

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

----- Vice Chairman (A)

Claim Petition No. 16/SB/2021

Arun Kumar Goel, aged about 58 years, s/o Sri Pooran Mal Goel, r/o Mahadev Vihar General Mahadev Singh Road, presently posted as Superintending Engineer, A.D.B. Circle, Public Works Department, New Tehri.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Public Works Department, Government of Uttarakhand, Secretariat, Dehradun.
2. Engineer-in-Chief and Head of Department, Public Works Department, Yamuna Colony, Dehradun, Uttarakhand

..... Respondents

Present: Sri A.K. Goel, Petitioner
along with Sri L.K. Maithani, Advocate, for the petitioner
Sri V.P. Devrani, A.P.O., for the respondents

Judgement

Dated: 27th May, 2022

Justice U.C. Dhyani (Oral)

Present claim petition has been filed by the petitioner being aggrieved against the impugned order dated 7.08.2020 passed by the Secretary, Public Works Department, Govt. of

Uttarakhand (respondent no. 1) by which the special adverse entry was awarded to the petitioner.

2. The petitioner also seeks to set aside order no. 1809/III(1)/2021-02(37) *Jaanch/2017* dated 27.01.2021, by which the representation/ revision against the order dated 07.08.2020 has been rejected by the aforesaid respondent.

3. Copies of the impugned orders dated 07.08.2020 & 27.01.2021 have been brought on record as Annexure: A1 & Annexure: A2 to the claim petition.

4. It has been stated, in the claim petition, that the aforesaid orders have been passed in violation of the principles of natural justice and in utter violation of the rules and regulations.

5. There was a construction project in District Pithoragarh, falling under the jurisdiction of P.W.D Division, Berinag. The petitioner, at the relevant time, was posted in Berinag as an Executive Engineer. Superintending Engineer, 3rd Circle, P.W.D., Pithoragarh, invited the tenders on 11.06.2012. Tenders were opened on 28.07.2012 by Sri G.S. Pangti, Superintending Engineer, 3rd Circle, P.W.D., Pithoragarh and Sri Pooran Kumar Arya, Superintending Engineer, 1st Circle, P.W.D., Almora. A meeting of Technical Bid Evaluation Committee was held in the office of Superintending Engineer, 3rd Circle, P.W.D., Pithoragarh on 13.09.2012. Such committee consisted of four members, including the petitioner. Somebody made a complaint against the genuineness of certification. A preliminary enquiry was conducted by the Engineer-in-Chief, P.W.D., Pithoragarh, in which three members including the petitioner were *prima facie* found guilty. The Govt., in the P.W.D. Department, directed the Engineer-in-Chief, P.W.D., to prepare the charge sheet against the delinquent officer, who, in turn, directed the Chief Engineer to prepare the

charge sheet. Chief Engineer sent the charge sheet to Engineer-in-Chief, who sent the same to Secretary to the Govt. in the P.W.D. Department. Respondent No. 1 appointed Chief Engineer, Almora, as enquiry officer.

6. Chief Engineer, Almora issued notice to the petitioner and after conducting enquiry, submitted enquiry report dated 19.12.2018 to respondent no. 1. Such report along with show cause notice was served upon the petitioner on 25.01.2019. The petitioner replied to the same on 14.02.2019. Respondent No. 1 was not satisfied with the reply and passed the 1st impugned order on 07.08.2020 (Annexure: A1). **A bare reading of office memorandum dated 07.08.2020 would indicate that special adverse entry was given to the delinquent petitioner when the charge against him was proved.**

7. **Para 5 of the 1st impugned order dated 07.08.2020 (Annexure: A1) was concluded by respondent no. 1 by holding the delinquent petitioner guilty of charge framed against him.**

8. In para 6 of the office memorandum dated 07.08.2020 (Annexure: A1), it has been indicated that the special adverse entry is being given to the petitioner for committing irregularity and carelessness in relation to the construction of road under Central Road Fund through e-tender, in district Pithoragarh.

9. The following are the minor and major penalties, as prescribed under Rule 3 of the Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003, (for short, 'Rules of 2003'):

“(a) Minor Penalties:

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;
- (iv) Fine in case of persons holding Group “D” posts

Provided that the amount of such fine shall in no case exceed twenty five percent of the month's pay in which the fine is imposed.

(b) Major Penalties:

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to lower stage in a time scale;
- (iii) Removal from the Service which does not disqualify from future employment,
- (iv) Dismissal from the Service, which disqualifies from future employment."

10. The Tribunal finds that special adverse entry has not been prescribed as penalty under the Rules of 2003 (as amended in 2010).

11. The Hon'ble Apex Court has held in Civil Appeal No. 3550 of 2012, Vijay Singh vs. State of U.P. and others, that a punishment which has not been prescribed under the Rules cannot be given to the delinquent.

