

**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)

**WRIT PETITION NO 312(S/B) OF 2020**

**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 116/DB/2022]**

Nand Nandan Prasad Pandey, aged about 71 years, s/o Sri Nitya Nand Pandey,  
r/o 304, Aneeya Block, Sahastradhara Residency, Near Hill View apartment,  
Kandoli, Dehradun.

**.....Petitioner**

**vs.**

1. The State of Uttarakhand through Chief Secretary, Government of Uttarakhand, Uttarakhand Secretariat, Dehradun.
2. Secretary, Secondary Education, Section-II, Govt of Uttarakhand, Uttarakhand Secretariat, Dehradun.
3. Additional Secretary, Basic Education, Govt. of Uttarakhand, Uttarakhand Secretariat, Dehradun.

**.....Respondents**

Present: Sri C.K.Sharma, Advocate, for the Petitioner (virtually)  
Sri V.P.Devrani, A.P.O., for Respondents .

**JUDGMENT**

**DATED: JULY 04 , 2023.**

**Justice U.C.Dhyani (Oral)**

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 312/2015 , Nand Nandan Prasad Pandey vs. State of Uttarakhand and others, on 15.09.2022, as follows:

“The petitioner has preferred the present Writ Petition to seek the following reliefs :-

“i) Issue a writ of certiorari quashing the impugned order dated 28.1.2019 passed by respondent no.2 (contained as Annexure No.1 to the writ petition).

ii) Issue a writ order or direction in the nature of mandamus commanding and directing the respondents to pay entire gratuity and pension to the petitioner with 18% compound interest.”

2. The petitioner falls within the definition of a public servant. The claim raised by the petitioner squarely falls for consideration by the Uttarakhand Public Services Tribunal.

3. Considering the fact that the Writ Petition has been pending since 2020, and pleadings are complete, we direct the Registry to transfer the complete record of this Writ Petition to the Uttarakhand Public Services Tribunal. The Tribunal shall register the same as a Claim Petition, and deal with the same accordingly.

4. Interim order shall continue to operate till the matter is taken up by the Tribunal.

5. In sequel thereto, pending application, if any, also stands disposed of.”

2. Writ Petition No. 312 (S/B) of 2020 is, accordingly, reclassified and renumbered as Claim Petition No. 116/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon’ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as ‘petition’ and petitioner shall be referred to as ‘petitioner’, in the body of the judgment.

3. In this petition, the petitioner has challenged impugned order dated 28.01. 2019, passed by the Secretary Education, Government of Uttarakhand, Respondent No. 2, whereby major punishment has been given to the petitioner by forfeiting the entire gratuity and deduction of 10% of his pension (Annexure: 1). Petitioner was initially appointed through Uttarakhand Public Service Commission in the year 1975 and thereafter he served in the State on various positions. On 25.03. 2009, he was served with a charge-sheet for violation of Rule 3 of Government Servants’ Conduct Rules, 2002. He was charged for making appointment of the candidates contrary to the prescribed qualification, in the year 1997. Secretary Basic Education, was appointed as enquiry officer, and was directed to enquire into the matter (Copy of order dated 25.03.2009: Annexure 2). The enquiry officer, *vide* letter dated

08/15.06.2009, served chargesheet upon the petitioner. Five charges were levelled against him. The details of the charges have been given in para 7 of the petition. The Tribunal need not reproduce those charges ( Copy: Annexure- 3), for, they are already part of record. The petitioner replied to the enquiry officers, who were appointed in succession. (Copy of replies: Annexure- 4 *colly*). The petitioner denied the charges levelled against him. Petitioner took a categorical stand that the appointments were made as per rules and such appointments were upheld by the Courts of law. Every appointment was made as per the directions of the superior authorities. It was as per the reservation policy.

4. **In para 14 of the petition, it has been mentioned that the enquiry officer did not find the petitioner guilty for any of the charges levelled against him. He was exonerated of the said charges. (Copy of the enquiry report dated 7.12.2011: Annexure- 5).**

5. The file of the petitioner kept on moving from one desk to another. In the Directorate, some persons were interested in taking the revenge against the petitioner. As per the information obtained under R.T.I Act 2005, as has been mentioned in para 15 of the petition, the petitioner came to know that punishment order has been passed against him without complying with the mandatory provisions or without issuing show cause notice.

6. It has been mentioned in paras 16 of the petition that some junior officers against whom the petitioner made a complaint for irregularities and illegalities in the department, managed to get the departmental proceedings initiated against the petitioner at the fag end of his service period, even when the state of Uttarakhand was not in existence. The concerned persons dugout the matter of State of UP. and initiated the departmental proceedings to harass the petitioner. The petitioner moved for voluntary retirement on 26.02.2009, but the same was not considered. To the contrary, departmental proceedings were initiated against him, which continued for a period for more than two years and in between, three enquiry officers were changed. **The last enquiry officer submitted his report on 07. 12.2011, holding that the petitioner was not guilty of the charges levelled against him.**

7. Against the termination order of the teachers, the writ petitions were filed before the Hon'ble High Court, who allowed the petitions of the concerned teachers and directed the authorities to allow the persons to continue as per Service Rules, 2006 and their termination orders were set aside. All of them are still working.

8. It has been mentioned in the petition, again, that the enquiry officer has not found the petitioner guilty and has exonerated him on the ground that the termination orders (of the teachers) have been set aside by the Hon'ble High Court and the charges levelled against the petitioner were baseless.

9. The scrutiny officer, consequently, proposed the punishments- (1) No punishment order can be passed after the retirement of an employee but the appropriate deductions can be made according to Article 351 A of Civil Service Regulations; or ( 2) Since the enquiry officer has not recommended any punishment against the petitioner, there has been inordinate delay in payment of retiral dues, and the department would have to make the payment of interest on the delayed payment, the same shall not be paid by way of punishment; or (3) One time deductions be made from retiral dues.

