

**BEFORE THE UTTARAKHAND PUBLIC SERVICES  
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 19/2011**

Satish Chandra Mamgain, S/o Late Sri D.N.Mamgain, R/o 317/195, Old  
Dalanwala, Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Department of Tourism,  
Secretariat, Subhash Road, Dehradun,
2. Principal Secretary, Department of Tourism, Government of  
Uttarakhand, Subhash Road, Dehradun,
3. Director Tourism, Uttarakhand, 3/3, Industrial Area, Patel Nagar,  
Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, P.O  
for the respondents no. 1 & 2

Sri Rajeshwar Singh, Counsel  
for the respondent no. 3.

**JUDGMENT**

**DATE: MAY 28, 2014.**

**DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioner has challenged the punishment order dated 21.10.2010 passed by the Director, Tourism, Uttarakhand (Copy Annexure-A-1) by which the petitioner has been removed from the service.

2. The facts in brief are that the petitioner had joined as Typist/Clerk on 09.02.1978 in the department of Tourism, Govt. of Uttarakhand and was promoted as Senior Assistant and was posted in Hotel Management and Catering Institute, Dehradun. While posted in the above institute, the petitioner is said to have committed embezzlement of huge amount during the period (w.e.f 6.7.1991 to 14.4.1993), the details of which has been given in the charge sheet (Copy Annexure -A-9). The petitioner was placed under suspension vide order dated 21.04.1993 and enquiry was ordered. Mr. Tanveer Ali, Additional District Magistrate (Planning) was appointed as enquiry officer. Charges were framed by Sri S.K.Nigam, Chief Manager, Tourism on 18.4.1994. Later on, some more facts were revealed and fresh charges were framed against the petitioner on 12.11.2003 on the basis of audit done by the Accountant General, Allahabad. The petitioner had submitted his reply. After holding the enquiry, the petitioner was found guilty by Sunishtha Singh, who was replaced by earlier enquiry officers, had submitted enquiry report on 04.04.1997. After this, further enquiry was also conducted by Joint Director, Tourism, who submitted his report on 20.11.2007. However, during the course of enquiry, the petitioner was reinstated into the service, but on the post of Junior Assistant, which was lower in rank. After considering the enquiry reports and giving opportunity of hearing to the petitioner, the order of punishment was passed by the Director, Tourism and the petitioner was removed from service, which is under challenge in this petition. After exhausting all the departmental remedies, the petitioner has preferred this claim petition and impugned order of punishment has been challenged on the following grounds:

- i. That the petitioner had already been reverted to the lower post of Junior Assistant. Again the petitioner has been removed, thus he has been subjected to double

punishment, which is not permissible as it is hit by the principle of double jeopardy,

- ii. That the charge sheets have not been signed by the competent authority, therefore, the proceedings of enquiry are vitiated,
- iii. That the enquiry officer who conducted the second enquiry has not even taken the approval of the disciplinary authority for issuance of the second charge sheet,
- iv. That the enquiry officers have not conducted the enquiry in accordance with the settled rules, principles of natural justice and equity. The Enquiry Officers had also acted as Presenting Officers as well as investigation officers and thus, exceeded their authority,
- v. That the Enquiry Officers have failed to examine the witnesses of the petitioner,
- vi. That the findings of the Enquiry Officers are illegal, unconstitutional, arbitrary, and are based on the facts which are inconsistent with the evidence available on record and are also against the principles of natural justice,
- vii. That the impugned order of punishment has been passed by the respondent no. 2 who is not the appointing authority of the petitioner and thus was incompetent to pass the impugned order,
- viii. That copies of the documents have not been supplied to the petitioner,
- ix. That the order regarding non-payment of salary during the period of suspension is bad in the eye of law.
- x. That the proceedings had prolonged for about 17 years, which is against the principles of natural justice and equity.

