

**STATE PUBLIC SERVICES TRIBUNAL, INDIRA BHAWAN, LUCKNOW.**

Present: Hon'ble Mr. Suresh Chandra, Vice-Chairman (Admn.)

**Claim Petition No. 522/2023**

Head Constable Brishketu Singh, PNO(942470318) aged about 48 years, son of Sri Late Nagendra Singh, Resident of Village-Sahadodar, Post-Dubavli, Police Station Gola Bazar, District-Gorakhpur, U.P.

.....Applicant/Petitioner.

**Versus**

- 1.State of U.P. through Principal Secretary, Home Department, U.P.Govt., Civil Secretariat, Lucknow.
- 2.Superintendent of Police, Basti.
- 3.Deputy Inspector General of Police, Basti, Circle Basti.
- 4.Additional Director General of Police, Gorakhpur Zone, Gorakhpur, U.P.

.....Opposite Parties

**JUDGMENT****(By Hon'ble Mr. Suresh Chandra, Vice-Chairman (Admn).)**

This claim petition has been filed by petitioner under Section-4 of the U.P. Public Services (Tribunal) Act, 1976 and sought the following reliefs:-

- (i) To quash/set aside the impugned punishment orders dated 05.08.2022(Annexure No. 1), appellate order dated 31.10.2022(Annexure No. 2) and revisional order dated 21.01.2023(Annexure No. 3) with all consequential service benefits.
- (ii) Any other direction or order may also be passed which Court may kindly be pleased to issue in the facts and circumstances of the case.

2. Briefly stated, case of petitioner is that he was initially appointed on the post of Constable in the year 1994, thereafter he was promoted on the post of Head Constable on 09.10.2018. The work and conduct of the petitioner has always been satisfactory and appreciable. A show cause notice was issued to the petitioner on 12.05.2022 (Annexure No. 7) which is reproduced below:

“जब यह याची वर्ष 2022 में थाना परसुरामपुर जनपद बस्ती में मुख्य आरक्षी के पद पर नियुक्त थे तो दिनांक 21-03-2022 को सोशल मीडिया पर प्रकाशित “हमारे गांव में जहरीली शराब बहुत तेजी से बन रही है। इस पर प्रशासन द्वारा कोई कार्यवाही नहीं कर रहे हैं तथा गांव थाने से महज 01 कि०मी० दूर है। उक्त प्रकरण की जांच से पाया गया कि थाना परसुरामपुर क्षेत्र के हल्का नं०-01 का बीट नं० 01

दिनांक 20-07-2021 से इनको आवंटित है। बीट नं०-01 में ग्राम खड़वा कुंवर, मोइयापुर, उल्लहा, बेलभरिया, ढेलहुपुर, लालपुर, रघुनाथपुर घोलवाहै। इनके द्वारा थाने पर नियुक्ति के दौरान बीट सूचना अंकित नहीं कराया गया जबकि बीट सूचना अंकित कराये जाने के सम्बन्ध में पुलिस महानिदेशक उ०प्र० लखनऊ के परिपत्र संख्या-01/2020 दिनांक 03-01-2020 व अपर पुलिस महानिदेशक गोरखपुर जोन गोरखपुर के पत्र संख्या-जीजेड-सीए-6 (निर्देश-01)-2021/2744 दिनांक 26-02-2021 द्वारा पूर्व में ही दिशा निर्देश जारी किया गया था। इनके द्वारा आदेश का पालन न करते हुए अपने कर्तव्यों की इतिश्री कर ली गयी। उक्त प्रकरण की प्रारम्भिक जाँच क्षेत्राधिकारी लाइन जनपद बस्ती से करायी गयी। प्रारम्भिक जाँच से इनको दोषी पाया गया। इनका उक्त कृत्य कर्तव्य पालन के प्रति घोर लापरवाही, स्वेच्छाचारिता एवं उदासीनता का परिचायक है जिसकी परिनिन्दा की जाती है।”

Petitioner submitted reply to the show cause notice on 30.05.2022 (Annexure No. 8) denying all the charges levelled against him. Thereafter, disciplinary authority passed the impugned order dated 05.08.2022(Annexure No.1) by which censor entry has been awarded against the petitioner on the ground that the reply submitted by the petitioner is unsatisfactory. Feeling aggrieved with the order dated 05.08.2022 petitioner preferred appeal which was also rejected by appellate authority vide order dated 31.10.2022. Thereafter, petitioner filed revision before the revisional authority which was also rejected vide order dated 21.01.2023. Contention of the petitioner is that petitioner was not supplied relevant documents with the show cause notice. Punishment order, appellate order and revisional order passed by the opposite parties are illegal ,arbitrary, unreasoned, nonspeaking and violations of natural justice, hence this claim petition.

