

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 72/DB/2019

Sh. Shrikant Sharma s/o Sh. Kulanand Sharma at presently working and posted as Incharge Executive Engineer, ADB Project, Director Office, Public Works Department, G.M.S. Road, District Dehradun, Uttarakhand.

.....Petitioner

VERSUS

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

.....Respondents

Present: Sri L.K.Maithani, Advocate, for the petitioner.

Sri V.P.Devrani, A.P.O. for the respondents

JUDGMENT

DATED: MARCH 17, 2021

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this petition for the following reliefs:

“(i) To quash the impugned punishment order dated 21.05.2019 alongwith its effect and operation declaring that all the department proceedings initiated against the petitioner is wrong and illegal as the petitioner is not liable for any act in respect of the charges levelled against him in the charge-sheet dated 26.08.2016/31.08.2016 and show cause notice dated 16.07.2018.

(ii) To issue an order or direction to the respondents that the petitioner is also entitled for all consequential benefit of service, which are withheld and barred due to the above impugned order.

(iii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.

(iv) To award the cost of petition."

2. Petitioner, serving as Assistant Engineer in P.W.D., Construction Division-II, Dehradun, was served a charge sheet dated 26.08.2016/31.08.2016, levelling four charges against him for the alleged irregularities done in the construction and reinforcement work of 3 motor roads, done under contract No. 10 package No. 14, in district Hardwar, funded by Asian Development Bank (ADB) in the year 2009-10. Reply to charge sheet was submitted by him on 28.10.2016 denying the charges.

3. An inquiry was conducted by the Chief Engineer Level-I, and in the inquiry, petitioner was found not guilty.

4. According to the petition, an inquiry was initiated on the complaint of Shri A.K. Bisht against the then Chief Engineer Level-I and Project Director, ADB Project. In the inquiry report dated 21.03.2016, it was specifically mentioned that the DPR of the roads was made by the DPR Consultant and after proper justification on the basis of DPR, consent was given by the Government. But, respondent No. 1 initiated the inquiry against the petitioner along with other officials i.e., Executive Engineer and other Assistant Engineer, Sri Lakhi Ram Jaguri. The charge sheet was issued by the inquiry officer, levelling four charges. The petitioner submitted his reply to the charge sheet dated 28.10.2016, in which it was specifically mentioned that the charge sheet given to the petitioner is in violation of the Uttarakhand Government Servant (Discipline and Appeal) (Amendment) Rules, 2010, but respondents having knowledge of the Rules, continued with the inquiry, which was not permissible in the eyes of law. Respondent No. 1 vide order dated 05.11.2016 changed the inquiry officer and in place of Engineer-in-Chief, appointed Chief Engineer Level-I, as inquiry officer, on the basis of whose initial inquiry report, disciplinary proceeding was initiated against the petitioner, which was wrong and illegal. The inquiry officer without conducting any proper and regular inquiry and without fixing any date

for hearing in the inquiry, submitted his report. Even then, no charges were found proved against the petitioner.

5. Respondent No. 1, vide letter dated 04.06.2018, sought the reply of the petitioner against the reports of inquiry officer. Then, petitioner for the first time came to know that, apart from the regular inquiry by the Chief Engineer Level-I, some other inquiry was also conducted by Shri R.C. Bhatt, Technical Advisor, who submitted his inquiry report dated 29.03.2018 to Respondent No. 1. In his report, he presumed a loss of Rs. 178.36 Lakh to the Government, on the basis of the only point that the payment was made in Sq. mtr. Petitioner submitted his reply and mentioned that in departmental inquiry, the said charges were found not proved against the petitioner hence, inquiry of the technical advisor was having no meaning and on the basis of that, punishment cannot be awarded. But, respondents No. 1, with the intention to punish the petitioner did not accept the reply of the petitioner and treated the report of the inquiry officer, as done in a formal and casual manner and vide his show cause notice dated 16.07.2018 sought reply of the petitioner on new allegations, which were not part of the inquiry. Petitioner replied on 14.08.2018 denying all the allegations, but the respondents without considering the reply of the petitioner, vide impugned punishment order dated 21.05.2019 punished the petitioner with the punishment of censure entry, withholding of two increments with cumulative effect along with an order of recovery of Rs.15.60 Lakh on account of loss to the Government. Such punishment passed against the petitioner, is arbitrary, discriminatory, malafide, against the rules and was in total disregard to the rules hence, petition was filed for relief as mentioned above.

