

**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. 31/NB/DB/2020**

Dr. Rakesh Sinha, aged about 65 years, s/o Sri K.N. Sinha, r/o 12-A,  
Friends Enclave, Near Railway Goods Godown, Rudrapur, Udham Singh  
Nagar.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Medical Department-2,  
Dehradun.
2. Director General, Department of Medical Health and Family Welfare,  
P.O. Gujrara, Sahastradhara Road, Dehradun.
3. Chief Medical Officer, Udham Singh Nagar.

.....Respondents

Present: Sri Harshit Sanwal, Advocate, for the Petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents.

**Judgement**

**Dated: 24<sup>th</sup> May, 2022**

**Per: Justice U.C. Dhyani**

**RELIEFS SOUGHT**

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

- “(i) To quash Office Order No. 2045/XXVIII-2/2018- 01(31) 2014,  
Dehradun, dated 21.12.2018 whereby a penalty has been imposed on the

petitioner for deduction of 50% of his monthly pension towards the recovery of the amount of Rs. 83,31,000/- (Rupees Eighty Three Lakh Thirty One Thousand);

(ii) To direct refund of the amount already deducted and recovered by the respondents from the pension of the applicant in terms of Office Order No. 2045/XXVIII-2/2018- 01(31) 2014, Dehradun, dated 21.12.2018, along with interest;

(iii) To direct the respondents to pay the petitioner the applicable regular pension, as well as its arrears, as may have accrued since 01.03.2015;

(iv) To direct the respondents to release the gratuity amount and other retirement and pensionary dues, as may be, that have accrued to the applicant on his superannuation.

(v) Quash/ set aside the Office Order No. 199/2018 dated 19.08.2019 issued by the respondent no. 3 directing for deduction of 50 % of the pension amount admissible to the claimant/ petitioner.”

2. Office orders dated 21.12.2018 and 19.08.2019 are in the teeth of present claim petition.

3. When the claim petition was filed on 06.07.2020, learned A.P.O. opposed the claim petition, *inter alia*, on the ground that the same is barred by limitation. Issue of limitation was left open to be decided at the time of final hearing.

4. Claim petition in respect of quashing of office order dated 21.12.2018 should have been filed on or before 21.12.2019 and claim petition in respect of quashing of office order dated 19.08.2019 should have been filed on or before 19.08.2020. Claim Petition has been filed on 06.07.2020..

5. The petitioner has also sought a direction to direct the respondents to pay applicable regular pension, as well as arrears, as may have accrued since 01.03.2015. Petitioner has also prayed for release of gratuity amount and other retiral benefits, which might have accrued to the applicant on his superannuation. By amendment,

the petitioner has also sought quashing of order dated 19.08.2019. Although the amendment was sought on 15.03.2022, but the claim petition in respect of office order dated 19.08.2019, has been filed on 06.07.2020, which is within time. The effect of amendment is from the date of filing of the claim petition. Relief in respect of quashing office order dated 19.08.2019, therefore, is within time.

## **FACTS**

6. *Vide* Office Order dated 21.12.2018, penalty has been imposed on the petitioner for deduction of 50% of his monthly pension for recovery of an amount of Rs. 83,31,000/-. While granting provisional pension, a direction was given to deduct 50%, out of such provisional pension, every month. Office Memorandum dated 21.12.2018 (Annexure: A12) appears to be an unambiguous speaking order. Consequent upon the incident of payment of fake taxi bills, which came to light on 03.05.2016, Sri R.R. Singh, the then Joint Secretary, Medical Education Department was appointed as Preliminary Inquiry Officer. Sri R.R. Singh, preliminary inquiry officer submitted his inquiry report on 09.08.2016. The (preliminary) inquiry officer confirmed an irregular payment of Rs. 83,31,000/- towards forged taxi bills, by the petitioner, the then Chief Medical Officer, Udham Singh Nagar, as DDO/ Head of the office. The Charge sheet was issued to the delinquent officer on 24.10.2016 asking the petitioner to submit his replies within 15 days and also to inform the inquiry officer whether he wants personal hearing and the names of witnesses, whom he wants to produce and the witnesses, whom he wants to cross-examine. The delinquent officer submitted his explanation. On receipt of such replies, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, was appointed as inquiry officer. A copy of Office Memorandum dated 06.11.2017 was given to the petitioner desiring him to submit his case before the inquiry officer.

