

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

Through Audio Conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

ORDER

ON

INTERIM RELIEF

IN

CLAIM PETITION NO. 31/NB/DB/2020

Dr. Rakesh Sinha

Vs.

State of Uttarakhand & others

Present: Sri Harshit Sanwal & Sri Pankaj Kapil, Advocates for the petitioner
Sri Kishor Kumar, A.P.O., for the Respondents

DATED: AUGUST 16, 2021

Justice U.C.Dhyani (Oral)

Present claim petition was filed on 29.06.2020 with delay condonation application and prayer for interim relief.

2. The claim petition was taken up for admission on 06.07.2020. While admitting the claim petition, the issue of delay was left open to be decided at the time of final hearing. A date was fixed for hearing on interim relief application. Thereafter, a few dates for C.A./W.S. and R.A. were given.

3. On 11.08.2021, learned Counsel for the petitioner pressed prayer for interim relief and accordingly, we have heard learned Counsel for the parties on the same. The interim relief is pressed for staying the effect, operation and enforcement of the Office Order No. 199/2018 dated 19.08.2019 issued by respondent No. 3.

4. *Vide* Office Order dated 21.12.2018, a penalty has been imposed upon the petitioner for deduction of 50% of his monthly pension towards recovery of the amount of Rs. 83,31,000/-. While granting interim pension, a direction was given to deduct 50%, out of such interim pension. Office Memorandum dated 21.12.2018 (Annexure: A12) is an unambiguous speaking order. Consequent upon an 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, the preliminary inquiry officer submitted his inquiry report on 09.08.2016. The 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 Head of the office. The Charge sheet was issued to the delinquent officer on 24.10.2016 desiring 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 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 an 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.

5. 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 on 31.03.2015. The Government, in the Medical and Health Department, *vide* order dated 21.12.2018 (Annexure: A12) therefore, 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 351A 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 Sri 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. 81,21,100/-. An FIR was lodged on 07.02.2015 at Reporting Out Post, SIDCUL, district Udham Singh Nagar under sections 420, 467, 468, 471 IPC.

6. The allegation was that payment of fake taxi bills was made under the pretext that they were used by the Hon'ble Chief Minister and 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 including the petitioner, who 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 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.

6. According to the petitioner, an order for making payment was made 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/CMS are neither the expert of finance nor are they given any training of financial matters, therefore, it was wrong to hold the petitioner guilty of financial irregularities. Delinquent officer also explained that the accounts

work is 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 to 10 CMOs including petitioner has enclosed the report of inquiry officer, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, who has given detailed and cogent reasons as to why the delinquent-petitioner has been found guilty for unauthorizedly releasing the money, out of Grant (*Anudan*) No.3 which was earmarked for Grant (*Anudan*) No. 12.

7. This Tribunal does not feel it necessary to give details of 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 finds 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 amount 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. Conceding the arguments of learned Counsel for petitioner that the Medical Officers have expertise in administering medicines and treating patients, the fact remains that CMOs are 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.

8. Thus, the Tribunal does not find grounds for intervention in Annexures: A12 and A13. The Tribunal is, therefore, unable to accept the prayer of the petitioner for interim relief.

9. Interim relief prayer is, accordingly, denied to the petitioner.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 16, 2021
DEHRADUN
KNP