

**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 30(S/B) OF 2020  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 147/DB/2022]**

Dr. Surendra Dutt Saklani, aged about 54 years, s/o Late Sri Sundar Lal Saklani, presently posted as Medical Officer, Specialist (Surgeon), District Govt. Hospital Uttarkashi, District Uttarkashi.

.....Petitioner

**VS.**

1. State of Uttarakhand, through Secretary, Medical, Health and Family Welfare, Govt. of Uttarakhand, Dehradun.
2. Director General, Medical, Health and Family Welfare, Govt. of Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Vinay Kumar, Advocate, for the petitioner. (virtually)  
Sri V.P.Devrani, A.P.O., for Respondents.

**JUDGMENT**

**DATED: AUGUST 17, 2023.**

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

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 30/2020 , Dr. Surendra Dutt Saklani vs. State of Uttarakhand and another, on 19.09.2022, as follows:

“The petitioner has preferred the present Writ Petition to seek the following relief :-  
 “(i) Issue a writ, order or direction in the nature of Certiorari calling for the record and quashing the impugned Order No. 2054 dated 21st December 2018 issued by the Secretary, Medical Health and Family Welfare, Govt. of Uttarakhand, whereby a punishment of recovery of Rs. 3,41,000/- in equal installments of Rs. 5000/- per month has been directed to be recovered from the petitioner and has also been awarded the punishment of stoppage of two annual increments with cumulative effect along with recording of censure entry for the year 2013- 14.”

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. The Writ Petition stands disposed of accordingly.

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

2. Writ Petition No. 30 (S/B) of 2020 is, accordingly, reclassified and renumbered as Claim Petition No. 147/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.

### **PETITIONER’S VERSION**

3. When the petition was filed, the petitioner was posted as Specialist Medical Officer, (Surgeon), in District Govt. Hospital Uttarkashi. He is aggrieved by the impugned order dated 21.12.2018, passed by the Secretary, Medical, Health and Family Welfare, Govt. of Uttarakhand, whereby a punishment of recovery of Rs.3,41,000/- has been directed from the petitioner along with stoppage of two annual increments with cumulative effect and recording of censure entry in the service record of the petitioner for the year 2013-14. The relief sought by the petitioner is that the impugned punishment order dated 21.12.2018, passed by Respondent No.1 be quashed, inasmuch as the same is in violation of Discipline and Appeal Rules, as the punishment order is a non-speaking, cryptic order for rejecting the explanation given by the petitioner.

3.1 On 30.01.2014, the then Hon'ble Minister for Health and Family Welfare, Government of Uttarakhand issued a communication to the Principal Secretary, Health and Director General, Health Govt. of Uttarakhand, which communication mentioned that it has come to the knowledge that the Taxis were hired from time to time for the use of Hon'ble Chief Minister, for which payments have been made by the concerned Chief Medical Officers. It was also mentioned that it is possible that similar payments might have been made from other offices also. It was mentioned that the Chief Medical Officers have informed that the payment for hiring of the Taxis was as per the direction given by Sri Uttam Rawat, the then Public Relation Officer, of the Hon'ble Chief Minister, who has denied the same. Sri Uttam Rawat has stated that no Taxi was hired for the use of Hon'ble Chief Minister of the State. It was stated that the Govt. money has been siphoned off and, therefore, strict action should be taken against such activities. (Copy of communication dated 30.01.2014: Annexure-1).

3.2 In pursuance to the communication dated 30.01.2014, by the then Hon'ble Minister, Department of Medical, Health and Family Welfare, Govt. of Uttarakhand, a 05 Member Enquiry Committee was constituted by the Director General, Medical, Health and Family Welfare on 17.04.2014 for inquiring into the allegation of payment of the rent for the taxis hired from time to time for the use of Hon'ble Chief Minister of the State, on the basis of forged bills. The constitution of the Enquiry Committee was amended *vide* Office Memorandum dated 02.09. 2014. The 05 Members Inquiry Committee was to be headed by the Director, Additional Director, Joint Director, Finance Officer and Assistant Accounts Officer as its Members ( Copy of O.M. dated 02.09.2014: Annexure-2).

