

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 90/NB/DB/2020

Bishan Singh Dhapola aged about 56 years, s/o Late Sri Laxman Singh Dhapola, presently posted as Chief Assistant at Child Development Project Officer's Office, Dwarahat District Almora.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Women Empowerment and Child Development Department, Government of Uttarakhand, Dehradun.
2. Director, ICDS (Women Empowerment and Child Development Department) Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Amar Murti Shukla, Advocate, for the Petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.

JUDGMENT

DATED: OCTOBER 05, 2021

Justice U.C.Dhyani (Oral)

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

- (i) In view of the facts and grounds as mentioned above the applicant prays that this Hon'ble Tribunal may graciously be pleased

to direct the respondents to extend the benefit of promotion to the petitioner from the post of Chief Assistant to Administrative Officer w.e.f. 2008 from the date when his juniors were promoted, from the post of Administrative Officer to Senior Administrative Officer w.e.f. 2011 from the date when his juniors were promoted and from Senior Administrative Officer to Chief Administrative Officer w.e.f. 2018 from the date when his juniors were promoted, along with all consequential / monetary benefits.

(ii) This Hon'ble Tribunal may further graciously be pleased to direct the respondents to extend the benefit of ACP and arrears of salary during the period of suspension and LTC and other monetary benefits of which petitioner is legally entitled for..

(iii) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award cost of the petition.

2. In the background of present claim petition is another claim petition (being Claim Petition No. 56/NB/DB/2019), filed by the petitioner against the State and others. Claim Petition No. 56/NB/DB/2019 was filed in this Tribunal for the following reliefs:

“a) To set aside the impugned order dated 14.08.2019 & 21.09.2019 passed by the respondent No. (Contained as Annexure No. 1 & 2 to the petition).

b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

c) Award cost of the petition.”

3. Judgment rendered by this Tribunal on 19.03.2020 in Claim Petition No. 56/NB/DB/2019, has relevance in present claim petition. Relevant paragraphs are, therefore, reproduced hereunder:

“20. At the time of alleged irregularity, he was posted as Senior Clerk in 2006. When he was transferred to Ukhimath, District Rudra Prayag, he filed a writ petition in the year 2007, before the Hon'ble High Court. After filing his writ petition in the Hon'ble Court, the Child Development Officer lodged an FIR against Smt Bharti Tiwari, District Programme Officer, Smt. Maya Verma, Head Assistant and the petitioner on 14.06.2007 and the petitioner was named on account of the reason that he had filed a Writ Petition No. 252 of 2007 against the department, alleging that the cash book of the department has intentionally been misplaced by the persons mentioned in the FIR. The aforesaid case was registered as case Crime No. 08 of 2007 U/s 409 IPC at Kumoun Revenue, Police Tehsil in District Nainital.

21. Respondent No. 2, placed the petitioner under suspension by contemplating the disciplinary inquiry. The charge sheet dated 01.12.2007 was served by the inquiry officer to the petitioner with the approval of the

respondent No. 2, disciplinary authority, wherein, it was stipulated that the reply to be submitted to the inquiry officer.

22. The petitioner aggrieved by the suspension order, filed a writ petition No. 1694 of 2007 (S/S) before the Hon'ble High Court, which came up for hearing on 16.10.2008 and the same was disposed of with the direction that the inquiry officer shall submit the inquiry report within a period one month from the date of production of certified copy of the order by the petitioner and thereafter, the punishing authority/appointing authority shall take decision thereupon within further 15 days and if the inquiry is not completed or the decision is not taken, within that period, the suspension order will stand revoked. As the inquiry was not completed as per the direction of the Hon'ble High Court, the respondent No. 2 vide order dated 20.01.2011 revoked the suspension order of the petitioner and attached him at Child Development Project Officer's officer, Dwarahat, District Almora.

