

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

**Court no.10**

**Present: Hon'ble Mr.Ravindra Nath Tripathi, Member (Judicial)**

**Claim Petition No. 1586 of 2022**

**Ramesh Singh Yadav aged about 26 years, S/o Ramdhari yadav,  
Resident of Village-Mehar Alipur Muja Bhagalpur Post Fadanpur,  
Poice Station Jangipur, District -Ghazipur.**

**.....Petitioner.**

**Versus**

- 1. State of U.P. through Additional Chief Secretary, Department of Home, U.P. Civil Secretariat, Lucknow.**
- 2. Superintendent of Police, Kushi Nagar, District-Kushi Nagar.**
- 3. Deputy Inspector General of Police, Gorakhpur Range, Gorakhpur.**
- 4. Additional Director General of Police, Gorakhpur Zone, Gorakhpur, U.P.**

**.....Opposite Parties.**

**Shri Om Prakash Mishra, Ld. counsel for petitioner.  
Ld. P.O. for Opposite Parties.**

**JUDGMENT**

**(By Hon'ble Mr. Ravindra Nath Tripathi, Member (Judicial))**

**This claim petition has been filed under Section-4 of the U.P. Public Services Tribunal Act, 1976 to quash the impugned punishment order dtd. 06.02.2021 (Annexure No.1) passed by the Opp. Party No.2 whereby petitioner was awarded punishment of censure entry, appellate order dtd. 04.06.2021 (Annexure No.2) passed by the Opp. Party No.3 and revisional order dtd. 30.09.2021 (Annexure No.3) passed by the Opp. Party No.4 by which appeal and revision were rejected respectively.**

2- Briefly stated the facts of the case are that the petitioner was initially appointed on the post of Constable civil Police in the year 2018. When the petitioner was posted at Police Chauki Highway P.S. Kasya, District-Kushi Nagar in the year 2020 then on 15.12.2020 at 9 PM at P.S. Kasya at Aditya Lodge Upma Singh daughter of Pappu Singh resident of P.S. Tarkulwa, District-Deoria along with her family about 10 to 15 members were taking Dinner in the night. The petitioner along with constable Kamlesh Yadav also arrived at the aforesaid lodge to take dinner. During the dinner the petitioner interrogated to Upma Singh and family members who were sitting to Aditya Lodge and during the interrogation instead of discharging the official duty, the petitioner began to misbehavior to Upma Singh and family members and consequently the situation of Maar Peet took place and as such it has been alleged against the petitioner that the petitioner has committed negligence and remissness while discharging the official duties and as such on the aforesaid allegation a show cause notice dtd.13.01.2021 was issued to the petitioner by the opposite party No. 2 proposing the punishment of censure entry. To verify the veracity of allegation leveled against the petitioner a preliminary inquiry was constituted which was constituted which was conducted by the then Additional Superintendent of Police, Kushi Nagar, Sri A.P.Singh, who submitted his report dtd. 11.01.2021 in which petitioner was found guilty. Petitioner has submitted the detailed reply dtd.28.01.2021 to the show cause notice, before opp. party no.2 in which petitioner has raised eleven factual and legal grounds but none of these points have been considered and dealt with by opposite party no.2 while passing the impugned punishment order. Thus, impugned punishment order is non speaking and unreasoned order and in this regard petitioner mentioned several decisions of Hon'ble Apex Court and Hon'ble High Court and has prayed to quash the impugned punishment order. It has been further stated that there is no iota of evidence on records

which shows that the act of the petitioner has come into zone of misconduct. There is no iota of evidence on records the act of the petitioner is ill motive in nature as such same is not sustainable in the eyes of law. Against impugned order of punishment, petitioner has preferred an appeal and revision before competent authorities but same have been rejected by them without considering the facts mentioned by the petitioner in his appeal and revision respectively. Hence, this claim petition has been filed before this Tribunal.