3.3 On 16.09.2014, the Director/ Chairman of the Enquiry Committee issued a communication to the petitioner in respect of payment of the rent of the Taxis hired for the use of Hon'ble Chief Minister of the State. It was stated that the Director General has constituted an enquiry committee under the Chairmanship of Dr. L.K. Gusain, Director, Medical Health. Petitioner, who was posted as Chief Medical Superintendent, SPS Government Hospital Rishkesh from 11.09.2012 to 17.07.2013 and payment of Rs.5, 41, 500/- was made during that period, was required to submit an explanation.

Explanation of the Petitioner was sought on 15 points mentioned in communication dated 16.09.2014. (Copy of the communication dated 16.09.2014: Annexure-.3 ). Under the financial rules, petitioner was competent to release the amount. Petitioner was also required to submit explanation on other points mentioned in the said communication, within 15 days.

3.4 On 01.10. 2014, the petitioner who was posted as Specialist Medical Officer (Surgeon) in SPS Govt. Hospital Rishikesh, submitted his explanation to the communication dated 16.09.2014. The petitioner enclosed the copies of the orders issued from time to time for hiring the Taxis for use of the Hon'ble Chief Minister. It was also stated that the bills were submitted by Sri Sushil Uniyal of Kala's Tour and Travels himself. The payments of the bills for hiring the taxis for the then Chief Minister was made in terms of the letters issued from the office of the Chief Minister. The Head of the Department was informed regarding the payments thus made. The bill vouchers were verified by the then Additional Private Secretary of the Hon'ble Chief Minister. (Copy of the reply of the petitioner dated 01.10.2014: Annexure-4 ).

3.5 The petitioner pointed out that the decision to hire the vehicle on rent was taken at the level of the Hon'ble Chief Minister and Health Minister and as such no agreement was entered with the Travel Agency. Payments were made only after verifying the same on phone from the officer who has verified the vouchers.

3.6 The five Members Enquiry Committee submitted its report to the Director General, Medical Health and Family Welfare in respect of the payments made to the Travel Agency for hiring the vehicles for the use of the Hon'ble Chief Minister. The Enquiry Committee report concluded that serious financial irregularities have been committed in making payments of the vehicles hired for the use of the Hon'ble Chief Minister and Hon'ble Health Minister of the State for their tours by the concerned officers of the Health Department and thereby caused loss to the Government.

3.7 In para 10 of the petition, it was pointed out that the letter-pad of the Private Secretary/ Additional Private Secretary and Public Relation Officers of the Hon'ble Chief Minister and Health Minister, were forged. The vouchers alleged to have been verified by the said persons, also appear to be doubtful

inasmuch as there might be possibility that those persons may not have written those letters and verified them. It is also stated that the vouchers submitted in various Departments have been verified by Sri Uttam Singh Adhikari, Public Relation Officer of the Hon'ble Chief Minister.

3.8 Various other grounds have been taken in the petition to conclude that the punishment order dated 21.12.2018, passed by the Secretary, Medical, Govt. of Uttarakhand (Respondent No.1), is not sustainable being cryptic and non-speaking, inasmuch as it does not deal with the explanation given by the petitioner to the show cause notice. According to the petition, the orders impugned dated 21.12.2018, whereby the punishment of recovery of Rs.3,41,000/- has been directed to be recovered from the petitioner in equal installments of Rs.5,000/- per month along with stoppage of two annual increments with cumulative effect and recording of censure entry for the year 2013-14, are not sustainable and, therefore, are liable to be set aside. Various documents have been filed by the petitioner in support of his case, which form part of the petition.

#### **RESPONDENTS' VERSION**

4. Counter Affidavit has been filed on behalf of Respondent No.2. Dr. Tripti Bahuguna, the then Director General, Medical, Health and Family Welfare has filed the Counter Affidavit, denying the material averments made in the petition. Relevant documents have been filed in support of the Counter Affidavit.

4.1 In the C.A., it has been stated, among other things, that the petitioner wrongly made payment to the tour and travel agency. The enquiry was conducted in the matter and the enquiry officer found that the payment made to the tour and travel agency was not legal and, therefore, the Govt. has issued order dated 21.12.2018. As the petitioner has misused the Govt. money for giving benefit to the tour and travel agency, therefore the order passed by the Govt. dated 21.12.2018 is just and reasonable. Misuse of Govt. money came to the knowledge of the then Hon'ble Health Minister and, therefore, Hon'ble Minister *vide* letter dated 30.01.2014 directed the concerned Secretary for taking immediate action against the persons involved in it.