23. In a criminal case, police submitted a charge sheet against the petitioner and other persons. The Court of Chief Judicial Magistrate, Nainital acquitted them from the charges vide its order dated 20.02.2015. The judgment attained finality, as it was never challenged in any appeal or revision. Thereafter, the petitioner made a representation dated 15.07.2017 to the respondent No. 2 by which he prayed for his salary, arrears of salary, the amount deposited by him under protest, travelling allowance, LTC, promotion as per his seniority, promotional grade pay and other benefits. The grievance of the petitioner had not been redressed inspite of the reminders. However, respondent No. 2 vide its letter dated 09.10.2017 sought guidance from the Government, regarding compliance of the order of the Chief Judicial Magistrate. The disciplinary proceedings were initiated against the petitioner as well as against District Programme Officer, Smt. Bharti Tiwari and Smt. Maya Verma in the year 2007 and it was kept pending for long time due to which the petitioner was deprived from several benefits like promotion etc. During pendency of the disciplinary proceedings, the services of the petitioner were again transferred from Dwarahat, Almora to Child Development Project Officer office, Lohaghat, vide order dated 29.05.2018.

24. Feeling aggrieved by the transfer order, petitioner again approached the Hon'ble High Court by filing a writ petition No. 1642 of 2018 (S/S). The said petition came up for hearing before the Hon'ble Court on 19.06.2018 and an interim order was passed by the Hon'ble High Court, directing the respondents to conduct and conclude the inquiry within a period of two months from the date of passing of order and for the period of two months only the effect and operation of transfer order dated 29.05.2018 would be kept in abeyance. The order was served on the respondents but inquiry was not concluded within the time as directed by the court. The writ petition again came up for hearing on 11.03.2019 and the Hon'ble High Court directed the learned counsel appearing on behalf of the State to seek instructions in the matter, who submitted that the inquiry officer has submitted inquiry report in the year 2017 and respondent No. 2, Director ICDS vide letter dated 09.10.2017 forwarded the inquiry report to the State Government for taking final decision in

respect of other charge sheeted officers, one of them happens to be a class-II officer, for whom, State Government alone is competent to take final decision upon completion of inquiry. It was also submitted that since the decision of State Government in regard to Class-II officer namely, Smt. Bharti Tiwari is awaited therefore no final order could be passed in respect of the petitioner. The State counsel further submitted that as soon as the State Government passes a final order in respect of that officer, final order would be passed in respect of the petitioner also. The Hon'ble High Court on the basis of the submission of learned counsel for the State, disposed of the writ petition with the direction to the State Government to take final decision in respect of the then District Programme Officer (Smt. Bharti Tiwari) by passing a final order within two months from the date of receipt of the copy of the order. It was further directed by the Hon'ble Court vide order dated 08.04.2019 that the respondent No. 2 (disciplinary authority of the petitioner) will pass final order in respect of the petitioner within one month, thereafter.

25. After order of the Hon'ble High Court, State Govt. issued letter to the inquiry officer, stating that he was appointed to inquire into the charges, but the District Magistrate further delegated the power of the inquiry to Chief Development Officer, Nainital of which there is no provision whatsoever in the Rules of 2003. Consequently, the State Government directed the inquiry officer/ District Magistrate, Nainital to conduct and conclude the inquiry himself, within a week and same be sent to the State Govt. Thereafter, District Magistrate issued a letter dated 10.05.2019 to the petitioner asking him to remain present either on 14, 15, 16 or 17.05.2019 to submit his version in defense. The petitioner appeared before the District Magistrate (inquiry officer) on 15.05.2019 and prayed for some time to file his defence. The District Magistrate granted time upto 31.05.2019 to the petitioner as well as others. Pursuant to the letter dated 10.05.2019 and 15.05.2019, the petitioners submitted their detailed reply on 15.05.2019 and 20.05.2019 denying the charges levelled against him.

26.The above orders have been challenged by the petitioner more or less on the similar ground like Smt. Maya Verma that due procedure has not been followed; without holding proper inquiry, without giving show cause notice with the inquiry report, the respondent No. 2 has passed the punishment order whereas, on the one hand, the inquiry is still being done by the District Magistrate, Nainital and the State Govt. has not taken any decision in the case of Smt. Bharti Tiwari as per the direction of the Hon'ble High Court; the principles of natural justice have been violated and a major punishment has been imposed, without following the due procedure in law hence, punishment orders cannot sustain in the eyes of law and same deserves to be set aside.

27. the charge sheet has been issued by the inquiry officer and not by the disciplinary authority. The inquiry has not still been concluded. Respondent No.2, in simple compliance of the order of the respondent No. 1, directly passed the punishment order. Rules of law require a proper inquiry and after inquiry, the show cause notice must have been given. The disciplinary authority has relied upon with the inquiry report of District

Development Officer, who was never appointed as an inquiry officer and the State Government itself has set aside that inquiry report, as the District Magistrate further wrongly delegated the powers of the inquiry officer. Directions have been issued to the District Magistrate to hold an inquiry himself, which is yet to be completed. So the punishment order was passed without following the due procedure and without conducting a proper inquiry, punishment order has been passed in gross violation of the rules and the law, hence, same are liable to be set aside.

