

**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)

**CLAIM PETITION NO. 65/DB/2020**

Devesh Nautiyal, aged about 45 years, S/o Sri Anusuiya Prasad Nautiyal,  
R/o Village Silla, Post Office Patholdhar, District Rudraprayag.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Education, Dehradun.
2. Mukhya Shiksha Adhiikari, Department of Education, Rudraprayag, Uttarakhand.
3. Zila Shiksha Adhikari (Prarambhik Shiksha), Rudraprayag, Uttarakhand.

.....Respondents

Present: Sri V.P.Sharma, Advocate, the petitioner.  
Sri V.P.Devrani, A.P.O., for the respondents.

**JUDGMENT**

**DATED: AUGUST 09, 2021**

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

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

“(i) To quash and set aside the impugned order dated 26.02.2019, Annexure: A-1 to the claim petition, passed by the Zila Shiksha Adhikari.

(i) To quash and set aside the appellate order dated 15.11.2016, Annexure: A-3 to the claim petition, passed by the Mukhya Shiksha Adhikari.

(ii) To quash and set aside the order dated 13.08.2020, passed by Respondent No.3( Annexure: A-5) and final appellate order dated 06.08.2020 (Annexure: A-6) passed by Respondent No.2.

(iii) To quash and set aside the charge sheet dated 20.02.2015, issued by Sri K.L. Radwal, Inquiry Officer, Annexure: A-7 to this claim petition.

(iv) To quash and set aside the suspension order dated 22.01.2015, Annexure: A-8 to this claim petition.

(v) To pay the subsistence allowance from 22.01.2015 till the date of termination as per provision of Law.

(vi) To reinstate the services of the petitioner with full back wages and along with its consequential benefits.

(vii) The Hon’ble Tribunal may kindly direct the respondents to accept the resignation of the petitioner from the period resignation letter dated 18.02.2019, Annexure: A-11 to the claim petition.”

2. Facts, giving rise to present claim petition, are as follows:

2.1 Petitioner was an Assistant Teacher with the respondent department. He was appointed as such in the year 2005. In view of his failing health, he applied for medical leave. Since such leave was not sanctioned by respondent department, therefore, the petitioner tendered his resignation on 18.02.2019, on medical ground. In between, the petitioner was suspended in January, 2015. The charge sheet was issued and after inquiry, his services were terminated *vide* order dated 26.02.2019 (Annexure: A-1).

2.2 Feeling aggrieved with the same, petitioner preferred departmental appeal, which was dismissed *vide* order dated 16.11.2019, as time barred. This Tribunal *vide* order dated 12.12.2019, passed in Claim Petition No. 155/DB/2019 (Annexure: A-4), condoned the delay in filing the appeal in the peculiar facts of the case and directed Respondent No.2 to decide the departmental appeal of the petitioner, on merits, in accordance with law, within a reasonable time. The appellate order dated 16.11.2019 was, accordingly, set aside.

- 2.3 Following the directions of this Tribunal, the Chief Education Officer, Rudraprayag, passed an order on 13.03.2020 (Annexure: A-24), which is also in teeth of present claim petition. In between, the petitioner has incorporated an amendment in his claim petition, for directing the respondents to accept his resignation letter dated 18.12.2019, enclosed as Annexure: A-11 to the claim petition.
3. In his order dated 13.03.2020 (Annexure: A-24), the Chief Education Officer, Rudraprayag, has reproduced the operative portion of Tribunal's order dated 12.12.2019 and proceeded to decide the departmental appeal of the petitioner.
4. In Annexure: A-24, the appellate authority (Chief Education Officer) has mentioned that a decision has to be taken whether the decision taken by District Education Officer, Primary Education, Rudraprayag, for dispensing with petitioner's services, was proper or not. The appellate authority has noted, in Annexure: A-24, that the petitioner, as per record, was continuously absent since 07.02.2014. [it is a case of unauthorized absence]. Several notices were issued to the petitioner to give his joining, but the petitioner did not join. *Vide* order dated 22.01.2015, services of the petitioner were suspended and he was attached to Dy. Education Officer, Agastmuni. Even then the petitioner did not join. Last notice was given to him on 02.01.2019, without yielding any result. A notice was published in daily newspapers on 13.02.2019, to place his case, but even then the petitioner did not respond. Consequently, *vide* order dated 26.02.2019, his services were dispensed with.
5. The appellate authority has also mentioned the version of the petitioner in Annexure: A-24 that, he had sent an application on 12.01.2015 for grant of medical leave through registered post to Dy. Education Officer, Agastmuni, which was overlooked by the respondent department and departmental proceedings were initiated against him. The appellate authority, in Annexure: A-24, has also mentioned the version of the petitioner that, feeling aggrieved with the departmental proceedings, he (petitioner) moved application for