4.2 An Enquiry Committee was constituted in the matter, which sought explanation from the petitioner on various points. But, the explanation given by the petitioner was not found to be satisfactory, therefore, it was concluded by the Enquiry Committee that the petitioner gave undue benefit to the tour and travel agency, whereby loss was caused to the public exchequer.

4.3 The action taken against the petitioner, has been taken on the basis of the enquiry report, which found that the petitioner has given undue benefit to the tour and travel agency, thereby caused loss to the Govt. exchequer and therefore, order for initiating the disciplinary enquiry was passed and the order for recovery of Rs.3,41,000/-, stoppage of two increments with cumulative effect and recording of censure entry in the service record of the petitioner for the year 2013-14 was passed against the petitioner.

## DISCUSSION

5. It is clear from the record that the matter regarding drawing and disbursing of the bills was in the knowledge of the then Chief Medical Superintendents, SPS Hospital, Rishikesh, *i.e.* Dr. Rajiv Hatwal, Dr. Y.S. Rana, Dr. S.P. Agarwal and Dr. Surendra Dutt Saklani. In this way, the liability of payment of Rs.7.05 lacs was of the Chief Medical Superintendents, SPS Hospital, Rishikesh. The liability, which has been calculated by the department for the aforesaid officers is being quoted herein below:

1	Dr. Rajiv Hatwal, deceased	Rs.17,500.00
2	Dr. Y.S. Rana	Rs.1,24,500.00
3.	Dr. S.P. Agarwal	Rs.2,22,000.00
4.	Dr. Surendra Dutt Saklani	Rs.3,41,000.00

6. The F.I.Rs were lodged in various districts against the travel agencies, as in the aforesaid matter the petitioner and other persons made payment of the bills without seeking any directions from the higher authorities. Provisions of the Budget Manual have also been ignored by the petitioner and others. Any Head of the Office is not competent to make payment of the

expenditure incurred in the jurisdiction of other departmental head. It is a serious financial irregularity. Before passing the impugned order, due procedure was followed. In the enquiry report, all the charges levelled against the petitioner were proved and, therefore, there appears to be no occasion to call for interference in the orders impugned.

7. Sri Vinay Kumar, Ld. Counsel for the petitioner drew attention of the Tribunal towards the grounds taken in the petition submitting that the impugned orders are liable to be set aside. He also submitted that due procedure of law has not been followed. The findings have been given by the enquiry officer on the basis of surmises and conjunctures, which have no basis in law. According to Ld. Counsel for the petitioner, principles of natural justice have not been followed in the instant case. The Tribunal has already recorded the facts and grounds taken by the petitioner in his petition. The same facts and grounds were reiterated by Sri Vinay Kumar, Ld. Counsel for the petitioner, mainly arguing that the impugned orders are liable to be set aside.

8. Ld. A.P.O., on the other hand, vehemently opposed the petition. He argued that the impugned order has been passed only after due enquiry. Ld. A.P.O. drew attention of the Tribunal towards para 15(12) of the Budget Manual, to submit that the provisions of the Budget Manual have been ignored while releasing the money in favour of tour and travel agencies. Ld. A.P.O. also relied upon the documents, which have been filed along with the Counter Affidavit.

9. This Tribunal has decided a similar petition earlier on 24.05.2022 bearing Claim Petition No. 31/NB/DB/2020, Dr. Rakesh Sinha vs. State and others. The facts of the aforesaid petition are almost identical and pertains to the same subject matter, although the punishment awarded to Dr. Rakesh Sinha, (the petitioner of Claim Petition No. 31/NB/DB/2020) may not be exactly similar to the petitioner of present petition. The relief sought for in the Claim Petition No. 31/NB/DB/2020 were also different, but, the core area, on the basis of which such claim petition was decided, totally resembles to the subject matter of present petition.

10. It will, therefore, be pertinent to reproduce the judgment rendered by this Tribunal on 24.05.2022, in Claim Petition No. 31/NB/DB/2020, Dr. Rakesh Sinha vs. State and others, herein below for convenience:

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

“(i) To quash Office Order No. 2045/XXVIII-2/2018- 01(31) 2014, Dehradun, dated 21.12.2018 whereby a penalty has been imposed on the petitioner for deduction of 50% of his monthly pension towards the recovery of the amount of Rs. 83,31,000/- (Rupees Eighty Three Lakh Thirty One Thousand);

(ii) To direct refund of the amount already deducted and recovered by the respondents from the pension of the applicant in terms of Office Order No. 2045/XXVIII-2/2018- 01(31) 2014, Dehradun, dated 21.12.2018, along with interest;

(iii) To direct the respondents to pay the petitioner the applicable regular pension, as well as its arrears, as may have accrued since 01.03.2015;

(iv) To direct the respondents to release the gratuity amount and other retirement and pensionary dues, as may be, that have accrued to the applicant on his superannuation.

