on the part of the petitioner. He performed his duty with full devotion and satisfaction. The statements of the doctor and the victim could not be taken by him due to exigency of work and not due to negligence and carelessness. Hence punishment was bad in the eyes of law. The punishment is harsh and

disproportionate to the charge levelled against him. The appellate authority has acted in a mechanical manner and learned Tribunal has committed serious error of law in rejecting the claim petition and review application.

14. *Per contra*, learned counsel appearing for the State submitted that the submissions of the petitioner are erroneous, misleading and misconceived and in the facts and circumstances of the case, there is no illegality in awarding the said punishment of censure.

15. At this stage, it would be appropriate to look the relevant rules of the Rules, 1991, which are as follows: -

"4. Punishment (1) The following Punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely: -

(a) Major Penalties: -

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower scale or to a lower stage in a time-scale.

(b) Minor Penalties: -

(i) With-holding of promotion.

(ii) Fine not exceeding one month's pay.

(iii) With-holding of increment, including stoppage at an efficiency bar.

(iv) Censure.

(2)

(3)

"5. Procedure for award of punishment- (1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.

(2) The case 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.

(3)

"14. Procedure for conducting departmental proceedings-(1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I.

(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.

(3) "

16. The basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law. A fair trial is the heart of criminal jurisprudence. Denial of fair trial is crucifixion of human rights. In *Kalyani Baskar vs. M.S. Sampooram*, (2007)2 SCC 259, the Hon'ble Supreme Court held that the right to fair trial includes "fair investigation."

17. Therefore, it is the responsibility of the Investigating Officer to ensure that the investigation should be judicious, transparent and fair and the record of investigation should not show that efforts were being made to protect and shield the guilty or the investigation was indicative of bias mind. A high responsibility lies upon the Investigating Officer not to conduct an investigation in a tainted and unfair manner. The investigation must be

honest, unbiased and in accordance with law. Negligence in the investigation is the breach of a duty caused by omission. It leads to miscarriage of justice.

18. It is well settled that the Courts will not interfere with findings of facts recorded in a departmental enquiry, except where such findings are based on no evidence or where they are mala fide or clearly perverse.

19. The petitioner was given full opportunity to explain the matter, which he availed. He never raised any objection during the enquiry complaining of any prejudice of any nature to him. In this matter, dereliction in duties was found on the part of the petitioner. In the facts and circumstances of the case, no case is made out to hold that the said enquiry suffers from any procedural lapse or there was no evidence or was in violation of the principle of natural justice, thereby causing any prejudice to the rights of the petitioner.

20. It is well settled that quantum of punishment is essentially the domain of the departmental authority. Courts cannot assume the function of departmental authorities and the judicial review of quantum of punishment is very limited only where penalty is found to be shocking to the conscience of the Court. It is not for the Court to substitute its decision by prescribing the quantum of punishment unless the punishment is shockingly disproportionate with the gravity of charge.

21. In our opinion, the order of censure passed against the petitioner cannot be faulted with. In view of the guilt of the petitioner, it cannot be said that the punishment is disproportionate and shocking warranting any interference. The said punishment of censure is proportionate with the gravity of the charge, hence deserves to be upheld.

22. In view of the above detailed discussion, we are of the considered view that the learned Public Services Tribunal has not erred in law or on facts. We do not find any perversity or infirmity in the impugned judgment and order warranting interference. Therefore, the writ petition is liable to be dismissed.

23. In the result, the writ petition is dismissed. No costs.

(Alok Kumar Verma, J.)

**(Ravi Malimath)
A.C.J.**

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