

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 72/2012

Ram Charan Joshi, S/o Sri Sambhu Prasad Joshi, Junior Assistant,
Child Development Project and Women Empowerment Officer,
Dugadda, District Pauri

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Women Empowerment &
Child Development, Civil Secretariat, Dehradun,
2. Director, Women Empowerment & Child Development, Integrated
Child Development Services, Uttarakhand, Dehradun,
3. Chief Development Officer, Pauri Garhwal, District Pauri,
4. District Programme Officer, Child Development, Pauri Garhwal,
Pauri,
5. Child Development Project Officer, Dwarikhal District Pauri
Garhwal.

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiya, P.O
for the respondents

JUDGMENT**DATE: OCTOBER 16, 2014****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioner has challenged the order dated 22.10.2011 passed by the Director, Women Empowerment and Child Development Department, Govt. of Uttarakhand, Dehradun by which the following punishments have been awarded to the petitioner:

- a. *Stoppage of two increments with cumulative effect,*
- b. *Censure Entry for the year 2005-06*

2. The petitioner at the relevant point of time was working as Junior Clerk at Narayan Bagar, District Chamoli. The petitioner was placed under suspension by the Director vide order dated 02.05.2008 on the allegations that he in connivance with Ms Maya Bisht, had issued false experience certificates to Smt. Damiyanti Devi and Urmila Rawat, Anganwari workers to extend benefit to them in unlawful and illegal manner. Disciplinary proceedings were also initiated against the petitioner. Thereafter, a charge sheet was served upon the petitioner on 09.06.2008 levelling charges in this respect. The petitioner had submitted appropriate reply on 23.07.2008 to the Enquiry Officer and the Enquiry Officer did not find the accused guilty for any misconduct and submitted his report on 05.09.2008. The Disciplinary Authority was not satisfied with the enquiry report and ordered the Enquiry Officer to conduct the enquiry again. Thereafter, the Enquiry Officer again submitted report on 09.09.2009 and held the petitioner guilty for issuing the false experience certificates and also to illegally removing these

certificates from the record. Consequently, the petitioner was awarded the above mentioned punishment by the Director vide order dated 22.10.2011. The petitioner has preferred a departmental appeal, but of no consequence. Thereafter, the petitioner challenged the impugned order before the Hon'ble High Court and the Hon'ble High court had dismissed the petition on the ground of availability of alternative remedy before this Tribunal. Hence the petitioner has preferred this petition. The petitioner has assailed the impugned order on the following grounds:

- i. That the impugned order has been passed in violation of Article 14, 16 and 311 of the Constitution of India.
- ii. That the impugned order has been passed without affording the petitioner sufficient opportunity of making defence,
- iii. That the allegations levelled against the petitioner are not proved,
- iv. That the charges levelled against the petitioner is in violation of rule 7 of Uttaranchal Govt. Servants (Disciplinary and Appeal) Rules, 2003,
- v. That the two punishments i.e. minor as well as major cannot be awarded,
- vi. That no order has been passed on departmental appeal.

Therefore, the petitioner has requested for setting aside the impugned order of punishment,

3. The petition has been opposed on behalf of the respondents on the ground that the impugned order has been passed after affording adequate opportunity of hearing to the petitioner. The petitioner had issued two experience certificates illegally to Smt.

Damyanti Devi and Smt. Urmila Rawat, copy of which has been annexed with the Counter Affidavit. It is further stated that the impugned order was passed after framing the proper charge and on conducting the proper departmental enquiry. There is no illegality or irregularity in the impugned order. Therefore, the petition lacks merit and is liable to be dismissed.

4. No rejoinder affidavit has been filed on behalf of the petitioner.

5. We have heard both the parties at length and perused the material available on record carefully. The original enquiry record has also been filed. We have perused that also.

6. Firstly, it has been contended on behalf of the petitioner that the charges have not been framed by the competent authority namely, Disciplinary/Appointing Authority, for want of which, the whole proceeding of enquiry gets vitiated. Consequently, the impugned order of punishment based on such charges, cannot be sustained and is liable to be set aside. On the other hand, it has been contended that the charges have been framed properly and in accordance with the relevant rules prevailing at that time and no interference is required; therefore, the contention of the petitioner does not bear any force. We have gone through the charge sheet levelled against the petitioner and it transpires from the record that the charge sheet was issued by the enquiry officer and which was approved by the Disciplinary Authority. The important question is whether charge sheet can be issued by the Enquiry Officer or not? The law is now settled in this respect that the charge sheet can only be issued by the Disciplinary Authority and not by the enquiry officer. Apart from it, the Disciplinary Authority before issuing the

charge sheet must have satisfied itself as to whether sufficient grounds exist for initiating further proceedings or not, but in the present case, neither a charge sheet has been issued by the Disciplinary Authority nor the Disciplinary Authority had satisfied itself from the enquiry report and other material on record as to whether sufficient grounds existed for further enquiry. These facts vitiate the enquiry proceedings.

7. It has further been contended on behalf of the petitioner that by way of impugned order, two punishments, one minor and another major have been imposed against the petitioner, which are not permissible under rules and the impugned order thus is bad in the eye of law. We agree with the contention raised on behalf of the petitioner. The law in this respect is settled and only one kind of punishment either minor or major can be imposed against any employee in one departmental proceeding. But in the present case, two punishments, one i.e. the censure entry, which is minor and another stoppage of increment, which is major in nature against the petitioner, which cannot be justified. The impugned order is therefore, bad in eye of law.

8. It is further contended on behalf of the petitioner that the petitioner has no concerned with the issuing of the experience certificates which have been made basis for the enquiry. The copies of the experience certificate of one Smt. Damiyanti and another Smt. Urmila Rawat have been filed on behalf of the respondents with the affidavit of Dr. Satish Kumar Singh. We have carefully perused the copies of the certificates, which reveal that the experience certificates have been issued by the Child Development Project Officer, Dugadda and the petitioner was an employee in that office. It cannot be inferred that the petitioner had any role in

the issuance of these certificates, on the basis of the only fact that petitioner was an employee in that office. It was also necessary for the respondents to establish that the petitioner was in anyway involved in the issuance of the certificates and that action of the petitioner was malafide. It was also alleged that the petitioner had any connivance with the Child Development Project Officer, but perusal of record, does not establish this fact. These facts create doubt about the involvement of the petitioner in the issuance of the experience certificates.

9. On the basis of above facts, we are of the considered view that the impugned order is not justified, so the petition deserves to be allowed and impugned order of punishment is liable to be set aside. Consequent to setting aside of the impugned order, the petitioner is entitled for arrears of pay and other service benefits.

ORDER

The claim petition is allowed. The impugned order dated 22.10.2011 is hereby set aside. Consequent to setting aside the impugned order, the petitioner is entitled for arrears of pay and other service benefits, if any. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: OCTOBER 16, 2014.
DEHRADUN

KNP