BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Sri V.K. Maheshwari

------ Vice Chairman (J)

&

Sri D.K. Kotia

------- Vice Chairman (A)

CLAIM PETITION NO. 09/DB/2013

Dharmanand Pandey, S/o Late Sri Sureshanand Pandey, posted as Logging Assistant in the office of Divisional Forest Development Manager, New Tehri Division, Uttarakhand Forest Development Corporation.

……Petitioner

VERSUS

1. Divisional Forest Development Manager, New Tehri Division, Uttarakhand Forest Development Corporation,
2. Managing Director, Uttarakhand Forest Development Corporation, Dehradun,
3. State of Uttarakhand through Principal Secretary, Forest, Civil Secretariat, Dehradun

……Respondents

Present: Sri Shashank Pandey &
Sri Nishant Chaturvedi, Advocates
for the petitioner

Sri Rajeshwar Singh, Counsel
for the respondents no. 1 & 2

Sri Umesh Dhaundiyal, A.P.O.
for the respondent no. 3

JUDGMENT

DATE: MARCH 07, 2014

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The claim petition has been filed by the petitioner for setting aside the Recovery Order dated 01.11.2012 contained in Annexure-1 to the claim petition.

2. The facts in brief are that the petitioner was unit incharge of Logging Department at New Tehri (Which was an office of the Uttar Pradesh Forest Corporation) during the year 1985 to 1987. He was issued a show cause notice on 01.11.1996 for a recovery of Rs.55,337.39 as some shortfall/loss of timber under the charge of the petitioner. The petitioner in his reply dated 4.12.1996 to the said notice denied the charges and explained the anomaly in the difference in quantities of 4 lots wherein the deficiency was alleged. Subsequently, a reminder notice was also served upon the petitioner on 28.11.2011. The detailed reply to this was submitted by the petitioner on 16.12.2011 explaining in detail the reasons for the difference in quantities and requested to withdraw the recovery notice. The authority not finding the reply satisfactory passed the Recovery Order on 01.11.2012. Aggrieved by this order, the petitioner has filed this petition.

3. The impugned order has been challenged on the grounds that the recovery pertains to the year 1981-82, 1983-84 and 1984-85 and the recovery order has been passed on 01.11.2012 i.e after a period of about 30 years. Secondly that

the person from whom the petitioner had taken charge on 17.11.1985 has already died. Thirdly that the scalar of the Depot (where the lots were brought) and who maintains the books of depot had left the Corporation in 1986 and he has not been examined and the impugned order has been passed in violations of the principles of natural justice. Fourthly that due opportunity was not provided to the petitioner during the inquiry for making defence, which is also a violation of the principles of natural justice. It is therefore, prayed to set aside the impugned order of recovery.

4. The petition has been challenged and the respondents no. 1 and 2 in their counter affidavit have stated that the petitioner did not make any complaint about shortage of actual stock before or immediately after taking over the charge and if he had taken the charge without verifying the stock, then it is his responsibility and he cannot escape consequences now. It has further been stated that there is no limitation for recovery of government dues and the same do not get extinguished due to lapse of time. Further, the petitioner had the opportunity to file the departmental appeal to higher authority under the service rules, which he has not done and the claim petition is therefore, premature and liable to be dismissed.

5. The petitioner in his rejoinder affidavit has mainly reiterated the contentions of the claim petition. Further, it has been stated that the violation of principles of natural justice can never be justified at the alter of recovery of government dues. The petitioner has been punished without holding any inquiry. It has also been pleaded that the petitioner had duly

appealed on 29.11.2012 against the recovery order dated 01.11.2012 but the authority did not respond to it.

6. We have heard learned counsel for the petitioner and learned A.P.O (on behalf of the respondent no.3) and perused the record filed carefully. Learned Counsel for the respondent no.1 and 2 remained absent in spite of many opportunities given to him, so we think it proper to decide the matter on merits.

7. Learned counsel for the petitioner argued that the punishment in the form recovery order has been passed in the year 2012 which pertains to the incident of the year 1985. Thus the order is grossly delayed and there is no justification for this delay. In support of this contention, learned counsel for the petitioner referred the decision of **Hon'ble Supreme Court in P.V.Mahadevan vs. M.D. Tamil Nadu Housing Board decided on 8 August, 2005**. In this case, the charge memo was issued to the employee in 2000 for the irregularity committed in 1990; the records were very much available with the employer in 1990; no action was taken for about 10 years; no explanation was offered for the inordinate delay in initiating the disciplinary action against the employee. It was held the departmental proceedings at this distance of time will be a highly prejudicial to the employee. The charge memo was quashed.

