

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. 25/NB/DB/2021

Ashutosh Khulbe, aged about 42 years, s/o Late Sri S.D. Khulbe,
r/o Village and, Post Office- Sauni, Tarikhet, District Almora

.....Petitioner

versus

1. State of Uttarakhand through Secretary, School Education Department, Government of Uttarakhand, Dehradun
2. Director, Primary Education, Dehradun
3. Additional Director of Education, Primary Education, Kumaun Division, Nainital
4. District Education Officer, Basic Education, Almora
5. Chief Education Officer, Almora
6. Deputy Education Officer, Dhauladevi, District Almora
7. Deputy Education Officer, Bhikyasen, District Almora
8. District Magistrate, Almora

.....Respondents

Present: Sri Ashutosh Khulbe, Petitioner in person
Sri Kishore Kumar, A.P.O. for the Respondents

JUDGEMENT

Dated: 30th December, 2021

Justice U.C. Dhyani (Oral)

RELIEFS CLAIMED

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

“A. To set aside the impugned demotion order dated 09.02.2021 passed by the respondent no. 4.

B. To direct the respondents to comply with the order dated 29.05.2019 passed by the Chief Information Commissioner forthwith.

C. To direct the respondent no.1 to look into the matter and direct him to constitute a committee for the corruption and mismanagement going on in the Primary/ Higher Primary Institutions in Almora and take appropriate action against the culprits.

D. To issue any other order or direction directing the respondents to give all consequential benefits to the petitioner.

E. To issue any other writ or direction, which this Hon'ble Tribunal deem fit and proper in the circumstances of the case.

F. Award the cost of the claim petition in favour of the petitioner.”

BRIEF FACTS

2. Brief facts giving rise to present claim petition are as follows:

(a) Petitioner was appointed as Assistant Teacher in Govt. Primary High School, Matela Manihar, Tarikhet Block, Almora on 17.02.2009.

(b) On 06.09.2013, consequent upon his transfer, the petitioner joined Govt. Primary School, Naiti, Simaldhar, Block Tarikhet, District Almora.

(c) On 29.07.2016, the petitioner was promoted as Assistant Teacher, Upper Primary School, G.U.P.S., Amrolidhar, Bhikyasen, Almora.

(d) On 18.10.2016, petitioner submitted an application to Deputy Education Officer, Bhikyasen for relieving him from the post of in-charge Headmaster Naiti, Simaldhar, Block Tarikhet, District Almora, but no action was taken on such application.

(e) When no action was taken, the petitioner sought certain information under R.T.I. on 28.02.2017. Petitioner was transferred from Higher Primary School, Amrolidhar, Bhikyasen, Almora to Higher Primary School, Swadi, Dhauladevi on administrative ground *vide* order dated 29.11.2018. The petitioner joined at his new place of posting.

(f) Several letters under R.T.I. were sent. Chief Information Commissioner passed an order on 29.05.2019, on which no action was taken by Chief Education Commissioner, Almora.

(g) According to the petitioner, his transfer from Higher Primary School, Amrolidhar, Bhikyasen to Higher Primary School, Swadi, Block Dhauladevi, on administrative ground, is illegal. Petitioner has continuously been complaining about the mismanagement in the institution at Bhikyasen but the respondent(s) did not take any action on the same. Respondents were engaged in corruption and mismanagement. The Commission, in collusion with the respondents, was determined to teach petitioner a lesson.

(h) A major penalty was imposed upon the petitioner on 09.02.2021, which is impugned in present claim petition.

(i) The grounds of challenge have been delineated by the petitioner in the text of the claim petition. The Tribunal does not feel it necessary to reproduce these grounds, for the same will

be dealt with, as and when required, while discussing the merits of the claim petition.

COUNTER AFFIDAVIT

3. Written statement has been filed, on behalf of respondents, by Id. A.P.O. A counter affidavit has been filed by Sri Harsh Bahadur Chand, in-charge, Chief Education Officer, Almora, contradicting the material facts on which the claim petition is based. It has been mentioned in the counter affidavit that the departmental enquiry conducted against the petitioner is in accordance with law and after affording due opportunity of hearing.

3.1. Various documents have been filed in support of the counter affidavit, on behalf of respondents, by Id. A.P.O.

DISCUSSION

4. Learned A.P.O. submitted, at the very outset, that reliefs 'B' and 'C' can only be granted by a Writ Court and not this Tribunal. Learned A.P.O. submitted that it is beyond the jurisdiction of this Tribunal to grant reliefs 'B' and 'C'.

4.1 This Tribunal is in agreement with such submission of Id. A.P.O.

5. The compliance of an order dated 29.05.2019 of Id. Chief Information Commissioner cannot be enforced by this Tribunal. Likewise, a direction to respondent No. 1 to constitute a committee to look into the complaints of corruption and mismanagement in Primary school in Almora is also not within the jurisdiction of this Tribunal.

6. Since this Tribunal has no jurisdiction to grant reliefs 'B' and 'C', therefore, claim petition in respect of such reliefs is dismissed, leaving it open to the petitioner to seek appropriate remedy, in respect of these reliefs, before the appropriate forum.

7. Petitioner's main relief is for setting aside the impugned demotion order dated 09.02.2021(copy Annexure: A1) passed by respondent No. 4. Impugned order dated 09.02.2021 (Annexure A:1) is, therefore, in the teeth of present claim petition.

