

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

Present: Hon'ble Mr. Rajendra Singh
..... Vice Chairman (J)
Hon'ble Mr. A. S. Rawat
.....Vice Chairman (A)

CLAIM PETITION NO. 78/NB/DB/2023

Girish Chandra Joshi, Male, aged about 64 years, S/o Ram Dutt Joshi, R/O Village Maal Gaon, PO Almora, near Tamra Nagar, Dugalkhola, District Almora.

..... Petitioner

Versus

1. State of Uttarakhand, through the Secretary Technical Education, Govt. of Uttarakhand, Dehradun.
2. Director, Technical Education, Uttarakhand Dehradun.
3. Principal, Government Girls Polytechnic, Almora.

..... Respondents

Present : Sri Tarun Prakash Singh Takuli, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents.

JUDGMENT

Dated: 18th December, 2024

This claim petition has been filed seeking the following reliefs:-

"i. Be pleased to quash the impugned order no. 7674-77/Ni.Pra.Shi./Stha. Court Case/2022-23 dated 03-02-2023 passed by the learned Director, Technical Education Directorate, Uttarakhand Bhaktiyana, Srinagar (Garhwal) communicated to the petitioner on 20-04-2023, by which the representation/appeal dated 26-05-2004 submitted by the petitioner has been rejected by the respondent no. 2. (Annexure no. 1 to the petition).

ii. Be pleased to direct the respondents to reconsider the punishment order dated 24-02-2003 awarded by the respondent no. 3 by restoring the annual pay increments and for sanction of the third financial up gradation to the petitioner, as the petitioner was innocent, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.

iii. To award the cost of the petition in favor of the petitioner.”

2. Brief facts of the case, as per the claim petition, are as follows:

2.1 The petitioner was posted as stenographer in Government Girls Polytechnic Almora. At the relevant point of time, he was given the additional charge of accountant/Cashier. In the night of 07-10-2001, Rs. 92140.00/- (Ninety Two Thousand One Hundred Forty Rupees), from the Principal's office was stolen by breaking the lock of the main gate and in the institution, watchmen, security officer, hostel warden and other staff were residing, however the petitioner was residing about 6 kilometer from the institution. An F.I.R. was lodged for the aforesaid theft, but no one could be caught.

2.3 On 25-02-2002, the respondent no. 3 has suspended the services of the petitioner as he was having the charge of accountant/cashier. On 24-02-2003, the respondent no. 3 has awarded four punishments to the petitioner by restoration of his service with immediate effect- (i) three years annual increment permanently with cumulative effect (ii) no important work or work relating to account will not be taken from the petitioner in future, (iii) No promotion shall be given to the petitioner in future & (iv) petitioner shall be transferred to some other place from Government Girls Polytechnic, Almora. Thereafter, the petitioner was transferred to different places and he duly represented the respondent no. 2 through proper channel on 26-05-2004, 02-08-2004, 30-04-2005, 18-03-2008, 26-07-2008, 12-09-2012, 04-09-2014, 29-11-2014, 24-05-2016, 08-02-2018, 06-07-2019, 06-07-2019.

2.4 The petitioner was retired from the service from the post of Personal Assistant on 31-07-2019. On 16-01-2020, the respondent no. 3 has recommended for restoration of three annual increments.

2.5 On 11-05-2020, after about 17 years, the respondent no. 2 informed the respondent no. 3 regarding non consideration of the petitioner's case as his first representation dated 26-05-2004 was received by the Directorate through Principal, Government Polytechnic Thalnadi, however the Uttarakhand Government Servant

(Discipline & Appeal) Rules, 2003 provides the appeal within 90 days, but the petitioner submitted that the punishment order was passed on 24-02-2003, however the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 was notified on 06-03-2003, hence the aforesaid Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 would not be applicable in petitioner's case. Thereafter, the respondent no. 2 vide it's letter dated 11-08-2020 sought directions from the respondent no. 1.

2.6 On 16-02-2021, the respondent no. 2 submitted a detailed enquiry report to the respondent no. 1 for considering the petitioner's case sympathetically, as at that relevant point of time, the department has not granted any opportunity of hearing to the petitioner prior to passing the punishment orders.

2.7 The petitioner again represented the respondents on 14-12-2021, 03-01-2022 & 02-07-2022, but even after the recommendation of the respondent no. 2 and even after the repeated request, the respondents have not taken any decision in the petition's case, which created great hardship, irreparable loss and injury and the same cannot be compensated by any means. The enquiry report dated 16-02-2021, clearly reveals that the petitioner is innocent and was not involve in the said theft in any manner, and the said amount was under the custody of the Principal and further no opportunity of hearing was ever provided to the petitioner prior to passing punishment orders against him.