8. In the abovementioned case, the Hon'ble Supreme Court has also referred two other decisions of the Court:

(i) State of Madhay Pradesh V. Bani Singh and Another, (1990 Supp. SCC, 738),

(ii) State of A.P. v. N. Radhakrishan, (1998)4 SCC, 154.

9. In State of Madhya Pradesh v. Bani Singh and Another (Supra), it has been held that:

> ”*The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”*

10. In the case of State of A.P. v. N. Radhakrishan (Supra), it has been held that:

> *“The Tribunal, however, held that the memo dated 31.7.1995 related to incidents that happened ten years of more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent and that there was no justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this stage*.

> *……there was hardly any explanation worth consideration as to why the delay occurred. In circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the respondent……..Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed*."

11. The principle laid down by the Apex Court in the above noted cases are fully applicable to the facts and circumstances of the present case. In the present claim petition, the incident of shortfall/loss of timber pertains to the year 1985. This had come to the notice of the respondents through the balance sheet of 1986. Even then the first show cause notice was issued to the petitioner on 01.11.1996 which means that the action was initiated after a period of 10 years. The petitioner replied to the said notice on 04.12.1996, but nothing was done by the respondents to decide the matter at that time. It is very strange and surprising that a reminder notice dated 28.11.2011 was again given to the petitioner but after a further period of about 15 years from the first notice given in 1996. It is very clear that for the incident of 1985, the first notice was given after 11 years and the second notice was given after 15 years and the recovery order was passed on 01.11.2012 i.e. after 27 years from the date of incident. Absolutely there is no explanation of this delay. This in our view is certainly inordinate delay. No explanation or reason has been mentioned by the respondents for this extraordinary delay. It is also on the record that the matter had come to the notice of the respondents in the year 1986 onwards through the Balance Sheets. Keeping in view the principle laid down

by the Hon'ble Supreme Court, this ground alone is enough for setting aside the impugned order.

12. Learned counsel for petitioner has further argued that the inquiry also was not conducted properly and the principles of natural justice have been violated as the predecessor of the petitioner and the person who maintained Depot record have not been examined who were the material witnesses and on the basis of whom the deficiency was alleged and consequently in the absence of opportunity for cross-examination by the petitioner. We have perused reply dated 16.12.2011 to the second notice (dated 28.11.2011) and find that the petitioner has explained the reason of shortfall but while passing recovery order on 01.11.2012, no cognizance of this fact has been taken and therefore, no reason has been given as to why the explanation of the petitioner was found unsatisfactory. The recovery order dated 01.11.2012 has been passed in a very cursory manner. We are also convinced with the contention of the petitioner that without affording opportunity of cross-examination with the aforesaid witnesses vitiates the proceedings of the enquiry. Moreover, learned counsel for the respondents were asked by this Tribunal to file the relevant documents pertaining to inquiry as the counter affidavit does not provide the details of the proceedings of inquiry but despite several opportunities given to the respondents, no documents were filed. Therefore, adverse inference may be drawn against the respondents.

13. In the counter affidavit of respondents no. 1 and 2, it has also been contended that the petitioner had the opportunity to file an departmental appeal to higher

authorities, which he has not done so, it is not proper to adjudicate the matter before this Tribunal. On the other hand, in the rejoinder affidavit filed by the petitioner, it has been mentioned that the appeal was filed by the petitioner on 29.11.2012 and copy of the same is also annexed with the rejoinder affidavit. The respondents again could not clarify the issue of appeal and could not demonstrate rules in this regard orally or by filing documents.

14. In the light of the above discussions, we are of the view that the punishment order in the form of recovery is inordinately delayed. Moreover, the inquiry has not been conducted properly and the principles of natural justice have not been followed. Therefore the impugned order of recovery is bad in the eye of law and is liable to be set aside and the petition deserves to be allowed.

ORDER

The claim petition is allowed. The impugned order dated 01.11.2012 (Annexure-1) is hereby set aside. In case any recovery is made in pursuance of the aforesaid order that may be refunded to the petitioner. No order as to costs.

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: MARCH 07, 2014
DEHRADUN

KNP