(v) Quash/ set aside the Office Order No. 199/2018 dated 19.08.2019 issued by the respondent no. 3 directing for deduction of 50 % of the pension amount admissible to the claimant/ petitioner.”

2. Office orders dated 21.12.2018 and 19.08.2019 are in the teeth of present claim petition.

3. When the claim petition was filed on 06.07.2020, learned A.P.O. opposed the claim petition, *inter alia*, on the ground that the same is barred by limitation. Issue of limitation was left open to be decided at the time of final hearing.

4. Claim petition in respect of quashing of office order dated 21.12.2018 should have been filed on or before 21.12.2019 and claim petition in respect of quashing of office order dated 19.08.2019 should have been filed on or before 19.08.2020. Claim Petition has been filed on 06.07.2020..

5. The petitioner has also sought a direction to direct the respondents to pay applicable regular pension, as well as arrears, as may have accrued since 01.03.2015. Petitioner has also prayed for release of gratuity amount and other retiral benefits, which might have accrued to the applicant on his superannuation. By amendment, the petitioner has also sought quashing of order dated 19.08.2019. Although the amendment was sought on 15.03.2022, but the claim petition in respect of office order dated 19.08.2019, has been filed on 06.07.2020, which is within time. The effect of amendment is from the date of filing of the claim petition. Relief in respect of quashing office order dated 19.08.2019, therefore, is within time.

#### FACTS

6. *Vide* Office Order dated 21.12.2018, penalty has been imposed on the petitioner for deduction of 50% of his monthly pension for recovery of an amount of Rs. 83,31,000/-. While granting provisional pension, a direction was given to deduct 50%, out of such provisional pension, every month. Office Memorandum dated 21.12.2018 (Annexure: A12) appears to be an unambiguous speaking order. Consequent upon the incident of payment of fake taxi bills, which came to light on 03.05.2016, Sri R.R. Singh, the then Joint Secretary, Medical Education Department was appointed as Preliminary Inquiry Officer. Sri R.R. Singh, preliminary inquiry officer submitted his inquiry report on 09.08.2016. The (preliminary) inquiry officer confirmed an irregular payment of Rs. 83,31,000/- towards forged taxi bills, by the petitioner, the then Chief Medical Officer, Udham Singh Nagar, as DDO/ Head of the office. The Charge sheet was issued to the delinquent officer on 24.10.2016 asking



the petitioner to submit his replies within 15 days and also to inform the inquiry officer whether he wants personal hearing and the names of witnesses, whom he wants to produce and the witnesses, whom he wants to cross-examine. The delinquent officer submitted his explanation. On receipt of such replies, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, was appointed as inquiry officer. A copy of Office Memorandum dated 06.11.2017 was given to the petitioner desiring him to submit his case before the inquiry officer.

7. After conducting the inquiry, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, submitted the inquiry report to the Medical, Health and Family Welfare Directorate *vide* letter dated 02.02.2018. Inquiry Officer found the petitioner guilty. A copy of inquiry report submitted *vide* letter dated 02.02.2018 was given to the delinquent officer *vide* letter dated 09.02.2018, directing him to submit his replies within 15 days. The petitioner had already attained the age of superannuation by then. The Government, in the Medical and Health Department, *vide* order dated 21.12.2018 (Annexure: A12), closed the disciplinary proceedings by directing 50% deduction from the pension of the petitioner, till Rs. 83,31,000/- are realized. This was done after inquiry officer held the petitioner guilty in the inquiry, upon consideration of his explanation and after concurrence of Uttarakhand Public Service Commission. All this was done in the light of the Uttarakhand Govt. Servant (Punishment and Appeal) Rules, 2003, as amended in 2010 and Article 351-A Civil Services Regulations. Office Order dated 19.08.2019 (Annexure: A13) is consequential to the order dated 21.12.2018 (Annexure: A12) followed by the endorsement dated 31.12.2018 of the Directorate, Medical Health and Family Welfare. An FIR was lodged by Dr. H.K. Joshi, Chief Medical Officer, Udham Singh Nagar, against the Travelling Agency M/s Kala Tour & Travel, Dharampur, Mothorawala, Dehradun, for generating fake bills of Rs. 83,31,100/-. Such FIR was lodged on 07.02.2015 at Reporting Out Post, SIDCUL, district Udham Singh Nagar, under sections 420, 467, 468, 471 IPC.

