

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL DEHRADUN
BENCH AT NAINITAL**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri U. D. Chaube

----- Member (A)

Claim Petition No. 34/N.B./2009

Anil Kumar Tripathi, Project Officer (Reverted)
Jan Jati Vikas Nigam, Nainital

.....Petitioner

Vs.

1. State of Uttaranchal through Secretary Ministry of Tourism
Uttarakhand, Dehradun.
2. Managing Director, Kumaon Mandal Vikas Nigam Ltd., Nainital.
3. Managing Director, Kumaon Anusuchit Jan Jati Vikas Nigam Ltd.,
Nainital.

.....Respondents

Present: Sri A. D. Tripathi Advocate,
for the petitioner.
A.P.O. for the respondent no. 1.
None for the respondent nos. 2 & 3.

JUDGMENT

Date: May 9, 2013

DELIVERED BY SRI V.K. MAHESHWARI,
VICE-CHAIRMAN (J)

1. Quashing the reversion order dated 27.1.2007 and order passed
on appeal dated 29.04.2009 is prayed in the present petition.

2. The facts giving rise to this petition as stated in the petition are that there are two Corporations namely, Kumaun Anusuchit Janjati Vikas Nigam and Kumaun Mandal Vikas Nigam working in the Kumaun Division of State of Uttarakhand. Both these Corporations are owned and controlled by the State of Uttarakhand.
3. There are no separate rules for governing the service conditions of the employees working in Kumaun Anusuchit Janjati Vikas Nigam. In absence of separate rules, the rules applicable to the service conditions of the employees of the Kumaun Mandal Vikas Nigam are also applicable to the employees of the former Nigam. Even there is no separate Board of Directors for the Kumaun Anusuchit Janjati Vikas Nigam and the Board of Directors including Chairman, Kumaun Mandal Vikas Nigam was entrusted to look after the work of Kumaun Anusuchit Janjati Vikas Nigam vide notification No. 475 dated 27.6.2002, (Annexure-4). Of late, State Government has also initiated proceedings for winding up the Kumaun Anusuchit Janjati Vikas Nigam.
4. The petitioner was inducted into service of Kumaun Anusuchit Janjati Vikas Nigam in the year 1980 as Assistant Grade Clerk. He was promoted to the post of Assistant Project Officer in the year 1985 and later on, as Deputy Project Officer in the year 1993 and in the same year the petitioner was again promoted to the post of Project Officer vide order dated 14.10.1993, (Annexure-1). The petitioner had discharged his duties with utmost devotion and dedication and he has an unblemished service record for last more than 20 years.

5. The Managing Director (Respondent No. 2) had issued a show cause notice to the petitioner on 23.10.2006 (Annexure-7) on eight counts and petitioner was directed to submit his reply within a period of 7 days. The petitioner had submitted his reply on 28.11.2006 (Annexure-8). Thereafter, General Manager who was appointed as Enquiry officer issued a charge sheet (Annexure-9) in which the same eight charges were leveled against the petitioner. Petitioner has submitted reply on all the charges, but the enquiry officer after enquiry has submitted his report against the petitioner finding him guilty on all the charges. The Managing Director (Respondent No 2) relying upon the enquiry report, punished the petitioner and reverted him from the post of Project Officer to the post of Deputy Project Officer in the pay scale of Rs. 5000-8000/- vide impugned order (Annexure-11). It is further stated that though all the charges levelled against the petitioner were treated to be proved but copy of the enquiry report was never furnished to the petitioner.
6. The petitioner has further stated that charge No. 1 is not proved against him as scheme of overdraft was started by the then General Manager and the Project Officer cannot be held responsible for it. The copy of transactions of bank regarding overdraft dated 28.11.2006 is at Annexure-12.
7. It is stated regarding the charge no 2, and 3 that the petitioner had done his best to improve and rejuvenate the conditions of the corporation and he had made plans and executed several projects such as production of cotton clothes, purchase of raw material for production of woolen clothes, marketing facility to small scale industry, establishment of

woolen yarn bank in the region, exposition of finished goods produced by Nigam, improvement of marking centre, establishment of small finishing machine, establishment of Uttaranchal Emporium at New Delhi and management of plans which were financed by Central Govt. As the petitioner had planned and executed above projects so he cannot be held guilty for not planning or implementing any project.

