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. 55/NB/DB/2019.

Atul Semwal, aged about 55 years, s/o Late Sri C.M.Semwal, presently posted as Block Education Officer, Tharali, District Chamoli.

……Petitioner

vs.

1. State of Uttarakhand through its Secretary, Secondary Education.
2. Secretary, Secondary Education, Govt. of Uttarakhand, Dehradun.
3. Director, Secondary and Elementary Education, Govt. of Uttarakhand, Dehradun.

..……Respondents

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

JUDGMENT

DATED: AUGUST 31, 2021

Per: Justice U.C.Dhyani

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

(i). To set aside the impugned order dated 30.04.2019 passed by Respondent No.2 whereby the petitioner has been awarded the censure entry and has been ordered recovery of Rs.7000/- from him.

(ii). To direct the respondents to promote the petitioner on the post of Joint Director and further, to open the sealed envelope to promote the petitioner on the post of Joint Director *w.e.f.* the date the junior of the petitioner has been promoted.
(iii). Award the cost of the petition.

[*Note*: *Ld. Counsel for the petitioner prays for reading the post of 'Joint Director' as 'Deputy Director', which has been erroneously mentioned in the script of the claim petition.*]

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

2.1 Petitioner was appointed as Lecturer on 23.07.1990 in Govt. Inter College Kot, District Pauri Garhwal. After qualifying the P.C.S. exam, he joined as Principal in the Govt. Inter College Patlot, Nainital on 31.03.1999 and thereafter, in the year 2013, the petitioner was promoted to the post of Block Education Officer.

2.2 The Director, School Education Officer, Uttarakhand, issued an office order on 27.04.2015 (Copy: Annexure- A 2), alleging certain irregularities against the petitioner that he has not acted as per his responsibilities as Addl. Education Director, Pauri. Finance Controller, National Secondary Education Scheme was appointed as inquiry officer to inquire into alleged irregularities.

2.3 On 19.06.2015, a charge sheet (Copy: Annexure- A 3) was issued against the petitioner, charging him on several counts. The petitioner submitted his reply to the same on 10.07.2015 (Copy: Annexure- A 4). During this period, the process of promotion to the post of Deputy Director was initiated and three officers, junior to the petitioner, were promoted, but the petitioner was not considered (for such promotion). Being aggrieved with the same, he submitted a representation to Addl. Chief Secretary, Education, Uttarakhand, requesting him to include his name in the said list. The Addl. Secretary, Secondary Education Section-2, Govt. of Uttarakhand issued an office memorandum dated 08.04.2016 (Copy: Annexure- A5) whereby Sri B.S. Rawat, In-Charge Addl. Director was appointed as inquiry officer to inquire into the charges leveled against the petitioner.

2.4 Petitioner again submitted a representation to the Addl. Chief Secretary, Govt. of Uttarakhand, on 09.11.2016 (Copy: Annexure- A 6) for

including his name in the promotion list of Deputy Directors. On 11.12.2017, the Chief Education Officer, Chamoli, served the inquiry report upon the petitioner (Copy: Annexure- A7), to which the petitioner submitted his reply on 26.12.2017 (Copy: Annexure- A 8).

2.5 Petitioner again preferred a representation before Addl. Chief Secretary, on 08.08.2018, requesting him to take decision on it, as the same is affecting the promotion of the petitioner. The Secretary, Secondary Education, Section-3, Govt. of Uttarakhand, with predetermined mind, awarded the punishment of censure entry to the petitioner along with direction for recovery of Rs. 7000/- from him.

2.6 Aggrieved with the impugned punishment order, present claim petition has been filed.

3. W.S./C.A. has been filed on behalf of the respondents. Rejoinder thereto has been brought on record by the petitioner.