8. The allegation was that payment of fake taxi bills was made under the pretext that they were used by the then Hon'ble Chief Minister and the then Hon'ble Health Minister from time to time. A departmental committee was constituted under the Chairmanship of Director General, Medical and Health, who found financial irregularities and involvement of 12 Chief Medical Officers and one Chief Medical Superintendent. Petitioner was posted as Chief Medical Officer (Head of the Office), Udham Singh Nagar. The payment to the tune of Rs. 1,43,96,500/- was found, out of which payment of Rs. 83,31,000/- was made under the orders of the petitioner. The illegal payment was made as 'Head of the Office' for fake taxi bills. The same was evident from the report dated 09.08.2016 (Annexure: A8) of Sri R.R. Singh, Joint Secretary, Medical Health Education and Home, Govt. of Uttarakhand/Preliminary Inquiry Officer.

9. According to the petitioner, an order for making payment was issued by Hon'ble Chief Minister's office and therefore, it was not possible for the petitioner to have got the bills verified by district level officers. CMOs/CMSs are neither the experts of finance nor are they given any training on financial matters, therefore, it was wrong to hold the petitioner guilty of financial irregularities. Delinquent officer also explained that the accounts work was done by a ministerial level employee and therefore, he (delinquent officer) was deprived of proper advice in the financial matters. The Secretary to the Govt. in Medical and Health Department *vide* letter dated 09.02.2017, which was issued to 10 CMOs, including the petitioner, has enclosed the report of inquiry officer, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, who has given cogent reasons, in detail, as to why the delinquent-petitioner has been found guilty of unauthorizedly releasing the money, from Grant (*Anudan*) No.3, which money was earmarked for Grant (*Anudan*) No. 12.

10. This Tribunal does not feel it necessary to give details of the inquiry report because such report is part of record. Learned Counsel for the petitioner has mentioned various grounds in his claim petition as to why the Tribunal should intervene in the orders impugned. The Tribunal found, at the time of disposal of interim relief application that, *prima-facie*, the proceedings appear to have been

conducted, as per procedural safeguards, given in law. Regulations 351A CSR takes care of the situation leading to the recovery of the loss suffered by the Govt. from the amount of pension and gratuity, payable to a delinquent employee when he was found guilty of commission of misconduct or negligence, causing pecuniary loss to the Govt. The inquiry report is the basis of passing impugned orders. While accepting the argument of learned Counsel for petitioner that the Medical Officers have expertise in administering medicines and treating patients, the Tribunal finds that the CMOs are also incharge of finance in their respective jurisdiction and, therefore, they or any of them cannot take excuse that they are not well-versed in financial matters. In para 'M' of the grounds in the claim petition, it has been mentioned that the petitioner only sanctioned the bills after receiving the invoices, budget clearance by the Finance Controller and accompanying letters from the C.M.'s office. It was the duty of the petitioner to have ensured, before sanctioning the bills, that those bills are genuine bills and not fake bills and the payment is being made from the appropriate head.

#### COUNTER VERSION

11. Preliminary objections have been filed on behalf of the respondents to submit that the claim petition is barred by limitation in view of Section 5(1)(b) of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand). It has also been prayed in the C.A. filed by Dr. Amita Upreti, Director General, Medical Health and Family Welfare that the delay condonation application is liable to be rejected.

12. In parawise reply, it has been mentioned that the petitioner retired from service on 31.03.2015. Pursuant to the report of the enquiry officer, considering his reply, following the procedure and after consultation with the Uttarakhand Public Service Commission, recovery of Rs.83,31,000/- has been ordered against the petitioner. It has been provided that such amount may be recovered by deducting 50% of his pension per month. Hence, the claim petition is liable to be dismissed on merits.