8. The charge No. 4 is also not proved against the petitioner as sending the report to the Government was the responsibility of the General Manager and not that of the petitioner.
9. The charge No. 5 is also not proved against the petitioner as the appointing authority of the employees of the Corporation and to impose any penalty upon them vests with the General Manager and not with the Project Officer, so the petitioner working as Project Officer cannot be held responsible for any court cases instituted by the employees against the Corporation
10. Charge No. 6 is related to the Accountant of the Corporation and the petitioner is in no way responsible for it, so this charge also was not proved against the petitioner.
11. Charge No. 7 is also not proved against the petitioner as it was the duty of the Accountant to get the accounts audited and the petitioner is no way responsible for it.
12. The charge No. 8 is also not proved against the petitioner as the petitioner had projected and finalized all the relevant documents and placed them before the Managing Director.
13. As none of the charges leveled against the petitioner is proved, hence the petitioner can not be held responsible for any misconduct and impugned order of punishment is illegal and liable to be set aside.

14. The petitioner had preferred an appeal against the impugned punishment order which was not decided; therefore the petitioner had preferred a claim petition before this Tribunal and on the direction of the Tribunal the appeal was decided vide order dated 29.4.2009 by the Board of Directors in its 73rd Board meeting. It is further stated that though policy decision has been taken to wind up the Kumaun Anusuchit Janjati Vikas Nigam, but it had not been completely winded up. It is also stated that not only the charges are not proved against the petitioner but even the punishment order has not been passed by the competent authority. The impugned order is illegal, arbitrary and is liable to be set aside. Hence, this petition.
15. The petition has been opposed on behalf of the respondents and in the written statement filed on behalf of Respondent Nos. 2 & 3 which is adopted on behalf of Respondent No. 1 also, it is stated that the Kumaun Mandal Vikas Nigam and Kumaun Anusuchit Janjati Vikas Nigam are two separate companies registered under the Companies Act 1956. The Rules governing the service condition of employees of Kumaun Mandal Vikas Nigam are not at all applicable to the employees of Kumaun Anusuchit Janjati Vikas Nigam. On the ground of omission and inaction on the part of the petitioner, explanation was called vide order dated 23.10.2006 and after considering his explanation, which was not found satisfactory, the Managing Director decided to initiate the departmental proceeding against the petitioner and the General Manager was appointed the Enquiry Officer. After conducting the proper enquiry, the enquiry report was submitted (copy is Annexure-CA-2.)

16. The petitioner was found guilty for all the charges. The petitioner without examining the prospects submitted the proposal for utilization of funds ignoring the guidelines, which put the corporation to a disadvantageous position. The petitioner had not made any plan or projects. The projects mentioned by the petitioner were made by the Managing Director or the General Manager. The petitioner tried to escape from the responsibility of the failures of the projects but tried to take the credit of the successful projects.
17. The petitioner did not ensure the effective and proper implementation of the resolutions passed by the Board of Directors.
18. He did not effectively supervise and monitor the court cases instituted against the Corporation while he was responsible for monitoring the court cases. The petitioner is responsible for the pathetic condition of court cases. The petitioner did not finalize the accounts of the Corporation and audit of the accounts for last 10 years is still pending. He never tried his business acumen ship or talent for the upliftment of the economic condition of the Corporation.
19. Due to inaction on the part of the petitioner, the working capital was not sanctioned
20. It is further stated that the petitioner had taken voluntary retirement from the corporation after accepting the lump sum amount payable to him under law, thus the petitioner is not entitled for any relief and the petition is liable to be dismissed.
21. A rejoinder affidavit has also been filed on behalf of the petitioner reiterating the facts stated in the main petition.

22. We have heard both the parties (petitioner and the respondent no. 1) at length and perused the documents available on record carefully. After filing the written statement, none appeared on behalf of the respondent nos. 2 and 3. Hence, the petition proceeded ex-parte against them.

23. The petitioner has challenged the impugned order on the following grounds:-

- (i) That the impugned order was not passed by the competent authority and,
- (ii) copy of the enquiry report was not supplied to him and ,
- (iii) The petitioner has discharged his duties with utmost dedication and devotion and no charge leveled against him is proved.