7. After conducting the inquiry, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, submitted the inquiry report to the Medical, Health and Family Welfare Directorate *vide* letter dated 02.02.2018. Inquiry Officer found the petitioner guilty. A copy of inquiry report submitted *vide* letter dated 02.02.2018 was given to the delinquent officer *vide* letter dated 09.02.2018, directing him to submit his replies within 15 days. The petitioner had already attained the age of superannuation by then. The Government, in the Medical and Health Department, *vide* order dated 21.12.2018 (Annexure: A12), closed the disciplinary proceedings by directing 50% deduction from the pension of the petitioner, till Rs. 83,31,000/- are realized. This was done after inquiry officer held the petitioner guilty in the inquiry, upon consideration of his explanation and after concurrence of Uttarakhand Public Service Commission. All this was done in the light of the Uttarakhand Govt. Servant (Punishment and Appeal) Rules, 2003, as amended in 2010 and Article 351-A Civil Services Regulations. Office Order dated 19.08.2019 (Annexure: A13) is consequential to the order dated 21.12.2018 (Annexure: A12) followed by the endorsement dated 31.12.2018 of the Directorate, Medical Health and Family Welfare. An FIR was lodged by Dr. H.K. Joshi, Chief Medical Officer, Udham Singh Nagar, against the Travelling Agency M/s Kala Tour & Travel, Dharampur, Mothorawala, Dehradun, for generating fake bills of Rs. 83,31,100/-. Such FIR was lodged on 07.02.2015 at Reporting Out Post, SIDCUL, district Udham Singh Nagar, under sections 420, 467, 468, 471 IPC.

8. The allegation was that payment of fake taxi bills was made under the pretext that they were used by the then Hon'ble Chief Minister and the then Hon'ble Health Minister from time to time. A departmental committee was constituted under the Chairmanship of Director General, Medical and Health, who found financial irregularities and involvement of 12 Chief Medical Officers and one Chief Medical Superintendent. Petitioner was posted as Chief Medical

Officer (Head of the Office), Udham Singh Nagar. The payment to the tune of Rs. 1,43,96,500/- was found, out of which payment of Rs. 83,31,000/- was made under the orders of the petitioner. The illegal payment was made as 'Head of the Office' for fake taxi bills. The same was evident from the report dated 09.08.2016 (Annexure: A8) of Sri R.R. Singh, Joint Secretary, Medical Health Education and Home, Govt. of Uttarakhand/Preliminary Inquiry Officer.

9. According to the petitioner, an order for making payment was issued by Hon'ble Chief Minister's office and therefore, it was not possible for the petitioner to have got the bills verified by district level officers. CMOs/CMSs are neither the experts of finance nor are they given any training on financial matters, therefore, it was wrong to hold the petitioner guilty of financial irregularities. Delinquent officer also explained that the accounts work was done by a ministerial level employee and therefore, he (delinquent officer) was deprived of proper advice in the financial matters. The Secretary to the Govt. in Medical and Health Department *vide* letter dated 09.02.2017, which was issued to 10 CMOs, including the petitioner, has enclosed the report of inquiry officer, Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, who has given cogent reasons, in detail, as to why the delinquent-petitioner has been found guilty of unauthorizedly releasing the money, from Grant (*Anudan*) No.3, which money was earmarked for Grant (*Anudan*) No. 12.

10. This Tribunal does not feel it necessary to give details of the inquiry report because such report is part of record. Learned Counsel for the petitioner has mentioned various grounds in his claim petition as to why the Tribunal should intervene in the orders impugned. The Tribunal found, at the time of disposal of interim relief application that, *prima-facie*, the proceedings appear to have been conducted, as per procedural safeguards, given in law. Regulations 351A CSR takes care of the situation leading to the recovery of the loss suffered by the Govt. from the amount of pension and gratuity, payable to a

delinquent employee when he was found guilty of commission of misconduct or negligence, causing pecuniary loss to the Govt. The inquiry report is the basis of passing impugned orders. While accepting the argument of learned Counsel for petitioner that the Medical Officers have expertise in administering medicines and treating patients, the Tribunal finds that the CMOs are also incharge of finance in their respective jurisdiction and, therefore, they or any of them cannot take excuse that they are not well-versed in financial matters. In para 'M' of the grounds in the claim petition, it has been mentioned that the petitioner only sanctioned the bills after receiving the invoices, budget clearance by the Finance Controller and accompanying letters from the C.M.'s office. It was the duty of the petitioner to have ensured, before sanctioning the bills, that those bills are genuine bills and not fake bills and the payment is being made from the appropriate head.