6. Petition was opposed by the respondents with the contention that petitioner was *prima-facie* found guilty of committing irregularities and wrongly submitted the completion report ignoring the basic principles for the payment. The Disciplinary Authority disagreeing with

the inquiry report of Chief Engineer, dated 09.05.2018, issued another notice dated 16.07.2018 and after recording his own finding, ascertained the guilt of petitioner on the basis of the record. On the basis of the technical calculation and due to negligence of the petitioner with other officials, a loss of Rs. 178.36 Lakh was ascertained to the Government. Petitioner was found guilty of not re-determining the rates of Cement Concrete Pavement as per the GCC Clauses 36 and 37 of the Contract. The petitioner and other officials were found guilty of not executing the work as per the specifications/standard prescribed and as such, for the aforesaid irregularities, they were found guilty under the provisions of Rule 3(1) and (2) of the Uttarakhand State Employees Conduct Rules, 2002. It is also contended that as per Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, the Disciplinary Authority himself can inquire into the allegations or can appoint any of his subordinate authority to inquire about the allegations as inquiry officer. As per Rule 9 of the said Rules, if the Disciplinary Authority does not agree with the reasons given by the inquiry officer, it would be open to the Disciplinary Authority to hold further inquiry in accordance with the provisions of Rule 7 and after disagreeing with the findings about any of the charges, he can proceed further, after recording his finding with reasons. Under Rule 13 of the said Rules of 2003, there is a provision of revision also. As the concerned work was also related to an audit para, the Govt. *vide* Govt. Memo dated 08.02.2018, directed the technical consultant and Sri Lalit Mohan (other officer), taking cognizance of all records and facts, to report about the quantum of loss. Subsequently, on the basis of technical consultants' report submitted to the Govt., the loss to the Govt. was ascertained and it was held that the petitioner and other concerned officers had committed irregularities and failed in their duties for rightful execution of the work and submitting proper reports. As per G.O., the loss caused to the Government was rightly ordered to be recovered in the proportion fixed as per the G.O. The appropriate opportunity of hearing was given to the petitioner and after giving

rightful show cause notice and after considering his reply, the punishment order was rightly passed. The stoppage of increments and recovery of the loss caused to the Government was passed as per the Rules. The claim petition has no merit and deserves to be dismissed.

7. Petitioner has filed Rejoinder Affidavit denying the contentions of the respondents and has reiterated that the inquiry on the basis of which impugned punishment was awarded, is a nullity in the eyes of law. In preparation of Bill of Quantity, Estimated Quantity and analysis chart, there was no role of the petitioner and it was prepared by the office of Project Director and the Consultant. Hence, if any loss was caused to the Government, it was not due to the act of the petitioner, but due to the wrong done by other persons, for which, petitioner has wrongly been punished. The tender was invited by the department in Sq. Meter instead of Cubic Meter and the quality of work was done as per the advice of the consultant. The petitioner was having no role and the charges were wrongly levelled against him. As per conditions of the contract, the whole of the liability and responsibility in respect of measurement, quality, quantity of work and certification of invoices of contractor, to review design drawing etc., if any, is of the work of Consultant and his staff and not of the petitioner. Hence, petitioner was wrongly held responsible for the loss. The Disciplinary Authority has also punished him on the ground of lower standard of work due to non-implementation of Dowel Bar in the works/roads, but it was on the direction of the Consultant that the Dowel Bar was not used in view of the thickness of the roads. Hence, the charge of lower standard work against the petitioner is wrong and false. The contentions of the respondents are wrong and the petitioner is innocent. The punishment awarded to the petitioner deserves to be set aside.