24. As regard to the first ground is concerned, it is stated that the impugned order was passed by Sri Avanendra Singh Nayal in the capacity of Managing Director (competent authority). The impugned order was passed on 27.1.2007, whereas Sri Avanendra Singh Nayal had already been transferred and had handed over charge on 24.1.2007 and Sri Kunal Sharma had joined as Managing Director simultaneously, thus, Sri Avanendra Singh Nayal was not competent to pass the impugned order on 27.1.2007. In support of this contention, the Ld. Counsel for the petitioner has filed the copy of the charge certificate of Sri Avanendra Singh Nayal, as Annexure-19. This document clearly reveals that Sri Avanendra Singh Nayal had handed over charge for the post of Managing Director, Kumaun Mandal Vikas Nigam Ltd. in the forenoon of 24.1.2007. But original record of enquiry has been submitted on behalf of the

respondents. We have perused that record which reveals that the impugned order was passed on 23-01-2007 but it was issued on 27-01-2007 so it cannot be said that the impugned order was passed by the Punishing Authority after handing over the charge. We hold that the impugned order was passed on 23-01-2007 and it was issued on 27-01-2007 and the Punishing Authority was competent to pass the impugned order on 23-01-2007. The contention raised by the petitioner has no force.

25. It is further contented on behalf of the petitioner that the copy of the Enquiry report was not furnished to the petitioner so the whole of the enquiry proceedings are vitiated and it is not justified to punish the petitioner on the basis of such enquiry report. In support of this contention the Id. Counsel for the petitioner has relied upon the principle laid down by the five Judges Bench of the Hon'ble Supreme Court of India in **Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others (1993) S.C.C.727**. Hon'ble Apex Court has held that "*Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice*".

26. In the present case it is undisputed that the disciplinary authority had entrusted the enquiry to another officer. The petitioner in unambiguous terms has averred in his petition the non supply of the copy of the enquiry report in the following words:-

“That punishing authority has passed punishment order coming to conclusion that the charges 1 to 8 imposed on him have been fully proved against the delinquent employee, however the copy of enquiry report of the enquiry officer has not been given to the delinquent employee as such he has no knowledge about the enquiry report of the enquiry officer.”

On behalf of the respondents, it has not been stated in clear terms that the copy of the enquiry report was supplied to the petitioner, but in evasive terms, it has been averred in the para-17 of the W.S. that the petitioner was given ample opportunity to place his case before the enquiry officer and he was having sufficient knowledge of the enquiry report. The relevant para-17 is reproduced below:-

“That in reply to the contents of Para 4.14 of the claim petition, it is submitted that the claimant/ petitioner has been given ample opportunity to place his case before the enquiry officer and he was having sufficient knowledge of the enquiry report.”

A true copy of the enquiry report is being filed herewith and marked as Annexure No. CA-2 to this affidavit.”

From the above averments of the parties it becomes amply clear that the copy of the enquiry report was not supplied to the petitioner which was essential as the enquiry was not conducted by the disciplinary authority himself. Keeping in view the

principle laid down by the Hon'ble Supreme Court, we have no hesitation to hold that non supply of the copy of the enquiry report vitiates the proceedings of enquiry.

27. It is further contended on behalf of the petitioner that the charges levelled against him are not only vague but are also not proved. He has submitted his detailed explanation regarding each charge in the petition itself. We have sincerely considered the charges and the explanation submitted by the petitioner. Though generally this Tribunal does not look into the merits of enquiry report unless there is miscarriage of justice. In the present case, it appears that whole of the responsibility has been imposed upon the petitioner. There is no specific charge regarding any inaction, negligence or dereliction of duty. The petitioner as a Project Officer was not the only controlling or supervising authority but the Managing Director and General Manager were above him. They must also have taken the responsibility for failure of the Nigam. So even without going into the merits of the charges and the explanation furnished by the petitioner, we are of the view that holding the petitioner guilty on the charges levelled against him causes miscarriage of justice.

28. It is also contended on behalf of the respondents that the petitioner has taken voluntarily retirement and lump-sum amount has been paid to him and that is also accepted by him so now the petitioner is not entitled to present any claim petition regarding any controversy which had arisen during service. But we are not convinced with the argument of the respondents. Simply by taking voluntarily retirement, the petitioner cannot be stopped from taking legal recourse before this Tribunal or

any other competent Forum. Hence the contention raised by the respondents carries no weight.

29. On the basis of the above discussion, we are of the clear view that the impugned order of punishment cannot be sustained. Consequently, the order passed on the appeal is also liable to be set-aside. The petition deserves to be allowed. The petitioner is thus entitled for all service benefits including salary as per rules.

ORDER

The petition is allowed on merits as against the respondent no. 1 and ex-parte as against the respondent nos. 2 and 3. The impugned order of punishment dated 23-01-2007/27.1.2007 and order passed on appeal dated 29.04.2009 are hereby set-aside. The petitioner is entitled for all the service benefits including salary and its arrears if any. No order as to costs.

Sd/-
U. D. CHAUBE
MEMBER (A)

Sd/-
V. K. MAHESHWARI
VICE CHAIRMAN (J)

DATE: MAY 9, 2013