

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 70/2012

Suresh Pal Singh, S/o Late Sri Shankar Singh, R/o P-III/40,
Yamuna Colony, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Irrigation Department, Civil Secretariat, Subhash Road, Dehradun,
2. Chief Engineer & HOD, Irrigation Department, Yamuna Colony, Dehradun

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: MARCH 27, 2014

DELIVERED BY SRI V.K. MAHESHWARI

Petitioner has challenged the order of penalty dated 15.10.2011 passed by the Chief Engineer/HOD, Department of Irrigation, Govt. of Uttarakhand as well as the orders dated 24.09.2012 and dated 7.6.2013 passed on departmental appeal by the Secretary Govt. of Uttarakhand, Dehradun.

2. The facts as have been stated in the petition are that the petitioner had joined the Irrigation Department on the post of Junior Engineer. The petitioner was posted at Tunnel Power House Division-II Yamuna Colony, Dehradun. He was transferred to the Office of Executive Engineer, Inspection and Planning Division, Pithoragarh vide order dated 28.6.2003. The petitioner had requested for permission to continue till 30.6.2003 so that his salary may be drawn from Dehradun itself, but the request was declined. Thereafter, the Superintending Engineer recommended for the cancellation of transfer of the petitioner on the ground of its having adverse effect on the Govt. work, which was under the supervision of the petitioner. However, the transfer order was modified and the petitioner was posted to the office of Executive Engineer, Dak Pathar Basti & Sanchar Khand, Dakpathar Distt. Dehradun. The petitioner was relieved on 28.7.2003 for joining at Dakpathar. The petitioner after availing part of the joining time submitted his joining report at new station of posting on 1.8.2003 but he was not permitted to join.

3. That the petitioner was shocked to know that he was placed under suspension retrospectively i.e. w.e.f. 31.7.2003 on the ground that petitioner has violated the provisions of Govt. Servants Conducts Rules, 1956 by not handing over the charge to the new incumbent in compliance of his transfer order. It was further mentioned that the petitioner has also refused to accept the order sent by registered post but the true fact is that the said transfer order was never received by the petitioner. With the suspension of the petitioner, departmental proceedings were also initiated. However, the petitioner had challenged the suspension order before the Hon'ble High Court of Uttarakhand by way of writ petition no. (SS) 106 of 2003 and the Hon'ble High Court

was pleased to stay the operation of the suspension order. The Chief Engineer got annoyed by the stay of the suspension order and attached the petitioner to Kumaun Sichain Khand, Almora.

4. After the illegal departmental enquiry, the petitioner was dismissed from service vide order dated 20.8.2004 passed by the Chief Engineer/Head of the Department. The petitioner had also challenged the order of dismissal in the same writ petition as mentioned above. However, the writ petition was dismissed. The petitioner had preferred special appeal no. 183 of 2007 against that order of dismissal of the writ petition. The special appeal of the petitioner was allowed and the order of dismissal of the petitioner from the service was set aside and the petitioner was treated to be in service but under suspension. The Hon'ble Court had further directed the respondents to supply the copy of the charge sheet and a direction was also issued to the petitioner to file the reply to the charge sheet within a period of one month. The petitioner submitted his reply on 2.11.2010 mentioning that the documents relied by the department are forged and also requested to summon the witnesses for cross-examination. The petitioner has also submitted the supplementary reply.

5. The enquiry officer, Shri Ranveer Singh Chauhan submitted an enquiry report on 6.4.2011 holding the petitioner guilty. The petitioner submitted representation against the enquiry report, but without considering the representation of the petitioner and without application of mind, the petitioner was dismissed from the service vide order dated 15.10.2011, which is under challenge in this claim petition.

6. It is further stated that the petitioner had again approached the Hon'ble High Court by way of writ petition no.

1491 (SS) of 2011, which was dismissed on 8.11.2011 on the ground of availability of alternative remedy. Thereafter, the petitioner preferred a departmental appeal to the appellate authority i.e. Principal Secretary, Irrigation, but the said appeal was not decided. Thereafter, the petitioner had preferred the present claim petition. On direction from the Tribunal the departmental appeal was decided in a cursory manner without considering the points raised by the petitioner.