13. The Kala Tour and Travels Agency was the beneficiary of the act of the petitioner and others. When such fact came to the knowledge of the Health Minister, then he directed the office of the deponent on 30.01.2014 to enquire into the matter and punish the culprits of the scam. Pursuant to such directions, the deponent *vide* Office Order dated 02.09.2014 constituted an enquiry committee. The charge of illegal payment was proved against the petitioner. The petitioner did not discharge the duties of Drawing and Disbursing Officer properly. The disciplinary authority, after considering the reply of the petitioner to the charge sheet and after granting him opportunity of hearing, found the petitioner guilty. Punishment order was passed on 21.12.2018.

14. After receiving the information about illegal payment to the Travel Agency, the records of Chief Medical Offices of different districts were summoned, in which it was found that the petitioner and other C.M.Os. have made illegal payment. The petitioner, without taking approval of the concerned authorities and without consent of the higher authorities, released the amount from different sources. The deponent *vide* letter dated 18.11.2014, forwarded the report of the departmental enquiry committee to the Government. First Information Report was also lodged against the petitioner and Kala Tour and Travel Agency. The Govt., for a detailed enquiry, appointed Sri R.R. Singh, Joint Secretary, Medical Education Department. The Head of the Department is not authorized to disburse the money and make payment from the money of other head. This amounts to serious financial irregularity. In the present case, expenses of 'Council of Ministers', under head no. 03, were directed to be paid from head no. 12 'Medical Health and Family Welfare', for which the petitioner was not authorized.

15. In Para No. 15(12) of the Budget Manual, the definition of the Budget Controller has been defined. The powers and duties of the Departmental Budget Controller have been defined in Para No. 92 of the Manual. As per Para no. 92(1), a

grant can be used only for a particular purpose. Duties of DDO, have been defined in Para No. 154 of the Manual.

16. In Para No. 154 (2) of Manual, it is provided that the expenditure will be done as per the provisions of Appropriation Act. For each financial year, the expenditure will be done from the amount of income-expenditure as prescribed in the budget. In the present case, the amount provided under head no. 12 has been released for the expenses of head no. 03, for which no permission for reappropriation was taken from authorities concerned. For illegal payment, the petitioner was served with the charge sheet. The petitioner was DDO. The DDO can make Govt. payment only as per Financial Rules and payment of bills cannot be made only for the reason that they are certified by higher officials. The petitioner, being DDO, did not properly exercise his powers and without taking permission from the competent officer, paid the bills. The charges levelled against the petitioner were found proved by the enquiry officer and after following proper procedure, the petitioner has been awarded minor penalty under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003.

#### DISCUSSION

17. According to learned Counsel for the petitioner, the departmental proceedings suffered from various defects on conjoint reading of Regulation 351-A and Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules; there is no mention of proposed documentary evidence or names of witnesses; charge sheet was not served with any documentary evidence; petitioner's request for examination of the record before replying the charge sheet was also not responded to; the inquiry officer did not summon any witness or record; no opportunity was given to the petitioner to examine the documents and petitioner was not given any opportunity to defend himself. Case laws have been cited by learned Counsel for the petitioner, in support of his contention.

18. Sri Arunendra Singh, inquiry officer, has given his report (Annexure: A11 *colly*), in which there is description of charge leveled against the delinquent, that the delinquent petitioner, as Head of Department, made a payment of Rs. 83,31,000/- towards forged taxi bills. Inquiry Officer has mentioned the replies of the delinquent petitioner. He was the Drawing and Disbursing Officer. It has been mentioned in the report that delinquent petitioner has admitted making payments, which was being done by the departmental officers since 2009-10, treasury never objected to it, taxis were used during the visit of the Hon'ble Chief Minister, Accountant General also never objected to it in audit reports, and he is not expert in financial matters. Such pleas were not accepted by the inquiry officer. According to the inquiry officer, ignorance of the petitioner, as HOD/ DDO, towards general rules and procedure is not excusable. Inquiry Officer concluded his report by saying that the petitioner has unauthorizedly made the payment of money earmarked in grant no. 12 for a subject, which falls under grant no. 3.

19. The Secretary to the Govt. in Medical Department, in order dated 21.12.2018 (Annexure: A12), has mentioned that the delinquent petitioner has retired on 31.03.2015 and the charge leveled against him has been proved. According to office order dated 21.12.2018, replies filed by the delinquent petitioner were considered. Consent of Uttarakhand Public Service Commission was obtained, a direction was given for deduction of 50 % amount from the pension of the petitioner every month till a sum of Rs. 83,31,000/- is realized. Departmental proceedings were closed.