28. Respondents have opposed both the petitions on similar ground and it is contended that in the present case, issue of corruption by government servants was involved, who were found responsible for embezzlement along with other persons. On receiving complaint, the Commissioner, Kumoun Division, Nainital constituted a committee for inquiring into the matter. The preliminary inquiry was held in the year 2006 in which both the petitioners and their officer, Smt. Bharti Tiwari were found involved in the year 2004-05 and 2005-06. The committee found that the embezzlement has been made, the government funds have been misappropriated and the petitioners were also found involved. The committee submitted its report to the Commissioner, Kumoun Division, who vide his letter dated 05.05.2007 forwarded the same to the government. Thereafter, departmental inquiry was initiated against the petitioners and the then District Magistrate, Nainital was appointed as an inquiry officer. The charge sheets were accordingly served with the approval of the appropriate authority and in the inquiry, petitioners were found guilty for misappropriation of funds and were also found responsible for embezzlement of Rs. 56,88,250/-. Hence, the department passed the order of recovery and their reversion, as a lesson to other employees who are involved in such type of corrupt practices. The contention of the petitioners has been denied and it was contended that the petitioners were found guilty in the preliminary inquiry and also in the departmental inquiry held later on by the District Development Officer. By following the provisions and procedure of the Rules of 2003, as amended 2010, suspension order was also passed. The Hon'ble Supreme Court in the case of Sukhendra Chandra Das vs Tripura Union State Region, AIR 1962 and in the case of Police Inspector General vs. Thavasiyappan (1996)2, SCC, 145, has held that the appointment of inquiry officer by the disciplinary authority is valid.

29. The District Magistrate, Nainital submitted the inquiry report dated 18.12.2008, conducted by the District Development Officer, Nainital against Sri Dhapola and a similar report dated 09.02.2009 was also prepared against Smt. Maya Verma for the financial irregularity. The inquiry officer also found Smt. Bharti Tiwari guilty of financial/administrative irregularities in connivance with the petitioners. The proceedings of the criminal case are different from the departmental proceedings and even if they were discharged from the criminal proceedings, the departmental proceeding can go on. The Uttarakhand Govt. vide its order dated 26.07.2019, directed the disciplinary authority to pass appropriate orders against the petitioners and in compliance of that

order, after hearing the petitioners, the impugned punishment orders have rightly been passed and correction orders were passed, to correct the calculation mistake. Petitioners were found guilty of misappropriation of government fund hence, order of recovery has rightly been made. The petitions have no merit and deserve to be dismissed.

30. The petitioners in their R.As. reiterated the facts of the petition and contended that government in its order dated 09.04.2019, clearly stated that the Chief Development Officer, Nainital or District Development Officer, Nainital were never authorized to hold the inquiry in the matter. As such, District Magistrate, Nainital was further directed to hold fresh inquiry within one week. In compliance of the judgment of the Hon'ble High Court dated 08.04.2019 as well as order dated 09.04.2019, passed by the State Govt., the District Magistrate, Nainital is holding the inquiry in the matter and petitioner and other persons were directed to submit their written submission/version on or before 21.05.2019. In pursuance of which, they have submitted their submissions and the inquiry is going on at level of the District Magistrate, Nainital. The respondent No. 2 relying upon the report of the District Development Officer, which has been set aside by the State Govt., has passed the impugned orders, which deserves to be set aside.

32. Both the petitioners, who were Head Assistants in the respondent department, were found involved in embezzlement of Government money along with the District Programme Officer, Smt. Bharti Tiwari. When the matter was reported by the Commissioner, Kumaon, to the Government after making a preliminary inquiry, the State Government appointed District Magistrate, Nainital as an inquiry officer, to inquire into the matter. In relation to both the petitioners, the Appointing Authority/Disciplinary Authority was Respondent No. 2, but as there was also an involvement of Class-II officer, for whom, State Government is the Appointing Authority, hence, inquiry officer was appointed by the State Govt.