8. We have heard both the sides and perused the record.

9. The present matter relates to the road construction work done in the year 2009-10 in district Hardwar whereby, the respondents found

the petitioner and other officials *prima-facie* guilty of committing irregularities during the construction, improvement and repair work of roads in district Haridwar, under contract package No. 14. The date of start of this contract work was 23.03.2009, and it was to be completed by 22.09.2010. The contract was signed by the Project Director/Chief Engineer (ADB), PWD with M/S NKG Infrastructure Ltd. The petitioner was working as Assistant Engineer in Construction Division-II, PWD and was found *prima-facie* guilty of committing irregularity during the construction and repair work. The Disciplinary Proceedings were initiated against the petitioner as well as other officers, as per the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003.

10. The record reveals that the preliminary inquiry was conducted on the basis of the complaint dated 26.06.2015 made by retired Chief Engineer, Sri A.K.Bisht. As per the order of the Secretary to the Government dated 14.06.2016, the then Executive Engineer, Sri S.K.Gupta, Assistant Engineer, Sri Lakhiram Jaguri and Assistant Engineer, Srikant Sharma (present petitioner) were found *prima-facie* guilty of the irregularities. Vide order dated 14.06.2016 (Annexure: A4), an order was issued to serve a charge sheet and to appoint an inquiry officer. Thereafter, the charge sheet dated 26.08.2016/31.08.2016 (Annexure: A5), alleging four charges signed by the Chief Engineer and HOD and approved by the Secretary was issued to the petitioner. Petitioner submitted his reply to the charge sheet vide his letter dated 28.10.2016 (Annexure: A6). Thereafter, vide order dated 05.11.2016, after disagreeing with the reply of the petitioner, the then Chief Engineer Level-I, Dehradun was nominated as inquiry officer and was ordered to complete the inquiry within a stipulated period. The inquiry officer after conducting the inquiry, submitted inquiry reports dated 09.05.2018 in relation to the charged employees, Sri S.K.Gupta, the then Executive Engineer, Sri Lakhiram Jaguri, the then Assistant Engineer and Sri Srikant Sharma (petitioner). In the inquiry report dated 09.05.2018, the

petitioner and other officers were found not guilty about all four charges levelled against them.

11. The Disciplinary Authority issued a show cause notice dated 04.06.2018 (Annexure: A9) to the petitioner enclosing the inquiry report dated 09.05.2018 and the report of Shri R.P. Bhatt, Technical Advisor dated 29.03.2018, which was replied by him vide his reply dated 21.06.2018, but the respondents after considering the inquiry report dated 09.05.2018 and disagreeing with the reports on the ground that the inquiry officer has made the inquiry in cursory manner and after disagreeing with the inquiry report, recorded his own conclusion about the guilty of the petitioner and issued another show cause notice dated 16.07.2018 (Annexure: A14) and gave an opportunity of hearing to the petitioner to submit his reply as to why the major penalty be not imposed upon him. The show cause notice was replied by the petitioner vide his letter dated 14.08.2018 (Annexure: A15) and after considering the reply of the petitioner, the impugned punishment order dated 21.05.2019 was passed, whereby the punishment of censure entry and withholding of two increments with cumulative effect was imposed and an order to recover the amount of Rs. 15.60 lakh, on account of the loss caused to the government was made, which has been challenged by the petitioner.

12. The first point raised by the petitioner is that the charges under the disciplinary proceedings started against the petitioner, were inquired and investigated by the Chief Engineer Level-I, and in his inquiry report dated 09.05.2018, all the four charges against the petitioner were found not proved and the petitioner was exonerated from the charges. The Disciplinary Authority without disagreeing with the inquiry report dated 09.05.2018, issued first show cause notice dated 04.06.2018, hence, the proceedings against the petitioner are not as per the rules.

13. Learned A.P.O. in response to this argument, has submitted that Disciplinary Authority has completed disciplinary proceedings and issued a recovery order, not on the basis of show cause notice dated 04.06.2018, but the Disciplinary Authority after considering the inquiry report dated 09.05.2018 applied his judicious mind and disagreeing with the report of the inquiry officer, came to the conclusion that petitioner is guilty of irregularities and dereliction of his duties and, thereafter a show cause notice dated 16.07.2018 was again issued to the petitioner. The show cause notice dated 16.07.2018 (Annexure: A14) itself clarifies that the inquiry report submitted by the inquiry officer was duly considered by the Disciplinary/Appointing Authority, who was of the view that the inquiry officer has not touched and considered the important points. Therefore, the Disciplinary Authority after recording his own finding and finally disagreeing with the inquiry report, came to the conclusion that the petitioner has committed irregularities and failed in his duties, on account of which, a loss to the government was caused on account of lapses on his part as well as on the part of other officers. Hence, disagreeing with the report and recording his own conclusion about the misconduct/irregularities of the petitioner, another show cause notice dated 16.07.2018 was issued, to which, petitioner was required to submit his reply. After considering all the facts and reply of the petitioner, the impugned punishment order was rightly passed as per the procedure and within the domain of the Disciplinary Authority.

