

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 09/NB/SB/2021

Deewan Singh Negi (Male) aged about 61 years, S/o Late Sri Dol Singh
R/o Neelkanth Colony, Himmatpur Malla, Haldwani, District Nainital

..... Petitioner/Applicant

Versus

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare Department, Government of Uttarakhand, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.
3. Principal Medical Superintendent, District Male Hospital, Almora.
4. Principal Medical Superintendent, B.D. Pandey District Male Hospital, Nainital.

..... Respondents

Present : Sri Alok Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED : OCTOBER 17, 2024

By means of this petition, the petitioner seeks the following reliefs:

- A. To set-aside the impugned punishment order dated 07.01.2019 issued by the Respondent No. 2 (Annexure No. 1 to Compilation-I)
- B. To set-aside the impugned appellate order dated 02.06.2019 issued by the Respondent No. 1 (Annexure No. 2 to Compilation-I)
- C. To direct the Respondents, particularly Respondent No. 1 and 2 to consider and promote the petitioner to the post of Senior Administrative Officer and Chief Administrative Officer from the date when juniors to him were promoted

to the said posts i.e. 23.06.2016 and 24.07.2016 respectively.

- D. To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.
- E. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- F. To allow the claim petition with cost.”

2. Brief facts of the case are that the petitioner, who was fully eligible, was initially appointed on the post of Junior Clerk/Lower Division Clerk w.e.f. 02.03.1982 in the Medical Health and Family Welfare Department in the erstwhile State of Uttar Pradesh. After his appointment in the Department, the petitioner discharged his duties with due honesty, sincerity and dedication and in fact he was having unblemished service record to his credit. In view of his work and performance as well as inter-se seniority position and after assessing the suitability of the petitioner to discharge duties of the higher posts, the petitioner was promoted to the next higher post of Senior Clerk/Senior Assistant in the Department and thereafter, on the post of Head Clerk/Head Assistant and lastly, he was promoted to the post of Administrative Officer in the Department. In the year 2014, the petitioner was serving as Administrative Officer in B. D. Pandey District Male Hospital, Nainital and one Dr. G. B. Bisht was serving as Principal Medical Superintendent in the said Hospital at Nainital. Vide order dated 01.04.2014 the respondent No. 4 extended the contract of hired vehicle in favour of one Sri Kunwar Singh Dev till further order. The said order was signed by Dr. G. B. Bisht himself. The said Contractor submitted two cheques for payment putting forged signature of the respondent No. 4 and withdrawn the amount of the said cheques in May, 2014 and June, 2014. As such, the respondent No. 4 had sent a letter to the Local Police on 25.11.2014 for lodging an F.I.R. in the matter. Thereafter, the respondent No. 4 as well the petitioner also sent two letters on 20.12.2014 to the Local Police to lodge an F.I.R. in the matter against the said contractor. Vide letter dated 12.12.2014 the respondent No. 4 also

sought explanation from the petitioner in the matter. The petitioner replied the same on 22.12.2014. After coming to know about the aforesaid letters, the said Contractor sent various letters to the respondent No. 4, Local Police, Deputy Inspector General of Police as well as on 05.12.2014, 20.12.2014 and 22.12.2014, stating therein that the respondent No. 4 had himself paid the amount through cheques to him and it was alleged that Dr. G. B. Bisht had issued the cheques after taking the commission. Thereafter, vide order dated 09.01.2015, the respondent No. 2 directed the Director, Medical Health, Kumaon Division, Nainital to hold an enquiry in the matter and concerned Director submitted the enquiry report on 12.01.2015 exonerating the petitioner from any allegations. Meanwhile, on 30.12.2014 on the complaint of the petitioner, an F.I.R. No. 55 of 2014 was lodged by the concerned Police Station against the aforesaid Contractor namely Shri Kunwar Singh Dev, in which, the informant/complainant is the petitioner. However, surprisingly enough, the petitioner was placed under suspension by the respondent No. 2 on 20.01.2015. Neither any charge-sheet was issued to the petitioner for a long period of about 09 months nor the petitioner, was reinstated in service. Having left no option, the petitioner had approached this Hon'ble High Court of Uttarakhand at Nainital by filing a Writ Petition No. 2079 (S/S) of 2015 (D. S. Negi Vs. State & others) in the month of September 2015, challenging the suspension order dated 20.01.2015. After hearing the parties, the Hon'ble Court directed the respondents to file Counter Affidavits in the matter. On 06.11.2015, Dr. G. B. Bisht himself filed a Counter Affidavit in the said writ petition. The charge-sheet was issued to the petitioner only on 13.10.2015 i.e. only after hearing of the writ petition before the Hon'ble High Court. On 22.09.2015, one charge-sheet was issued to Dr. G. B. Bisht by the respondent No. 1. Thereafter, on 15.01.2016, the petitioner had submitted a detailed representation to the Director, Medical Health, Kumaon Division, Nainital. Thereafter, on 18.01.2016, the concerned Enquiry Officer, namely, Director, Medical Health, Kumaon Division, Nainital