20. Order dated 19.08.2019 was issued by Chief Medical Officer, Udham Singh Nagar (respondent no. 3). Such an order was given with a view to implement order dated 21.12.2018. Such deduction was directed to be made from the provisional pension of the petitioner.

21. The Tribunal finds that the petitioner has challenged order dated 21.12.2018 late in view of Section 5(1)(b)(i) of the U.P. Public Services Tribunal. He should have filed the claim petition for setting aside the order dated 21.12.2018

(Annexure: A12) on or before 21.12.2019. Claim petition has been filed on 06.07.2020.

22. Assuming for the sake of arguments that the claim petition in respect of setting aside order dated 21.12.2018 is within time, petitioner has not been able to create dent in the departmental version, even on merits.

23. The Tribunal observes that the inquiry officer has given cogent reasons for coming to the conclusion that charge against the petitioner was proved. The charge is for making payments of forged taxi bills. As HOD/ DDO, it was the duty of the petitioner CMO to have observed financial discipline to ensure that proper payments are being made. Making of payments has not been denied by the petitioner. He has stated, among other things, that he was not an expert in financial matters therefore, he did not do so deliberately.

#### CONCLUSIONS

24. In ground (M) to the petition, the petitioner has stated that “petitioner only sanctioned the bills after receiving the invoices; budget clearance by the Finance Controller, Medical Health and Family Welfare and accompanying letter from the concerned officer of the Chief Minister Office with directions to clear the payment .....”. “Moreover the bill signed by the petitioner as Chief Medical Officer was further sent to District Treasury Officer, who finally, after satisfying himself, issued treasury cheques in favour of the concerned travel agency.....”

25. In ground (I) of the petition, it has been indicated that the petitioner is a Medical Officer and his expertise is on the subject of Health and Medicine and in treating patients. The petitioner is not assisted by any Finance Officer to guide him in financial matters, coupled with the fact that the bills of expenditure in visits of Hon’ble Ministers, are to be cleared compulsorily without putting any remark or query. “The enquiry officer, at the time of passing impugned order, having been posted as an officer in one of the highest ranks, could better consider the compelling situation under which the bills were paid.”

26. In ground (J), it has been mentioned that “no such irregularity was ever pointed out or flagged either by the Treasury or by the Accountant General in yearly audit, who are specially skilled and possess the requisite know how in dealing the financial matters and payment of dues.”

27. According to the Tribunal, it appears to be a case of ‘admission and avoidance’.

28. Enquiry, as per the facts given in the chronology of events, was initiated on 29.09.2014. Enquiry committee submitted its report on 24.12.2014. A letter was written to the Principal Secretary, Medical Health, for appointment of competent enquiry officer to conduct the enquiry. On 07.02.2015, an FIR was lodged. On 28.02.2015, the petitioner retired from service. Thereafter, from 01.03.2015, the petitioner is being paid provisional pension. Sri R.R. Singh, Joint Secretary, Medical Health, was appointed as investigating officer. Enquiry report dated 09.08.2016 was forwarded to the Secretary, Medical Health and Family Welfare. On 24.10.2016, the petitioner was served with the charge sheet that “transactions covered under head no. 3 ‘Council of Ministers’ have been disbursed under head no. 12 (Budget of Department of Medical Health and Family Welfare), which were not permitted as per Appropriation Rules.” Thus, the petitioner was charged for unauthorizedly clearing the payments.

29. On 19.02.2018, the petitioner was served with the enquiry report dated 02.02.2018 prepared by Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, which report was forwarded to the Secretary of the respondent-department. On the basis of enquiry report dated 19.02.2018, pecuniary loss of Rs. 83,31,000/- was directed to be recovered from the pension of the petitioner by way of 50% monthly deduction. At present, the petitioner is being paid his provisional pension as per office order dated 21.12.2018.

30. As per Rule 351-A of Civil Service Regulations, the Governor reserves to himself the right for withholding or withdrawing a pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Govt., if the pensioner is found in departmental or judicial proceedings to be guilty of grave misconduct, or to have caused pecuniary loss to the Govt. by misconduct or negligence, during his service.

31. The contention of learned Counsel for the petitioner that the order directing withholding of petitioner's pension is contrary to Rule 351-A of Civil Service Regulations, has no legs to stand.

32. The Tribunal has noted the main grounds taken by the petitioner in his claim petition above. Petitioner has admitted that he has sanctioned the amount as Drawing and Disbursing Officer. The facts of Mata Prasad Mishra vs. State of U.P. and others, 1994 (4) AWC 3600, are therefore, clearly distinguishable from the facts of present case.