14. We find that the Disciplinary Authority was well within his right to disagree with the inquiry report. He may differ by recording the reasons and may draw his own conclusion on the basis of material before him. Learned counsel for the petitioner has argued that the Disciplinary Authority has based his finding on the basis of another ex-parte inquiry, conducted by a technical advisor, who was neither authorized by the Disciplinary Authority, to conduct the inquiry, nor was a departmental officer. Whereas, respondents have argued that the report of technical advisor was only a material for the assistance of the

Disciplinary Authority to ascertain the amount of loss. The Disciplinary Authority independently made up his mind, considering all the facts and drawn his own conclusion about the guilt of the petitioner.

15. We find that the report of technical expert was only a material, collected to arrive at the conclusion about the amount of loss and even if it is not considered as a fool-proof inquiry report before issuing the notice dated 16.07.2018, the Disciplinary Authority after considering the inquiry report dated 09.05.2018 and other material, recorded his own reasons in detail about the guilt of the petitioner and came to the conclusion that on account of the irregularities and non-fulfillment of the duties by the petitioner, a huge loss to the government has been incurred.

16. This Court cannot go into the subjective satisfaction of the Disciplinary Authority about the fact. Moreover, in this case, on factual basis, sufficient reasons have been recorded as to how the petitioner failed in his duties and in what manner, he was negligent and how irregularity was committed. The Disciplinary Authority in detail has recorded that the inquiry officer conducted the inquiry, of the charges levelled against the guilty officers, in a cursory manner and has not taken cognizance of some important aspects of the matter. The petitioner and other concerned officials were duty bound to point out the violation of the standard conditions of contract. According to the inquiry report of the technical advisor, the rate of cement concrete pavement quoted by the contractor was Rs. 2000 per Sq. meter whereas, in the sanctioned estimate, the departmental rate was Rs. 4810/- per cubic meter, which converted in Sq.Meter comes to Rs. 721.50 per Sq.Meter. Therefore, the contractor's rate was 177.2% more than the departmental rate. Further, according to the respondents, the statutory GCC clause 36 & 37 was not followed and in view of the Disciplinary Authority, the petitioner and other officials have violated the terms and conditions of the contract and recommended wrong proposal to the higher authorities. Respondents in

their Counter Affidavit clarified in detail how and in what manner, the petitioner was negligent for causing loss to the Government. Against the standard of IRC/ MORT & H, the tender was invited in Sq. Meter resulting in loss to the Govt. Further the cement concrete payment work was done without Dowel Bar as a result of which the possibility of the pavement getting damaged early will remain. We see no reason to interfere in the factual finding of the department about the loss. We have to see whether the correct procedure to complete the disciplinary proceedings has been followed or not.

Petitioner has tried to take the shelter of the reply submitted to the PAC by the Government in February, 2018 which justifies the work to be done in Sq. Meter and denies the excess expenditure of about Rs. 2 Crore. We find that the report of the Technical Advisor was submitted subsequently on 29.03.2018 to the Government, explaining in detail how the excess payment has been made by taking the unit of work as Sq. Meter in place of Cubic Meter in violation of the MORT&H specifications. Thereafter, the disciplinary authority after considering the inquiry report, disagreeing with the same and after issuing proper notice dated 16.07.2018 had given an opportunity of hearing to the petitioner and after considering his reply, has passed punishment order. Such action is within the domain of the respondents. We find no procedural lacunae in the procedure.