12. Learned A.P.O. submitted that Vijay Singh's decision (*supra*) was based on U.P. Police Officers of Subordinate Ranks (Punishment and Appeal Rules), 1991 (hereinafter referred as the 'Rules of 1991') and special adverse entry has been awarded to the petitioner under different rules. The Tribunal agrees with the submission of learned A.P.O. that the rules applicable in Vijay Singh's decision (*supra*) were the Police Rules of 1991, but the fact remains that the *ratio* of decision rendered by Hon'ble Apex Court in Vijay Singh's case (*supra*) shall be applicable even if present case is governed by the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. The ratio is that if any punishment, which has been given to the delinquent, has not been prescribed 'as punishment' under the service rules, the same cannot be given. In the instant case, special adverse entry has been awarded to the petitioner after due enquiry and after holding him guilty of the charge leveled against the delinquent petitioner. In such

circumstances, special adverse entry could not have been given to the petitioner as punishment.

13. Learned A.P.O., relying upon the G.O. 1712/karmik-2/2003 dated 18.12.2003 of the Personnel Department, Govt. of Uttarakhand, still submitted that special adverse entry can be awarded to an employee as punishment. Learned A.P.O. also drew attention of the Tribunal towards G.O. 1371//III(1)/20-21(sa)/2020 dated 06.11.2020 to argue that special adverse entry could be given to an employee as punishment. G.O. dated 06.11.2020 refers to the G.O. dated 08.01.2003 and 18.12.2003. It may be pointed that it is nowhere mentioned in G.O. dated 18.12.2003 that special adverse entry can be given to an employee as punishment. It will be relevant to mention here that para 11(2) of the G.O. dated 18.12.2003 has reference of censure, reprimand, warning etc. to say that the same will be deemed to be adverse entry, to be kept in the character roll of a gazetted officer.

14. Para 5 of the G.O. dated 08.01.2003 says that reprimand, warning etc., which is kept in the character roll shall be treated as adverse entry, but no G.O. anywhere says that the special adverse entry may be given as punishment. Moreover, no G.O. can prescribe anything contrary to the statutory rules, which are superior in nature.

15. G.O. dated 06.11.2020 is dependent upon the G.O. dated 08.01.2003 & G.O. dated 18.12.2003, which nowhere says that the special adverse entry may be given as a punishment. A reference of the opinion given by the Personnel Department has been given in G.O. dated 06.11.2020, which, probably, might be peculiar to the facts of the Sri N.P. Singh, Superintending Engineer and Sri Naveen Lal Sharma, Assistant Engineer, P.W.D., in whose reference such opinion was given. Thus, the Tribunal finds that special adverse

entry could not have been given to the petitioner by way of punishment.

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16. In para 4.xx of the claim petition, the petitioner has stated that Sri K.P. Joshi, Chief Engineer, Pithoragarh made investigation and framed the charge sheet against the petitioner. Sri K.P. Joshi sent the draft charge sheet to the Engineer-in-Chief/ H.O.D./ Dehradun, *vide* letter dated 06.06.2018 (Copy Annexure: A3). Annexure: A3, which is a letter sent by Chief Engineer, P.W.D., Pithoragarh on 06.06.2018, would indicate that charge sheets were framed against the petitioner (and two others) and were sent in triplicate to Engineer-in-Chief/ H.O.D./ (complaint cell), P.W.D., Dehradun.

17. In para 4.xxi of the claim petition, it has been mentioned that Sri K.P. Joshi, Chief Engineer, conducted the disciplinary enquiry against the petitioner on 11.09.2018, on the charge sheet, which was framed by him.

18. In para 4.xxii of the claim petition, it has been mentioned that the Additional Chief Secretary, P.W.D., issued charge sheet on 09.07.2018 with definite finding of guilt of *hera pheri* (manipulation) of certificate, with biased and closed mind. Copy of charge sheet dated 09.07.2018 has been brought on record as Annexure: A14 to the claim petition. Sri K.P. Joshi was instructed to frame draft charge sheet against the petitioner and the same officer was appointed as enquiry officer. Although the charge sheet was signed by the punishing authority but the enquiry officer was instructed, in writing, to prepare the charge sheet against the petitioner. The same appears to be in violation of Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as amended in 2010, which reads as below:

“4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

7. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge sheet. (4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet, whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub-rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub-rule (8), he will forward the following to the Inquiry Officer, namely:

(a) A copy of the charge sheet and details of misconduct or misbehavior;

(b) A copy of written defence statement, if any submitted by the government servant;

(c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;

(d) A copy of statements of evidence referred to in the charge sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to the produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of

the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any of such evidence, as provided earlier, and may examine, cross examine and re-examine him.

(17) This rule shall not apply in following case; *i.e.* there is no necessity to conduct an inquiry in such case:-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an inquiry in the manner provided in these rules.”

19. Petitioner submitted that charge sheet was something else and he has been punished for some other accusations. He further submitted that one statutory representation was given by him, but all the points given in such representation were not dealt with by the punishing authority.

20. In para 3(2) of the counter affidavit filed on behalf of the respondent-state, it has been stated that the technical bids were opened after examination by the tender committee under the chairmanship of the then Superintending Engineer, in which (committee) the petitioner was included as technical member. In the technical bids, two bidders were found technically suitable for opening the price bid by the petitioner.

20.1 In para 3(5) of the written statement, it has been stated that there was lapse in evaluating the tenders by the officials of the technical evaluation committee.