submitted its report on 18.01.2016 in the matter and thereafter, on 31.03.2016, the petitioner had submitted his reply to the aforesaid enquiry report. However, despite lapse of a considerable long period of about 09 months, when neither the petitioner was reinstated in service nor any final order was passed in the matter and apart from the above, various junior persons to the petitioner were promoted to the next higher post of Senior Administrative Officer on 23.06.2016, as such the petitioner had submitted a detailed representation on 22.12.2016 to the respondent No. 2 in the matter. On 24.11.2015, the writ petition was disposed off by the Hon'ble High Court of Uttarakhand at Nainital with a direction to the respondents to conclude the enquiry proceedings within a period of 04 months. When the aforesaid order was not complied with by the respondents, then the petitioner was compelled to file a Civil Contempt Petition No. 393 of 2016 (D. S. Negi Vs. Kusum Nariyal). In the said contempt petition, a response affidavit was filed by the respondents, but the same was found unsatisfactory by the Hon'ble High Court and process of framing of charges was ordered on 06.04.2017. On 08.08.2018 a time extension application was filed by the department in the aforesaid decided writ petition that the time given for completion of departmental enquiry be extended. The said time extension application was dismissed by the Hon'ble Court on 12.10.2018 and with a view to save the own skin, the contemnor namely Dr. Kusum Nariyal passed an order on 28.01.2017 reinstating the petitioner in service and transferred him on administrative ground to District Hospital, Almora, keeping pending the departmental enquiry on account of alleged vigilance enquiry. As such, the petitioner had submitted his objection in the matter on 01.02.2017 and 02.02.2017 to the respondent No. 2. Thereafter, on 30.03.2017 another representation was submitted by the petitioner in the matter to the respondent No. 2. Under the reply dated 23.05.2017 under R.T.I. Act, the respondent No. 2 informed in Point No. 2 that the amount of concerned Cheques No. 8 & 9 was withdrawn under the signature of the then Principal Medical Superintendent, i.e., Dr. G. B. Bisht.

Thereafter, various representations were submitted by the petitioner in the matter on 08.06.2017, 16.06.2017, 23.08.2017 & 16.09.2017. During the aforesaid period, various junior persons to the petitioner were further promoted to the next higher post of Chief Administrative Officer. State Government without concluding the aforesaid disciplinary proceeding initiated against Dr. G. B. Bisht vide charge-sheet dated 22.09.2015, released all the retiral dues of Dr. G. B. Bisht on account of his superannuation from service, vide order dated 18.10.2017. Thereafter, on 23.11.2017, 05.07.2018 & 05.12.2018 the petitioner had submitted representations/reminder in the matter. Ultimately, the respondent No. 2 had issued a notice on 19.12.2018 to the petitioner and thereafter, the petitioner submitted his reply to the said notice on 28.12.2018. Ultimately, on 07.01.2019 the respondent No. 2 had passed impugned order against the petitioner, whereby, a censure had been awarded to the petitioner for the year 2014-15 and two annual entries for future had been withheld for a period of two years. Feeling aggrieved, the petitioner had submitted a Statutory Appeal against the aforesaid impugned order, before the respondent No. 1 on 26.02.2019. However, on 02.06.2019 the respondent No. 1 cursorily had rejected the said appeal. Thereafter, vide representation dated 27.7.2019 the petitioner requested the respondent No. 1 to review the matter. On 11.09.2019, the respondent No. 1 observed that there is no occasion of review of the matter. Thereafter, on 28.09.2019 the petitioner had submitted another representation in the matter. However, no decision, whatsoever, had been taken on the same. Therefore, the impugned orders cannot be sustained in the eyes of law and the same deserves to be set-aside. The action of the respondents in the matter were totally arbitrary and illegal which cannot be justified at all in the eyes of law.