- xi. That the petitioner was not responsible for withdrawal of the amount of the bills as it was the responsibility of the D.D.O. The petitioner was not holding the post of Accounts Clerk or Cashier. So the petitioner cannot be held liable for embezzlement. It has also been stated that the cash chest had two locks and keys were kept by two different persons, so it was not even possible to withdraw any amount by the petitioner,
- xii. The petitioner has thus prayed for setting aside of the impugned order.

3. The petition has been opposed on behalf of the respondents and it has been stated that two charge sheets dated 18.4.1994 and 12.11.2003 were properly issued to the petitioner and both the enquiry officers after conducting proper enquiry had submitted their reports on 04.04.1997 and 20.11.2007. The copy of these reports had been supplied to the petitioner. The procedure adopted in holding the enquiry is based on the principles of natural justice and equity. It is further stated that petitioner had committed embezzlement of the public money, which was proved against him in the enquiry. Therefore, the punishment awarded to the petitioner is not excessive and there is no scope of interference and petition is liable to be dismissed.

4. The petitioner had filed following documents in support of his version:

- i. Copy of instructions for Drawl and Disbursement of money ( Annexure-A-3)
- ii. Copy of the FIR and Police Charge Sheet (Annexure-A-4),
- iii. Copy of letter by the petitioner dated 15.4.1993 (Annexure-A-5)
- iv. Copy of letter 18.6.1993 (Annexure-A-6)

- v. Copy of the appointment of Enquiry Officer dated 15.4.1993 (Annexure-A-7).
- vi. Copy of suspension order dated 21.4.1993 (Annexure-A-8),
- vii. Copy of charge sheet dated 18.4.1994 (Annexure-A-9),
- viii. Copy of representation of the petitioner (Annexure A-10),
- ix. Copy of charge sheet dated 12.11.2003 (Annexure-A11),
- x. Copy of show cause notice (Annexure-A-12),
- xi. Copy of enquiry report (Annexure A-13 and A-14)
- xii. Copy of representation of the petitioner dated 1.09.2010,( Annexure –A-15),
- xiii. Copy of the letter of the petitioner( Annexure A-16),
- xiv. Copy of memo of departmental appeal, receipt and letter (Annexure A-17, A-18 and A-19).

5. The following documents have been submitted on behalf of the respondents:

- i. Copy of charge sheet dated 28.4.1994 (Annexure R-1),
- ii. Copy of the charge sheet dated 12.11.2003(Annexure R-2),
- iii. Copy of representation of the petitioner (Annexure R-3),
- iv. Copy of enquiry report (Annexure R-4)
- v. Copy of letter ( Annexure R-5),
- vi. Copy of Enquiry Report (Annexure-R-6),
- vii. Copy of representation of the petitioner (Annexure R-7),
- viii. Copy of impugned order (Annexure R-8),
- ix. Copy of memo of appeal (Annexure R-09)

6. A rejoinder affidavit has also been filed on behalf of the petitioner on 22.09.2011 reiterating the facts already stated in the main petition. Original record of the enquiry was also submitted on

behalf of the respondents for perusal of the Tribunal and we have also perused the same.

7. We have heard both the parties carefully and perused the evidence on record.

8. First of all, it has been contended on behalf of the petitioner that the impugned order of punishment is illegal because it is hit by the principle of double jeopardy as the petitioner has been removed from the service by the impugned order of punishment, while the petitioner had already been reverted to a lower post. The record reveals that the petitioner was placed under suspension after detection of embezzlement. Copy of the suspension order has been submitted by the petitioner as Annexure A-8. Later on, the petitioner was reinstated in service. At the time of the suspension, the petitioner was Senior Assistant, but he was reinstated as Typist Clerk. Now, the question is whether it can be treated as punishment and whether it is hit by the principle of double jeopardy. We have considered this aspect also. In our opinion, the petitioner is not entitled for any benefit on this count as the petitioner has been reinstated on his original post, which cannot be treated as punishment. Secondly, if, for the sake of argument, it is treated as punishment, it should have been challenged at that time, but this has not been challenged at the relevant time. So, we are of the considered opinion that merely on the ground of reinstatement of the petitioner on a different post, the impugned order of punishment is not hit by principle of double jeopardy and we do not find any force in the contention of the petitioner.