3- Respondents while filing CA/WS have refuted the claims made by the petitioner and asserted that in case of the petitioner procedure provided for minor penalty was adopted and preliminary inquiry was constituted to verify the veracity of allegation leveled against the petitioner which was conducted by competent authority the then Additional Superintendent of Police, Kushi Nagar, Sri A.P.Singh, in which he was found guilty. The petitioner was provided reasonable opportunity to defend himself during inquiry. On submission of inquiry report dtd.11-01-2021 the disciplinary authority followed the procedure provided under Rule 14(2) of Sub Para-4(1)(kha)-(4) of Rules 1991 and issued show cause notice to the petitioner for filing his reply which was filed on 28.01.2021 and thereafter on the basis of evidence on record a reasoned and speaking order dtd. 06.02.2021 was passed considering the points raised in reply. Similarly the appellate and revisional authorities have passed reasoned and speaking order dtd.04.06.2021 and 30.09.2021 on the basis of evidence on record and considering the points raised in the memo of appeal as well as revision filed by the petitioner assigning the reasons. The petition of petitioner is based on false and misleading facts, no cause of action has arisen in favour of the petitioner, he is not entitled to get any relief and hence petition is liable to be dismissed.

4- Rejoinder affidavit has been filed by the petitioner in which he reiterated earlier averments what he had pleaded in his claim petition.

5- I have heard argument of Shri Om Prakash Mishra, the learned counsel for petitioner and Ld. Presenting Officer on behalf of respondents and have gone through the record.

6- The learned counsel for petitioner has argued that the disciplinary authority without considering the reply to show cause notice and without giving cogent reason why issues raised in the reply were found not sustainable, passed an unreasoned and non speaking order which is not tenable in the eyes of law and if this order is not tenable then appellate order will fall automatically.

7. The learned Presenting Officer on behalf of the Opposite Parties has argued that after due consideration of the facts mentioned by the petitioner in his explanation, the impugned punishment order has been passed which is absolutely a speaking and reasoned order and needs no interference.

8- I have gone through the record and find that for the alleged allegation a preliminary enquiry was conducted by Shri A.P.Singh, Additional Superintendent of Police, Kushi Nagar. During the enquiry statement of the petitioner and other relevant witnesses were recorded and petitioner's statement was also recorded in which petitioner has denied the allegation labeled against him. Statement of witness Upma Singh Son of Pappu Singh, Sweety Yadav D/o Sri Surendra Yadav, Anupma Singh S/o Pappu Singh all resident of Village-Pathardeva, Police Station Tarkulwan, District-Deoria were recorded. Further statement of Shri Sanjay Kumar, then Inspector Incharge of Police Station Kasya, District-Kushinagar, S.I. 152766957 Nagendra Gaur, Police Station-Kasya, District-Kushinagar, Kamlesh Yadav Constable 182623312, Constable 1826222087 Ramesh yadav Police Station-Kasya, Distt-Kushinagar, Balwant Kumar Singh Son of Shri Komal Singh Sa Ward No. 24 Subhash Nagar, Police Station Kasya,

**District-Kushinagar, Chhotelal Son of Shri Virjhan Gaur, Sa-Rahsajnevi, Patti, Police Station-Patherwa, District-Kushinagar, Abhishek Singh, Chandan Singh and statement of several other witnesses were recorded. Enquiry Officer after considering the statement of the witnesses has submitted his enquiry report on 11.01.2021 holding guilty to the petitioner. Operative portion of the conclusion of inquiry report is reproduced as under: ;**

“अब तक की गयी जांच से तत्कालीन चौकी इंचार्ज हाइवे थाना कसया श्री नागेन्द्र कुमार गौड़ तत्समय हाइवे चौकी पर नियुक्त का० रमेश यादव व पुलिस लाइन में नियुक्त का० कमलेश यादव दिनांक 15.12.2020 के रात्रि करीब 09.00 बजे होटल आदित्य में आवेदिका उपमा सिंह व उनके परिजनों से दुर्व्यवहार करने, पदेन दायित्वों के निर्वहन में विफल रहने, अनुशासनहीनता बरतने व कर्तव्य के प्रति लापरवाही बरतने के दोषी पाये जा रहे हैं एवं दूसरी ओर आवेदिका उपमा सिंह के पक्षकार भी कर्तव्य के दौरान पुलिस बल से अवैधानिक तरीके से मारपीट करने के दोषी प्रतीत हो रहे हैं।”

