

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

Present: Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 24/ DB/2015**

Dharampal Singh Saini, S/o Late Sri Shambhu Singh, R/o Village and Post Office Kaluwala, Paharipur, Jahanpur, District Saharanpur, U.P..

.....Petitioner

**Versus**

1. State of Uttarakhand through Secretary Agriculture, Government of Uttarakhand, Dehradun.
2. Director, Department of Agriculture, Nanda ki Chowki, Prem Nagar, Dehradun.
3. Chief Agriculture Officer, Niranjanpur Sabji Mandi, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Ld. Counsel  
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.  
for the respondents.

**JUDGMENT**

**DATED: FEBRUARY 06, 2017**

1. The petitioner has filed this claim petition for seeking the following relief:-

- “(i) To issue order or direction to the respondents quashing the impugned charge sheet dated 08.09.2014 along with its effect and operation also.
- (i) To issue order or direction to the respondents to pay the gratuity amount of Rs.5,97,680/- along with interest @ 18% per annum to the petitioner from the date of retirement till the date of payment.
- (ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iii) To award cost of this petition to the petitioner.”

2. The necessary facts required to appreciate the rival contentions advanced on behalf of the parties are stated in brief hereunder:-
- 2.1 The petitioner has been an employee of the Department of Agriculture, Government of Uttarakhand.
- 2.2 The petitioner, for the alleged misconduct when was working as Store In-charge, Vikas Nagar Block, Dehradun in 2010, was issued a charge sheet on 19.10.2011 (Annexure: A 4) containing three charges.
- 2.3 After attaining the age of superannuation, the petitioner retired from the post of Assistant Agriculture Officer- Grade-II, Uttarkashi on 30.09.2012.
- 2.4 The inquiry against the petitioner continued even after his retirement on 30.09.2012.
- 2.5 The Director, Agriculture, Department of Agriculture, Government of Uttarakhand vide order dated 08.09.2014 cancelled the departmental proceedings against the petitioner (Annexure: A6). The charge sheet dated 19.10.2011 was, therefore, dropped and it stood withdrawn. However, the Director, Agriculture issued another charge sheet dated 08.09.2014 initiating the departmental inquiry against the petitioner afresh. The order of the Director, Agriculture (Annexure: A6) reads as under:-

“आदेश

राज्य के मैदानी जनपदों में खरीफ 2010 में मृदा स्वास्थ्य सुधार हेतु हरी खाद के रूप में वितरित किये गये ढ़ैचा बीज के सत्यापन में प्रकाश में लायी गयी अनियमितताओं के फलस्वरूप प्रथम दृष्टया दोषी अधिनस्थ कार्मिक श्री धर्मपाल सेनी, तत्कालीन भण्डार प्रभारी विकासनगर जनपद देहरादून के विरुद्ध अनुशासनात्मक कार्यवाही प्रारम्भ की गयी। उक्त प्रारम्भ की गयी अनुशासनात्मक कार्यवाही सुसंगत नियमावली यथा— उत्तराखण्ड सरकारी सेवा नियमावली (अनुशासन एवं अपील) नियमावली 2010 में निर्धारित प्रक्रिया के अन्तर्गत प्रचलित न होने के फलस्वरूप निदेशालय के आदेश सं0 3401 दिनांक 08.09.20014 के द्वारा उक्त अनुशासनात्मक कार्यवाही निरस्त कर दी गयी।

प्रचलित प्रकरण में बरती गयी अनियमिततायें गम्भीर प्रकृति के होने के फलस्वरूप प्रथम दृष्टया दोषी कार्मिक श्री धर्मपाल सेनी, तत्कालीन भण्डार प्रभारी विकासनगर जनपद देहरादून के विरुद्ध उत्तराखण्ड सरकारी सेवा नियमावली (अनुशासन एवं अपील) 2010 के नियम-7 के अन्तर्गत निर्धारित प्रक्रियानुसार

विधिवत अनुशासनात्मक कार्यवाही पारम्भ करते हुये बरती गयी अनियमितताओं के विरुद्ध संलग्न आरोप पत्र समस्त साक्ष्यों सहित इस निर्देश के साथ उपलब्ध कराया जा रहा है कि जारी किये जा रहे आरोप पत्र का प्रतिउत्तर आदेश प्राप्ति के पन्द्रह दिन के अन्तर्गत अधोहस्ताक्षरी को प्रस्तुत करना सुनिश्चित करें। आरोप पत्र का प्रतिउत्तर उक्त निर्धारित अवधि में प्रस्तुत न किये जाने की दशा में यह अवधारणा अवधारित कर ली जायेगी कि निर्गत किये जा रहे आरोप पत्र के सम्बन्ध में सम्बन्धित कर्मचारी को कुछ नहीं कहना है, तदनुसार प्रकाश में आयी गम्भीर अनियमितताओं के विरुद्ध उत्तराखण्ड सरकारी सेवक (अनुशासन एवं अपील) नियमावली 2010 के अन्तर्गत निहित प्राविधानों का प्रयोग करते हुये सम्बन्धित कर्मचारी के नियुक्ति एवं अनुशासनिक अधिकारी होने तथा अन्तिम निर्णय लेने हेतु सक्षम एवं अधिकृत होने के फलस्वरूप एकतरफा अग्रिम कार्यवाही सम्पन्न कर दी जायेगी।