9. Secondly, it has been contended on behalf of the petitioner that the charge sheets have not been signed by the competent authority, but which has been reverted back by the respondents. Record reveals that the first charge sheet dated 18.04.1994 was served upon the

petitioner though it was prepared and signed by Sri S.K. Nigam, Chief Manager, Tourism/ Enquiry Officer, but it has been approved by the appointing authority on the same day and there is no illegality in it because at the relevant time, there was a provision for approval of charge sheet by the competent authority. The final enquiry officer, Sunishtha Singh had submitted the enquiry report on this charge sheet on 04.04.1997, but no decision was taken on the basis of this enquiry report. Meanwhile, another enquiry was initiated on different grounds against the petitioner and its charge sheet dated 12.11.2003 was served upon the petitioner and it was signed by Sri A.K.Singh, Deputy Director, Tourism/Enquiry Officer. There is no approval on this charge sheet, but the enquiry officer in this enquiry, is a Senior Officer than the appointing authority. So, there was no need for its approval and Sri A.K.Singh has submitted his report (Copy Annexure A-14) on 20.11.2007. The ultimate decision on these reports were taken by the Principal Secretary, Govt. of Uttarakhand who is undoubtedly is senior to the appointing authority. Therefore, as the first charge sheet was approved by the appointing authority and second charge sheet was issued by a higher authority so we do not find any illegality or irregularity in issuance of the charge sheet and no ground is made out of interference on this count.

10. It has further been contended that the Sunishtha Singh was one of the several enquiry officers and on completion of enquiry had submitted the report but the enquiry officer had acted in utter disregard and violation of the established procedure for the enquiry. In support of this contention, it is argued that Sunishtha Singh had acted as investigating, presenting as well as the enquiry officer. Numbers of documents were also admitted in the enquiry without knowledge of the petitioner and petitioner was thus deprived of his right of defence. It has also been contended that some witnesses, who were not even named in the charge sheet have also been examined. Therefore, the enquiry report dated 04.04.1997 (Copy Annexure A-

13) submitted by Sunishtha Singh, is waste paper and no reliance can be placed on it. We have carefully perused the charge sheet dated 18.4.1994 and enquiry report dated 04.4.1997 submitted by Sunishtha Singh but we do not find any violation of rules in conducting the enquiry. From the record, it becomes crystal clear that proceedings have been conducted in accordance with the established procedure. It is also not proper to say that enquiry officer had acted beyond her authority. We do not find any force in the contention of the petitioner that enquiry officer had also acted as the investigation or presenting officer. There is nothing on record by which it could be possible to draw a conclusion that the enquiry officer had acted as investigation or presenting officer. The petitioner had referred the following cases also.

- I. State of Uttarakhand & others Vs. Kharak Singh, 2008, (5) SLR, 585,
- II. Narendra Mohan Arya Vs. United India Insurgence Cop. 2006, LABIC, 2114
- III. Union of India and Others Vs. Dhyan Singh Chattar, 2009(12) SCC, 78,

We have gone through all these cases carefully. In Kharak Singh' case the Hon'ble Supreme Court has laid down that in case the enquiry officer also acts as an investigator, prosecutor and judge, such procedure is against the principles of natural justice. In Dhyan Singh Chattar's case, the enquiry officer had taken into consideration the materials, which were not established on record, but in the present case neither the enquiry officer had acted as an investigator, prosecutor and a judge simultaneously nor was any non-existent material taken into consideration. We have also gone through the Narendra Mohan's case also and reach to the conclusion that it is also not applicable to the case in hand. Therefore, the contention of the petitioner that the enquiry officer had violated the principles of



natural justice by acting as investigator, prosecutor and judge is not tenable. It is also not established on record that any out of the record material was taken into consideration. We are not even convinced by the contention that the enquiry officer had examined any witness whose name was not mentioned in the charge sheet.