#### **COUNTER VERSION**

11. Preliminary objections have been filed on behalf of the respondents to submit that the claim petition is barred by limitation in view of Section 5(1)(b) of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand). It has also been prayed in the C.A. filed by Dr. Amita Upreti, Director General, Medical Health and Family Welfare that the delay condonation application is liable to be rejected.

12. In parawise reply, it has been mentioned that the petitioner retired from service on 31.03.2015. Pursuant to the report of the enquiry officer, considering his reply, following the procedure and after consultation with the Uttarakhand Public Service Commission, recovery of Rs.83,31,000/- has been ordered against the petitioner. It has been provided that such amount may be recovered by deducting 50% of his pension per month. Hence, the claim petition is liable to be dismissed on merits.

13. The Kala Tour and Travels Agency was the beneficiary of the act of the petitioner and others. When such fact came to the knowledge of the Health Minister, then he directed the office of the deponent on 30.01.2014 to enquire into the matter and punish the culprits of the scam. Pursuant to such directions, the deponent *vide* Office Order dated 02.09.2014 constituted an enquiry committee. The charge of illegal payment was proved against the petitioner. The petitioner did not discharge the duties of Drawing and Disbursing Officer properly. The disciplinary authority, after considering the reply of the petitioner to the charge sheet and after granting him opportunity of hearing, found the petitioner guilty. Punishment order was passed on 21.12.2018.

14. After receiving the information about illegal payment to the Travel Agency, the records of Chief Medical Offices of different districts were summoned, in which it was found that the petitioner and other C.M.Os. have made illegal payment. The petitioner, without taking approval of the concerned authorities and without consent of the higher authorities, released the amount from different sources. The deponent *vide* letter dated 18.11.2014, forwarded the report of the departmental enquiry committee to the Government. First Information Report was also lodged against the petitioner and Kala Tour and Travel Agency. The Govt., for a detailed enquiry, appointed Sri R.R. Singh, Joint Secretary, Medical Education Department. The Head of the Department is not authorized to disburse the money and make payment from the money of other head. This amounts to serious financial irregularity. In the present case, expenses of 'Council of Ministers', under head no. 03, were directed to be paid from head no. 12 'Medical Health and Family Welfare', for which the petitioner was not authorized.

15. In Para No. 15(12) of the Budget Manual, the definition of the Budget Controller has been defined. The powers and duties of the Departmental Budget Controller have been defined in Para No. 92 of

the Manual. As per Para no. 92(1), a grant can be used only for a particular purpose. Duties of DDO, have been defined in Para No. 154 of the Manual.

16. In Para No. 154 (2) of Manual, it is provided that the expenditure will be done as per the provisions of Appropriation Act. For each financial year, the expenditure will be done from the amount of income-expenditure as prescribed in the budget. In the present case, the amount provided under head no. 12 has been released for the expenses of head no. 03, for which no permission for reappropriation was taken from authorities concerned. For illegal payment, the petitioner was served with the charge sheet. The petitioner was DDO. The DDO can make Govt. payment only as per Financial Rules and payment of bills cannot be made only for the reason that they are certified by higher officials. The petitioner, being DDO, did not properly exercise his powers and without taking permission from the competent officer, paid the bills. The charges levelled against the petitioner were found proved by the enquiry officer and after following proper procedure, the petitioner has been awarded minor penalty under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003.

## **DISCUSSION**

17. According to learned Counsel for the petitioner, the departmental proceedings suffered from various defects on conjoint reading of Regulation 351-A and Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules; there is no mention of proposed documentary evidence or names of witnesses; charge sheet was not served with any documentary evidence; petitioner's request for examination of the record before replying the charge sheet was also not responded to; the inquiry officer did not summon any witness or record; no opportunity was given to the petitioner to examine the documents and petitioner was not given any opportunity

to defend himself. Case laws have been cited by learned Counsel for the petitioner, in support of his contention.

18. Sri Arunendra Singh, inquiry officer, has given his report (Annexure: A11 *colly*), in which there is description of charge leveled against the delinquent, that the delinquent petitioner, as Head of Department, made a payment of Rs. 83,31,000/- towards forged taxi bills. Inquiry Officer has mentioned the replies of the delinquent petitioner. He was the Drawing and Disbursing Officer. It has been mentioned in the report that delinquent petitioner has admitted making payments, which was being done by the departmental officers since 2009-10, treasury never objected to it, taxis were used during the visit of the Hon'ble Chief Minister, Accountant General also never objected to it in audit reports, and he is not expert in financial matters. Such pleas were not accepted by the inquiry officer. According to the inquiry officer, ignorance of the petitioner, as HOD/ DDO, towards general rules and procedure is not excusable. Inquiry Officer concluded his report by saying that the petitioner has unauthorizedly made the payment of money earmarked in grant no. 12 for a subject, which falls under grant no. 3.