(सी0एस0 मेहरा)  
कृषि निदेशक,  
उत्तराखण्ड

कृषि निदेशालय, उत्तराखण्ड  
देहरादून

पत्रांक:- कृ0नि0/ 3427/लेखा/जांच/ढैंचा/देहरादून/ 20014-15/दिनांक  
08/09/2014

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. सम्बन्धित कर्मचारी, श्री धर्मपाल सैनी,(तत्कालीन भण्डार प्रभारी विकासनगर जनपद देहरादून द्वारा मुख्य कृषि अधिकारी देहरादून।(पंजीकृत डाक द्वारा)
2. मुख्य कृषि अधिकारी देहरादून को इस निर्देश के साथ प्रेषित कि, जारी किये जा रहे आदेश सम्बन्धित कर्मचारी को हस्तगत कराते हुये प्राप्ति रसीद अधोहस्ताक्षरी कार्यालय को प्रेषित करना सुनिश्चित करें।
3. उप कृषि निदेशक, मानव संसाधन एवं प्रशिक्षण,कृषि निदेशालय उत्तराखण्ड देहरादून।
4. अपर कृषि निदेशक गढ़वाल मण्डल पौड़ी।
- 5.गार्ड पत्रावली।

कृषि निदेशक  
उत्तराखण्ड”

2.6 Both the charge sheets were identical and the charges against the petitioner in old charge sheet dated 19.10.2011 (Annexure: A 4) and the new charge sheet dated 08.09.2014(Annexure: A 1) are exactly the

same. The charge sheets (dated 19.10.2011 and 08.09.2014) read as under:-

“आरोप पत्र

श्री धर्मपाल सिंह सैनी,वर्ग-2  
भण्डार प्रभारी विकासखण्ड विकासनगर,  
जनपद देहरादून।

आप जब भण्डार प्रभारी विकासखण्ड विकासनगर के पद पर कार्यरत थे, तो आपके द्वारा फर्जी रूप से ढैंचा बीज की प्राप्ति की है तथा आपके द्वारा विकासखण्ड अन्तर्गत न्यायपंचायतों को भी फर्जी रूप से ढैंचा बीज की आपूर्ति की है। अतः आपको ढैंचा बीज के फर्जी रूप से प्राप्त करने हेतु निम्न प्रकार से आरोपित किया जाता है।

आरोप संख्या-1

आपके द्वारा भण्डार प्रभारी विकासखण्ड विकासनगर के पद पर कार्यरत रहते हुए बीज लेजर के पृष्ठ संख्या 125 पर बिल 159655 दिनांक 22.05.2010 न्याय पंचायत प्रभारी लांघा को ढैंचा बीज 12.00 कु0 का जारी किया है, परन्तु न्याय पंचायत प्रभारी द्वारा उक्त मात्रा प्राप्त नहीं की। आपके द्वारा स्टोर रसीद प्राप्त न होने से उक्त मात्रा को लेजर में कटिंग कर उक्त मात्रा अवशेष दिखाई है। परन्तु भण्डार पर उक्त मात्रा भौतिक सत्यापन के समय उपलब्ध नहीं पायी गयी। अतः आपके द्वारा 12.00 कु0 ढैंचा बीज की मात्रा गबन/ व्यपगत किया गया है। जिससे शासन को 48000.00 रू0 की क्षति हुई है। अतः आपको 12.00 कु0 ढैंचा बीज जिसकी कीमत 48000.00 रू0 गबन/व्यपगत करन तथा अभिलेखों में कटिंग /ओवरराइटिंग हेतु आरोपित किया जाता है।

संलग्नक:- साक्ष्य जो उक्त आरोप की पुष्टि में पठनीय होंगे।

1. श्री के0सी0पाठक उ0 कृ0नि0(तकनीकी सम्प्रेक्षण) कृषि निदेशालय की दिनांक 3.08.2010 की निरीक्षण टिप्पणी जो कृषि निदेशक को पत्रांक 3476 दिनांक 5.08.2010 की प्रति।

आरोप संख्या-2

जिलाधिकारी देहरादून द्वारा कराये गये रैण्डम सत्यापन में गम्भीर अनियमितताएँ प्रकाश में आने के फलस्वरूप चालानों में अंकित ढैंचा बीज ढुलान ट्रकों का वाणिज्य कर सहायता केन्द्र चिडियापुर में अंकन के सम्बन्ध में वस्तुस्थिति से अवगत कराने हेतु उपायुक्त व्यापार कर इंदिरानगर देहरादून को लिखा गया।

उक्त क्रम में आयुक्त कर उत्तराखण्ड देहरादून के अनुसार जांच चौकी के पंजी-1 में वाहन संख्या यू0पी0 12 एच 1983 दर्ज है शेष 16 वाहन पंजी -1 में दर्ज नहीं है और ना ही उनके गेट पास जारी ह। वाहन संख्या यू0पी0 12 एच

