

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

----- Vice Chairman (A)

Claim Petition No. 64/NB/SB/2019

Bala Dutt Pandey (Male), aged about 54 years, s/o late Sri Bhola Dutt Pandey, r/o Amba Vihar, Talli Bamori, Haldwani, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Department of Panchayati Raj, Government of Uttarakhand, Dehradun.
2. Director, Panchayati Raj, Uttarakhand, Dehradun.
3. Chief Development Officer, Haridwar.

..... Respondents

Present: Sri Bhagwat Mehra, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

Judgement

Dated: 05th December, 2022

Justice U.C. Dhyani (Oral)

By means of present claim petition, the petitioner seeks following reliefs:

"A. To set aside the impugned punishment order dated 02-01-2018 passed by the Respondent No. 1 (Annexure No. 1 to Compilation-I).

B. To direct the Respondents to grant all consequential benefits to the Petitioner.

C. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

D. Award the cost of the Claim petition in favour of the petitioner.”

2. Facts giving rise to present claim petition, as per petitioner’s version, are as follows:

2.1 The petitioner was working as *Apar Mukhya Adhikari, Zila Panchayat*, when he voluntarily retired from service. When he was serving as Engineer in *Zila Panchayat*, Haridwar, in the year 2008-09, he accepted the tender forms of two contractors.

2.2 A public representative made a complaint against him on 25.08.2009. The same public representative complained of security threat to him on 27.08.2019. Respondent No. 1 directed Project Director, D.R.D.A., Haridwar, to hold a preliminary enquiry. No substance was found in the allegation of security threat. Project Director, D.R.D.A. Haridwar submitted his report to the Respondent No. 1 on 14.09.2009. Respondent No. 1 directed departmental proceedings against the petitioner and one Sri Kailash Kumar Sharma. Chief Development Officer, Haridwar was appointed as enquiry officer. Enquiry officer, thus, was therefore appointed before issuance of charge-sheet.

2.3 *Vide* letter dated 15.11.2011, Respondent No. 1 directed the Enquiry Officer to prepare draft charge-sheet, which is against the provisions of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (for short, ‘Rules of 2003’).

2.4 Respondent No. 1 *vide* letter dated 11.01.2012 expressed his displeasure to Respondent No. 3 and pointed out certain defects in the draft charge sheet dated 15.11.2011 prepared by him (i.e. Respondent No. 3). On 09.03.2012, Respondent No. 1 again called the explanation of Respondent No. 3, who thereafter amended the draft charge-sheet. Respondent No. 1 issued the said charge-sheet drafted and prepared by the Respondent No. 3, on 12.06.2012 to the petitioner and Sri K.K. Sharma.

2.5 After receiving the charge-sheet, Sri K.K. Sharma submitted his reply. The petitioner also did the same, refuting the charges.

2.6 When Respondent No. 3 submitted his enquiry report to Respondent No. 1, *vide* letter dated 18.03.2015, charge no. 1 was not proved against the petitioner and Sri K.K. Sharma. Charges No. 2(1) and 2(2) were proved against the both. *Vide* letter dated 04.06.2015, the Respondent No. 1 required the petitioner and Sri K.K. Sharma to submit their replies, to which the petitioner (and also Sri K.K. Sharma) submitted the replies. Surprisingly, the Respondent No. 1 transferred the enquiry to another Department (Pey Jal Department). The Secretary, Pey Jal Department, *vide* order dated 27.01.2016 directed the Managing Director of Uttarakhand Pey Jal Nigam to hold enquiry. Transfer of enquiry was also illegal. Uttarakhand Pey Jal Nigam is a Government Corporation and is a different entity.

2.7 The Executive Engineer, Uttarakhand Pey Jal Nigam, submitted his enquiry report on 06.04.2017 directly to the Respondent No. 1, who, *vide* letter dated 30.06.2017, referred the matter to the Uttarakhand Public Service Commission stating that the State Government has decided to recover a sum of Rs. 17,621/- each from petitioner and Sri K.K. Sharma. In addition to the same, punishment of stoppage of one annual increment with cumulative effect was also ordered.

2.8 The Uttarakhand Public Service Commission disapproved the proposed punishment of stoppage of one annual increment with cumulative effect observing that the same is totally disproportionate. The Commission, however, gave consent for recovery of proportionate amount (Rs. 17,621/-) from petitioner and Sri K.K. Sharma. Since the petitioner's third ACP was due from 19.07.2014 and was pending consideration before the Respondents No. 1 and 2, petitioner deposited meager amount of Rs. 17,621/- under the bona-fide belief that the petitioner will be granted third ACP *w.e.f.*

13.09.2014. As per oral information given to the Petitioner by Respondent No. 1, petitioner's case was recommended for third ACP in the meeting dated 22.09.2015. Under such bona-fide belief, petitioner deposited a sum of Rs. 17,621/- *vide* letter dated 15.02.2018. Petitioner sought voluntary retirement from service *vide* letter dated 16.08.2018.