19. The Secretary to the Govt. in Medical Department, in order dated 21.12.2018 (Annexure: A12), has mentioned that the delinquent petitioner has retired on 31.03.2015 and the charge leveled against him has been proved. According to office order dated 21.12.2018, replies filed by the delinquent petitioner were considered. Consent of Uttarakhand Public Service Commission was obtained, a direction was given for deduction of 50 % amount from the pension of the petitioner every month till a sum of Rs. 83,31,000/- is realized. Departmental proceedings were closed.

20. Order dated 19.08.2019 was issued by Chief Medical Officer, Udham Singh Nagar (respondent no. 3). Such an order was given with a

view to implement order dated 21.12.2018. Such deduction was directed to be made from the provisional pension of the petitioner.

21. The Tribunal finds that the petitioner has challenged order dated 21.12.2018 late in view of Section 5(1)(b)(i) of the U.P. Public Services Tribunal. He should have filed the claim petition for setting aside the order dated 21.12.2018 (Annexure: A12) on or before 21.12.2019. Claim petition has been filed on 06.07.2020.

22. Assuming for the sake of arguments that the claim petition in respect of setting aside order dated 21.12.2018 is within time, petitioner has not been able to create dent in the departmental version, even on merits.

23. The Tribunal observes that the inquiry officer has given cogent reasons for coming to the conclusion that charge against the petitioner was proved. The charge is for making payments of forged taxi bills. As HOD/ DDO, it was the duty of the petitioner CMO to have observed financial discipline to ensure that proper payments are being made. Making of payments has not been denied by the petitioner. He has stated, among other things, that he was not an expert in financial matters therefore, he did not do so deliberately.

## **CONCLUSIONS**

24. In ground (M) to the petition, the petitioner has stated that “petitioner only sanctioned the bills after receiving the invoices; budget clearance by the Finance Controller, Medical Health and Family Welfare and accompanying letter from the concerned officer of the Chief Minister Office with directions to clear the payment .....”. “Moreover the bill signed by the petitioner as Chief Medical Officer was further sent to District Treasury Officer, who finally, after satisfying himself, issued treasury cheques in favour of the concerned travel agency.....”

25. In ground (I) of the petition, it has been indicated that the petitioner is a Medical Officer and his expertise is on the subject of Health and Medicine and in treating patients. The petitioner is not assisted by any Finance Officer to guide him in financial matters, coupled with the fact that the bills of expenditure in visits of Hon'ble Ministers, are to be cleared compulsorily without putting any remark or query. "The enquiry officer, at the time of passing impugned order, having been posted as an officer in one of the highest ranks, could better consider the compelling situation under which the bills were paid."

26. In ground (J), it has been mentioned that "no such irregularity was ever pointed out or flagged either by the Treasury or by the Accountant General in yearly audit, who are specially skilled and possess the requisite know how in dealing the financial matters and payment of dues."

27. According to the Tribunal, it appears to be a case of 'admission and avoidance'.

28. Enquiry, as per the facts given in the chronology of events, was initiated on 29.09.2014. Enquiry committee submitted its report on 24.12.2014. A letter was written to the Principal Secretary, Medical Health, for appointment of competent enquiry officer to conduct the enquiry. On 07.02.2015, an FIR was lodged. On 28.02.2015, the petitioner retired from service. Thereafter, from 01.03.2015, the petitioner is being paid provisional pension. Sri R.R. Singh, Joint Secretary, Medical Health, was appointed as investigating officer. Enquiry report dated 09.08.2016 was forwarded to the Secretary, Medical Health and Family Welfare. On 24.10.2016, the petitioner was served with the charge sheet that "transactions covered under head no. 3 'Council of Ministers' have been disbursed under head no. 12 (Budget of Department of Medical Health and Family Welfare), which

were not permitted as per Appropriation Rules.” Thus, the petitioner was charged for unauthorizedly clearing the payments.