17. In this respect, the relevant law is summarized in Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003, according to which the 'major' and 'minor' penalties have been prescribed in Rule 3. In the present case, procedure to impose major penalty was adopted, which is enumerated in Rule-7, according to which, Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as inquiry officer to inquire into the charges and after serving charge sheet and giving an opportunity of hearing, the inquiry officer, may submit his report. The inquiry officer submitted his report to the

Disciplinary Authority. Rule 9 of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 prescribes the procedure to be followed by the Disciplinary Authority on the inquiry report. Rule 9 of the said Rules reads as under:-

“9. Action on Inquiry Report--

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

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

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

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges, is of the opinion that any penalty specified in rule-3 should be imposed on the charged Government Servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government Servant, if any, and subject to the provisions of rule-16 of these rules, pass a reasoned order imposing one or more penalties mentioned in rule-3 of these rules and communicate the same to the charged Government Servant.”

18. Hence, as per the above Rule, the Disciplinary Authority may either agree or disagree with the inquiry report or may remit the case for re-inquiry. The Disciplinary Authority after disagreeing with the inquiry report may also record its own finding and reasons for the same. The Disciplinary Authority after recording his own findings on the charges with reasons, may serve a show cause notice, with proposed penalty as specified in the Rules. However, he is under obligation to give copy of

the inquiry report along with its own findings recorded under sub-rule (2) to the charged Govt. Servant, and after considering the reply of the employee, may pass a reasoned order imposing one or more of the penalties under Rule 3 of the said Rules.

19. In this case, the Disciplinary Authority as per the Rules and within his own domain, disagreeing with the findings of the inquiry report dated 09.05.2018, recorded his own reasons and then issued a show cause notice dated 16.07.2018 to the petitioner and after considering his reply and all the circumstances, passed the punishment order dated 21.05.2019, whereby the penalty of withholding of two increments with cumulative effect and recovery of an amount of Rs. 15.60 Lakh as pecuniary loss caused to the Government, has been ordered.

20. We find that there is no procedural lacunae in the proceeding completed by the Disciplinary Authority on the basis of show cause notice dated 16.07.2018.

21. Learned counsel for the petitioner has based his petition particularly on the point the charge sheet was issued by the inquiry officer. We do not agree with this argument because the charge sheet was signed by the Appointing Authority as well and after serving of the charge sheet and receiving the reply of the petitioner, final inquiry officer was appointed.

22. Another point of the petitioner is that the proceeding has been finalized on the basis of an ex-parte inquiry conducted by the technical expert, in which, petitioner was not given an opportunity of hearing. We find that the petitioner was given opportunity of hearing in the inquiry, conducted by the Chief Engineer Level-I who submitted his report dated 09.05.2018. The Disciplinary Authority although taking the help of evidence collected by the technical expert, recorded his own conclusion, disagreeing with inquiry report dated 09.05.2018 and finally,

concluded the guilt of the petitioner and a show cause notice dated 16.07.2018 was issued. The process of analysis by the technical expert may not be technically called an inquiry, it was simply to ascertain the loss caused to the government apart from the departmental inquiry done in this respect. The Disciplinary Authority recorded his own conclusion about the guilt of the petitioner disagreeing with the inquiry report. In this case, the Disciplinary Authority applied his own mind and after disagreeing and rejecting the inquiry report dated 09.05.2018, finally concluded about the guilt of the petitioner with reasons and thereafter, served him with a show cause notice and after considering his reply, the penalty was imposed. We find that no procedural irregularity was caused, as sufficient opportunity of hearing was given to the petitioner and the disciplinary proceedings were concluded as per the procedure and law.

23. The factum of pecuniary loss of Rs. 178.36 Lakh to the Government, on account of irregularities of the government officials, was rightly distributed between the Contractor and the Govt. officials in the ratio of 50-50% as per the G.O. dated 12.05.1999. The 50% of the loss was further distributed between the Govt. officials in the ratio of 50% from Junior Engineer, 35% from Assistant Engineer and 15% from Executive Engineer hence, accordingly, from the petitioner, being Assistant Engineer, 35% of that part was rightly ascertained and ordered to be recovered. Hence considering all the circumstances, we are of the view that the petition has no merit and deserves to be dismissed.

ORDER

The Claim Petition is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: 17.03.2021
DEHRADUN
KNP