2.9 When no decision was taken by the respondents regarding grant of Third A.C.P. to the petitioner from due date, despite repeated requests, the petitioner filed Writ Petition No. 438 (S/B) of 2018 (Bala Dutt Pandey vs. State of Uttarakhand and others) before Hon'ble High Court seeking the following reliefs:-

"i) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant the ACP benefits as per Government order no. 2698/XII/2013/90(21)/2009 dated 21-10-2013 and Government order dated 08-03-2011 and 01-07-2013, whereby ACP has been made applicable in Zila Panchayats (contained as Annexure no. 3, 4 & 5 to this writ petition).

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to forthwith release petitioner's arrears of salary of the month of December, 2017, January 2018 and February, 2018 and June 2018, July 2018 and salary of 1st August 2018 along with interest.

iii) Issue any writ or order which this Hon'ble Court may deem fit in the interest of justice.

iv) Award cost of the petition in favour of the Petitioner".

2.10 The aforesaid Writ Petition came up for hearing before Hon'ble Uttarakhand High Court on 26.09.2018 and the Hon'ble High Court *vide* order dated 26.09.2018 disposed of the same by directing the competent authority to decide the representation of the petitioner by passing a detailed/ speaking order within four weeks. It was further directed that admissible arrears/ salary shall be released to the petitioner. When the said order dated 26.09.2018 was not complied with by the respondents despite repeated requests, for a considerable long period of about nine months, the petitioner filed Civil Contempt Petition No. 360 of 2019 (Bala Dutt Pandey vs. Mr. Senthil Pandiyan and another) in the month of June 2019. The Hon'ble High Court issued Contempt notices to the opposite parties.

In the said Contempt Petition, the Respondent No. 1 filed Compliance Affidavit on 09.07.2019. Along with the same, the Respondent No. 1 enclosed the copy of impugned order dated 25.06.2019, whereby the claim of the petitioner for benefit of Third A.C.P. was rejected. Consequently, the said Contempt Petition was closed *vide* order dated 11.07.2019 by the Hon'ble High Court, as infructuous. Now the petitioner is challenging the impugned rejection order dated 25.06.2019, by means of separate claim petition before this Hon'ble Tribunal. Similarly, the petitioner is challenging the punishment order dated 02.01.2018 by means of instant Claim Petition.

3. Written Statement has been filed on behalf of the respondents. Sri P.S. Bisht, Additional Chief Officer, Zila Panchayat, Nainital, has filed counter affidavit contradicting the material facts of the claim petition. The counter affidavit is supported by the documents. Rejoinder affidavit thereto has been filed by the petitioner.

4. A bare perusal of the impugned enquiry proceedings/punishment order would reveal that the same has been passed in violation of the provisions contained in the Rules of 2003, as amended in 2010. A bare perusal of the documents enclosed with this Claim Petition would reveal that the same has been prepared and drafted by the Enquiry Officer himself which is not permissible in law. Hon'ble High Court of Uttarakhand, in a catena of decisions, has repeatedly held that the Enquiry Officer cannot be appointed before considering the reply of the delinquent employee to the charge-sheet and in no way, the Enquiry Officer can prepare and issue charge-sheet to the delinquent employee. As per the above settled position of law, the Charge-sheet against any employee can only be prepared and issued by the Appointing Authority alone and not by any other person. Some of the aforesaid judicial pronouncements are Special Appeal No. 133 of 2010, Attar Singh Rathod vs. State of Uttarakhand and others, reported in (2010) 2 U.D. 140, and Writ

Petition No. 1364 (S/S) of 2011, Uday Pratap Singh vs. State of Uttarakhand and others, (2012)1 U.D. 365.

5. A detailed procedure for imposing minor and major punishment upon an employee has been prescribed by the Govt. of Uttarakhand by making Statutory Rules in 2003 under *proviso* to Article 309 of the Constitution, namely "The Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003" which were notified on 06.03.2003. These Rules govern the field in the present case. Rule 3 of the said Rules deals with imposition of penalties to be inflicted upon the delinquent employee. Such Rule is reproduced herein below for convenience:

"3. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants:-

(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 orders;
 - (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 months 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 a 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."

6. Whereas Rule 7 of the said Rules deals with the procedure for major penalty, Rule 8 deals with submission of enquiry report. Rule 9 is relevant which deals with action on inquiry report, which (Rule) is reproduced herein below for ready reference:

"9. (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule-7.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government Servant shall be exonerated the Disciplinary Authority of the charges and informed him accordingly.

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges, 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 inquiry report 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 inquiry and representation of the 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. From the above, it is apparent that the petitioner was denied reasonable opportunity of defending himself, which has resulted in miscarriage of justice. Since this was not done by the Disciplinary Authority, hence the entire enquiry was vitiated on this ground alone. The Disciplinary Authority, in the impugned punishment order, has not deliberated upon the findings of the Enquiry Officer on charges leveled against him. Disciplinary Authority has passed the impugned punishment order mechanically. An order, which entails civil consequences, cannot be passed in such a mechanical manner. Disciplinary Authority, while passing the impugned punishment order, has not recorded any reason for agreement/disagreement with the findings of the Enquiry Officer, nor has he issued any show cause notice to the petitioner in order to enable him to submit representation against the findings of the Enquiry Officer.