20.2 In para 3(5) of the written statement, it has also been mentioned that on the basis of investigation, the petitioner along

with Sri G.S. Pangti was *prima facie* found guilty of the irregularities in verification of the certificate.

20.3 In para 3(6) of the written statement, it has been stated that after verification it was found that only after ascertaining the correctness of all the records by the petitioner, the tender should have been signed in the acceptance form but as a member of the tender committee, the petitioner accepted the records submitted by the second tenderer, M/s KBM Construction as correct, which indicates gross negligence on his part.

20.4 The petitioner along with Sri G.S. Pangti was given special adverse entry. It has also been mentioned that the registration certificate submitted by the second tenderer was for building work, instead of road work.

20.5 Learned A.P.O. submitted that as a custodian of record, it was the responsibility of the petitioner to have presented correct facts and documents before the tender committee, which was not done and therefore, the petitioner was rightly found negligent of his duties.

21. A rejoinder affidavit thereto has been filed by the petitioner contradicting the allegations leveled against him in the written statement. In such RA, the petitioner has reiterated those facts which have been mentioned (by him) in the claim petition. In para 7 of the RA, it has been stated that it is wrong to say that the technical bid was opened on 13.09.2012. It is also wrong to say that the petitioner was included as a technical member when the bid was opened on 13.09.2012. The true fact is that the technical bid was opened on 28.07.2012 by Sri G.S. Pangti, Superintending Engineer, 3rd Circle, P.W.D., Pithoragarh and Sri Puran Kumar Arya, Superintending Engineer, 1st Circle, P.W.D., Almora.

22. A perusal of the documents reveals that technical bid documents were received *online* in the office of Superintending Engineer and they were opened on 28.07.2012, as is mentioned in the Annexure to the charge sheet, according to which, the recommendations of the technical bid committee were made on 13.09.2012, which were signed by four persons including the petitioner, Superintending Engineer, 3rd Circle ,PWD, Pithoragarh, Executive Engineer, Sri Bablu Ram and Assistant Engineer, Temporary Division, PWD, Berinag.

The petitioner contended that the technical bid documents remained in the office of the Superintending Engineer, 3rd Circle, P.W.D., Pithoragarh and were presented at the time of the meeting of the technical bid committee on 13.09.2012. So there was no occasion for the petitioner to have verified the certificates of all bidders.

On the other hand, learned A.P.O. contended that that according the inquiry report, petitioner's division was the custodian of the record and the petitioner was the Presenting Officer of the documents before the technical bid committee.

In the above circumstances, the Tribunal found it necessary to know when and in what manner the technical bid documents were sent to the petitioner and directed the respondents to file affidavit in this regard along with copy of the relevant correspondence.

Respondents have filed affidavit stating that on 13.09.2021, the evaluation of the technical bid was done by the technical committee, as a member of which the petitioner was the Presenting Officer. In this regard, the evaluation report has been annexed as Annexure No. CA-1, which bears the signatures of four persons as stated above. C.A.-2 to this affidavit is an Office

Memorandum dated 19.09.2012 issued by the Superintending Engineer, 3rd Circle, PWD, Pithoragarh, which, *inter-alia* states that the technical bids were presented before the technical committee after due examination by the Executive Engineer, Temporary Division, Berinag. Copy of this Office Memorandum is also marked to the Executive engineer, Temporary Division, P.W.D., Berinag. Learned A.P.O., on the basis of these documents, asserts that the technical bids were duly examined by the petitioner before presenting the same to the technical committee.

The petitioner refers to Annexure CA-3 to this affidavit which is the copy of the approval on the report of the tender advisory committee which has been signed by the petitioner, Superintending Engineer and Chief Engineer. This also bears the signatures of Assistant Engineer and the Contractor. This report, *inter-alia*, states that the technical bids were opened by Sri G.S. Pangti, Superintending Engineer, 3rd Circle, Pithoragarh and Sri P.K. Arya, the then Superintending Engineer, 1st Circle, P.W.D., Almora, in which two bids were received. This report further states that both the technical bids were evaluated by a committee of four persons, namely, (i) Superintending Engineer, 3rd Circle, PWD, Pithoragarh (ii) Executive Engineer, Temporary Division, P.W.D., Berinag (Petitioner) (iii) Executive Engineer, Provincial Division, PWD., Pithoragarh, and (iv) Assistant Engineer, Temporary Division, P.W.D., Berinag. Both the technical bids were found valid. On the basis of this, the petitioner asserts that the evaluation was done by the committee jointly and not by him alone. If the Tribunal accepts such submission, even then the petitioner cannot escape from his responsibility on the principle of 'joint and several liability'.

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23. On the basis of the above discussion and as observed in para 15 of this order that special adverse entry could not have been

given to the petitioner by way of punishment, the impugned punishment order dated 07.08.2020 and the order dated 27.01.2021 by which the representation/revision against the punishment order was rejected, are liable to be set aside and are, accordingly, set aside, leaving it open to the respondents to proceed afresh against the petitioner, in accordance with law.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 27th May, 2022
DEHRADUN
RS/KNP