33. Admittedly, this is a matter of major punishment, for which, Rule 7 to 9 of the Uttaranchal Government Servant (Discipline & Appeal) Rules, 2003, are the relevant law, which prescribes the procedure to be adopted in such cases. Relevant Rules 7 to 9 read as under:

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34. Hence, according to the procedure prescribed by the rules, a delinquent employee should be served with the charge sheet and after obtaining his reply to the charge sheet, the Disciplinary Authority, if not satisfied with his reply, should record such opinion and then he can conduct the final inquiry, either himself, or through another officer, appointed by him, in this behalf. Respondent No. 2, who was the Appointing Authority of the petitioners, never appointed any inquiry officer, rather, the inquiry officer was appointed by the State Govt. and the District Magistrate, Nainital was ordered to hold inquiry against the petitioners as well as Smt. Bharti Tiwari, the then District Programme Officer.

35. The record reveals that District Magistrate, Nainital never conducted the inquiry himself, rather he delegated this power to the Chief Development Officer, for the matter relating to Smt. Bharti Tiwari and in relation to the petitioners, power was delegated to the District Development Officer. The District Development Officer conducted the inquiry against the petitioners and his report was forwarded to the State Govt. The record also reveals that when the matter came before the State Govt. for consideration, it was held that the District Magistrate was not having any powers to further delegate his power of inquiry and accordingly, directions were again issued by the State Govt. to the District Magistrate, Nainital to hold an inquiry himself and to report the matter.

36. Learned A.P.O. on behalf of the respondents as well as learned counsel for the petitioners also admits that the report of the District Magistrate, Nainital (inquiry officer) is yet to be acted upon, at the level of the State Govt. against Smt. Bharti Tiwari. There is no proof on behalf of the respondents that upon any legal inquiry conducted by the District Magistrate, Nainital, any action has been taken against Smt. Bharti Tiwari, the then District Programme Officer. There was a round of litigation, before the Hon'ble High Court, wherein, directions were issued to finalize the result of inquiry against District Programme Officer, Smt. Bharti Tiwari and thereafter, respondents were allowed to take action against the petitioners, who were clerks in the department.

37. Respondent No. 2 after receiving a letter from the Govt., to take lawful action in the matter, against the employees, directly issued show cause notice to the petitioners and after obtaining their replies, the impugned punishment orders were passed. We find that there is no lawful inquiry in the matter, conducted by the Disciplinary Authority, either himself or by the officer appointed by him, nor Disciplinary Authority has recorded his concurrence on any such lawful inquiry finding. In this matter, the Disciplinary Authority relying upon the inquiry report, prepared by the District Development Officer, with the delegated power of District Magistrate, Nainital, the punishment orders have been passed, whereas, the inquiry conducted by the District Development Officer, is not an inquiry by a person authorized by the Disciplinary Authority. Moreover, such report has been set aside by the State Govt., and setting aside that report, directions were again issued to the District Magistrate, Nainital to conduct the inquiry himself.

38. We find that the Disciplinary Authority, Respondent No. 2 never served the petitioners inquiry any report, conducted by the District Magistrate, Nainital along with the show cause notice, neither concurrence has been recorded as per law.

39. We find that without following the due procedure of inquiry, laid down in the rules, the impugned punishment orders have been passed by respondent No.2. Even if, the letter was written by the State Govt. to take appropriate action in the matter, there was a need to conduct a lawful inquiry by the Disciplinary Authority or by any other officer, appointed in this behalf, and in that inquiry, there was also the requirement of the law

that petitioners must have been given due opportunity of hearing i.e. cross-examination of witnesses and the right to defend themselves.

40. If the inquiry officer, District Magistrate, Nainital after conducting inquiry himself had given his finding against the petitioners then, only on the basis of that inquiry report, the Disciplinary Authority, after recording his concurrence, was under obligation to serve with a show cause notice and thereafter, the punishment orders would have been passed. It has been admitted by the respondents that the action on the inquiry report of the District Magistrate, Nainital, is yet to be finalized at the level of the State Government.

41. We find that the impugned order of reversion as well as of recovery were passed in violation of the law and without following the due procedure, prescribed in the rules. The Respondent No. 2, after receiving a letter from the Govt., to take lawful action in the matter against the employees, directly issued show cause notice and after obtaining their replies, the impugned punishment orders were passed whereas, there was no lawful inquiry in the matter, conducted by the Disciplinary Authority, either himself or by any officer appointed by him. The Disciplinary Authority relying upon the inquiry report submitted by the District Development Officer, under his delegated power of Inquiry, passed the impugned punishment orders whereas, the inquiry conducted by the District Development Officer was not by a person authorized by the Disciplinary Authority or by the State Government. Hence, the impugned orders deserve to be set aside.