8. The Hon'ble Apex Court, in the decision of Punjab National Bank and others vs. Kunj Bihari Mishra, reported in (1998) 7 SCC 84, has highlighted the necessity of issuance of second show cause notice before imposing major penalty upon an employee. It has been observed in the said judgement that the principles of natural justice require the disciplinary authority, which has to take a final decision and can impose a penalty, to give an opportunity to the official charged of misconduct to file a representation before the disciplinary

authority records its findings on the charges framed against the official.

9. The Hon'ble Supreme Court, in the decision of Punjab National Bank and others vs. K.K. Verma, reported in (2010) 13 SCC 494, after following the judgement of Kunj Bihari Mishra (*supra*), has observed that right to represent against the findings in the enquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty and the denial of right to represent against the findings in the enquiry report will make the final order vulnerable. It is apparent that the impugned enquiry proceedings/punishment order has been passed without following the statutory provisions. [Even otherwise also, the punishment was disproportionate]. As such, impugned punishment order cannot sustain and is liable to be set aside, with liberty to the Disciplinary Authority/ Appointing Authority to proceed afresh, in accordance with law.

10. Letter dated 15.02.2018 cannot be construed as an admission on the part of the petitioner to admit his guilt and admit the impugned punishment order, for the same was only under the bonafide belief that after deposition of a meager amount of Rs. 17,621/-, he will be granted benefit of grade pay of Rs. 8700/- *w.e.f.* 19.07.2014. This was natural conduct of a retiring employee. There cannot be estoppel against a statutory provision.

11. Respondent No. 3 submitted his enquiry report *vide* letter dated 18.03.2015 to the Respondent No. 1. In the said enquiry report, submitted in respect of the petitioner, it was held by the enquiry officer that all the charges i.e. Charge No. 1 as well as Charge No. 2 (1) and Charge No. 2 (2) were not proved against the petitioner. However, regarding Sri K.K. Sharma, it was held that although Charge No. 1 was not proved against him also, however, Charge No. 2(1) and 2(2) stand proved against him. Copy of enquiry report regarding petitioner has been enclosed at Page No. 78 to 81 of

the paper book. At Page No. 80 (on top), it is clearly mentioned by the Enquiry Officer that Charge No. 1 is not proved against the petitioner. Similarly, in the last portion of Para No. 1 in Page No. 81, regarding Charge No. 2 (1) and Charge No. 2 (2), it has been mentioned by the Enquiry Officer that the said charges are also not proved against the petitioner.

12. Regarding Sri K.K. Sharma, it was observed that Charge No. 1 stands proved against him; regarding Charge No. 2 (1) and Charge No. 2 (2), it was observed that both the charges are not proved against him.

13. There appears to be undue haste on the part of Respondent No. 1 in the matter. It appears that due to inadvertent oversight/undue haste/typographical human error, in the enquiry report regarding the petitioner, the same sentence as was used in the enquiry report of Sri K.K. Sharma was typed and regarding petitioner, it was inadvertently mentioned that Charge No. 1 stands proved against the petitioner.

14. However, *vide* impugned punishment order dated 02.01.2018, the aforementioned minor punishment was imposed upon the petitioner, to deny the legitimate claim of the petitioner for 3rd A.C.P. in the Grade Pay of Rs. 8700/- *w.e.f.* the due date i.e. 19-07-2014. Respondent No. 1 without application of mind to the fact that the petitioner was exonerated from the all the charges, has mechanically passed punishment order against the petitioner. Respondent No. 1 never disagreed with the enquiry report filed in respect of the petitioner nor was any reason ever recorded for disagreement as mandated in Rule-9 (2) referred above, nor the same was ever communicated to the petitioner.

15. The Tribunal has also observed that a sum of Rs. 17,621/- was recovered from the petitioner for committing financial irregularity in installing ten hand pumps, which was not as per the standards

prescribed by the Public Works Department. A major part of the written statement deals with justification of the department for not giving third ACP to the petitioner.

16. It is true that if there is no satisfactory service during the relevant period, ACP cannot be granted but the fact remains, in the instant case, that the provisions of the Rules of 2003 have not been observed in its entirety, by the Disciplinary Authority/ Appointing Authority. Since there is breach of mandatory provisions of procedure, therefore, the impugned order requires interference granting liberty to the Disciplinary Authority/ Appointing Authority to initiate departmental proceedings afresh, in accordance with law, if he is so advised. Impugned order is liable to be set aside.

17. Impugned order, therefore, cannot sustain. The same is liable to be set aside with liberty to the disciplinary authority/ appointing authority to initiate fresh departmental proceedings against the petitioner, in accordance with law, if he is so advised.

18. Claim Petition is disposed of by setting aside the impugned order, leaving it open to the Disciplinary Authority/ Appointing Authority to initiate departmental proceedings against the petitioner, in accordance with law, if he is so advised. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
[virtually from Dehradun]

(JUSTICE U.C. DHYANI)
CHAIRMAN
[virtually from NJA]

DATE: 05th DECEMBER, 2022
DEHRADUN
RS