1983 से एक दिन में दो बार ढैंचा बीज की आपूर्ति की गयी है जो कि सम्भव नहीं है।

13 ट्रकों की इन्द्राजी व्यापार जांच चौकी चिडियापुर के अभिलेखों (पंजी-1) में न होने से 1980.00 कु0 ढैंचा बीज जिसकी कीमत रू0 7898220.00 होती है फर्जी रूप से प्राप्त किया जाना प्रतीत होता है।

जनपद देहरादून में 3 ट्रक जिनकी इन्द्राजी व्यापार कर चौकी चिडियापुर के अभिलेखों(पंजी-1) में नहीं है से 430.00 कु0 ढैंचा बीज धनराशि रू0 1715270.00 की आपूर्ति फर्जी प्रतीत होती है। इस फर्जी आपूर्ति में से आपके विकासखण्ड में अनुपातिक आधार पर 149.30 कु0 ढैंचा बीज धनराशि रू0 595557.00 फर्जी रूप से आपके द्वारा प्राप्त किया जाना प्रतीत होता है तथा आपके द्वारा विभिन्न न्याय पंचायतों को ढैंचा बीज की फर्जी रूप से आपूर्ति की है। अतः आपको इसके लिए आरोपित किया जाता है।

संलग्नक- साक्ष्य जो उक्त आरोप की पुष्टि में पठनीय होंगे।

1. बफर गोदाम प्रभारी द्वारा जारी बिल, आपके द्वारा जारी स्टोर रसीद की प्रति एवं आपके द्वारा जारी बिल की प्रति।

2. उप कृषि निदेशक (तत्कालीन संप्रेक्षण) के पत्रांक 4988 दिनांक 20.09.2010 की प्रति एवं कृषि निदेशक पत्रांक 5078 24.09.2010 की प्रति, एवं आयुक्त कर उत्तराखण्ड के पत्रांक 4498 दिनांक 1.02.2011 की प्रति।

आरोप संख्या-3

ढैंचा बीज आपूर्ति एवं वितरण के सम्बन्ध में की गयी प्रारम्भिक जांच कार्यवाही के दौरान मै0 निधि सीड्स कारपोरेशन बेलपोखड़ा नैनीताल द्वारा जिन अन्य फर्मों से अपने नैनीताल स्थित गोदाम पर प्राप्ति दर्शाई गई है, उन समस्त फर्मों से मै0 निधि सीड्स कारपोरेशन बेलपोखड़ा नैनीताल द्वारा किये गये ब्यौहारों (ट्रान्जेक्शन्स) के विषय में सम्बन्धित व्यापार कर विभाग से सूचनायें प्राप्त की गई, जिसके आधार पर प्रकाश में आया है कि सम्बन्धित फर्म द्वारा फर्जी रूप से अन्य फर्मों से ढैंचा बीज क्रय करना दर्शाया गया है, जिसके सापेक्ष आपके जनपद के बफर गोदाम पर प्राप्ति दर्शाई गयी है।

स्पष्ट है कि जब फर्म द्वारा ढैंचा बीज क्रय किया गया तो बफर गोदाम पर आपूर्ति भी फर्जी रूप में दर्शाई गयी है तथा आपके द्वारा भी फर्जी रूप से ढैंचा बीज की प्राप्ति की है। अतः उक्त अनियमितता हेतु आपको आरोपित किया जाता है।

संलग्नक:- साक्ष्य जो उक्त आरोप की पुष्टि में पठनीय होंगे।

1. वाणिज्य कर उत्तर प्रदेश का पत्रांक - ज्वा0कमि0(वि0अनु0शा0) मु0/10-11/आगरा /सूचना सत्यापन / 2743 / वाणिज्य कर / दिनांक 17.03.2011

2. निदेशालय स्तर से सत्यापन हेतु नियुक्त सहायक कृषि अधिकारी एवं कीटनाशी विश्लेषक कृषि निदेशालय, उत्तराखण्ड की सत्यापन रिपोर्ट दिनांक 13.04.2011

3. सहायक वाणिज्य कर अधि० वार्ड तृतीय वृत्त ब भरत पुर राजस्थान का पत्रांक -77/ दिनांक 29.06.2011

4. सहायक वाणिज्य कर अधि० वार्ड तृतीय वृत्त ब भरत पुर राजस्थान का पत्रांक -78/ दिनांक 29.06.2011

5. में० निधि सीड्स कारपोरेशन बेलपोखड़ा नैनीताल द्वारा उपलब्ध कराये गये अभिलेखों के आधार पर अन्य फर्मों से क्रयित ढैंचा वितरण फर्मों स क्रय का विवरण।

अतः उपरोक्त आरोपों के क्रम में आपसे अपेक्षा की जाती है कि इस आरोप पत्र की प्राप्ति के 15 दिन के अन्तर्गत अपने बचाव पक्ष में लिखित स्पष्टीकरण/प्रतिउत्तर प्रस्तुत करें। उपरोक्त आरोपों के सम्बन्ध में यदि आप स्वयं उपस्थित होकर अथवा किसी साक्षी से जिरह कराना चाहते हैं तो उनके नाम मय पता तथा सम्भावित जिरह का सारांश भी लिखित उत्तर के साथ प्रस्तुत करें।