voluntary resignation on 18.02.2019, but instead of accepting his application for voluntary resignation, his services were terminated.

6. Then comes the inference drawn by the appellate authority, in Annexure: A-24, which is being reproduced herein below for convenience:

“On the basis of documents filed by both the sides, the representation of the petitioner, under Rule 12 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, deserves to be allowed.”

- 6.1 Rule 12 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (for short, Rules of 2003), runs as below:

“**12. Consideration of Appeal:** The Appellate Authority shall pass such order as mentioned in clause (a) to (d) of Rule-13 of these rules, in the appeal as he thinks proper after considering:

- (a) Whether the facts on which the order was based have been established;
- (b) Whether the fact established afford sufficient ground for taking action; and
- (c) Whether the penalty is excessive, adequate or inadequate.”

- 6.2 It will also be pertinent to reproduce Rule 13 of the Rules of 2003, herein below for convenience:

“**13. Revision-** Notwithstanding anything contained in these rules, the Government may on its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

- (a) confirm, modify or reverse the order passed by such authority, or
- (b) direct that a further inquiry be held in the case, or
- (c) reduce or enhance the penalty imposed by the order, or
- (d) make such other order in the case as it may deem fit.”

7. A perusal of Annexure: A-24 would reveal that order dated 13.03.2020, passed by the appellate authority is hardly an order under Rule 12 of the Rules of 2003 and in terms of order dated 12.12.2019 passed by this Tribunal in Claim Petition No. 155/DB/2019.

8. Instead of deciding the appeal of the petitioner, the appellate authority has allowed his representation, that too after taking recourse to Rule 12 of the Rules of 2003, which is not meant for deciding the

representation, but for deciding the appeal. Ld. Appellate Authority has misdirected itself to give an erroneous turn to the appeal, by passing an unreasoned order on the representation of the petitioner, which is aimed at accepting his resignation. Such a decision cannot be allowed to sustain, also because it is a non-speaking order. The Tribunal is unable to understand, as to what has happened to the departmental appeal. The appellate authority, thereafter proceeded to conclude the matter by passing the following order:

**“Judgment**

Further inquiry be held under Rule 13 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, in respect of the proceedings conducted against the petitioner. District Education Officer, Primary Education, is directed to inquire about the medical leaves availed by the petitioner on the basis of his service book. The appeal is disposed of accordingly.”

9. The Tribunal is at a loss to find out what type of order it is. Neither here nor there. A quasi judicial authority is expected to apply his mind, while passing an order in departmental proceedings. Possible plea that the appellate authority, being an administrative authority, is not well versed with the procedure, is hardly an excuse. A quasi judicial authority is required to pass an order, as per procedure, *albeit* without entering into the details of legal niceties.
10. In any case, the order dated 13.03.2020 (Annexure: A-24), passed by the appellate authority, cannot be allowed to sustain, and must go. The Same is, accordingly, set aside. The appellate authority is directed to pass a fresh order on the departmental appeal of the petitioner, in accordance with law, without unreasonable delay.
11. This Tribunal would have gone into other legal grounds taken in the claim petition, but for the reason that the appellate authority is being directed to pass a fresh decision on the departmental appeal of the petitioner, in accordance with law, opinion is not being expressed on other legal grounds taken up in the claim petition.
12. In case, the appellate authority decides to set aside the termination order while deciding the departmental appeal, suitable decision may be taken by the competent authority on petitioner’s voluntary resignation

and/ or medical leave application for the period of his absence, in accordance with rules.

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

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

*DATE: AUGUST 09,2021*

*DEHRADUN*

VM