4. Whereas Ld. Counsel for the petitioner vehemently assailed the impugned order, Ld. A.P.O. made whole hearted efforts to justify departmental action stating that the petitioner committed irregularities while (he was) posted as In-Charge District Education Officer/ District Project Officer (RMSA), District Tehri Garhwal. The petitioner sanctioned Rs.7000/- for recharge of the mobile phones of concerned coordinators, which was not permissible, as such, the same caused loss to the Govt. The petitioner has been awarded a censure entry, as per Rule 3(a) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (for short, Rules of 2003) along with a direction for recovery of Rs. 7000/- from him, which comes within the definition of ‘minor penalty’.

5. Ld. A.P.O. submitted that the petitioner made the payment of Rs.7000/- erroneously, without obtaining the permission of the Govt., which act was contrary to RMSA guidelines and as such, he has caused loss of Rs.7,000/- to the Govt. The petitioner was not only careless in discharging his duties [for which he has been awarded censure entry], but has also caused loss to the Govt., and therefore, an order has been made to recover Rs. 7000/- from him, which order is under challenge in present claim petition.

6. In reply, Ld. Counsel for the petitioner submitted that in response to the Charge No.4, it has been explained in para 4.16 of the claim petition that since necessary information and directions were essential to be communicated to the Coordinators, therefore, said payment was made to them only after presentation of bill, which was duly sanctioned by the Accounts Officer. Ld. Counsel for the petitioner further submitted that no such inquiry has been initiated against the Accounts Officer. If it is assumed that there was any irregularity, as has been mentioned in Charge No.4, against the petitioner, then the Accounts Officer was also equally responsible for the same. No reason has been assigned for not initiating any proceeding against the Accounts Officer. The petitioner has solely been held responsible for the alleged irregularity. It is further submitted by Ld. Counsel for the petitioner that the respondents do not deny the fact that the said amount was not payable, their only argument is that no prior approval was taken before making the said payment. The payment was made with approval/ recommendation of the Accounts Officer. Respondents have not charged the petitioner for misappropriation of funds. Charge No.4 has not been dealt with in the impugned order. The same has been passed without explaining how and under which rule or guideline the petitioner committed default. While punishing the petitioner it was the duty of the disciplinary authority to explain the provision of law under which he is doing so. Therefore, the order impugned is not sustainable.

7. Reliance has been placed by Ld. Counsel for the petitioner on the following decisions of Hon'ble Supreme Court:

1. In the *State of Punjab and others vs. Bakhtawar Singh and others, AIR 1972 (2) 2083*, Hon'ble Apex Court in paras 12 and 13 of the decision has observed as under:

> "11. Now coming to Shri Rajinder Pal Abrol, all the charges leveled against him related to alleged acts and omissions prior to his appointments as a member of the Board. That apart, the order of the Minister removing him does not disclose that he had applied his mind to the material on record. That order does not show what charges against Shri Abrol have been established. ……..
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> 12. <u>This order cannot be said to be a speaking order. It is arbitrary to the core. Such an order cannot be upheld</u>. Hence it is not necessary to go in to the other contentions advanced on behalf of Shri Abrol."

2. In *Roop Singh Negi vs. Punjab National Bank and others, 2009 (2) SCC 570*, Hon'ble Supreme Court has observed as below:

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely *ipse dixit* as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

3. In *G. Vallikumari vs. Andhra Education Society and others, 2010 (2) SCC 497*, Hon'ble Supreme Court, in para 19 of the decision, has observed as under:

"In his order, the Chairman of the Managing Committee did refer to the allegations leveled against the appellant and representation submitted by her in the light of the findings recorded by the inquiry officer but without even adverting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the concerned authority."

[*Emphasis supplied*]

8. A perusal of the order impugned would indicate that the delinquent petitioner has been held guilty only in respect of Charge No. 4, although several charges were framed against him. Inquiry procedure prescribed for major penalty, has been followed. Since the allegation in respect of Charge No. 4 only was proved against him, therefore, he was held guilty for only one charge and was punished with minor penalty.