यदि उक्त निर्धारित अवधि के अन्तर्गत आपका प्रत्युत्तर प्राप्त नहीं होता है, तो यह माना जायेगा कि आपको उक्त आरोपों के विषय में कुछ नहीं कहना है एवं तदनुसार अग्रेत्तर कार्यवाही सम्पन्न कर दी जायेगी।

कृषि निदेशक  
उत्तराखण्ड”

- 2.7 As has been mentioned earlier, the petitioner retired on 30.09.2012. The entire amount of gratuity of the petitioner amounting to Rs.5,97,680/- was withheld by the respondents due to pending departmental inquiry.
- 2.8 The petitioner has challenged the departmental inquiry which has been initiated afresh by issuing the new charge sheet on 08.09.2014 after his retirement on 30.09.2012. The petitioner has also sought relief for payment of withheld amount of gratuity with interest.
- 3.1 The main ground on the basis of which the initiation of the departmental inquiry issuing the charge sheet dated 08.09.2014 has been challenged is that the same is illegal, time barred and against the provisions of Article 351-A of the Civil Service Regulations.
- 3.2 The contention of the petitioner in the claim petition is that the departmental inquiry which was initiated by issuing the charge sheet dated 08.09.2014 after the retirement of the petitioner on 30.09.2012

pertains to the allegations for the period April, 2010 to June, 2010. The allegations in the charge sheet are in respect of events which took place more than four years before the institution of departmental proceedings on 08.09.2014.

- 3.3 The petitioner has also contended that the departmental proceedings have been initiated against the Government Order संख्या 391/कार्मिक-2/2003 दिनांक 28 अप्रैल, 2003 (Annexure A 7A) and the provisions of Article 351-A of the Civil Service Regulations.
- 3.4 The relevant part of the said Government Order dated 28.04.2003 reads as under: -

“संख्या 391/कार्मिक -2/2003

प्रेषक,  
आलोक कुमार जैन,  
सचिव,  
उत्तरांचल शासन।  
सेवा में,  
समस्त प्रमुख सचिव/सचिव,  
उत्तरांचल शासन।

कार्मिक अनुभाग-2            देहरादून: दिनांक 28 अप्रैल, 2003

विषय- सेवानिवृत्त कार्मिकों के विरुद्ध सिविल सर्विस रेगुलेशन्स के अनुच्छेद 351-ए के अन्तर्गत सेवाकाल से सम्बन्धित अनियमितता के सम्बन्ध में अनुशासनात्मक कार्यवाही ।

महोदय,

सेवानिवृत्त कार्मिकों के विरुद्ध सिविल सर्विस रेगुलेशन्स के अनुच्छेद 351-ए (इस शासनादेश के साथ उद्धरण संलग्न है) के अन्तर्गत, सेवाकाल से संबंधित किसी ऐसे मामले, जिसमें शासन को आर्थिक क्षति पहुंचाने अथवा गम्भीर दुराचरण के आरोप हो, के लिए अनुशासनिक कार्यवाही करके उनकी पेंशन में कटौती आदेशित करने के प्राविधान विद्यमान है, परन्तु उपरोक्तानुसार कार्यवाही के लिए यह आवश्यक है कि उसे सेवानिवृत्ति के पूर्व आरोप-पत्र दे दिया गया है। यदि सेवानिवृत्ति के पश्चात किसी ऐसी चूक (लैप्स) के लिए आरोप-पत्र दिय जाना प्रस्तावित हो तो ऐसा प्रकरण आरोप-पत्र देने के दिनांक को 4 वर्ष से अधिक पुराना न हो.....

संलग्नक -यथोपरि।

भवदीय

आलोक कुमार जैन  
सचिव।”

- 3.5 The relevant part of Article 351-A of the Civil Service Regulations is extracted as under:-

**“351-A The Governor reserves to himself the right of 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 Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement.**

Provided that-

**(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment.**

**(i) Shall not be instituted save with sanction of the Governor.**

**(ii) Shall be in respect of an event which took place not more than four years before the institution of such proceedings, and**

**(iii) Shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.”**

4. Respondent No.1 State of Uttarakhand through Secretary, Agriculture, Respondent No.2, Director, Department of Agriculture and Respondent No.3, Chief Agriculture Officer, Dehradun have filed their joint written statement. The joint W.S. is very brief and sketchy. It is difficult to make out as to what stand is taken by the respondents on various specific issues stated by the petitioner in the claim petition. The joint W.S. of respondents is reproduced below:-

“प्रतिवादी सं० 01 से 03 तक का प्रतिशपथ पत्र/ लिखित विवेचन

शपथ पत्र – अजय कुमार पुत्र श्री परशुराम  
उम्र 41 वर्ष, उप कृषि निदेशक, मानव संसाधन  
एवं  
प्रशिक्षण, कृषि निदेशालय उत्तराखण्ड,  
देहरादून।