7. Therefore, the petitioner has challenged the impugned order of punishment and appellate order in this petition on the following grounds:

- i. That the disciplinary authority had appointed the enquiry officer before issuing the charge sheet to the petitioner which is illegal in the eye of law,
- ii. That the enquiry officer was already prejudiced with the petitioner and had made up his mind even before the reply of the petitioner,
- iii. That the name of the enquiry officer or the date, time and place of the enquiry was never communicated to the petitioner,
- iv. That the copy of the relevant documents were not supplied to the petitioner,
- v. That the opportunity of hearing was not provided to the petitioner,
- vi. That the appellate authority has disposed of the appeal without application of mind,
- vii. That the charges against the petitioner are vague in nature,
- viii. That the petitioner was gazetted officer and was within the purview of Public Service Commission, but the

Public Service Commission was not consulted before passing the impugned order of punishment,

- ix. That the petitioner had been the victim of the personal grudge and annoyance of, Sri Sagar Chand, the then Chief Engineer & HOD Sri A.K.Rathi, Superintending Engineer and Sri M.C.Gupta, Executive Engineer and Km Manju, Assistant Engineer.

8. The petition has been opposed on behalf of the respondents and it has been stated in the counter affidavit that the petitioner along with other Junior Engineers were transferred in the chain of annual transfers which is a routine annual exercise. The concerned Executive Engineers were directed to relieve the transferred junior engineers by 7.7.2003.

9. That the petitioner was rightly relieved on 28.7.2003 and it is wrong to say that he was entitled to avail 10 days joining time. In case of transfer within the district, the employee can avail only the journey time and no joining time is admissible.

10. That the petitioner had violated the internal discipline by communicating directly to the Chief Engineer and further by giving threat of hunger strike. Consequently the petitioner was put under suspension and was attached with Irrigation Division, Almora. The suspension order was stayed by the Hon'ble High Court vide its order dated 17.9.2003 and thereafter, the petitioner was expected to join at Almora but he illegally tried to join at Dakpathar. It is further stated that the enquiry has properly been conducted and two different charge sheets were framed. Sufficient time for making defence was afforded to the petitioner. It is further stated that in compliance of the judgment dated 4.10.2010 passed by the Hon'ble High Court, the enquiry

officer was appointed again and enquiry officer had conducted the enquiry in accordance with the settled principles and in accordance with the principles of natural justice. There is no illegality or irregularity in process of enquiry. After considering every aspect and with proper application of mind, the impugned order has been passed. The petitioner is habitual of indiscipline and misconduct. He is adamant in nature and used to work arbitrarily. On enquiry, his integrity and conduct was found doubtful, so it was not found in the interest of the department to keep the petitioner in service.

11. It is further stated that there was no need for consultation with the Public Service Commission while passing the impugned order. The appellate authority has decided the appeal after a direction by this Tribunal in which there is no illegality. Thus, the petition is devoid of merit and is liable to be dismissed.

12. A rejoinder affidavit has also been submitted on behalf of the petitioner and the facts stated in the petition have been reiterated.

13. Numbers of documents have also been filed on behalf of the parties. The original enquiry record has also been submitted by the respondents.

14. We have heard both the parties at length and perused the material on record and the enquiry record carefully.

15. First of all, it has been contended on behalf of the petitioner that Public service Commission has not been consulted before passing the impugned order of punishment, which was a condition precedent and in absence of such consultation, the impugned order cannot be sustained. In this contest the

petitioner has stated in his petition that gazetted rank was made available to him vide office order dated 24.6.1999 and after attaining the gazetted rank the consultation of Public service commission was mandatory. The burden of proving this fact was upon the petitioner himself. But the petitioner miserably failed to adduce any evidence by which we could be able to infer that consultation of Public Service commission was necessary before passing the impugned order. In absence of any material on record, we fail to uphold the contention of the petitioner. On the other hand, it has been contended on behalf of the respondents that there was no need for any consultation with the Public Service Commission. In absence of any reliable material on record, we do not find any force in the contention of the petitioner.