3. Opposite parties have filed their written statement denying material allegations mentioned in reference petition. They have stated that petitioner committed dereliction of duty and irregularity for which a show cause notice was issued upon petitioner. Full opportunity of hearing was given to petitioner to defend his case. Opposite parties had contended that impugned orders passed against petitioner are in accordance with Rule-14(2) of U.P. Subordinate Ranks of Police Officers (Punishment and Appeal) Rules, 1991. There is no illegality committed by the authorities concerned in passing the orders against the petitioner. Orders passed against the petitioner are reasoned and speaking order. Grounds shown in support of reference petition are devoid of merit, so petition deserves to be dismissed.

4. Reiterating his earlier submissions, the petitioner filed his R.A. wherein he submitted his version in view of the pleas agitated by the opposite parties.

5. I have heard the learned Counsel for the petitioner as well as the learned P.O. appearing on behalf of the opposite parties and perused the record available on the file.

6. The learned counsel for the petitioner has contested the case that petitioner always performed his work and duties with extra ordinary and honesty and always worked with full satisfaction of his superior authorities having unblemished service record. The preliminary enquiry was conducted and the enquiry report dated 18-04-2022 (Annexure no.6) submitted, on the basis of enquiry report show cause notice was issued to the petitioner, but the relevant copy of the documents have not been provided and as such the punishment order has been passed on relying the extraneous material which is in violation of principles of natural justice, therefore, the entire disciplinary proceeding vitiates on the ground only. There is neither any negligence nor dereliction of his duty by the petitioner. The learned Counsel for the petitioner, in this connection, drew attention to the directions issued by the Director General of Police, U.P. vide his Circular dated 08.03.2001, The same are being gainfully reproduced as hereunder:-

“नियमावली के नियम –14(2) के “युक्तियुक्त अवसर” का तात्पर्य अपचारी अधिकारी को बचाव हेतु समुचित सामग्री उपलब्ध कराते हुए पर्याप्त समय उपलब्ध कराना है। अतः अपचारी अधिकारी को कारण बताओ नोटिस के साथ जॉच आख्या की प्रति एवं स्पष्टीकरण देने के लिए कम से कम 15 दिन का समय अवश्य दिया जाये। जॉच आख्या के साथ-साथ अन्य अभिलेख, यदि बचाव के लिए आवश्यक है तो, उन्हें भी सक्षम अधिकारी द्वारा अपचारी अधिकारी को दिया जाना चाहिए। यदि कोई अभिलेख गोपनीयता या अन्य किसी विशिष्ट कारणों से दिया जाना सम्भव न हो पाये तो पत्रावली का अवलोकन करने की अनुमति दी जानी चाहिए। सी०बी०सी०आई०डी०/सतर्कता अधिष्ठान द्वारा की गयी जॉच आख्या अपचारी अधिकारी को नहीं दी जायेगी और न ही उसका उल्लेख कारण बताओ नोटिस में किया जाए।”

7. It was further indicated that by not furnishing relevant documents to the petitioner, the concerning authority has acted against the following directions of the Hon'ble High Court issued in **Ram Surat Singh vs. Inspector General of Police, Allahabad Zone, Allahabad (2005) 2 U.P.L.E. B.C. 1155:**

“Disciplinary Authority relied upon statements recorded in preliminary inquiry report while imposing punishment—Thus, copy

of preliminary inquiry report ought to have been supplied to petitioners—Non supply thereof, is violation of mandatory requirement of Rule 14(2)—Apart from it, opportunity of hearing, also be given —That too was not given —Mere permission to inspect file— Not sufficient—Principle of natural justice also violated—Punishment has to be set aside.”

8.. The importance of furnishing essential documents to the delinquent during the course of disciplinary proceedings has also been emphasized by the Hon'ble Supreme Court in **Union of India and Others vs. Mohd. Ramzan Khan, A.I.R. 1991 (S.C. Page 471)** as follows:-

“It is necessary for the department to supply a copy of the enquiry report and non-supply of the enquiry report is fatal and vitiates the entire enquiry proceedings. It seems that if preliminary enquiry has been relied upon by the department, then the copy of the report is required to be furnished in order to give the delinquent an opportunity to represent the matter sufficiently when penal consequences flow from the show cause notice. In the present case merely by issuing a direction to inspect the file was not sufficient. The respondents should have supplied the copy of the enquiry report and since the enquiry report was not supplied, the principles of natural justice were violated and the petitioner was not afforded a reasonable opportunity to defend his case and consequently the impugned order is not sustainable in the eye of law and is liable to be quashed.”