33. The provisions of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (for short, 'Rules of 2003') have been adhered to by the enquiry officer and respondent-department while directing 50 % deduction from the monthly pension of the petitioner, for causing pecuniary loss to the Govt.

34. Recovery from pay of the whole or part of any pecuniary loss, caused to Govt. by negligence or breach of order is a minor penalty under the Rules of 2003, for which proper procedure under Rule 10 of the Rules of 2003 has been followed.

35. For better appreciation, Rule 10 of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 is reproduced herein below, for convenience:

**"10. Procedure for imposing minor penalties-** (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule-3.

(2) The Government Servant shall be informed of the substance of the imputations against him and be called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated to the concerned Government Servant.

36. Equivalence to the ratio of decision rendered by Hon'ble Allahabad High Court in Santosh vs. Kanpur Electricity Supply Company Limited and others, 2018 3 AWC 2942 Allahabad is, therefore, not possible to be given to the petitioner in the present case. Every case has to be decided on its own merits and when the facts are distinguishable, the Court or Tribunal is not required to apply a ruling to different set of facts. Other rulings, as supplied by learned Counsel for the petitioner, are also not found applicable to the facts of present claim petition.

37. The petitioner's fault, in a nutshell, is that the payment was released under head no. 12, which was a subject matter of budgetary head no. 3, which is used for the 'Council of Ministers'. The petitioner did not obtain any permission (in the form of 'appropriation') for the same. Had any permission been sought, probably, the same would not have been granted and the petitioner would have been saved from ignominy, which he is facing at present. The petitioner might not have any intention to commit a wrong, still, the fact remains that he has not properly discharged his duties as Drawing and Disbursing Officer.

#### INFERENCE & ORDER

38. The nature of charge was such that the same did not require production of oral evidence. When oral evidence was not produced, there was no question of giving any opportunity to the petitioner to cross-examine those witnesses. Applicability of rulings depends on case to case. A ruling cannot be made applicable to each and every situation. The report of inquiry officer has appropriately been dealt with by the

Disciplinary Authority. The Tribunal does not find any illegality in the same. No interference is called for in the order dated 21.12.2018 (Annexure: A12).

39. But, the petitioner has been able to make out a case for interference in the order dated 19.08.2019 (Annexure: A13), which has been issued by respondent no. 3, Chief Medical Officer, Udham Singh Nagar. There appears to be no provision for recovery of loss caused to the Govt. from the provisional pension, although there is provision for realizing the loss caused to the Govt. from the pension of a retired Govt. servant. *Vide* office order dated 19.08.2019, his provisional pension was sanctioned for one month. His pension matter is pending consideration in the office of Director General, Medical Health, therefore, deduction of 50% from the provisional pension of the petitioner every month, cannot sustain in the eye of law. Interference is called for in the same.

40. Order dated 19.08.2019 (Annexure: A13) is therefore, set aside. Respondents are directed to revisit this aspect whether any deduction can be made from the provisional pension of a delinquent officer or not. They are, accordingly, directed to pass a fresh order on the same, in accordance with law. The pension matter of the petitioner may also be finalized as quickly as possible.

Claim petition is, accordingly, disposed of. No order as to costs.”

11. Above noted principles and reasons are equally applicable to the petitioner of this case. These reasons are not being reiterated to avoid repetition and for the sake of brevity.

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12. Like cases should be decided alike. When the subject matter is covered by the decision rendered by this Tribunal on 24.05.2022 in Claim Petition No. 31/NB/DB/2020, Dr. Rakesh Sinha vs. State and others, therefore, present petition should be decided in terms of the aforesaid decision dated 24.05.2022. In Dr. Rakesh Sinha case (*supra*), the Tribunal did not interfere in the order dated 21.12.2018 (Annexure: 12 of Claim Petition No.31/NB/DB/2020) citing reasons in support thereof, therefore, this Tribunal should not interfere in order dated 21.12.2018 too, in the instant case. Due procedure has been followed.

13. No illegality is found in the impugned order dated 21.12.2018 (Annexure: 16), therefore, no interference is called for in the same. The petition fails and is dismissed. In the circumstances, no order as to costs.

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

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

*DATE: AUGUST 17, 2023.*  
*DEHRADUN*

*VM*