16. The next contention of the petitioner is that before appointing the enquiry officer, it was mandatory for the disciplinary authority to apply his mind as to whether the appointment of the enquiry officer is in fact required or not, but the disciplinary authority has acted mechanically and without application of mind had appointed the enquiry officer. The H.O.D was already prejudiced with the petitioner. The respondents have rebutted this contention and argued that the HOD/ Disciplinary Authority had acted judiciously and it is not proper to allege that disciplinary authority had acted arbitrarily, mechanically or was prejudiced in any manner. In light of the rival contentions of the parties, we have gone through the record of the enquiry which have been submitted by the respondents and find that the disciplinary authority has conducted the whole proceedings in accordance with the established procedure of the enquiry and there is nothing on record by which it could be inferred that the disciplinary authority had acted mechanically or arbitrarily. We could not find any ground to hold that the H.O.D

in any manner was prejudiced with the petitioner. It will not be out of place to mention here that the charge sheet was served upon the petitioner in compliance of the order of the Hon'ble High Court and the petitioner had submitted his reply to the HOD on 2.11.2010. Thereafter, he appointed the enquiry officer vide order dated 15.12.2010 (Copy Annexure A-14). There appears to be no irregularity in the appointment of the enquiry officer. We are not convinced with the contention of the petitioner that the appointment has been made without application of mind or without considering the material on record. Under above circumstances, we do not find any deficiency, irregularity or illegality in the appointment of the enquiry officer or in any action of the Chief Engineer/HOD in the matter of appointment of the enquiry officer, thus there appears no illegality or irregularity in the proceeding of enquiry on this count.

17. It has further been contended on behalf of the petitioner that the enquiry officer did not conduct the enquiry properly and sufficient time of making defense was not afforded to the petitioner. Even the date, time and place of the enquiry was not intimated to the petitioner. In this contest, it is also stated that the petitioner had requested for the cross-examination of several witnesses, but the enquiry officer did not summon those witnesses and thus the petitioner could not cross-examine them. Had the opportunity of cross-examination been afforded to the petitioner, he could have been able to prove his innocence. On the other hand, the contention of the petitioner has been countered by the respondents. In the light of the contention of the petitioner, we have carefully gone through the record and have found that sufficient opportunity was provided to the petitioner for cross-examination of the witnesses as well as for making defense, after intimating him the date, time and place of the

enquiry. It is also pertinent to mention here that petitioner has participated in the enquiry. It has also not been mentioned as to who were those witnesses which were not permitted to be cross-examined. Under the above set of circumstances, there are no ground to accept the contention that sufficient opportunity of cross-examination of the witnesses or making defense was not provided to the petitioner, so we do not find any force in the contention of the petitioner.

18. It has further been contended that the petitioner is the victim of annoyance and conspiracy of the some of the officers' in the department, which have been named by the petitioner. The petitioner has raised this contention in para 4.24 of the petition which reads as under:

“That the petitioner has been made sacrificial victim of personal grudge and annoyance of the then Chief Engineer and HOD, Sri Sagar Chand, Superintending Engineer, Sri A.K.Rathi, Executive Engineer, Sri M.C. Gupta and Assistant Engineer, Km. Manju due to denied of the petitioner from hands in gloves with them. Although these facts can be established from the record available in the department, but now the petitioner before this Hon'ble Tribunal prays that in case the Hon'ble Tribunal feels that requirements of these persons to be added as respondent as necessary parties, then the petitioner craves leave to add them as party as an when required.”

Though the above averment has been made in the petition but no evidence has been adduced on behalf of the petitioner by which it could be inferred that the petitioner has been victimized because of some annoyance or displeasure of other officers of the department. It's easy to allege any fact, but unless such fact

is proved, the party is not entitled for taking any benefit on the basis of that allegation. As the petitioner has totally failed to bring any material on record regarding this allegation, so we are unable to hold that the petitioner was victimized by the department or any of the officers.