8. On a perusal of demotion order dated 09.02.2021 (Annexure: A1), it is revealed that the complaints filed by the petitioner were jointly enquired into by Deputy Education Officer, Primary Education, Bhikyasen; Principal, Government Inter College, Jamoli and Govt. Inter College, Geenapani, Bhikyasen.

8.1 Enquiry Committee submitted a report on 12.11.2018. Enquiry Committee was of the view that the petitioner, an Assistant Teacher does not cooperate in functioning of the school. The Committee also reported that the petitioner has failed to perform his duties especially in imparting the education to the students. The committee also reported that the petitioner indulges unnecessarily in tarnishing the image of the Principal & School and does unnecessary correspondence with the higher officers of Education Department. The committee was also of the view that the activities of the petitioner, an Assistant Teacher were indicative of arbitrariness and indiscipline. He has also violated the orders of the superiors in the past. The President of School Management Committee and the parents/ wards of local students also made complaints against the working and non-cooperation of the petitioner. They, therefore, demanded that the petitioner be transferred to some other place and stringent disciplinary action be initiated against him. The committee recommended transfer of the petitioner on administrative ground. He was thereafter transferred from Bhikyasen to Swadi, Block Dhauladevi, Almora.

8.2 Even after his transfer to Dhauladevi, there was no change in the working and behavior of the petitioner, who indulges unnecessarily in correspondence with the officers of the Govt. and also with Chief Information Commissioner. He was warned for doing so, but the situation has not changed. The three-member

committee was constituted at the block level by Deputy Education Officer, Basic Education, Block Dhauladevi, to recommend action against the petitioner under the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010).

8.3 A charge sheet was given to the petitioner on 23.01.2020 along with evidence, desiring the petitioner to submit an explanation on 05.02.2020, failing which suitable departmental proceedings would be initiated against him.

8.4 On 05.02.2020, the petitioner did not come to respond to the charges. Nothing was given by him in writing either. Again, *vide* letter dated 04.03.2020, the petitioner was given opportunity to place his case on 16.03.2020, but the petitioner did not respond on such date also.

8.5 Thereafter, finally, information was published in Daily 'Hindustan' and 'Amar Ujala' asking the petitioner to appear on 26.12.2020, but to no avail. Neither the petitioner appeared in person nor did he file written explanation against the charges levelled against him. As per impugned order dated 09.02.2021 (Annexure: A1), the language of the correspondence made by the petitioner to the Govt. at the higher level was not only illegible but also was not clear. Such correspondence in indecent language to the high respectable institutions is contrary to the conduct of a Govt. servant.

8.6 The petitioner was, therefore, given major punishment of reversion to his original post of Assistant Teacher, Govt. Primary School (pay level- 06) and was transferred from Higher Primary School, Swadi, Block Dhauladevi, District Almora to Govt. Primary School, Chil, Block Dhauladevi.

9. Amended Rule 7, as substituted by the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010, which govern the field, is excerpted hereunder for convenience:

“ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

7. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge sheet. (4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet, whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings 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 recorded findings 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 findings recorded related to every charge and representation of charged government servant, if any, and subject to 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 the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub-rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub-rule (8), he will forward the following to the Inquiry Officer, namely:

(a) A copy of the charge sheet and details of misconduct or misbehavior;

(b) A copy of written defence statement, if any submitted by the government servant;

(c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;

(d) A copy of statements of evidence referred to in the charge sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to the produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any of such evidence, as provided earlier, and may examine, cross examine and re-examine him.

(17) This rule shall not apply in following case; *i.e.* there is no necessity to conduct an inquiry in such case:-

- (a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
- (c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an inquiry in the manner provided in these rules.”

10. In the instant case, there has been breach of such rule, as has been stated by the petitioner in this claim petition.

11. Reversion is a major penalty. Enquiry against the petitioner has been conducted by the Enquiry Committee. Enquiry Officer was not appointed by the appointing authority. Charge sheet was issued to the delinquent petitioner. He did not file reply. Another date was given, to which also he did not respond. Information was published in the newspapers. Even then the delinquent petitioner did not come and, therefore, the Enquiry Committee proceeded ex-parte. No show cause notice was given. The question of giving copy of enquiry report along with second show cause notice, therefore, did not arise. The proceedings were not conducted as per the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010). Therefore, the order demoting the petitioner to the post of Assistant Teacher, Govt. Primary School (pay level- 06) should be interfered with.

INFERENCE

12. The charges against the petitioner were serious but due procedure has not been followed and, therefore, such part of the impugned order dated 09.02.2021 whereby the petitioner was demoted to the pay level- 06 of Assistant Teacher is interfered with.

13. Order Accordingly.

14. Impugned order dated 09.02.2021 is hereby set aside to the extent of the demotion of the petitioner as Assistant Teacher (pay level-06), leaving it open to the respondent department to proceed

afresh with the departmental proceedings in accordance with law, if it is so advised.

15. It is made clear that the impugned order has been interfered with only because due procedure of law has not been followed. It is also made clear that the Tribunal has not interfered with the transfer of the petitioner inasmuch as such power does not vest with the Tribunal, in view of first *proviso* to sub section (1) of Section 4 of U.P. Public Services (Tribunal) Act, 1976.

16. The claim petition is, thus, partly allowed and partly dismissed, to the extent as above. In the circumstances, there shall be no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 30th December, 2021
DEHRADUN
RS