

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**Claim Petition No. 35/DB/2023**

Dayal Singh, s/o late Sri Dimar Singh, Beldar, r/o Village- Serki, PO-  
Maldevta, District Dehradun.

.....Petitioner

versus

1. Secretary, Public Works Department, Govt. of Uttarakhand, Dehradun.
2. The Chief Engineer (HQ), Public Works Department, Yamuna Colony, Dehradun.
3. The Superintending Engineer, 9<sup>th</sup> Circle, Public Works Department, Yamuna Colony, Dehradun.
4. The Executive Engineer, Asthai Khand, Public Works Department, Rajiv Nagar, Rishikesh, Near Railway Station, Rishikesh

..... Respondents

Present: Sri Uttam Singh, Advocate, for the petitioner  
Sri V.P. Devrani, Advocate, for respondents

**Judgement**

**Dated: 21<sup>st</sup> February, 2023**

**Justice U.C. Dhyani (Oral)**

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

“(i) Issue a writ, order, or direction in the nature of certiorari and quashing the order dated 23-11-2022 passed by the respondent No. 4

(Annexure No. 1) and reinstate the petitioner in service with all the consequential benefits.

(ii) Direct the respondents to release the salary from 25.11.2021 (i.e. the date petitioner reported for duties) onwards.

(iii) To pass any other suitable order, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

(iv) Award the cost of the petition to the petitioner.”

2. At the very outset, learned A.P.O. objected to the maintainability of present claim petition, *inter alia*, on the ground that the claim petition is pre-mature, inasmuch as the petitioner has not exhausted his remedy of filing departmental appeal. The petitioner ought to have filed the departmental appeal before the appropriate authority and had his prayer been rejected, only then he should have filed the claim petition before the Tribunal.

3. Learned Counsel for the petitioner fairly conceded that the departmental appeal has not been filed by the petitioner.

4. It will be in the fitness of things, if the petitioner is granted liberty to file the departmental appeal against the impugned order dated 23.11.2022 (Annexure: A1) for redressal of his grievances.

5. The Tribunal, therefore, finds force in the submission of learned A.P.O. that the petitioner should have availed the remedy of departmental appeal before coming to this Tribunal.

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6. Learned Counsel for the petitioner drew attention of this Bench towards paras no. 4 to 8 of the judgement rendered by this Tribunal in claim petition no. 40/DB/2016, Smt. Kiran Bahuguna vs. State of Uttarakhand and others, decided on 17.05.2018, which (paras) are reproduced herein below for convenience:

“.....

4. Admittedly, impugned order was passed without taking recourse to departmental proceedings. Services of the petitioner were dismissed

on the ground that she continuously remained absent for five years, without intimation. The question which arises for consideration of this Court is, whether departmental proceedings in such case were necessary or not?

5. Termination order, in the instant case, was admittedly issued under Fundamental Rule 18 (Financial Hand Book-Volume-2 Part II-IV). The said rule reads as under:-

“18. Unless the Government, in view of the special circumstances of the case, otherwise, determine, after five years’ continuous absence from duty elsewhere than on foreign service in India, whether with or without leave, no Government servant shall be granted leave of any kind. Absence beyond five years will attract the provisions of rules relating to disciplinary proceedings.”

6. Ld. Counsel for the petitioner has contended that no departmental inquiry was conducted against the petitioner as prescribed under Fundamental Rule 18. It has further been submitted by the petitioner that “termination” is a major punishment and a proper inquiry should have been conducted under “The Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003” as amended in 2010. The petitioner was not issued any charge sheet and no opportunity of hearing was given to the petitioner and, therefore, termination order cannot sustain in the eye of law.

7. It is clear that departmental inquiry is sine qua non for taking action under Fundamental Rule 18 (Financial Hand Book-Volume-2 Part II-IV), which has been quoted in Para 5 of this judgment hereinabove. Departmental proceedings should have been conducted after the amendment in Rule-18 of Financial Hand Book was incorporated. Such amendment came into force in 1989. Secretary to the Government in Finance Department, has also clarified, while issuing Office Memorandum on 25.07.2005, that even if, an employee remains absent from duty continuously for five years, his/ her services are to be dispensed with, but only after adopting due procedure. It further clarified that services of such an employee may be terminated only after serving charge sheet to him/ her, after giving him/ her due opportunity of hearing.

8. Further, documents have been filed to show that the petitioner was never served with the charge sheet. Even if it be conceded for the sake of arguments that the charge sheet was served upon her, admittedly, no further proceedings ever took place. Even a novice, in service jurisprudence, knows that after service of charge sheet, reply is to be sought. Thereafter, appointing officer himself may hold inquiry or he may appoint an inquiry officer. Evidence, against him, is adduced by the department, followed by evidence, if any, in defence. Inquiry report is filed, followed by show cause notice and then only termination order could be passed. In the instant case, nothing has been done.

.....”

7. Learned Counsel for the petitioner, therefore, prayed that a direction be given to the appellate authority to decide the departmental

appeal of the petitioner in the light of judgement rendered by this Tribunal in claim petition no. 40/DB/2016.

8. In reply, learned A.P.O. submitted that there is interim stay on order dated 17.05.2018 passed in claim petition no. 40/DB/2016 by Hon'ble High Court of Uttarakhand *vide* order dated 21.02.2019 in CLMA No. 2183/2019 in WPSB No. 73/2019.

9. Instead of directing the appellate authority to decide the departmental appeal (to be filed by the petitioner) in the light of the judgement dated 17.05.2018, passed in claim petition no. 40/DB/2016, liberty is granted to the petitioner to place all the relevant laws before the appellate authority in support of his appeal.

10. The claim petition thus stands disposed of, at the admission stage. No order as to costs.

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

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

*DATE: 21<sup>st</sup> February, 2023*

*DEHRADUN*

*RS*