

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

Present: Hon'ble Mr. D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 27/SB/2015**

Brijesh Kumar Jain, presently posted General Manager (Technical Audits) Head Office, Uttarakhand Pey Jal Nigam, Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Pey Jal, Govt. of Uttarakhand, Dehradun.
2. Uttarakhand Pey Jal Nigam having its Head Office at 11 Mohini Road, Dehradun through its Chairman.
3. Managing Director, Uttarakhand Pey Jal Nigam, having its Head Office at 11 Mohini Road, Dehradun.

.....Respondents

Present: Sri T.R.Joshi, Counsel,  
for the petitioner.  
Sri U.C.Dhaundiyal, A.P.O.  
for the respondent No. 1  
Sri Deepak Singh, Counsel  
for the respondents No. 2 & 3

**JUDGMENT**

**DATE: MAY 18, 2016**

1. The present claim petition has been filed for seeking the following relief:

*“a) In view of the facts and grounds as mentioned above the applicant prays that this Hon'ble Tribunal may graciously be pleased to quash/ set aside the Punishment Order/Office*

*memorandum dated 23/05/2015 awarding punishment of Censure Entry to the petitioner.*

*b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*c) Award cost of the petition."*

2. The facts in brief are that the petitioner who is presently posted as General Manager (Technical Audit), Uttarakhand Pay Jal Nigam was awarded the minor punishment of "Censure Entry" by the Chairman, Uttarakhand Pay Jal Nigam on 23.05.2015 (Annexure: 1)

3. The Punishment Order dated 23.05.2015 is reproduced below:

“उत्तराखण्ड पेयजल संसाधन विकास एवं निर्माण निगम

प्रधान कार्यालय 11- मोहिनी रोड, देहरादून

पत्रांक.....355/प्र0.नि0कैम्प- **PF** श्री बी0के0जैन (**SE**)/2 दिनांक 23/5/15

कार्यालय ज्ञाप

श्री बी0के जैन, महाप्रबन्धक (टैक्निकल ऑडिट), देहरादून द्वारा अपने कर्तव्यों एवं दायित्वों के प्रति उदासीनता बरतने तथा तत्कालीन महाप्रबन्धक (नोडल), निर्माण विंग, देहरादून के पद से स्थानान्तरण के फलस्वरूप अपने नये तैनाती स्थान पर कार्यभार ग्रहण न करने, उच्चधिकारियों के आदेशों की अवहेलना करने तथा सक्षम अधिकारी से अवकाश स्वीकृत कराये बिना विदेश यात्रा पर प्रस्थान करने, मा0 उच्च न्यायालय, उत्तराखण्ड द्वारा पारित निर्णय का अनुपालन सुनिश्चित न करने एवं मनमानी कार्यशैली व हटधर्मिता अपनाने आदि के प्रतिकूल तथ्यों के परिपेक्ष्य में श्री जैन से प्रधान कार्यालय के पत्र सं0 225/प्र0नि0कैम्प-पी0एफ0 श्री बी0के0जैन, अधी0अभि0/01ए दिनांक 01.04.15 द्वारा स्पष्टीकरण मांगा गया था, जिसके अनुपालन में श्री बी0के0जैन, महाप्रबन्धक (टैक्निकल ऑडिट) द्वारा अपने पत्र सं0 शून्य दिनांक 06.04.15 द्वारा जो स्पष्टीकरण प्रेषित किया गया है वह औचित्यहीन/आधारहीन है तथा सारगर्भित एवं तथ्यपरक नहीं है व उच्चधिकारियों को गुमराह करने का उद्देश्य मात्र परिलक्षित हुआ है। श्री जैन, महाप्रबन्धक द्वारा स्थानान्तरण के फलस्वरूप अपने नये तैनाती स्थान पर अत्याधिक विलम्ब अर्थात लगभग एक वर्ष पश्चात् कार्यभार ग्रहण करना भी स्पष्ट रूप से सिद्ध पाया गया है। श्री जैन, महाप्रबन्धक द्वारा बिना

अवकाश स्वीकृत कराये एवं बिना सक्षम अधिकारी की स्वीकृति प्राप्त किये विदेश यात्रा पर प्रस्थान किया गया है, जो कि निगम/शासनादेशों की अवहेलना/उल्लंघन है। अतः उपरोक्त वर्णित प्रतिकूल कृत्यों के लिए उत्तराखण्ड सरकारी सेवक (अनुशासनल एवं अपील) नियमावली, 2003 एवं (संशोधन) नियमावली- 2010 में निहित प्राविधानों के तहत लघुशास्ति के अर्न्तगत एतद् द्वारा श्री जैन, महाप्रबन्धक को परिनिन्दित (सेन्सर) किया जाता है तथा यह भी सलाह दी जाती है कि भविष्य में इस प्रकार की पुनरावृत्ति न की जाये।