3. Counter affidavit has been filed by the respondents stating therein that impugned orders dated 07.01.2019 and 02.06.2019 were correct and

justified. Hence, this present claim petition filed by the petitioner is liable to be dismissed.

4. Rejoinder Affidavit has been filed on behalf of the petitioner denying the contention of the respondents and has reiterated the averments made in the claim petition.

5. I have heard learned Counsel for the parties and perused the record carefully.

6. This matter, prima facie, seems to be a typical example of bureaucratic high handedness and red-tapism giving rise to erroneous conclusions, and delivery of injustice down the line in the departmental hierarchy. Though the learned A.P.O. has attracted this Court's attention towards the Claim Petition Nos. 110/NB/SB/2022 Dr. Neeraj Ruwali Vs. State of Uttarakhand & others, 111/NB/SB/2022 Dr. Deep Chandra Vs. State of Uttarakhand & others & 112/NB/SB/2022 Dr. Gokul Singh Satyal Vs. State of Uttarakhand & others, according to which, in his opinion, the petition suffers from delay which cannot be condoned. Nevertheless, it is observable here that primarily the delay has not been caused by deliberate procrastination on the part of the petitioner, but by the respondent-department. Thus, for delivery of justice it seems mandatory to hear this petition on merit. The delay in filing the claim petition is covered by the judgment of Hon'ble Supreme Court dated 01.01.2022, passed on Misc. Application No. 21 of 2022 in Suo Moto Writ Petition (CIVIL) No (s). 03/2020, on account of pandemic Covid-19.

7. As per the petitioner, he was only the custodian of the cheque books in question, which were issued subsequently by the signature of one Dr. G. B. Bisht, the then Principal Medical Superintendent in B. D. Pandey District Male Hospital, Mallital, Nainital. Since Dr. Bisht used to be quite busy the petitioner used to put-up the cheque books and the concerned files/registers in the office of Dr. G. B. Bisht for his

signatures. This fact is corroborated not only by all the enquiry reports, but also by Dr. Bisht's Letter No. A-1/2014-15 dated 25.11.2014 addressed to the Inspector Incharge, Thana Mallital, Nainital for the purpose of lodging an F.I.R. against the alleged accused Kunwar Singh Dev. Interestingly in this matter, there have been two enquiries by departmental Directors, one enquiry by Chief Development Officer, Nainital, another enquiry at the government level and finally an enquiry by Vigilance Department wherein the aforesaid Dr. G. B. Bisht has been held co-accused alongwith petitioner directly or indirectly and recommendations have been made for initiating the departmental enquiries against both of them. So, prima facie, Dr. G. B. Bisht's conduct has not been found either innocent, or above the Board.

8. Nevertheless, in the departmental enquiries, the aforesaid Dr. G. B. Bisht has been given a clean chit and all his retiral benefits have been doled-out to him after his superannuation, whereas only the petitioner has been held responsible for incident and has initially been punished by a very long suspension and, later on, by a censure entry which deprived him of his departmental promotion.

9. The entire case-study indicates that the aforesaid Dr. G. B. Bisht was equally responsible for carelessness and dereliction of duties alongwith the petitioner. At this juncture, learned Counsel for the petitioner has relied upon the Civil Appeal No. 1334 of 2013 (Arising out of SLP (Civil) No. 2070 of 2012, Rajendra Yadav Vs. State of M.P. & others, decided on 13 February, 2013, wherein, the Hon'ble Supreme Court has observed as follows:-

“11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and,

in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is *Director General of Police and Others v. G. Dasayan* (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In *Shaileshkumar Harshadbhai Shah* case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.”

10. In the light of above leading case, it is apparent that a gross injustice has been doled out to the petitioner, while the co-accused has been set free without a blemish. This is in contravention of the above quoted observations of the Hon'ble Supreme Court.

ORDER

The claim petition is allowed. The impugned punishment order dated 07.01.2019 issued by the respondent No. 2 (Annexure No. 1 to Compilation No.-I) and impugned appellate order dated 02.06.2019 issued by the respondent No. 1 (Annexure No. 2 to Compilation-I) are hereby set-aside. The respondents are directed to reconsider the case of the departmental promotion to the petitioner strictly as per rules; and grant all consequential benefits to the petitioner. No order as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: OCTOBER 17, 2024
NAINITAL
BK