9. Highlighting the importance of reasoned and speaking orders, the Hon'ble Apex Court in **Vijay Singh Vs. Union of India, (2007) scc 63 and Nirmla Jhala Vs. State of Gujarat and others, 2013(2)SCC ( L&S) 270** has held as under :-

" As the object of the preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry or not; the enquiry officer may give his finding, but cannot make the opinion to hold guilt to the delinquent employees."

10. It has further been argued by the petitioner that impugned order of punishment dated 05.08.2022 is non-speaking, unreasoned, illegal and arbitrary order, as it has been passed without application of mind, so, it is liable to be quashed. In this regard, I have perused the impugned order of punishment dated 05.08.2022 which is reproduced as under:-

“आरोपित मुख्य आरक्षी द्वारा प्रस्तुत स्पष्टीकरण में दिये गये अन्य प्रस्तारों, एवं पत्रावली पर उपलब्ध अभिलेखों का मेरे द्वारा सम्यक रूप से अनुशीलन किया गया तो दिनांक 21-03-2022 को सोशल मीडिया पर प्रकाशित “हमारे गांव में जहरीली शराब बहुत तेजी से बन रही है इस पर प्रशासन द्वारा कोई कार्यवाही नहीं कर रहे हैं तथा गांव थाने से महज 01 कि०मी० दूर है।” उक्त प्रकरण की जांच से पाया गया कि थाना परसुरामपुर क्षेत्र के हल्का नं० 01 का बीट नं० 01 दिनांक 20-07-2021 से इनको आवंटित हैं

बीट सं001 में ग्राम-खड़वा कुंवर, मोइयापुर, उल्लहा, बेलभारिया, ढेलहूपुर, लालपुर, रघुनाथपुर व घोलवा है। इनके द्वारा थाने पर नियुक्ति के दौरान बीट सूचना अंकित नहीं कराया गया, जबकि बीट सूचना अंकित कराये जाने के सम्बन्ध में पुलिस महानिदेशक उ0प्र0 लखनऊ के परिपत्र संख्या-01/2020 दिनांक 03-01-2020 व अपर पुलिस महानिदेशक गोरखपुर जोन गोरखपुर के पत्र संख्या-जीजेड-सीए-6 (निर्देश-01)-2021/2744 दिनांक 26-02-2021 द्वारा पूर्व में ही दिशा निर्देश जारी किया गया था। इनके द्वारा आदेश का पालन न करते हुए अपने कर्तव्यों की इतिश्री कर ली गयी। आरोपी मुख्य आरक्षी का स्पष्टीकरण संतोषजनक नहीं पाया गया।

11. The punishment has been passed without any evidence and without proving the allegation against the petitioner merely it has been stated that " आरोपी द्वारा प्रेषित स्पष्टीकरण संतोषजनक नहीं पाया गया " No reason has been given in the impugned punishment order and only conclusion has been mentioned, as such, the impugned punishment order has been passed in violation of the law. The opposite party concerned did not consider the material facts of the case as such it cannot be said that the petitioner was afforded a reasonable opportunity of hearing. In my view there is nothing to show on the file that any act of the petitioner amounts to misconduct. As there is no evidence displaying or establishing any ill motive on the part of the petitioner, he has been unjustifiably punished for misconduct. The petitioner did not commit any dereliction in his duties but merely on the basis of presumption the disciplinary was initiated against him leveling false allegations and without considering any single word of the reply and without proving misconduct, the impugned punishment has been passed, which is non speaking and unreasoned order. It is settled law that if the intention of the employee is not bad, his conduct does not come into the category of misconduct and he may not be punished. Thus the opposite parties unusually and unlawfully exercised their power. In view the action of opposite parties in the present case is illegal, arbitrary and violation of principles of Natural Justice. The impugned punishment order and appellate order have been passed in illegal and arbitrary exercise of power.