1- यह कि शपथकर्ता विभाग में उप कृषि निदेशक के पद पर कार्यरत है एवं प्रतिवादी संख्या 01 से 03 से विधिवत अधिकृत है।

2- यह कि शपथकर्ता ने याचिका एवं संलग्नक एवं नैरटिव का अध्ययन कर लिया है एवं निम्न कथन करता है।

3- याचिका के प्रस्तर 01 में कुछ नहीं कहना है।

4- याचिका के प्रस्तर 02 में कुछ नहीं कहना है।

5- याचिका के प्रस्तर 03 में कुछ नहीं कहना है।

6- याचिका के प्रस्तर 4(4) अस्वीकार्य है। श्री धरम पाल सिंह, तत्कालीन भण्डार प्रभारी विकास खण्ड विकासनगर के पद पर कार्यरत रहते हुए बीज भण्डार की बीज लेजर के पृष्ठ संख्या 125 पर बिल संख्या 159655 दिनांक 22.05.2010 न्याय पंचायत प्रभारी लांघा को ढैंचा बीज 12.00 कुन्टल का जारी किया गया है, परन्तु न्याय पंचायत प्रभारी द्वारा उक्त मात्रा प्राप्त नहीं की है एवं स्टोर रसीद प्राप्त न होने के कारण उक्त मात्रा को लेजर में कटिंग कर उक्त मात्रा अवशेष दिखाई गई है। परन्तु भण्डार पर उक्त मात्रा भौतिक सत्यापन के समय नहीं पाई गयी। अतः वादी द्वारा 12.00 कुं0 ढैंचा बीज की मात्रा का गबन / व्यपगत किया गया, जिससे शासन को 48000.00 अड़तालीस हजार रू0 की क्षति हुई, जिसकी वसूली के आदेश पारित किये गये है वादी के द्वारा मु0 रू0 48000.00 की वसूली जमा नहीं किये जाने पर गेंच्युटी का भुगतान नहीं किया गया।

7- यह कि याचिका के प्रस्तर 4(4) अस्वीकार्य है। श्री के0सी0पाठक, उप कृषि निदेशक, तकनीकी सम्प्रेक्षण कृषि निदेशालय उत्तराखण्ड के पत्रांक 3478 दिनांक 05.08.2010 की निरीक्षण टिप्पणी के आधार पर दिया गया आरोप पत्र सही है।

8- याचिका के प्रस्तर 4(6) के क्रम में कुछ नहीं कहना है।

9- याचिका के प्रस्तर 4(7) के क्रम में कुछ नहीं कहना है।

10- याचिका के प्रस्तर 4(8) के क्रम में कुछ नहीं कहना है।

11- याचिका के प्रस्तर 4(9) अस्वीकार्य है। पूर्व में दिया गया आरोप पत्र उत्तराखण्ड सरकारी सेवा नियमावली (अनुशासन एवं अपील) 2003 के अनुसार दिया गया है, जो पुनः निर्धारित प्रचलित प्रक्रियानुसार दिया गया है, और सही है।

12- याचिका के प्रस्तर 4(10) के क्रम में कुछ नहीं कहना है।

13- याचिका के प्रस्तर 4(11) के क्रम में कुछ नहीं कहना है।

14- याचिका के प्रस्तर 4(12) के क्रम में कुछ नहीं कहना है।

15- याचिका के प्रस्तर 4(13) के क्रम में कुछ नहीं कहना है।

16- याचिका के प्रस्तर 4(14) अस्वीकार्य है।

17- याचिका के प्रस्तर 4(15) अस्वीकार्य है। वसूली की कार्यवाही प्रचलित है।

18- याचिका के प्रस्तर 4(16) स्वीकार्य नहीं है।

19- याचिका के प्रस्तर 4(17) के क्रम में कुछ नहीं कहना है।

शपथकर्ता

सत्यापन –

मैं उपरोक्त नामांकित शपथकर्ता सत्यापित करता हूँ कि पैरा 01 से पैरा 19 मेरे निजी ज्ञान, जो कि कार्यालय अभिलेखों पर आधारित है, सत्य एवं सही है। कोई तथ्य नहीं छिपाया गया है।

शपथकर्ता”

5. A rejoinder has also been filed by the petitioner and the same averments have been reiterated in it which were stated in the claim petition.
6. I have heard both the parties and also perused the record including the original file of the inquiry.
7. Learned Counsel for the petitioner citing the provisions of Article 351-A of the Civil Service Regulations has argued that the departmental proceedings could not be instituted against the petitioner after his retirement without the sanction of the Governor. He has contended that the charge sheet dated 19.10.2011 was cancelled and fresh charge sheet was issued to the petitioner on 08.09.2014 after his retirement on 30.09.2012 without the sanction of the Governor/ Government. Learned counsel for the petitioner has also argued that the charge sheet dated 08.09.2014 has been issued on the basis of events which took place from April, 2010 to June, 2010 (Kharif crop season of 2010) and the allegations, therefore, pertain to the period more than four years before the institution of departmental proceedings on 08.09.2014. Thus, the institution of departmental action/ charge sheet on 08.09.2014 is illegal, time barred and against the provisions of Article 351-A of the Civil Service Regulations.
8. On behalf of Respondent Nos. 1 to 3, Ld. A.P.O. has argued that as the earlier charge sheet was not in accordance with relevant rules, it was cancelled and the departmental proceedings were initiated afresh and the new charge sheet was issued on 08.09.2014 after the approval of the Government. Ld. A.P.O. has further argued that the charge sheet was issued to the petitioner on 19.10.2011 while he was in the service. The charge sheet dated 19.10.2011 was cancelled on 08.09.2014 and on the same day new (but exactly the same) charge sheet was issued and,