2.8 The three annual increment of the petitioner have been illegally stopped by the respondent no. 3 and further the appeal of the petitioner was decided after about 17 years with the saying that he should approach within 90 days as per the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003, however petitioner's case was not covered under the aforesaid rules as the punishment order was passed on 24-02-2003. Due to the inaction in the part of the respondents, the petitioner was facing great hardship, irreparable loss and injury and the same cannot be compensated by any means.

2.9 When the respondents have not considered the representation of the petitioner for reconsideration of the punishment order dated 24-02-2003 awarded by the respondent no. 3 by restoring the annual pay increments and for sanction of the third financial up gradation to the petitioner, as the petitioner was innocent, the petitioner was not having any other option except to approach to the Hon'ble High Court by way of filing Writ Petition no. 1904 of 2022 (S/S) "Girish Chandra Joshi Vs. State of Uttarakhand & Ors." and the Hon'ble Single Judge of the Hon'ble High Court of Uttarakhand at Nainital has dismissed the writ petition on 29-09-2022, the relevant portion of the order is as under:

"Petitioner served as Stenographer in Technical Education Department of the State Government. An order of punishment was passed against him in the year increments 2003, whereby three were stopped with cumulative effect. Against the said punishment order, petitioner preferred various representations, but he did not file any appeal in terms of Uttarakhand Government Servant Appeal) Rules, 2003, (Discipline & which are applicable to the State employees.

In this writ petition, petitioner has sought a direction to the State Government to reconsider punishment order passed against him in 2003. Reference has been made to letter dated 16.02.2021 issued by Director, Technical Education, Garhwal to the State Government.

Since the punishment order has attained finality, therefore, there is no question of issuing any direction to the State Government to reconsider the punishment order.

In such view of the matter, relief, as claimed in the writ petition, cannot be granted. Accordingly, writ petition fails and is hereby dismissed."

2.10 The petitioner has challenged the order dated 29.09.2022 passed by the Hon'ble Single Judge before the Division Bench by filing Special Appeal No. 382 of 2022, which was disposed of by the Division Bench of Hon'ble High Court vide judgment and order dated 23.11.2022, with the following directions:

"19. Keeping in view of the aforesaid discussion, we dispose of this appeal with a direction to the respondents to decide the appellant's appeal/representation dated 26.05.2004 on its merits, without going into the issue of limitation in preferring the said appeal/representation by passing a reasoned order. The decision be taken within the next three months and be communicated to the appellant."

2.11 In compliance of the order of the Hon'ble High Court, the respondent no. 2 vide impugned order dated 03.02.2023, which was communicated to the petitioner vide order dated 20.04.2023, rejected the representation/appeal dated 26.05.2004 of the petitioner. While passing the impugned order, the respondent no. 2 has not considered the enquiry report dated 16.02.2021 which clearly indicates that the petitioner was innocent and was not having any responsibility with the alleged incident and the petitioner has been illegally and arbitrarily awarded the punishment and the respondent no. 2 even after the specific enquiry report, did not reconsider the punishment order and has passed the impugned order.

3. C.A./W.S. has been filed on behalf of the respondents defending the departmental action and submitted that in compliance of the judgment of the Hon'ble High Court dated 23.11.2022, the representation of the petitioner was properly considered and the same was rejected being basisless and the claim petition is liable to be dismissed.

4. R.A. has been filed on behalf of the petitioner denying the contents made in the Counter Affidavit and has reiterated the averments made in the claim petition.

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

6. Learned Counsel on behalf of the petitioner has pleaded that the Respondent No. 3 has issued suspension order dated 25/02/2002 and awarded four punishments to petitioner with restoration of the service with immediate effect. The departmental Enquiry has not been conducted as per the procedure. The charge sheet was issued by the enquiry officer which is against the law. The respondents have not given reasonable opportunity to petitioner to defend himself against the charges alleged. The order of the respondents is not in the line of the directions contained in the aforesaid judgement of the Hon'ble Supreme Court in the matter of **"Managing Director ECIL, Hyderabad & Others Vs B . Karunakar and Others "** reported in (1993) 4 SCC 727 (para no 25 to 30).