42. Learned A.P.O. also submitted that the proper inquiry report of the District magistrate, Nainital is yet to be considered by the State Govt. in relation to Smt. Bharti Tiwari, District Programme Officer as per the order of the Hon'ble High Court and after passing final order against Smt. Bharti Tiwari, the proceedings against the petitioners (her clerks) can be taken thereafter. We agree to that any hold that without doing any such exercise in that sequence and without acting on the report a lawful inquiry and following the due procedure, respondent No. 2 directly passed the impugned orders of reversion and recovery, hence, such orders deserve to be set aside. Such orders were passed without any proper inquiry and without giving the proper opportunity of hearing to the petitioners.”

4. Claim Petition No. 56/NB/DB/2019 was concluded as under:

“The claim petitions are hereby allowed. The impugned orders dated 14.08.2019 and 21.09.2019, passed by the Respondent No.2 in respect of the petitioners, are hereby set aside. However, the respondents will have liberty to proceed with the result of any lawful inquiry, conducted as per law, in the sequence & compliance of the order dated 08.04.2019, passed by the Hon'ble High Court in Writ Petition No. 1642 of 2018. No order as to costs.

Let copy of this order be kept on the file of Claim Petition No. 56/NB/DB/2019, Bishan Singh Dhapola vs. State & others.”

5. It is the submission of Sri Amar Murti Shukla, Ld. Counsel for the petitioner that since the punishment given to the petitioner has been set aside by the Tribunal *vide* order dated 19.03.2020, therefore, the petitioner is entitled for promotion, w.e.f. 2008 to the post of Administrative Officer, w.e.f. 2011 to the post of Senior Administrative Officer and w.e.f. 2018 to the post of Chief Administrative officer, from the date his juniors were promoted, along with all consequential monetary benefits.
6. It is also the submission of Ld. Counsel for the petitioner that the petitioner is entitled for the benefit of ACP and arrears of salary during the period of suspension and other monetary benefits, which the petitioner is legally entitled for.
7. Ld. A.P.O., on seeking instructions from the respondent department, submitted that the respondents are filing writ petition against judgment and order dated 19.03.2020, passed by Tribunal in Claim Petition No. 56/NB/DB/2019, Bishan Singh Dhapola vs. State and others and other connected claim petition. Ld. A.P.O. also submitted that permission of the Government has been obtained *vide* letter dated 18.08.2020 to file writ petition before Hon'ble High Court.
8. In reply, Ld. Counsel for the petitioner submitted that no writ petition has been filed against the above mentioned judgment dated 19.03.2020 of the Tribunal and the petitioner should not be compelled to wait unnecessarily for his promotion, from the date his juniors were promoted, along with all consequential benefits.
9. The Tribunal has been informed that the liberty given to respondents to proceed with the result of any lawful inquiry, as ordered in Claim Petition no. 56/DB/2019, has not been availed.
10. Since the order impugned has already been set aside by the Tribunal *vide* judgment and order dated 19.03.2020, passed in Claim Petition No. 56/NB/DB/2019, Bishan Singh Dhapola vs. State & others and connected claim petition, therefore, a direction is given to the respondents to hold Departmental Promotion Committees for the post

of Administrative Officer, Senior Administrative Officer and Chief Administrative Officer to consider the promotion of the petitioner on the above noted posts, from the dates his juniors were promoted, as per law, within three months from the date of this order. ‘Sealed cover’ procedure may be adopted in the event of disciplinary proceedings being pending on the dates of DPCs.

11. So far as the determination of salary for the period of suspension is concerned, this Tribunal is of the view that this prayer of the petitioner should be considered in terms of Para 54-B, Financial Handbook, Vol. 2 to 4, which reads as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

The above noted provision of Financial Handbook (*supra*) provides for a situation which the petitioner is faced with in present claim petition. The competent authority shall, therefore, consider and make a specific order regarding pay and allowances to be paid to the petitioner for the period prayed for by him in present claim petition.

12. Order accordingly.
13. The claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 05, 2021
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