उक्त आदेश की प्रति श्री बी०के०जैन, महाप्रबन्धक (टैक्निकल ऑडिट), प्रधान कार्यालय, देहरादून की व्यक्तिगत पत्रावली एवं चरित्र पंजिका में अभिलिखित की जायेगी।

(एस०राजू)  
अध्यक्ष”

4. The petitioner challenged above minor punishment of “Censure Entry” by filing a Writ Petition before the Hon’ble High Court of Uttarakhand No. 232 (SB) 2015. The Hon’ble High Court vide order dated 26.6.2015 disposed of the Writ Petition on the ground of alternative remedy with the observation that the petitioner may file the claim petition before the Public Services Tribunal. The order of the Hon’ble High Court dated 26.06.2015 is as under:

*“The petitioner challenges the censure imposed on him pursuant to the disciplinary proceedings.*

*We are of the view that the petitioner is to be relegated to the Public Services Tribunal in the facts of the case. Accordingly, we decline the jurisdiction; relegate the petitioner to the Public Services Tribunal.*

***We, however, request that if the petitioner moves the Tribunal, as per law, the Tribunal may decide the matter at the earliest.***

*Writ petition stands disposed of.”*

5. The counsel for the respondents has raised a preliminary objection that in the case in hand the petitioner has not availed the alternative remedy to file the departmental ‘Appeal’ against the punishment order dated 23.05.2015 and, therefore, the petition is liable to be dismissed on this ground alone.

6. It is admitted to both the parties that the relevant rules for awarding punishment are “The Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003.” It is provided under rule 11 of the said Rules that an employee is entitled to ‘Appeal’ against the punishment order to the next higher authority.
7. It is also admitted to both the parties that the “Appointing Authority” of the petitioner is the Chairman, Uttarakhand Pey Jal Nigam and the next higher authority (Appellate Authority) is the “Board of Directors of the Nigam.”
8. It is pertinent to mention here that Section 4 of the Public Services Tribunal Act provides that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him.
9. Learned counsel for the respondents has challenged the petition on a preliminary ground that the petitioner has approached the Tribunal without exhausting the departmental remedies under the rules. I am of the view that before going into the merits of the petition, it is proper to decide this preliminary objection.
10. Learned counsel for the petitioner though admitted that the “Appeal” against the punishment order was not made by the petitioner yet, he contended that, the petitioner approached the Hon’ble High Court and the petitioner was relegated by the Hon’ble High Court to the Public Services Tribunal and, therefore, the “Appeal” against the punishment order was not required. In other words, the contention of counsel for the petitioner is that after relegating the matter by the Hon’ble High Court to the Tribunal, exhausting the departmental remedy was not necessary.
11. A careful perusal of the order of the Hon’ble High Court reveals that while relegating the case to the Tribunal, the direction of

the Hon'ble High Court is that if the petitioner moves the Tribunal, as per law, the Tribunal may decide the matter at the earliest. Learned counsel for the respondents has contended that according to the order of the Hon'ble High Court, the Tribunal is required to decide the matter at the earliest but "as per law." He further contended that the petitioner has not availed the remedy of the departmental "Appeal" and, therefore, he has not exhausted remedies provided under the Rules. Thus, the claim petition of the petitioner cannot be entertained by the Tribunal.

12. After careful consideration of rival contentions of the parties, I am of the view that since the subject matter of the claim petition needs scrutiny of the facts and also the appreciation and reappraisal of evidence, it would be more appropriate and in the interest of justice if the grievance of the petitioner is first considered and decided by the departmental Appellate Authority.

13. Under the circumstances, it would be justified to allow the petitioner to avail the remedy of "Appeal" under Rule 11 of the Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003 condoning the delay, if any in filing the "Appeal". The petitioner may file the "Appeal" before the Appellate Authority within 15 days from the date of receipt of the certified copy of this order and the Appellate Authority, after receiving it, will decide the Appeal as expeditiously as possible preferably within a period of two months.

The petition is disposed of accordingly. No order as to costs.

**D.K.KOTIA**  
VICE CHAIRMAN (A)

DATE: MAY 18, 2016

DEHRADUN

*KNP*