11. It has further been contended on behalf of the petitioner that the impugned order of punishment has been passed by the Director, Tourism, who is not the appointing authority of the petitioner. It is admitted to both the parties that the service conditions of the petitioner is governed by "The Uttar Pradesh Tourism Department Ministerial Service Rules, 1980" which reveals that the appointing authority of the petitioner is Regional Officer. In this Rule-2(a) of the aforesaid rules is relevant which is quoted below for reference:

*"2(a): "Appointing Authority" (i) In respect of the post in the Regional Office other than the post of Head Clerk/Accountant means the Regional Officer, and (ii) in respect of the posts in the Directorate the post of Head clerk, Head Clerk/Accountant in Regional Offices and the post in another office, where there is no Regional Officer in charge of office, means the Director."*

However, the impugned order has been passed by the Director, Tourism who is undisputedly senior to the Regional Officer, the appointing authority of the petitioner. Now the question arises as to whether it was incumbent upon the appointing authority to pass the order of punishment or any senior officer had also authority to pass the order of punishment as has been done in the present case. In support of his contention, the petitioner relies upon the principle laid down by the Hon'ble High Court in Vipin Kumar vs. State of Uttarakhand & others, 2014 (1) UC, 108 and the Ho'ble Supreme

Court in Manohar Lal(D) by Lrs. Vs. Ugrasen (D) by Lrs and others, (2010(3) UC 1588). We have gone through the aforesaid judgment carefully. In Vipin Kumar's case, the order of punishment was passed by Assistant General Manager, who was below the rank of the appointing authority, which is not the position in the present case. So, the principle laid down in the above noted case, has no application in the present case. As regards the Manohar Lal (D)'s case is concerned, in fact, the Hon'ble Supreme Court has laid down that the higher authority cannot issue any direction to the statutory authority to act in a particular manner, which is also not applicable in the present case as no such direction was ever issued by any higher authority to any other junior authority relating to the matter in controversy. So, no benefit can be extended to the petitioner on the bases of principle laid down by the Hon'ble Supreme Court in the above noted cases. On the other hand, the counsel for the respondents relies upon the principles laid down by the Hon'ble Supreme Court, in Sumpuran Singh vs. State of Punjab (AIR 1982, SC, 1407). We have carefully gone through Sumpuran Singh's case. Hon'ble Supreme Court has very categorically held that any authority senior to that of appointing authority can pass the order of punishment. The relevant observations made by the Hon'ble Court are as follows:

*“It was further held that dismissal by an officer subordinate to the appointing authority is null and void. This Article 311 however does not require that dismissal or removal must be ordered by the same authority who made the appointment. There is a compliance with cl. (1) of Article 311 if the dismissing authority is not lower in rank or grade than the appointing authority.”*

12. In view of the aforesaid observation by the Hon'ble Apex Court, it becomes clear that an officer, senior to the appointing authority may pass the order of punishment and in the present case, the order of punishment has been passed by an authority who is

undoubtedly senior to that of appointing authority, so we do not find any illegality in the impugned order of punishment on the ground of incompetency of the authority concerned and therefore, there is no force in the contention made by the petitioner.

13. It has been also contended on behalf of the petitioner that copies of the documents have not been supplied to him. Therefore, he was prejudiced in making his defence, but perusal of the record reveals that, the evidence to be relied upon during the enquiries have been specifically mentioned in both the charge sheets issued to the petitioner. Copies of the charge sheets have also been supplied to the petitioner. The petitioner had also submitted his reply. The copies of the enquiry reports have also been supplied to the petitioner. The petitioner had also made representations against these enquiry reports, so we are not convinced with the petitioner that copies of the documents have not been supplied to him rather it transpires from the record that proper enquiry has been conducted after affording adequate opportunity to the petitioner for making his defence, so we do not find any force in the contention of the petitioner.