10. The Section Officer made a note on the file of the petitioner that the enquiry officer has made inquiry in a cursory manner. Appointments of the Assistant Teachers were not made as per the required qualification for which he (petitioner) is guilty. The details of evidence, which took place culminating in impugned order, have been unfolded in various paragraphs of the petition. The petitioner made a representation to Respondent No. 1, but the same is still pending, leaving no option for the petitioner but to file the petition. Various grounds have been mentioned in the petition to challenge the impugned order. Various documents have been filed in support of the petition.

11. Written Statement has been filed on behalf of respondents. Counter Affidavit has been filed by Shri R. Meenakshi Sundaram, Secretary, School Education, Government of Uttarakhand, on behalf of Respondent No. 2. In the C.A. it has been indicated, among other things, that the petitioner made

illegal appointments of those who were not eligible for appointment as Assistant Teachers, due to which Government suffered financial loss. Those teachers were given salary to the tune of Rs. 2,73,42,658/-. Government suffered huge financial loss to the tune of such amount. As per the provisions of article 351- A Civil Service Regulations, it has been recommended to deduct 100% of the amount of gratuity and 10% of the amount of pension currently due to the petitioner. Detailed para-wise replies have been given in the C.A. Documents have also been filed by the respondents in support of the averments made in the C.A.

12. **Office Memorandum dated 28.01.2019 is in the teeth of present petition. Accusations levelled, reasons therefor and reply to those accusations have been mentioned in such Office Memorandum (Annexure 1).**

13. It is the submission of Ld. Counsel for the petitioner that there are various lapses in the departmental enquiry. Ld. Counsel for the petitioner submitted that although various grounds have been taken in the petition, which strike at the very root of the departmental proceedings, but one such important aspect of the matter is that when the petitioner was exonerated by the enquiry officer of the charges levelled against him, the disciplinary authority proceeded to punish the petitioner without issuing show cause notice. In other words, according to Ld. Counsel for the petitioner, when enquiry officer exonerated the petitioner against the charges levelled against him, two options were available before the disciplinary authority, *i.e.* (i) either to accept the version of enquiry officer or (ii) to differ from the same.

14. **If the disciplinary authority was to accept the findings of the inquiry officer, the petitioner would not have been found guilty. But, here in the instant case, while the enquiry officer did not find the petitioner guilty of the charges levelled against him, the disciplinary authority differed from him and went on to punish the petitioner without notice. No show cause notice was given to the petitioner.**

15. It has been indicated in paras 25 and 33 of the petition that **no show cause notice was given to the petitioner before passing the impugned punishment order. Secondly, it is also the argument of Ld. Counsel for the**

**petitioner that copy of the enquiry report has not been given to the petitioner. This, according to Ld. Counsel for the petitioner, is a major flaw in the disciplinary proceedings conducted against the petitioner, which strike at the very root of it and vitiates the enquiry proceedings.**

16. We have perused the C.A. filed on behalf of respondents. We find that the reply to these averments of the petition is evasive. No specific reply has been given. The grounds have not been controverted specifically.

17. It is trite law that when the disciplinary authority differs from the finding given by the enquiry officer, he has to give show cause notice to the delinquent employee before proceeding further with the inquiry. This fact is under no dispute that the enquiry officer exonerated the petitioner from the charges levelled against him. The disciplinary authority has taken a contrary stand and went on to punish the petitioner by passing impugned order, which is in the teeth of present petition, taking recourse to Article 351-A of Civil Service Regulations.

18. Ld. A.P.O. made an endeavour to defend the departmental action with vehemence. He submitted that when the inquiry was conducted against the petitioner, for the second time (after he was exonerated by the enquiry officer), although the procedure meant for imposition of major penalty was adopted, but the petitioner has been given minor penalty for recovery of loss caused to the Govt. According to Ld. A.P.O., there was no need to give copy of enquiry report to the petitioner if disciplinary authority has given minor punishment to the delinquent petitioner. This Tribunal is unable to agree with the submissions of Ld. A.P.O. on two grounds, namely: (i) Rule 3 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010) has a reference of major penalty as well as minor punishment (ii) secondly, Rule 9 of the Rules of 2003, does not distinguish between the major penalty and minor punishment. In both the cases, copy of inquiry report has to be given to the petitioner. The petitioner is harping upon many grounds, including the fact that he has not been supplied the copy of the enquiry report. Patently, on the basis of pleadings of the parties and documents brought on record, it is clear that copy of the enquiry report whereby the

petitioner was punished, which found the petitioner guilty, has not been supplied to him. This is also the major flaw in the disciplinary proceedings. The disciplinary proceedings are vitiated on these two grounds alone.

19. The impugned order should be set aside, leaving it open to disciplinary authority to proceed against the petitioner afresh, as per law . To make it clear, firstly, it was incumbent upon the disciplinary authority to issue show cause notice to the petitioner when the enquiry officer had not found the petitioner guilty of the charges levelled against him. The disciplinary authority could have proceeded further after issuing the show cause notice to the petitioner and only after considering his replies. Secondly, even if the disciplinary authority has given minor punishment to the petitioner, the proceedings were started on the assumption that he would be given major penalty, even if it turned into minor penalty, a copy of the enquiry report ought to have been given to the petitioner before imposing punishment on him.

20. The impugned order is set aside, leaving it open to disciplinary authority to proceed against the petitioner afresh, as per law.

21. It is made clear that we have not gone into other legal aspects of the matter as canvassed by the petitioner.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)  
*(virtually)*

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: JULY 04, 2023.*  
*DEHRADUN*

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