

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

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.120/DB/2023

Smt. Kusumlata Mehar, aged about 36 years, Government Supervisor, Office of Registrar, Cooperative Societies, Uttarakhand at Dehradun..

.....Petitioner

vs.

1. State of Uttarakhand, through Secretary, Cooperative Societies, Secretariat, Subhash Road, Dehradun.
2. Registrar, Cooperative Societies, Miyawala, Uttarakhand, at Dehradun.
3. District Assistant Registrar, Cooperative Societies, Uttarakhand at Vikasbhawan, Survey Chowk, Dehradun.
4. Member, Additional District Cooperative Officer, Vikasbhawan, Survey Chowk, Dehradun.
5. Deputy General Manager, PACS, District Cooperative Bank Limited Kutchery, Dehradun.
6. Deputy Director, Cooperative Societies, Garhwal Mandal, Pauri
7. Additional District Cooperative Officer (Banking), Vikasbhawan, Survey Chowk, Dehradun.
8. Additional District Cooperative Officer, Tehsil Kalsi/Vikasnagar, Vikasbhawan, Survey Chowk, Dehradun.
9. Additional District Cooperative Officer, Tehsil Chakrata, Tyuni, Vikasbhawan, Survey Chowk, Dehradun
10. Assistant Development Officer (Cooperative), Development Division, Vikasnagar, Block Vikasnagar, District Dehradun.
11. Kanishth Shaskey Prabandhak, Sahaspur, District Cooperative Bank Limited, Dehradun.
12. Clerk/Cashier, District Cooperative Bank, Branch Vikasnagar.

.....Respondents

Present: Ms. Anupama Gautam & Sri Arjun Singh Bisht, Advocates,
for the petitioner. (online)
Sri V.P.Devrani, A.P.O., for Respondents.

JUDGMENT

DATED: OCTOBER 01, 2024

Justice U.C.Dhyani (Oral)

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

“That the Charge sheet, Enquiry report, punishment order No.562-68/Stha0/Bahaal/2021-22 dated 5.5.2021 passed by the respondent No.2, consequentially quashing Order No.1557- 60/Stha0/Nistaran/2023-24 dated 17.5.2023 by the respondent no.2 is set aside to the extent of punishment of permanent stoppage of two increments, Adverse Entry in the ACR 2020-21, Direction to not appoint the petitioner in any cooperative Society and non admissibility of salary in the suspension period.

b. Full cost of the petition.

c. Any other relief to which the petitioner is found entitled may very kindly be granted.”

2. Petitioner was appointed as Government Supervisor in Cooperative Societies *vide* order dated 22.11.2012 of Respondent No.2. She was given appointment in Haridwar. Subsequently her services were made permanent in the year 2014. In the seniority list of 2015, she was placed at Sl. No. 280. While the petitioner was posted in Vikasnagar in 2018, she was given extra charge of Secretary, *Kisan Sehkari Samiti, Vikasnagar* on 31.01.2018. In this way, she was discharging dual duties as Govt. Supervisor and Secretary, *Kisan Sehkari Samiti, Vikasnagar*.

2.1 While she was posted as Secretary, *Kisan Sehkari Samiti, Vikasnagar*, she pointed out misappropriation of Rs.88,75,000/- done by Smt.

Bharti Devi, the then Counter In-charge. After discovering financial misappropriation, petitioner immediately informed Respondent No.10 and Respondent No.3. Smt. Bharti Devi was issued recovery notice. She admitted her misconduct and agreed to deposit the entire amount within three months.

2.2 Although the embezzlement was done by Smt. Bharti Devi, but the petitioner was held vicariously liable for the same. The petitioner was eventually suspended *vide* order dated 11.06.2020. A charge sheet was issued to the petitioner by Respondents No. 3, 4 & 5. Neither of them is the appointing authority of the petitioner. She was issued suspension order on 11.06.2020. Her suspension continued for more than three months. Charge sheet was issued to her on 22.03.2021 and show cause notice was issued on 31.03.2021. Both were suitably replied to by the petitioner.