**9. In the light of above, I find that the preliminary enquiry report shows that the petitioner was afforded reasonable opportunity to defend himself and allegation labeled against him was found proved against the petitioner and some other constable. After perusing the enquiry report dated 11.01.2021 I do not find any defect in the report and on this ground petitioner is not eligible to get relief.**

**10- It has been stated in para 4.8 of the claim petition, that petitioner has lodged the FIR No. 0867/2020 under Section 147, 323, 332, 333, 398, 353, 504, 506 IPC and Section 7 of Criminal Law Amendment Act against 6 accused persons wherein charge sheet has been filed against the accused persons and the trial of the case is pending till date. It has been further mentioned that Smt. Upma Singh has also lodged FIR at 0878/2020 under Section 354-A, 323, 504, 427 IPC against the petitioner as well as humrahi constables Kamlesh Yadav and Sub Inspector Nagendra Kumar Gaur wherein final report has been filed against them and no protest has been filed by the complainant till date. Had the petitioner been charge sheeted and any adverse comment would**

have made against the conduct of the petitioner at the stage of trial of the aforesaid case, then only action could be taken against the petitioner in view of Rule-8 and Rule-18 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. Petitioner has also taken ground that in the aforesaid case crime no. 867/2020 which was lodged by the petitioner, if the accused persons has been acquitted and any adverse comment would have been by the trial court against the petitioner then in view of Para-500 of the Police Regulation and in view of Rule 18 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, the action could be taken against the petitioner. I have perused the impugned punishment order dated 06.02.2021 which shows that no finding has been recorded by the punishing authority as mentioned above. Punishing Authority only reiterated the allegation labeled against the petitioner while passing the impugned punishment order. Record shows that Case Crime No. 867/2020 under Section 147, 323, 332, 333, 398, 353, 504, 506 IPC and Section 7 of Criminal Law Amendment Act against 6 accused persons charge sheet has been filed against the accused persons and the trial of the case is pending till date. The FIR at 878/2020 lodged by Smt. Upma Singh Under Section 354-A, 323, 504, 427 IPC against the petitioner as well as humrahi constables Kamlesh Yadav and Sub Inspector Nagendra Kumar Gaur in which final report has been filed against him and no protest has been filed by the complainant till date. Had the petitioner been charge sheeted and any adverse comment would have made against the conduct of the petitioner at the stage of trial of the aforesaid case, then only action could be taken against the petitioner in view of Rule-8 and Rule-18 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. In the case Crime No. 867/2020 which was lodged by the petitioner, if the accused persons has been acquitted and any adverse comment would have been by the trial court against the petitioner then in view of para-500 of the Police regulation and in

view of Rule 18 of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 the action could be taken against the petitioner. I have gone through the impugned punishment order dated 06.02.2021 which shows that reply of the petitioner was not properly considered by the Punishing Authority thus, impugned punishment order dated 06.02.2021 legally not sustainable in the eyes of law. In support of argument the learned counsel for petitioner has placed reliance on the decision of R.K. Mehrotra Vs. State of Bihar 2006 SCC (L&S) 769 the Hon'ble Apex Court has held as follows:

"We are of the view that the impugned order of respondent authority imposing punishment on the applicant cannot be sustained without going into the order issue raised. Even if, we assume that Rule 55-A which pertains to minor punishment, was applicable and not rule 55 which relates to major punishment, nevertheless, rule 55-A requires that the punishment prescribed therein can not 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 applicant in his answer to the show cause notice, 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, can not be sustained and must be set aside."

