

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

Claim Petition No. 3/N.B./S.B./2013

Prahalad Ram, son of Late Shri Kishan Ram, resident of Ward No. 3, Gandhi Nagar, Gadarpur, District Udham Singh Nagar.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Revenue, Civil Secretariat, Dehradun.
2. The Secretary, Revenue, Civil Secretariat, Dehradun, Uttarakhand.
3. The Chairman, Board of Revenue, Dehradun, Uttarakhand.
4. The Commissioner, Kumaon Region, Nainital
5. The District Magistrate/Collector, Udham Singh Nagar, Uttarakhand.

..... Respondents

Coram: **Hon'ble Justice J. C. S. Rawat**

..... **Chairman**

&

Hon'ble U. D. Chaube

..... **Member (A)**

Present: Sri Puran Singh Rawat, Advocate for the petitioner.
Sri V. P. Devrani, A.P.O. for the respondents.

JUDGMENT

DATE: - **22-01-2014**

Justice J.C.S. Rawat (Oral)

This claim petition has been filed by the petitioner for seeking the following relief:-

“In view of the facts and circumstances mentioned in paragraph no. 4 of the claim petition, the applicant most respectfully prays that this Hon’ble Tribunal may graciously be pleased to:

1. To quash the impugned orders dated 29-9-2011 by which penalty of imposing penalty of one increment having cumulative effect was to be ordered and the same to be entered in his service records, dated 30-5-2012 by which the order of imposing penalty of increment was set aside however one factual entry to be maintained in the service record and order dated 9-10-2012, dated 20-2-2013 maintained the penalty imposed by the appellate authority by which one factual adverse entry has been made in the service book of the petitioner without any cogent reasons. (Copies of the impugned orders are annexed along with petition and part of compilation 1 of the Petition).

2. Any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

3. To award the cost of the petition in favour of the petitioner and against the opposite parties.”

2. The petitioner has alleged in his claim petition that the respondents had alleged against him that he entered wrong entry in the revenue records while he was posted as Patwari in the year 1999 at Bazpur Tehsil, District Udham Singh Nagar. A preliminary enquiry was conducted by the Sub Divisional Officer and he found him guilty of manipulating and recording the frivolous and fictitious entries in the revenue records. After receipt of the said enquiry, the District Magistrate initiated the regular departmental enquiry against him and framed charges against him. The charges are as under:-

“01— ग्राम नमूना, तहसील बाजपुर के खाता सं० 197 पर न्यायालय सहायक कलक्टर प्रथम श्रेणी/अपर उप जिलाधिकारी, काशीपुर के वाद सं० 22/218 (96-97) आदेश दिनांक 20-09-1997 के अन्तर्गत धारा-229 बी खसरा सं० 117/2 मि० रकबा

0-582 हेक्टे0, खसरा सं0 118/1 रकबा 0-358 हेक्टे0 कुल रकबा 0-940 हेक्टे0 भूमि रोशन सिंह, हरी सिंह, पुत्र होरी सिंह का नाम खारिज होकर दलीप सिंह पुत्र गुरुमुख सिंह का नाम इन्द्राज पटवारी खतौनी में दिनांक 09-04-1998 से आप द्वारा तैयार किया गया है। जबकि यह इन्द्राज नामान्तरण बही में नहीं है। ऐसा प्रतीत होता है कि आप द्वारा यह अमलदरामद फर्जी किया गया है। आपके द्वारा दिनांक 09-04-1998 को जो फर्जी इन्द्राज बिना अमलदरामद परवाने के किया गया है वह पूर्व पटवारी जगदीश चन्द्र पाण्डे की मृत्यु होने के बाद किया गया प्रतीत होता है।

02- बिना आदेश व परवाना अमलदरामद के बुक्सा जनजाति की भूमि को वर्ग-2 से दीगर जाति के व्यक्ति के नाम वर्ग-2 उसी वर्ग में दर्ज किया गया प्रतीत होता है।

03- खतौनी वर्ष 1402 फसली से 1407 फसली के ग्राम नमूना के खाता सं0 197 जो वाद सं0 22/218 दिनांक 09-04-1998 इन्द्राज किया गया है वह इन्द्राज श्री जगदीश चन्द्र पाण्डे, पटवारी की मृत्यु के बाद आपके द्वारा ही किया गया प्रतीत होता है।”

After receipt of the charge-sheet, the petitioner submitted his reply to the said charges. He alleged in his reply that he had not made the entries in the revenue records. The said entries were recorded on 09-04-1998 and the petitioner was not posted as Patwari at that time in the said Halka. Mr. Jagdish Chandra Pandey was the Patwari of the said Halka on the said date. After death of Mr. Jagdish Chandra Pandey, the petitioner took over the charges of the said Halka on 25-11-1999 and the entries were made prior to his joining. As such he is not guilty. After conclusion of the enquiry, the Enquiry Officer, Sub Divisional Officer, held him guilty and the enquiry report was submitted to the Collector, Udham Singh Nagar. The Collector, Udham Singh Nagar issued a show-cause notice and thereafter he punished the petitioner by way of withholding one increment with cumulative effect. The petitioner being aggrieved by the said order preferred appeal and revision before the Higher Authorities. The appellate authority partly allowed the appeal and quashed the punishment awarded of the petitioner for withholding one increment with cumulative effect and converted the said

punishment by way of adverse entry. Being aggrieved by the said orders, the petitioner has preferred this claim petition before this Tribunal.