therefore, the same departmental proceedings continued and there is no violation of Article 351-A of the Civil Service Regulations.

9.1 Perusal of Article 351-A (reproduced in paragraph 3.5 of this order ) reveals that the “Governor” reserves to himself the right of withholding or withdrawing the pension if the pensioner is found guilty of grave misconduct in departmental proceedings or to have caused pecuniary loss to Government during his service. Further, it has been provided that such departmental proceedings, if not instituted before retirement of Government servant, such departmental proceedings cannot be instituted after the retirement of the employee unless sanction of the “Governor” is obtained. In the case at hand, the departmental proceedings were, of course, instituted against the petitioner ( and the charge sheet was issued on 19.10.2011) before the retirement of the petitioner while he was in service but as has been stated earlier, the charge sheet dated 19.10.2011 was cancelled on 08.09.2014 and it stood dropped and withdrawn. Thereafter, departmental proceedings were initiated against the petitioner afresh on 08.09.2014 after his retirement on 30.09.2012. The petitioner was issued a new charge sheet on 08.09.2014. The earlier charge sheet dated 19.10.2011 no longer existed after its cancellation on 08.09.2014 and departmental proceedings which were initiated on 19.10.2011 (before the retirement of the petitioner ) were no longer pending. The respondents issued a fresh charge sheet on 08.09.2014. As a result, the departmental proceedings were started against the petitioner on 08.09.2014 after his retirement. For instituting departmental proceedings against the petitioner on 08.09.2014 after his retirement on 30.09.2012, it was essential to obtain the sanction of the “Governor” as has been prescribed under proviso to Regulation 351-A.

9.2 Perusal of record including the original file of inquiry reveals that the respondents have not obtained the ‘Sanction’ of the “Governor” to institute departmental proceedings or for issuance of the charge sheet dated 08.09.2014 after retirement of the petitioner on 30.09.2012. In spite of a very specific pleading in paragraphs 1(i), 4.13, 4.14 and the

ground 'A' in paragraph 5 of the claim petition, there is no mention of such sanction in the written statement of the respondents (reproduced in paragraph 4 of this order). Neither in the written statement nor in the original file of inquiry, there is any document or any indication to show the sanction of the "Governor". Learned A.P.O. has failed to bring on record anything wherefrom it would be evidenced that the said charge sheet was issued on the direction of the Governor of the State or that the Governor of the State granted prior sanction for issuance of the charge sheet dated 08.09.2014 or post facto sanction for institution of the departmental proceedings or issuance of the said charge sheet.

- 9.3 Learned A.P.O. mentioned (without showing any document/ record) that the approval on the charge sheet dated 08.09.2014 was given by the Minister In-charge. Even if it is assumed that the approval of the Minister In-charge was obtained, it is not enough as according to Regulation 351-A, the Governor alone is entitled to accord the sanction and no one else. **In the case of Chief Engineer and Head of the Department, Irrigation and Another Versus Rajendra Prasad Tayal, Writ petition No. 71 of 2011, Hon'ble High Court of Uttarakhand at Nainital has held as under:-**

"In the writ petition, petitioner/State is contending that the said charge sheet was authorized by the Minister In-charge and appropriate file noting in that regard is available. It was contended that in terms of the Rules of Business, made in exercise of powers conferred by Clauses 1 and 2 of Article 166 of the Constitution of India, the Minister In-charge of Irrigation Department, i.e. the Department from where the respondent no.1 has retired, was competent to authorize issuance of the said charge sheet. As aforesaid, under Regulation 351(A) of the said Regulations, the Governor alone is entitled to do what has been provided therein and no one else. Under Article 166 of the Constitution of India, Rules of Business are to be made for more convenient transaction of the business of the Government of a State. Business of the Government of a State does not include those, which have been specifically earmarked for the Governor in the regulations made in exercise of powers of the Government

of a State, as conferred by various provisions of the Constitution of India. Furthermore, the Rules of business annexed with the writ petition, do not show that any Minister or the Chief Minister or even the Council of Ministers, i.e. the Cabinet, can deal with the subject provided under Rule 351-A of the Civil Service Regulations. We, accordingly, hold that in absence of either Governor of the State initiating steps for issuing the said charge sheet or authorizing issuance of the same, the said charge sheet was not in accordance with Regulation 351(A) of the said Regulations and, accordingly, the said charge sheet had no legal backing to stand. Since the said charge sheet has been quashed by the Tribunal, we find no scope of interference with the judgment and order of the Tribunal. We dismiss the writ petition accordingly.