19. It has also been contended on behalf of the petitioner that the disciplinary authority deviated from the report of the enquiry officer and in that case, it was necessary to assign reasons and afford opportunity to the petitioner, which has not been done in the present case therefore, the petitioner cannot be held liable for the charges. In support of this contention, the learned counsel for the petitioner relies upon the principle laid down by the Hon'ble Supreme Court in Union of India and others Vs. B.V. Gopinath, 2013 (139) FLR, 831. We have given considerable thought to the contention raised by the learned counsel for the petitioner. In fact, we have already said that sufficient opportunity of making defense of the charges levelled against the petitioner has been provided to him and despite of sincere efforts, we could not find any deficiency in the departmental proceedings. We have also carefully gone through the case referred on behalf of the petitioner. The petitioner is not entitled to take any benefit on the basis of the findings of the Hon'ble Apex Court in the above mentioned case as the facts are totally different .In that case, the charge sheet was approved by an authority which was not competent of doing so, but the facts of the case in hand is entirely different. In the present case, charges have been properly drawn and charge sheet has been served by a competent authority. Copy of the charge sheet has been supplied to the petitioner by the order of the Hon'ble High Court, therefore, the proposition of law laid down by the Hon'ble Supreme Court in the abovementioned case, is not

applicable. Therefore, we do not find any force in the submission of the learned counsel for the petitioner.

20. It has also been contended on behalf of the petitioner that appellate court has not decided the departmental appeal properly and the judgment passed on the departmental appeal is erroneous and is not sustainable in the eye of law and therefore, the impugned order of punishment cannot be uphold. In this regard, it is important to mention that the following directions were issued by this Tribunal vide order dated 2.5.2013.

“We direct that the competent authority will dispose of the appeal on merit within a month from the date of receipt of the order. Let order be communicated to the Secretary by the Court also and the petitioner will also take the copy of the order and will present the same with along with an application before the appellate authority i.e. Principal Secretary/ Secretary, Irrigation Department. Meanwhile the petition shall remain pending; as soon as the appeal is disposed of, the petitioner will intimate to this Court by way of filing the copy of appellate order. The appellate authority shall also ensure that after disposal of the appeal, copy of the order may be sent to this Court.”

21. In pursuance of this order, the departmental appeal was disposed of vide order dated 7.6.2013. We have carefully gone through the appellate order. The appellate authority, after analyzing the material available on record, had concluded as follow:

“उपरोक्त विश्लेषण से यह पूर्णतया सपष्ट है कि श्री सिंह के विरुद्ध लगाये गये आरोप पूर्णतः सिद्ध होते हैं तथा यह इंगित करते है कि वह एक उदण्ड प्रवृत्ति क अनुशासनहीन कर्मचारी हैं और सरकारी सेवा में बनाये रखने योग्य नही हैं। दण्डन अधिकारी द्वारा पारित ओदश दिनांक 15.10.2011 विधिसम्मत है एवं इसमें किसी प्रकार के हस्तक्षेप की आवश्यकता नही है। श्री सिंह द्वारा योजित अपील दिनांक

14.11.2011 उक्तानुसार निस्तारित करते हुए बलहीन होने के कारण निरस्त की जाती है।'

The careful perusal of the appellate order reveals that the appellate authority has considered the material on record and thereafter passed a detailed and reasoned order. We do not find any illegality in the appellate order. So, no benefit can be extended to the petitioner on the ground of any alleged illegality in the appellate order. It is also important to mention that no specific illegality has been pointed out on behalf of the petitioner.

22. The last point is as to whether the penalty imposed upon the petitioner is excessive or is not commensurate with the delinquency of the petitioner. In this regard, we have gone through the charges levelled against the petitioner and considering the charges, the penalty does not seem to be excessive. The petitioner is not entitled any benefit on this ground.

23. On the basis of the above discussion, we do not find any force in the petition, and it is therefore, liable to be dismissed in toto, but without any order as to costs.

ORDER

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

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: MARCH 27, 2014
DEHRADUN

KNP