12. Highlighting the importance of a reasoned order the Hon'ble Apex Court in **Raj Kumar Mehrotra Vs. State of Bihar and others, 2006 Supreme Court Cases (L&S) 679** has held as under :-

"Without going into other issues raised, we are of the view that the impugned order of the respondent authority imposing punishment on the appellant cannot be sustained. Even if we assume that Rule 55-A which pertains to minor punishment, was applicable and not Rule 55 which relates to major punishments, nevertheless Rule 55-A requires that the punishment prescribed therein cannot be passed unless the

representation made pursuant to the show cause notice has been taken into consideration before the order is passed. There is nothing in the impugned order which shows that any of the several issues raised by the appellant in his answer to the show cause notice were, in fact, considered. No reason has been given by the respondent authority for holding that the charges were proved except for the ipse dixit of the disciplinary authority. The order, therefore, cannot be sustained and must be and is set aside.”

13. A distinction between “reasons” and “conclusions” have been spelt and by Hon’ble the Apex Court in **Union of India Vs. Mohan Lal Kapoor, (1973) 2 Supreme Court Cases 836**, it has been held as under:-

“Reasons are links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered by the conclusions reached.”

14. In **G. Valli Kumar Vs. Andhra Education Society, 2010(2) Supreme Court Cases 497**, it has been held by the Hon’ble Apex Court as under:-

“That the requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.”

15. In the case of **S.N. Mukherji vs. Union of India** it has been held by the Hon’ble Apex Court that:-

“reason must be recorded while awarding punishment and in this regard what is necessary is that the reason must clear and explicit so as to indicate that the authority has given due consideration to the point of controversy.

16. The Hon’ble High Court in case of **Arvind Kumar Pandey vs. State of U.P. & others reported in 2013(31) LCD 1964** has held that

“if the element of motive behind any lapse and dereliction of duty is absent, then for that reason, no employee shall be punished or face disciplinary enquiry as has been laid down by the Hon’ble Apex Court in the case of Union of India and others Vs. Jamil Ahmad.

17. The Division Bench of the Hon’ble High Court in case of **State of U.P. and others vs. Raj Mani Mishra and another reported in 2018(36) LCD 644**, it has been held that:-

“lack of efficiency or failure to attain highest standards in discharge of duties attached to public office would not constitute ‘misconduct’ unless the consequent directly

attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.”

18. By the Hon'ble High Court In the case of **Jagdish Prasad Singh vs. State of U.P. & others** has held that:

“There is not a single word as to whether he has perused the report of the enquiry officer before passing the order. The punishing authority also did not indicate about the report of the enquiry officer and the order was passed without any application of mind and it does not indicate that he had even perused the report of the enquiry officer and agreed with the report of the enquiry officer. The Hon'ble High Court accordingly quashed the illegal and non-speaking order, as even the enquiry report was not referred in the order.

19. In the light of above, I find that the order of punishment is clearly illegal, non speaking and un reasoned and there is sufficient reason to quash it.

20. The learned Counsel for the petitioner has further argued that until charge of the negligence of petitioner has been proved, the conduct of the petitioner is not come under the purview of misconduct and regarding define misconduct catena of judgments have been passed by Hon'ble Apex Court and Hon'ble High Court.

21. In case of **Baldev Singh Gandhi Vs. State of Punjab & Another AIR 2002 SC Page 1124** considering the term misconduct held that **"Misconduct has not been defined in the Act. The work 'misconduct' is antithesis of the word 'conduct' unlawful behavior, misfeasance, wrong conduct, misdemeanor etc."**

22. I have also perused the appellate and revisional orders and find that ground taken by the petitioner in appeal and revision have also not been considered properly and appeal and revision were rejected in mechanical manner vide order dated 31.10.2022 and 21.01.2023, these are consequential orders, so, the appellate and revisional orders are also liable to be quashed.

23. In view of discussions made above, the claim petition is deserves to be allowed.

### **ORDER**

The claim petition is allowed. Punishment order dated 05.08.2022 (Annexure No. 1), appellate order dated 31.10.2022 (Annexure No. 2) and revisional order dated 21.01.2023 (Annexure No. 3) are hereby quashed.

Petitioner shall be given all consequential service benefits which have been withheld on account of these punishment orders as per rules.

Compliance of this judgment and order shall be made within a period of three months from the date of receipt of certified copy of this order.

There is no order as to costs.

Sd/-  
(Suresh Chandra)  
Vice-Chairman(Admn.)

Judgment signed, dated and pronounced in the open court today.

Sd/-  
(Suresh Chandra)  
Vice-Chairman(Admn.)  
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Dated: 26-09-2024  
G.K./-