(Serves Kumar Gupta, J.) (Barin Ghosh, C.J.)

30.06.2011”

- 10.1 Learned counsel for the petitioner has also argued that after the retirement of the petitioner (on 30.09.2012), the departmental proceedings could not be instituted (by issuing the charge sheet on 08.09.2014) as allegations pertain to the period April, 2010 to June, 2010. Since the events, on the basis of which the departmental proceedings have been initiated, took place more than four years before the date of the institution of the departmental proceedings, the said charge sheet is time barred (and therefore, illegal) as per the provisions of the Regulation 351-A of Civil Service Regulations.
- 10.2 **Perusal of the charge sheet dated 08.09.2014, written statement (reproduced in paragraph 4 of this order) and original inquiry file reveals that the charges of supply of “Dhaincha Seeds” without delivery resulting in embezzlement/ misappropriation of money pertain to the “Kharif Crop” season of 2010, the period which is from April, 2010 to June, 2010. The documents which have been shown by the petitioner with Annexure: A 5 to the claim petition and which are also available in the original file of inquiry (and which have not been denied either in the written statement by the respondents or refuted by learned A.P.O. during hearing of the case) also clearly show that the allegations in the charge sheet dated 08.09.2014**

pertain to the period April, 2010 to June, 2010 and when calculated from 08.09.2014, the events are more than four years old and, therefore, the said charge sheet is time barred as per Regulation 351-A.

- 10.3 With reference to time limit of 4 years as provided in Regulation 351-A, the Hon'ble Supreme Court of India in **State of U.P. and Another Versus Shri Krishna Pandey, (1996) 9SCC 395** has held as under:-

“6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event or misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their

deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provision of Rule 351-A of the rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon.”

11.1 The question of charge sheet, which is issued after the retirement and **after more than four years from the date of alleged incident is time barred, has been dealt with by the Hon’ble Supreme court in a recent case, Brajendra Singh Yambem Versus Union of India and Another (2016) 9 Supreme Court Cases 20 decided by a bench of three Judges on 26.08.2016.**

11.2 The Rule which was under consideration before the Hon’ble Supreme Court has been quoted in paragraph 34 of the judgment as under:-

“34. Rule 9(2) of the CCS (Pension) Rules, 1972 reads thus:

**“9. Right of President to withhold or withdraw pension- (1).....**

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.”

11.3 **The Rule above in paragraph 11.2 is exactly same as it is in Regulation 351-A of the Civil Service Regulations (quoted in paragraph 3.5 of this**

**order).** While CCS (Pension) Rules are for the Central Government employees, Civil Service Regulations are applicable to the State Government employees.

11.4 In the above case before the Apex Court, departmental proceedings were instituted against the Commandant, CRPF which pertained to the incidents for the period from 1995 to 1998. The Commandant challenged the inquiry before the Hon'ble High Court which quashed the charge sheets but liberty was granted to the disciplinary authority to initiate departmental inquiry afresh. Meanwhile, the Commandant retired on 31.08.2006. Thereafter, earlier charge sheets were withdrawn and fresh charge sheets were issued on 22.08.2008 and 16.10.2009. The Commandant again challenged these two charge sheets. Learned Single Judge of the Hon'ble High Court allowed the petition on the ground that the charge sheets were time barred under CCS(Pension) Rules. The State respondents filed appeal before the Division Bench of the Hon'ble High Court and it was held by the Division Bench that since the sanction was obtained by the disciplinary authority from the President of India, then the bar of period of limitation of four years as contained in Rule 9(2)(b) (ii) of the CCS (Pension) Rules, 1972 will not apply. Against the order of the Division Bench, the Commandant (Appellant) filed the Appeal before the Hon'ble Supreme Court.

**11.5 The Hon'ble Supreme Court in this case framed the following essential questions of law for consideration:-**

- (i) Whether the impugned judgment and order passed by the Division Bench of the High Court correctly appreciates the scope of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 in the light of the fact that the disciplinary proceedings were initiated more than four years after the alleged incidents.**
- (ii) Whether the impugned judgment and order is erroneous and is vitiated in law ?**

11.6 The Hon'ble Supreme Court in the case has held in Paragraphs 35,36,37,38,39,40 and 52 as under:-



35. The learned counsel appearing on behalf of the appellant has rightly placed strong reliance on Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. It is an undisputed fact that the appellant retired from service on 31.08.2006. The learned single Judge of the High Court by way of judgment and order dated 18.05.2006 in Writ Petition No. 720 of 2002 quashed the disciplinary proceedings in the case pertaining to the missing arms and ammunitions. However, liberty was granted to the Disciplinary Authority/Enquiry Officer to conduct the disciplinary enquiry afresh after supplying the copies of the proceedings of the enquiry to the appellant. **The said judgment and order of the single Judge was challenged by the respondents by way of Writ Appeal No. 45 of 2006, in which the Division Bench, by judgment and order dated 07.11.2006 upheld the order of the single judge of the High Court. It was only pursuant to this that the fresh memorandum of charges dated 22.08.2008 was issued to the appellant, which was clearly beyond the period of limitation of four years as provided for under the CCS (Pension) Rules, 1972.**

36. Similarly, in the case involving the contraband ganja, the single Judge of the High Court by way of judgment and order dated 16.06.2006 passed in Writ Petition No. 805 of 2005 quashed the departmental enquiry under the memorandum of charges dated 14.05.1998. The Division Bench dismissed the Writ Appeal No. 25 of 2007 filed by the respondents vide judgment and order dated 13.11.2008 and upheld the order of the learned single Judge. It was pursuant to this that the fresh departmental enquiry was initiated against the appellant on 16.10.2009 after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972.