9. Impugned order would indicate that although the inquiry officer found the delinquent petitioner guilty of several charges, but punishing/ disciplinary authority found the delinquent guilty of only one charge. Parawise description of charges leveled against the delinquent along with the findings of the inquiry officer have been mentioned in the order impugned.

While describing the charges and findings of the inquiry officer, the disciplinary authority did not offer his own comments or draw his own inference in the only paragraph while concluding his report. The disciplinary authority has concluded the report in one paragraph without assigning reasons, which is being translated herein below for convenience:

> "Therefore, for above irregularities, the Governor is pleased to award minor penalty of 'censure entry' and recovery of Rs.7,000/- from the salary for the financial loss caused to the Govt. under the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 (As amended in 2010), to Sri Atul Semwal, presently Block Education Officer, Tharali, Chamoli, (the then In-Charge District Education Officer (Secondary)/ District Programme Officer (RMSA), District Tehri Garhwal."

10. It, therefore, follows that the disciplinary authority found the petitioner guilty and, accordingly, punished him only in respect of one charge, i.e., charge no. 4. He was, accordingly, not held guilty in respect of other charges by the disciplinary authority.

11. **The inference drawn in respect of Charge No.4 is a non-speaking order. No reasons have been assigned as to why the petitioner has been held guilty of Charge No.4. It appears that the disciplinary authority, while passing the order impugned, sat with preconceived mind that whatever act was done by the petitioner, was not permissible under the Rules. The disciplinary authority did not make any attempt to find out from the RMSA guidelines, as to whether mobile recharge allowance could be given to the concerned coordinators under the Rules or not. Whether specific provision was there in the guidelines for the said purpose or not** ? It was certainly contingent expenditure. Whether specific orders were required for drawing such money from the contingency? Whether prior permission of the Govt. was required for the purpose or not? Whether the same is within the discretionary powers of the petitioner or not? Ld. Counsel for the petitioner informed the Bench that there was no telephone facility to connect to the Supervisors, who usually were on field duty, to have communication with them. Therefore, the delinquent petitioner provided mobile recharge allowance to the concerned coordinators to enable them to communicate with the persons concerned and *vice versa*, in the interest of

Govt. work. Ld. A.P.O. argued that the petitioner ought to have taken permission of Govt. before doing so. It is not the case of Respondent Department that such allowance was not at all permissible or grant of such allowance by the petitioner was illegal and beyond his competence. Moreover, shelter of guidelines has been taken to punish the petitioner. The guidelines may be classified as Govt. Orders to some extent, but is there any provision in the guidelines not to sanction such allowance to the concerned coordinators, is not reflected in the order impugned. If the same could not have been done by the delinquent petitioner, it was justified on the part of the inquiry officer and on the part of disciplinary authority to hold him guilty and punish him appropriately, but the Tribunal does not find, on perusal of order impugned, as to whether the same was within the competence of the delinquent petitioner or not. Whether the same was beyond his competence? At least, the same is not reflected on a perusal of the order impugned. It is a non-speaking order.

12. Sub-rule (4) of Rule 9 and Rule 10 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, run as below:

> **9** (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 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 charged Government Servant.
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> **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.
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> (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."
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> *[Emphasis supplied]*

13. It is the submission of Ld. A.P.O. that reasons are necessary only when the disciplinary authority differs from the view taken by the inquiry officer. According to him, it was not necessary for the disciplinary authority to assign the reasons when he agrees with the findings of the inquiry officer. The Tribunal respectfully disagrees with such submission of Ld. A.P.O., inasmuch as it is always necessary for any quasi judicial authority to assign the reasons whenever any order is passed as is evident from a reading of sub-rule (4) of Rule 9 and Rule 10 of the Rules of 2003. It is necessary for the administrative authority also, but is more essential for the quasi judicial authority. The disciplinary authority acts as quasi judicial authority. The idea behind the same is that the parties should know as to what transpired in the mind of the quasi judicial authority while passing such order. Reasons are foundation of judicial decision making process. Any order, which is devoid of reasons, cannot be allowed to sustain.