14. It has further been contended that the petitioner has not been paid full salary during the period of suspension, which is not proper. The forfeiture of salary for the period of suspension has been treated as punishment and it is beyond the rules. We are convinced with this argument of the petitioner that the stoppage or forfeiture of salary has not been provided as the punishment, so salary for the period of suspension cannot be forfeited as punishment. In the present case, the same has been treated as a punishment and orders have been passed in the impugned order itself for non-payment of salary for the period of suspension which can not be justified. In our opinion non payment of salary for the period of suspension is not proper and to that extent, the impugned order needs to be modified.

15. It has been contended on behalf of the petitioner that first charge sheet was issued in the year 1994 and its enquiry report was submitted in the year 1997, but no action was taken. Second enquiry was initiated in the year 2003 and its report was submitted in the year 2007 even then no action was taken. The impugned order has been passed in the year 2010 i.e. three years after the submission of second enquiry report and about 13 years after the submission of first enquiry report and about 17 years after initiation of the proceedings. There is no dispute regarding the period mentioned on behalf of the petitioner. Though there is delay in taking action against the petitioner, but it itself is not a sufficient ground for interference in the impugned order. The petitioner had said to have committed embezzlement of public money so some delay in taking action on the part of the respondents, cannot be a ground for any lenient or liberally attitude towards the petitioner and no benefit can be extended to the petitioner on this ground. Moreover the petitioner failed to point out as to how he was prejudiced by the delay. So also delay can not be a ground for interference in the impugned order.

16. It has further been contended that a criminal case was lodged lodged against the petitioner by the Sobendra Kumar Verma, Principal Govt. Hotel Management & Catering Institute who is also said to be the DDO, thus he is an crucial witness but he has not been examined in the course of enquiry and no opportunity of cross-examination was afforded to the petitioner while the enquiry officer has taken the statement of the above mentioned officer in consideration. In support of this contention, the learned counsel for the petitioner relies upon on the following cases:

- i. Virendra Pal Singh Vs. State of U.P. & others, 2009 (5) ALJ, 144,
- ii. Roop Singh Negi vs. Punjab National Bank & others, 2009(4)SLR, 78,

We have gone through these judgments also in the light of this contention have perused the charge sheet as well as the enquiry report. In fact, lodging FIR for initiation of criminal proceedings is a different aspect from that of the departmental proceedings. In the present case, the petitioner has been punished in the departmental proceedings and it was not necessary to examine the person who had lodged the First Information Report. What seem relevant is the charge sheet and the enquiry report. These were taken into consideration. The evidence which were to be taken into consideration has categorically been mentioned in the charge sheet and only that evidence that been taken into consideration. Moreover, the petitioner has also been afforded sufficient opportunity of making defence. Therefore, we are not convinced that non-examination of the authority who lodged the FIR affects the proceedings of departmental enquiry in any manner, therefore no benefit can be given to the petitioner.

17. It has further been contended that the petitioner was compelled to sign an application for refund of the money, which has been taken into consideration by the enquiry officer, and it is not just and proper. On the other hand, it has been denied that the petitioner was ever compelled to sign any paper. The record reveals that the petitioner had moved an application on 15.04.1993 stating that the amount which has been withdrawn in excess be deducted from his salary at the rate of Rs. 1500/- per mensum. The copy of this application has been filed by the petitioner himself as Annexure A-5. There is nothing on record by which it could be inferred that the petitioner was compelled by anyone to move such an application. Mere averment of the petitioner in the petition is not sufficient to hold that petitioner was compelled by anyone to move such an application rather it appears that on revelation of the fact of withdrawal of amount in excess, the petitioner himself had moved an application to save himself from any action. As, it is the admission of the petitioner

and in case it is taken into consideration by the enquiry officer, does not affect the enquiry proceedings in any way. There is nothing on record by which it could be inferred that the petitioner was compelled to move the said application. So, we do not find any force in the contention of the petitioner.