11- A distinction between reason and conclusion has been spelt out by the Hon'ble Apex Court in case of Union of India Vs. Mohan Lal Kapoor & others (1973) 2 SCC 836 as under:

"Reasons are the 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 relational nexus between the facts considered by the conclusions reached."**

**12- In case of G. Valli Kumar Vs. Andhra Education Society (2010) 2 SCC 497, it has been held by the Hon'ble Apex Court as under:**

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

**13- In the case of S.N.Mukherjee Vs. Union Bank of India (1990) 4 SCC 594, it has been held by the Hon'ble Supreme Court that:**

**"The reasons must be recorded while rejecting the representation, it is necessary that the reason must be clear and explicit, so as to indicate that the authority has given due consideration to the point in controversy."**

**14- From perusal of the impugned punishment order dtd. 06.02.2021 it is obvious that Opposite Party No. 4 i.e. Punishing Authority has passed the impugned punishment order only on the basis of finding given in the enquiry report dated 11.01.2021 by the enquiry officer and averments made in the explanation dated 28.01.2021 no finding has been recorded for not accepting the reply of the petitioner. Mere mention in the order that explanation was not found satisfactory does not fulfill requirement of principles of natural justice, unless points raised in the explanation are addressed and dealt with. It is imperative upon the punishing authority to consider the points raised by petitioner in his explanation, but no reason whatsoever has been given in the order. Thus, punishment order is laconic and can not be sustained.**



15- The learned counsel for petitioner has further argued that no misconduct committed by the petitioner in view of the aforesaid allegation and in view of rule-3 of U.P. Government servant conduct rules-1956 and more over in view of judgment and order passed in the case of Union of India Vs. J. Ahmed (1979) 2 SCC 286 it has been stated that the innocent mistake does not constitute misconduct. No prejudice and no irreparable loss have been caused to the state exchequer and therefore the petitioner has not committed any misconduct in view of rule-3 of U.P. Government Servant Conduct Rules, 1956. The conduct of petitioner does not come under the purview of misconduct and regarding define misconduct there catena of judgments have been passed by Hon'ble Apex Court and Hon'ble High Court.

16- In case of Arvind Kumar Pandey & State of U.P. (2013) (31) LCD 1864, the Division Bench of Hon'ble High court held that.

“if the element of motive behind laps and dereliction of duty absent, then for the reason, no employees shall be punished or face enquiry.

17- That in case of 'Baldev Singh Gandhi Versus State of Punjab & Another AIR 2002 SC Page 1124' considering the term misconduct held that “Misconduct has not been defined in the Act. The word 'misconduct' is the antithesis of the word 'conduct'. Thus, ordinarily the expression 'misconduct' means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanor etc.' in the light of above mentioned observation, I find that there was no bad intention or ill motive or personal gain of the petitioner for the negligence towards duty on the party of the petitioner, as such, the conduct of the petitioner does not come into the category of misconduct. 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 by the disciplinary authority for such act.

18. In the light of above judicial pronouncements I am of the opinion that since the disciplinary authority has passed

impugned punishment order in haste without application of mind and without considering the relevant issues raised by the petitioner in the reply, hence this order cannot be sustained in the eyes of law. I am of the view that If the punishment order is not tenable then the appellate and revisional orders by which it has been confirmed also cannot be sustained because it has been observed by Hon'ble High Court Alld. in 2018 (5)ADJ 587 Umesh Kr. Singh Vs. State of U.P. and others that defect at initial stage if renders the proceeding null and void, same cannot be cured at appellate stage.

19. On the basis of above whole discussion I am of the considered view that impugned orders passed by the disciplinary, appellate and revisional authorities cannot be sustained in the eye of law and hence petition deserves merit and it is liable to be allowed.

#### **ORDER**

Claim petition is allowed. The impugned punishment order dtd. 06.02.2021, appellate order dtd. 04.06.2021 and revisional order dtd. 30.09.2021, (Annexure nos.1, 2 and 3) are hereby quashed. Petitioner is entitled to get all consequential service benefits which have been withheld on account of this punishment including salary of the suspension period. Judgment/order will be complied with within 03 months from the date of receipt of certified copy of this judgment/order.

No order as to costs.

Sd/-  
(R.N. Tripathi)  
Member (J)

Judgment signed, dated and pronounced today in open court.

Sd/-  
(R.N. Tripathi)  
Member (J)

Dated: 25.04.2025.  
Poonam