Learned Counsel for the petitioner has further pleaded that has not been given the opportunity for the hearing which has been confirmed by the letter dated 16/02/2021 of the Director Technical Education , Uttarakhand to the Additional Chief Secretary, Technical Education , Uttarakhand . The letter also cites at the point no. 14 that the audit teams which conducted the audit during the entire tenure of the petitioner did not report any financial irregularities.

7. Learned Counsel for the petitioner has further pleaded that the final order dated 03/02/2023 of the Director, Technical Education, Uttarakhand is contrary to his recommendations to the Additional Chief Secretary, Technical Education, Uttarakhand. The respondent no. 3 has awarded major penalty on the basis of improper and illegal enquiry. The Respondents has neither followed the provisions of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 nor the provisions of the Uttarakhand Government Servant (Discipline and appeal) Rules, 2003. So the claim petition is liable to be allowed and the petitioner is entitled to get the consequential benefits.

8. Learned A.P.O. has pleaded that the Enquiry Officer issued the Charge sheet to the petitioner on the approval of the respondents no . 3 , the Appointing Authority .The petitioner has submitted a written statement against the charges alleged against him. Based on the facts submitted by the petitioner in his defense and the documents available imposed punishment under Rule -3 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. Hence, no illegality or irregularity has been made by the respondents for passing punishment orders against the petitioner.

9. We have gone through the documents presented and heard the arguments of the learned counsels for the parties and are of the opinion that the provisions of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 has not been followed by the respondents while conducting enquiry as well awarding the punishment. The charge sheet for the major punishment has been issued by the Inquiry officer which is against the provisions of the

Uttar Pradesh Government Servant (Discipline and Appeal) Rules , 1999. The copy of the enquiry report was also not served to the petitioner before issuing final order by the Disciplinary Authority. The then Director, Technical Education, Uttarakhand has sent a letter dated 16/02/2021 addressed to the Addl. Chief Secretary, Technical Education, Uttarakhand and who himself mentioned in point no. 11 that the department should have heard the petitioner, the evidence of his having been heard is not available in the records. Further in the point No. 14 also the Director. Technical Education has agreed that the audit teams of Accountant General did not find any irregularities in the audits conducted time to time during the entire tenure of the petitioner.

10. Learned Counsel for the petitioner has relied on the judgement of the Hon'ble Supreme Court in the matter of “ **Managing Director ECIL, Hyderabad & Others Vs B. Karunakar and Others**“ reported in (1993) 4 SCC 727 (para no 25 to 30). The relevant para of which is as under:

“When enquiry officer is other than the disciplinary authority, held, delinquent employee is entitled to a copy of enquiry report of the enquiry officer before the disciplinary authority takes decision on the question of guilt of the delinquent-Delinquent has a right to reasonable opportunity to represent against findings of enquiry officer- This pertains to the first stage of the inquiry when disciplinary authority takes decision on the basis of the enquiry report along with delinquent employee's reply to it and other evidence which constitute an integral part of the inquiry- Right to show cause against penalty proposed which has been taken away by the 42nd Amendment pertains to the second stage of the inquiry when disciplinary authority takes decision on the question of penalty imposable on the delinquent. Denial of right to copy of the enquiry report amounts to denial of reasonable opportunity and violation of Arts. 14 and 21 and principles of natural justice.”

11. In view of above, it is crystal clear that the departmental Enquiry has not been conducted as per the procedure . The charge sheet was issued by the enquiry officer which is against the law. The respondents have not given reasonable opportunity to petitioner to

defend himself against the charges alleged. The order of the respondents is not in the line of the directions contained in the aforesaid judgement of the Hon'ble Supreme Court, hence, we hold that the respondents have not followed the procedure while conducting the departmental enquiry as per the provisions of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. The impugned order dated 03/02/2023 along with punishment order dated 24/02/2003 of the Principal Govt Girls Polytechnic, Almora is liable to be set aside and the claim petition is liable to be allowed. The petitioner deserves to be given all the financial benefits.

ORDER

The claim petition is hereby allowed and the orders dated 03/02/2023 of the Director Technical Education and dated 24/02/2002 of the Principal Govt Girls Polytechnic, Almora are set aside. Respondents also directed to give the financial benefits withheld due to the punishments. However the department is at liberty to reinstate fresh enquiry, if they so desire. No order as to costs.

(A.S. RAWAT)
VICE CHAIRMAN (A)

DATE: 18th December, 2024
DEHRADUN
KNP

(RAJENDRA SINGH)
VICE CHAIRMAN (J)