29. On 19.02.2018, the petitioner was served with the enquiry report dated 02.02.2018 prepared by Sri Arunendra Singh Chauhan, Additional Secretary, Finance, Govt. of Uttarakhand, which report was forwarded to the Secretary of the respondent-department. On the basis of enquiry report dated 19.02.2018, pecuniary loss of Rs. 83,31,000/- was directed to be recovered from the pension of the petitioner by way of 50% monthly deduction. At present, the petitioner is being paid his provisional pension as per office order dated 21.12.2018.

30. As per Rule 351-A of Civil Service Regulations, the Governor reserves to himself the right for withholding or withdrawing a pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Govt., if the pensioner is found in departmental or judicial proceedings to be guilty of grave misconduct, or to have caused pecuniary loss to the Govt. by misconduct or negligence, during his service.

31. The contention of learned Counsel for the petitioner that the order directing withholding of petitioner’s pension is contrary to Rule 351-A of Civil Service Regulations, has no legs to stand.

32. The Tribunal has noted the main grounds taken by the petitioner in his claim petition above. Petitioner has admitted that he has sanctioned the amount as Drawing and Disbursing Officer. The facts of Mata Prasad Mishra vs. State of U.P. and others, 1994 (4) AWC 3600, are therefore, clearly distinguishable from the facts of present case.

33. The provisions of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (for short, ‘Rules of 2003’) have been adhered

to by the enquiry officer and respondent-department while directing 50 % deduction from the monthly pension of the petitioner, for causing pecuniary loss to the Govt.

34. Recovery from pay of the whole or part of any pecuniary loss, caused to Govt. by negligence or breach of order is a minor penalty under the Rules of 2003, for which proper procedure under Rule 10 of the Rules of 2003 has been followed.

35. For better appreciation, Rule 10 of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 is reproduced herein below, for convenience:

**“10. Procedure for imposing minor penalties-** (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule-3.

(2) The Government Servant shall be informed of the substance of the imputations against him and be called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated to the concerned Government Servant.

36. Equivalence to the ratio of decision rendered by Hon’ble Allahabad High Court in Santosh vs. Kanpur Electricity Supply Company Limited and others, 2018 3 AWC 2942 Allahabad is, therefore, not possible to be given to the petitioner in the present case. Every case has to be decided on its own merits and when the facts are distinguishable, the Court or Tribunal is not required to apply a ruling to different set of facts. Other rulings, as supplied by learned Counsel for the petitioner, are also not found applicable to the facts of present claim petition.

37. The petitioner’s fault, in a nutshell, is that the payment was released under head no. 12, which was a subject matter of budgetary

head no. 3, which is used for the 'Council of Ministers'. The petitioner did not obtain any permission (in the form of 'appropriation') for the same. Had any permission been sought, probably, the same would not have been granted and the petitioner would have been saved from ignominy, which he is facing at present. The petitioner might not have any intention to commit a wrong, still, the fact remains that he has not properly discharged his duties as Drawing and Disbursing Officer.

### **INFERENCE & ORDER**

38. The nature of charge was such that the same did not require production of oral evidence. When oral evidence was not produced, there was no question of giving any opportunity to the petitioner to cross-examine those witnesses. Applicability of rulings depends on case to case. A ruling cannot be made applicable to each and every situation. The report of inquiry officer has appropriately been dealt with by the Disciplinary Authority. The Tribunal does not find any illegality in the same. No interference is called for in the order dated 21.12.2018 (Annexure: A12).

39. But, the petitioner has been able to make out a case for interference in the order dated 19.08.2019 (Annexure: A13), which has been issued by respondent no. 3, Chief Medical Officer, Udham Singh Nagar. There appears to be no provision for recovery of loss caused to the Govt. from the provisional pension, although there is provision for realizing the loss caused to the Govt. from the pension of a retired Govt. servant. *Vide* office order dated 19.08.2019, his provisional pension was sanctioned for one month. His pension matter is pending consideration in the office of Director General, Medical Health, therefore, deduction of 50% from the provisional pension of the petitioner every month, cannot sustain in the eye of law. Interference is called for in the same.

40. Order dated 19.08.2019 (Annexure: A13) is therefore, set aside. Respondents are directed to revisit this aspect whether any

deduction can be made from the provisional pension of a delinquent officer or not. They are, accordingly, directed to pass a fresh order on the same, in accordance with law. The pension matter of the petitioner may also be finalized as quickly as possible.

41. Claim petition is, accordingly, disposed of. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: 24<sup>th</sup> May, 2022*  
*DEHRADUN*  
*VM/RS*