37. The appellant challenged the correctness of the sanction and charges framed against him before the High Court of Gauhati, Imphal Bench in W.P. (C) No. 264 of 2010. The High Court quashed the Memorandum of Charges on the ground that it was issued after four years from the date of the alleged incident. **Therefore, it was held that the said action of the Disciplinary Authority in initiating disciplinary proceedings is not valid in law as the same was barred by limitation as per the provision of Rule 9(2)(b)(ii) of the CCS (Pension) Rules 1972. This important legal aspect of the case was not considered by the Division Bench of the High Court while setting aside the common judgment and order dated 01.09.2010 passed by the learned single Judge in Writ Petition No. 904 of 2008 (arms and ammunitions case) and Writ Petition No. 264 of 2010 (contraband ganja case).**

38. It is a well established principle of law that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. The aforesaid legal position has been laid down by this Court in the case of Babu Verghese & Ors. v. Bar Council of Kerala & Ors.<sup>7</sup>, the relevant paragraphs of which are extracted hereunder :

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of U.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

The aforesaid important aspect of the case should have been considered by the Division Bench of the High Court instead of mechanically accepting the argument advanced on behalf of the respondents that the case of the appellant squarely falls under Rule 9(2)(b)(i) read with Rule 9 (2)(b)(ii) of CCS (Pension) Rules, 1972. Therefore, the findings recorded by the Division Bench in the impugned judgment are erroneous in law and are liable to be set aside.

**39. The learned ASG appearing on behalf of the respondents contends that the period of limitation of four years as stipulated in 9(2)(b) (ii) of the CCS (Pension) Rules, 1972 does not apply to the facts of the present case for the reason that the departmental proceedings against the appellant had already been initiated while he was in service, and it was because of the pendency of the litigation before the High Court that the proceedings could not be concluded and further disciplinary proceedings were continued after obtaining prior sanction of the President of India as required under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The said contention is untenable both on facts as well as in law.**

40. The Division Bench of the High Court failed to appreciate the fact that liberty had been granted by the High Court vide its judgment and

order dated 07.11.2006 in W.A. (C) No. 45 of 2006 to the Disciplinary Authority to take disciplinary action against the appellant. Thus, there was no need for the respondent Disciplinary Authority to withdraw the Memorandum of Charges dated 14.05.1998 for the purpose of initiating disciplinary proceedings afresh against the appellant on the same charges by obtaining an order of sanction from the President of India as required under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The Division Bench of the High Court in its judgment and order dated 05.08.2013 has completely ignored this important legal aspect of the matter, that the prior sanction accorded by the President under the above said Rules was in fact, barred by limitation. Thus, it has committed serious error in law in arriving at the conclusion that the respondent Disciplinary Authority had obtained due sanction from the President of India to conduct the departmental proceedings against the appellant for the same charges, which action was barred by limitation as provided under Rule 9(2) (b)(ii) of CCS (Pension) Rules, 1972. Therefore, the impugned judgment and order passed by the Division Bench of the High Court cannot be allowed to sustain in law.

52. For the aforesaid reasons, we answer the questions of law that arose for consideration of this Court in favour of the appellant. The Division Bench of the High Court erred in allowing the Writ Appeal Nos. 39 and 40 of 2011. Therefore, the impugned judgment is liable to be set aside and accordingly, set aside.”

12. In the light of analysis from paragraph 7 to 11 above and the law laid down by the Hon'ble Supreme Court in **Brajendra Singh Yambem Versus Union of India (2016) 9 SCC 20** described in paragraphs 11.1 to 11.6 above, in the case at hand, the institution of fresh departmental proceedings against the petitioner/ issue of new charge sheet to him on 08.09.2014 after the retirement of the petitioner on 30.09.2012 is in violation of Regulation 351-A of Civil Service Regulations due to lapse of more than four years from the dates on which alleged misconduct had taken place and, therefore, cannot be allowed to sustain in law.
13. For the reasons stated in preceding paragraphs, the claim petition deserves to be allowed.

**ORDER**

The claim petition is allowed. The charge sheet dated 08.09.2014 (Annexure: A 1) is hereby quashed. The withheld amount of gratuity due to the petitioner with interest , if any, will be paid to him in accordance with the Rules/ Government Orders in this regard within a period of four months from today. No order as to costs.

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

*DATE: FEBRUARY 06, 2017*  
*DEHRADUN.*

*VM*