18. It has also been contended on behalf of the petitioner that only the DDO is responsible for the withdrawal of the amount and the petitioner cannot be held responsible for withdrawal of any amount so it is not proper to held him guilty for withdrawal of the amount and in support of this contention, instruction 1.3 and 1.10 of Drawl and Disbursement Money (Copy Annexure A-3) have been referred on behalf of the petitioner, which reads as follows:

*“1.3- The Drawing and Disbursing officer is personally responsible for the correct maintenance and timely readdition of accounts of returns in respect of Government funds or stores handled in his office.*

*1.10.-At the end of each month the D.D.O. should verify the balance in the cashbook with the balance of cash in hand and record a certificate to this effect in the cashbook.”*

19. It is true that the DDO was responsible for withdrawal as well as correct maintenance of accounts or returns, but it does not absolve the responsibility of the petitioner. The petitioner was also instrumental in withdrawal of the amount. Apart from it, it relates to the factual aspect of the matter and it is not appropriate for this Tribunal to scrutinize the factual aspect of the matter unless there is gross miscarriage of justice. In the present case, the concerned authorities have considered every aspect of the matter and only thereafter, fixed the responsibility of withdrawal of money illegally from Govt. Account. There appears no illegality or irregularity in the findings recorded by the appropriate authorities and we are not inclined to extend any benefit to the petitioner on this count.

20. It has further been contended that a criminal case was also initiated against the petitioner, which is still pending and till the decision of the criminal proceedings, it is not proper to punish the petitioner. The copy of order sheet of the criminal proceedings has been submitted on behalf of the respondents and it appears that the criminal proceedings are still pending in the court of Chief Judicial Magistrate, Dehradun, but departmental enquiry and criminal proceedings are two different aspects of the matter and departmental action can be taken without waiting for the decision of the criminal proceedings, therefore, the contention raised on behalf of the petitioner does not bear any force.

21. It has further been contended that a second enquiry was conducted through S.K.Singh and petitioner was not intimated about this enquiry, therefore the second enquiry is void. The record reveals that the departmental action was initiated against the petitioner on 15.4.1993 and first charge sheet was issued against him on 18.4.1994 and initially, the Tanveer Ali, Additional District Magistrate (Planning) was nominated as enquiry officer who was replaced Sri Sarvan Kumar Nigam, General Manager, GMVN, Tourism but finally Sunishtha Singh was nominated as enquiry officer vide order dated 01.05.1995, who submitted her report on 04.04.1997, which has formed basis of impugned order. A copy of enquiry report has also been filed on behalf of the petitioner as Annexure A-14. Another enquiry was also initiated against the petitioner on revelation of some new facts of embezzlement in the process of audit. Charges were framed against the petitioner and fresh charge sheet was served upon the petitioner on 12.11.2003. The record reveals that the petitioner was afforded sufficient opportunity for making defence in the second enquiry also. It cannot be said that petitioner was not aware about the proceedings of the second enquiry conducted by Sri A.K.Singh. The petitioner had submitted a reply and he has also admitted that the copy of the enquiry report submitted by Sunishtha Singh as well as by

Sri A.K.Singh was supplied to him so, it is not proper to contend that petitioner was not aware of the enquiry conducted by Sri A.K.Singh and we do not find any ground to interfere in the matter on this ground.

22. On the basis of the above discussion, we are of the opinion that the petitioner has been punished after giving sufficient opportunity of making defence and after conducting proper enquiry and there are no ground for any interference in the impugned order. So, there is no force in the petition, which is, thus liable to be partly allowed.

### **ORDER**

The petition is partly allowed. The impugned order of punishment is set aside to the extent of nonpayment of salary for the period of suspension. The petitioner is entitled for full salary for the period of suspension, which should be paid to him within a period of four months from today. For rest of the reliefs, the petition is dismissed without any order to the costs.

Sd/-

**D.K.KOTIA**  
VICE CHAIRMAN (A)

Sd/-

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: MAY 28, 2014.  
DEHRADUN  
KNP