2.3 Respondent had already made up their mind to punish the petitioner. As such Respondent No.2 passed the punishment order without looking into her reply dated 09.04.2021. By virtue of punishment order, the suspension order stood revoked. Against the punishment order dated 05.05.2021 (Annexure: 2), petitioner filed review petition to Respondent No.2 on 19.07.2021, but the same was also rejected. Then the petitioner filed an appeal on 25.09.2021 to Respondent No.1, but the Respondent No.1, instead of hearing the appeal himself, sent the same for hearing to Respondent No.2, who is the appointing authority/ punishing authority of the petitioner. Respondent No.2 passed a non-speaking order on 17.05.2023 and retained the punishment order as it is.

3. Order dated 17.05.2023, issued by the Registrar, Cooperative Societies (Annexure: A 1) is in the teeth of present petition.

4. Earlier order dated 05.05.2021(Annexure: 2) is also in the teeth of present claim petition.

5. Petitioner has filed affidavit in support of her claim petition. Relevant documents have also been filed with the claim petition.

6. Claim petition has been contested on behalf of respondents. Sri Suman Kumar, District Assistant Registrar, Co-operative Societies, Dehradun has filed Counter Affidavit on behalf of Respondent No.3. Rejoinder Affidavit has also been filed by the petitioner, reiterating the facts contained in the claim petition.

6.1 It has been mentioned, among other things, in the C.A. filed on behalf of Respondent No.3, that the delinquent petitioner is guilty of negligence in her duties, which led to embezzlement. In para 28 of the C.A., it has been mentioned that charge-sheet was issued after obtaining approval of the competent authority. The petitioner was found negligent in her duties, which led to embezzlement of huge amount of public money. Relevant Documents have been filed in support of the C.A.

7. After hearing Ld. Counsel for the parties and having gone through the documents brought on record, the Tribunal observes the following:

(i) Charge-sheet, in the instant case, was issued by the three members enquiry committee, although it has been stated in the C.A. that the same was done with the approval of the disciplinary authority/punishing authority. In other words, charge-sheet has not been issued by the disciplinary/punishing authority. It has been done by the enquiry committee. The same is in violation of Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) (Amendment) Rules, 2010 (for short, Rules of 2010)

7.1 It may be noted here that the amendment was introduced in the Rules of 2003 only after these Rules came up for interpretation before the Division Bench of the Hon'ble High Court of Uttarakhand in Writ Petition No. 118 (S/B) of 2008, Smt. Lalita Verma Vs. State and another. *Vide* order dated 30.06.2008, the Court laid down three propositions of law, namely-

1. With reference to the first proviso to sub-rule (1) of Rule 4 of Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003, the suspension order must say, record and mention, that the charges against the concerned Government Servant are so serious that in the event of these being

established, ordinarily major penalty would be inflicted. (refer to Para 4 of the aforesaid judgment)

2. By referring to Rule 7 of the aforesaid 2003 Rules in comparison to Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Inquiry Officer should be appointed only after the charge sheet is served upon the delinquent officer and he pleads “not guilty” to the charges. There is no reason or occasion to appoint an Inquiry Officer before the delinquent officer pleads “guilty” or “not guilty” to the charge sheet. (refer to Para 7 of the aforesaid Judgment)

3. The charge sheet should not be signed by the Inquiry Officer. (refer to Para 8 of the aforesaid judgment).”

7.2 Based on the aforesaid direction, the State Government issued a Government Order dated 23.07.2009 indicating that the following procedure would be laid in the Rules of 2003, namely-

1. With reference to the first proviso to sub-rule (1) of Rule 4 of Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003, the suspension order must say, record and mention, that the charges against the concerned Government Servant are so serious that in the event of these being established, ordinarily major penalty would be inflicted. 2. By referring to Rule 7 of the aforesaid 2003 Rules in comparison to Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Inquiry Officer should be appointed only after the charge sheet is served upon the delinquent officer and he pleads “not guilty” to the charges. There is no reason or occasion to appoint an Inquiry Officer before the delinquent officer pleads “guilty” or “not guilty” to the charge sheet. 3. The charge sheet should not be signed by the Inquiry Officer.”

Subsequently, the State Government amended the Rules of 2003 known as ‘the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010’. Original Rule 4(1) and Rule 7 were substituted.