3. The respondents have filed the written statement and alleged that findings of the Enquiry Officer are correct and it reflects the case of the respondents. It was further alleged that the petitioner manipulated the frivolous and fictitious entries in the revenue records and he was correctly punished and ultimately the respondents have prayed that the petition of the petitioner be dismissed.

4. We have heard the learned counsel for the petitioner Sri Puran Singh Rawat and Mr. V.P. Devrani, learned A.P.O. and perused the record.

5. The petitioner's contention is that the said entry was made by Sri Jagdish Chandra Pandey who was the Patwari on 09-04-1998. At that time he was not the Patwari of that Halka. He took over the charge on 25-11-1999. Thus, it is apparent that entry was made in the revenue records after taking over the charge of the said Halka. The contention of the respondents is that the entries were made on the back date showing on 09-04-1998 by the petitioner. The main controversy revolve only upto the above extent. We are aware that in the claim petition, when matter comes before this Tribunal for appreciation of the evidence, the Tribunal has the power of the judicial review regarding the mode and manner of the enquiry. The Court has further power to set-aside the findings recorded by the Enquiry Officer only if the findings are perverse. Perversity has been defined if the case is of no evidence. The Enquiry Officer concluded the inquiry accordingly. We have examined the findings and the evidence recorded by the Enquiry Officer.

6. The learned counsel for the petitioner contended that the Enquiry Officer has himself perused all the records and thereafter he has recorded the

findings of the guilt against the delinquent. The Enquiry Officer has himself acted like the witness in the case and he had not summoned any witnesses to support the contentions of the State. He has further contended that perusal of enquiry report further reveals that the Enquiry Officer himself enquired into the matter like as a prosecutor.

7. The learned counsel Mr. V.P. Devrani appearing for the State refuted the contentions.

8. After summoning the Enquiry file from the Department, we directed the parties to show as to whether any of the witness to prove the factum of the charges has been adduced or not? After going through the records, learned A.P.O. Mr. V.P. Devrani and pairakar Shri Gopal Ram Arya, Registrar Kanoongo could not demonstrate that any of the witnesses' statement had been recorded to prove the documents which have been adduced before the Enquiry Officer. As a matter of fact, the Enquiry Office should have summoned the Tehsildar or the Registrar Kanoongo to prove the record regarding the issuance or non-issuance of R-6 as well as other facts which have been incorporated in the enquiry report. Document could not speak itself without being proved by the oral evidence before the Enquiry Officer. We are aware that rules of Indian Evidence Act are not applicable during the course of enquiry. However, general principle of evidence is applicable. At least one of the witness either Tehsildar or the Registrar Kanoongo should have been examined. It is revealed from the enquiry report that the Enquiry Officer himself searched the record and he himself proved the facts as a witness. A reasonable man from the perusal of the documentary evidence cannot conclude that the petitioner was guilty. As a matter of fact it is case of no evidence against the petitioner. Thus, the findings are perverse. The evidence already recorded in the preliminary enquiry cannot be read against the petitioner in the regular enquiry.

9. In view of the above discussion, we find that the findings recorded by the Enquiry Officer are not in accordance with law or are perverse. In view of the above the proceedings after framing of the charge are non est. The impugned orders are liable to be set aside. However, it is made clear that the Collector, if deemed proper, may further proceed with the enquiry himself or may appoint the Enquiry Officer. The Enquiry Officer will enquire and proceed further with the enquiry about the charge already framed.

10. The impugned orders dated 29-9-2011 passed by District Magistrate, Udham Singh Nagar, 30-5-2012 passed by Commissioner, Kumaon Region, Nainital, 9-10-2012 passed by the Hon'ble Chairman, Board of Revenue, Uttarakhand and 20-2-2013 communication memo of the Secretary, Revenue Department, Utarakhand are set aside. The Collector will be at liberty to hold a fresh enquiry from the stage, the Enquiry Officer proceeded with the enquiry after serving the charges to the petitioner after giving him the proper opportunity and it is further directed that the Collector if deems it proper to hold the enquiry it should be completed expeditiously preferably within a period of six months from the production of a copy of this order.

The original record be returned to the learned A.P.O. for transmitting to the Department.

The petition is disposed off accordingly. No order as to cost.

Sd/-

U. D. Chaube
Member (A)

Sd/-

Justice J.C.S. Rawat
Chairman

Date: 22-01-2014

B.K.