

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

Present: Sri V. K. Maheshwari
----- Vice Chairman (J)

CLAIM PETITION NO. 07/N.B./2011

Leeladhar Pant, S/o Sri Bishan Dutt Pant, R/o Vipin Vihar,
Kotdwar Road, Ramnagar, District Nainital

.....Petitioner

Vs.

1. Conservator of Forest, Western Circle, Nainital,
2. Divisional Forest Officer, Ramnagar Forest Division,
Ramnagar, Nainital,
3. Range Officer, Koshi Range, Ramnagar Forest Division,
Ramnagar, District Nainital.
4. State of Uttarakhand through Secretary, Department of
Forest, Uttarakhand.

.....Respondents

Present: Sri Alok Mehra, Advocate
for the petitioner
Sri V.P. Devrani, A.P.O
for the Respondents

JUDGMENT

DATE: JANUARY 29, 2013

1. Impugned order dated 05.02.2011 imposing a recovery of Rs. 11,920/- against the petitioner is under challenge in the present claim petition.

2. The petitioner, Forest Guard in the forest department, was posted in Bhalun Beat (containing 7 compartments numbering 4, 5A, 5B, 6A, 6B, 7A and 7B) of Koshi Range Ramnagar w.e.f. 9.8.1985. Mr. Vinod Chand Samant, the Range Officer called the explanation of the petitioner vide letter dated 20.6.1991 (Copy Annexure-2) regarding the illegal felling of two Sal trees from the compartment 7B of the above mentioned beat. It was replied by the petitioner on 23.6.1991 and stated that he had handed over the charge of the Bhalun Beat to another employee named Sri Gopal Ram on 28.4.1991. However, Deputy Divisional Forest Officer, Ramnagar had issued a charge sheet against the petitioner on 25.3.1992 levelling two charges and the petitioner was called upon to submit reply within 15 days. The reply was submitted on 19.4.1992, but without affording any opportunity for making defence and for hearing, the Divisional Forest officer passed an order on 31.3.1993 to recover an amount of Rs.

27,390/- from the pay of the petitioner as well as to make an adverse entry in the character roll of the petitioner. This order was challenged by the petitioner by way of appeal before the Conservator Forest Western Circle, Nainital and the appeal was partly allowed and the amount was reduced to Rs. 11,920/- vide its order dated 11.4.1996. The petitioner challenged these order before the Hon'ble High Court of Allahabad by way of writ petition, which was transferred to the Hon'ble High Court of Uttarakhand after the creation of the State and the writ petition was allowed with liberty to pass fresh orders, if so desired. Consequently, the respondent no.2, D.F.O., Ram Nagar directed the petitioner to appear before him on 13.9.2010. The petitioner submitted his reply after appearing before the D.F.O., Ram Nagar. The petitioner had again made clear that he had handed over the charge of the beet to Mr. Gopal Ram on 28.4.1991, therefore, he cannot be held guilty but the D.F.O. passed the impugned order on 5.2.2011 and again ordered the recovery of Rs. 11,920/- from the pay of the petitioner. The departmental appeal preferred by the petitioner against the impugned order has also been dismissed vide order dated 07.05.2011. Hence this petition.

3. The impugned orders have been challenged by the petitioner on the following grounds:

- i. That after the writ petition was allowed and the previous orders of recovery were quashed. It was mandatory upon the respondents to issue fresh charge sheet, but fresh charge sheet had not been issued against the petitioner, therefore, the impugned order cannot be sustained,
- ii. That the reply of the petitioner has not been properly considered by the disciplinary authority,
- iii. That the opportunity of making defence and hearing had not been afforded to the petitioner, therefore, the impugned order cannot be sustained.

4. The petition has been opposed on behalf of the respondents and it has been stated that the explanation of the petitioner was called on 20.6.1991 by the Range Officer regarding the illegal felling of two Sal trees which was replied by the petitioner. After considering the reply of the petitioner, an order of punishment was passed on 31.3.1993 against which an appeal was filed by the petitioner which was partly allowed on 11.4.1996. This was again challenged before the Hon'ble High Court and the Hon'ble High Court of Uttarakhand vide its judgment dated 24.12.2009 quashed the impugned order, but liberty to the respondents to proceed

and to pass fresh orders in accordance with law. The impugned order has been passed on merit after affording proper and adequate opportunity of hearing to the petitioner and there is not irregularity or illegality in the impugned order. Therefore, the impugned order is perfectly valid and the appeal has also been rightly dismissed. There is no substance in the petition and the petition is also liable to be dismissed.

5. A rejoinder affidavit has also been filed on behalf of the petitioner. I have heard both the parties at length and perused the evidence on record carefully. It has been vehemently argued on behalf of the petitioner that after the order was set aside by the Hon'ble High Court of Uttarakhand, with a liberty to initiate fresh proceedings against the petitioner, it was incumbent upon the respondents to issue fresh charge sheet, which has not been done in the present case, therefore whole departmental proceedings are vitiated. Therefore, the impugned order cannot be sustained. In support of this contention, the petitioner relies upon the principle laid down by the Hon'ble Supreme Court in *Chairman-cum-Managing Director, Coal India Ltd. & others Vs. Ananta Saha and others* (2011) 5, Supreme Court Cases,

142. I have carefully gone through the abovementioned case. The Hon'ble Supreme Court has held as under:-

“The High court had given liberty to the appellants to hold de novo enquiry, meaning thereby that the entire earlier proceedings including the charge-sheet issued earlier stood quashed. In such a fact situation, it was not permissible for the appellants to proceed on the basis of the charge-sheet issued earlier. In view thereof, the question of initiating a fresh enquiry without giving a fresh charge-sheet could not arise.”

6. In my opinion, the petitioner is not entitled for any benefit on the basis of the principle laid down in the abovementioned case because the recovery of amount of loss is a minor punishment. For imposing the minor punishment, no charge sheet is required only an opportunity is to be afforded to the delinquent official. In the present case, after the impugned order, passed earlier was quashed with a liberty to pass fresh order, the respondents had issued a show cause notice to the petitioner and after considering the reply of the petitioner, the impugned order has been passed. Thus,

the requirement for holding the fresh enquiry is fulfilled in letter as well as in spirit. Therefore, in my opinion, petitioner is not entitled for any benefit on this ground.

7. It has further been contended that principles of natural justice have been violated and proper opportunity of hearing was not provided to the petitioner, but record reveals that petitioner has been afforded adequate opportunity to submit its reply of the show cause notice issued against the petitioner. Sufficient time was granted to the petitioner for its reply and petitioner had submitted proper reply of the show cause notice. Thus, it becomes clear that sufficient opportunity was afforded to the petitioner for hearing and no principles of natural justice have been violated and the contention of the petitioner does not bear any force.

8. It has also been contended on behalf of the petitioner that at the relevant time, the petitioner was not holding a charge of the beat from where the Sal trees alleged to have been fallen. In fact, its not proper for the Tribunal to go into the details of the matter in controversy unless the findings of the disciplinary authority are perverse. In the present case, it was to be considered by the disciplinary authority as to whether the petitioner was holding the charge of the

concerned beat or not which has been properly considered by the disciplinary authority and finding in this regard is not illegal or perverse. Therefore, no benefit can be extended to the petitioner.

9. No other contention has been put forward on behalf of the petitioner. Considering the above discussion, I do not find any force in this petition. Consequently, the petition is liable to be dismissed.

ORDER

The claim petition is dismissed. No order as to costs.

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JANUARY 29, 2013
NAINITAL