7.3 Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) (Amendment) Rules, 2010 (for short, Rules of 2010), reads as below:

“7. Procedure for imposing major punishment. Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehaviour against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority. Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation: Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub-rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub-rule (8), he will forward the following to the Inquiry Officer, namely-

- (a) A copy of the charge sheet and details of misconduct or misbehaviour;
- (b) A copy of written defence statement, if any submitted by the government servant;
- (c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;
- (d) A copy of statements of evidence referred to in the charge sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to the produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses

mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presiding Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presiding Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer is any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any of such evidence, as provided earlier, and may examine, cross-examine and re-examine him.

(17) This rule shall not apply in the following case i.e. there is no necessity to conduct an inquiry in such cases-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge, or

(b) Where the Disciplinary Authority is satisfied, that for reasons to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry in the manner provided in these rules."

[Emphasis supplied]

7.4 **In this way, the Tribunal observes that there is violation of Rule 7 of the Rules the Uttarakhand Government Servant (Discipline and Appeal) (Amendment) Rules, 2010, while punishing the petitioner for the alleged misconduct.**

7.5 The second point, which has been observed by the Tribunal is that:

(ii) Punishment order was passed by Smt. Vandana Singh, Registrar, Co-operative Societies, Uttarakhand on 05.05.2021 (Annexure: 2).

7.6 Petitioner filed representation/ review application against the same, which was dismissed, again by (Sri Alok Kumar Pandey, who was posted as) Registrar, Co-operative Societies, Uttarakhand, on 17.05.2023. In this way, both the orders have been passed by the same authority, i.e. the Registrar, Co-operative Societies, Uttarakhand.

7.7 Ld. A.P.O. pointed out that since the 'review appeal' was given by the petitioner on 19.07.2021 to the Registrar, Co-operative Societies, Uttarakhand, therefore, the same authority has taken the decision. Ld. A.P.O. further pointed out that the appeal was filed by the petitioner on 25.09.2021 to the Secretary, Co-operative Societies, Government of Uttarakhand, which has not been decided as yet. (Copy of appeal: Annexure- 23 to the claim petition).

7.8 The scheme of adjudication in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as amended in 2010, is as under:

“**Appeal - (1)** Except the orders passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.

(2) The appeal shall be addressed and submitted to the appellate Authority. A Government Servant preferring an appeal shall do so in his own name. The appeal shall contain all material statements and arguments relied upon by the appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language, may be liable to summarily dismissed.

(4) The appeal shall be preferred within 90 days from the date communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.

12. Consideration of Appeals- The Appellate Authority shall pass such order as mentioned in clause (a) to (d) of Rule-13 of these rules, in the appeal as he thinks proper after considering :-

(a) Whether the facts on which the order was based have been established;

(b) Whether the fact established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate.

13. Revision- Notwithstanding anything contained in these rules, the Government may on its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

- (a) confirm, modify or reverse the order passed by such authority, or
- (b) direct that a further inquiry be held in the case, or
- (c) reduce or enhance the penalty imposed by the order, or
- (d) make such other order in the case as it may deem fit.

14. Review - The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has; the effect of changing the nature of the case.”

8. In this way, the appeal shall be decided by the appellate authority, who shall be higher authority to the disciplinary authority. Revision shall be decided by the Government and the review is entertainable by the Governor either on his own motion or on the representation of the concerned Government Servant.

9. In the instant case, the appellate authority has not decided the departmental appeal of the petitioner and the Registrar, Co-operative Societies has not only entertained the review representation, but has also dismissed the same. The same could not have been done in law.

10. The order impugned dated 17.05.2023 (Annexure: 1) calls for interference and is accordingly, set aside.

11. The appellate authority is directed to decide pending appeal of the petitioner, with utmost expedition, without unreasonable delay, in accordance with law, on presentation of certified copy of this order along with copy of the appeal dated 25.09.2021 (Annexure: 23).

12. If the cause of action survives to the petitioner, he will be entitled to file revision or review, as the case may be, as per law.

13. The claim petition thus stands disposed of. No order as to costs.
14. The Bench records its appreciation for Sri V.P.Devrani, Ld. A.P.O., for rendering valuable assistance, as officer of the Court, in deciding the claim petition.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 01, 2024
DEHRADUN

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