14. Sub-rule (4) of Rule 9 of the Rules of 2003 is clear when it says that the disciplinary authority shall, subject to the provisions of Rule 16, pass a reasoned order, imposing one or more penalties mentioned in Rule 3 of these Rules.it may be noted here that Rule 9 is in continuation of Rule 7 (procedure for imposing major penalties) and Rule 8 (submission of inquiry report). Sub-rule (4) of Rule 9 is specific that the disciplinary authority shall pass a reasoned order, imposing one or more penalties mentioned in Rule 3.

15. Rule 3 deals with penalties, minor and major. Rule 3 does not deal with major penalties only. It also deals with minor penalties. Therefore, this Tribunal is of the considered opinion that the disciplinary authority is required to pass a reasoned order whenever any penalty is imposed, as provided in Rule 3 of the Rules of 2003. This Tribunal is, therefore, not in a position to accept the contention of Ld. A.P.O. that the disciplinary authority is required to record its own findings and reasons only when such authority disagrees with the findings of the inquiry officer, as provided under sub-rule (2) to Rule 9 of the Rules of 2003. It may, therefore, be reiterated that whenever any penalty is imposed, which finds mention in Rule 3, the disciplinary authority is legally required to pass a reasoned order, even if he agrees with the findings of the inquiry officer. Rule 9(2) will apply when disciplinary authority disagrees with the inquiry officer on any charge, then it will record

its own findings thereon for reasons to be recorded. In sub-rule (4) of Rule 9, the disciplinary authority shall pass a reasoned order while imposing one or more penalties mentioned in Rule 3 of the Rules of 2003.

16. In the instant case, the disciplinary authority adopted the procedure for imposing major penalties and awarded minor penalty to the delinquent petitioner *sans* reasoned order, which is not sustainable in the eyes of law.

17. Even if procedure for imposing minor penalties was adopted, as prescribed under Rule 10 of the Rules of 2003, reasons were required to be given if the penalty was imposed. In the instant case, the procedure for imposing minor penalties was not adopted, procedure for imposing major penalties was adopted, which culminated in imposing minor penalty, which is under Rule 3, for which a reasoned order was required to be passed by the disciplinary authority, which has not been done in the instant case.

18. The disciplinary authority might be correct in coming to the conclusion arrived at by him, but he has not assigned any reason while coming to such a conclusion, which is contrary to the principles of natural justice. On this ground alone, and without entering into other contentions, the order impugned is liable to be set aside, but with a liberty to the disciplinary authority to pass a fresh order, in accordance with law. No delinquent should be allowed to go scot free on technical omission of inquiry officer/ disciplinary authority and, therefore, the Courts and Tribunals have adopted consistent approach, in such cases, to set aside the orders, but at the same time granting liberty to the disciplinary authority to pass a fresh order after hearing the delinquent, in order to maintain equilibrium between '*delinquent's rights*' and '*department's interest*'.

19. The order impugned is, accordingly, set aside with a liberty to the disciplinary authority to pass a fresh order, in accordance with law, at an earliest possible, and in any case before 30.11.2021, in the light of observations made by the Tribunal in the foregoing paragraphs of this judgment.

20. Second prayer of the petitioner is to direct the respondents to promote him on the post of Deputy Director *w.e.f.* the date his junior has been promoted and to open the sealed envelope for this purpose. It is submitted by

Ld. Counsel for the petitioner that one post of Deputy Director is vacant and the petitioner prays for promotion to the said post. Since the order impugned has been set aside with a liberty to the disciplinary authority to pass a fresh order in accordance with law, on or before 30.11.2021, therefore, a direction is given to the respondents to open the sealed envelope while holding DPC for the post of Deputy Director, latest by 15.12.2021.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 31, 2021
DEHRADUN

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