

**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. 117/DB/2019

1. Ram Lal alias Ram Singh (since deceased), s/o Late Sri Tulsi (dismissed Driver) r/o Type-2, House No.-2, Tehri House Compound, P.W.D. colony, Rajpur Road, District Dehradun, Uttarakhand.
- 1/1 Smt. Anita Panwar, w/o Late Sri Ram Lal alias Ram Singh.
- 1/2 Sri Amit Panwar, s/o Late Sri Ram Lal alias Ram Singh.
- 1/3 Sri Ankit Panwar, s/o Late Sri Ram Lal alias Ram Singh.

.....Petitioners

VS.

1. State of Uttarakhand through Secretary, Panchayati Raj and Rural Engineering Services, Govt. of Uttarakhand, Dehradun.
2. Chief Engineer- Level-1, Rural Works Department, Uttarakhand, Tapovan Road, Raipur Road, District Dehradun, Uttarakhand.

.....Respondents

Present: Sri M.C.Pant, Sri Abhishek Chamoli &
Sri Abhishek Pant, Advocates, for the petitioners.
Sri V.P. Devrani, A.P.O. for Respondents.

JUDGMENT

DATED: FEBRUARY 05, 2024

Justice U.C.Dhyani (Oral)

Initially the claim petition was filed by Sri Ram Lal *alias* Sri Ram Singh, who was dismissed from service by the respondent department. During pendency of the claim petition, Sri Ram Lal *alias* Sri Ram Singh died. Smt. Anita Panwar, (his wife), Sri Amit Kumar and Sri Ankit Kumar, (his sons) were arrayed as legal representatives to pursue the claim petition.

3. Impugned punishment order dated 18.02.2019 and appellate order dated 24.07.2019 have been assailed in the instant claim petition. A prayer has also been made to reinstate Sri Ram Lal *alias* Sri Ram Singh in service, with all consequential benefits. It has further been prayed to release salary and allowances for the period 06.04.2015 to 18.08.2017.

4. Petitioner was appointed as Class-IV Employee (Messenger) in Rural Works Department (for short, RWD). According to the petition, petitioner had passed class VIII examination when he was given appointment. He had a driving license also. He was given promotion as Driver in December, 2014. When he was promoted as Driver, his educational qualification was never questioned by the respondent department.

4.1 He was given notice after 14 years, to which he replied. Enquiry was initiated against him. He denied the charges levelled against him. After enquiry, he was terminated from service *vide* order dated 21.01.2016, under the provisions of the Uttaranchal Temporary Government Servants (Termination of Services) Rules, 2003.

4.2 Petitioner challenged that order before Hon'ble High Court by way of filing WPSS No. 1143/ 2016. Hon'ble Court was pleased to set aside the order dated 21.01.2016 *vide* order dated 03.03.2017. Liberty was granted to the respondent department to initiate fresh enquiry. Ld. Single Judge also directed that- '*No other monetary benefit is liable to be given to the petitioner as of now as that would*

depend upon the finding and the order passed in the departmental proceedings.'

4.3 Petitioner challenged the same in Intra-Court Appeal in Special Appeal No. 126/2017. The Division Bench of Hon'ble High Court was pleased to stay the order dated 03.03.2017 *vide* order dated 24.04.2017.

4.4 Petitioner was reinstated in service *vide* order dated 26.04.2017, but, immediately thereafter he was suspended *vide* order dated 26.04.2017. Enquiry was instituted against him *vide* order dated 28.04.2017. A show cause notice was given to him. He replied to the same. Enquiry Officer was appointed. Petitioner denied the allegations levelled against him.

4.5 According to the petitioner, no regular enquiry was conducted against him. No opportunity of hearing was given to him. In Para 15 of the claim petition, it has been mentioned that punishment order dated 21.01.2016 was revived *vide* office order dated 18.05.2017 (Annexure: 10).

4.6 The sum and substance of other paragraphs, which have been mentioned in the claim petition is that no enquiry was conducted against the petitioner when second termination order (dismissing the petitioner from service) was passed. Hence, order impugned is liable to be set aside.

5. The claim petition is supported by the affidavit of the Ram Lal *alias* Ram Singh (since deceased). Relevant documents have been filed along with the same.

6. Claim Petition has been contested on behalf of Respondents. Counter Affidavit has been filed by Sri Sompal, Deputy Secretary, Roral Works Department, Govt. of Uttarakhand, Dehradun, on behalf of Respondents. Relevant documents have been filed in support of Counter Affidavit.

6.1 There is no denial of bare facts given in the claim petition, but every effort has been made in the W.S. to justify the departmental action. On legal note, it has been stated in so many paragraphs of the W.S. that petitioner was dismissed from service after due enquiry. Ld. A.P.O. submitted that whereas in the 1st round, the petitioner was terminated from service, he was dismissed from service after full fledged enquiry, as per law, in the 2nd round.

6.2 Since the petitioner had stated that he has not to furnish fresh evidence, therefore, the entire evidence taken earlier, was taken into consideration and the petitioner was dismissed from service by the appointing authority/ disciplinary authority under the provisions of the Uttarakhand Government Servant (Discipline and Appeal) Rules 2003, as amended in 2010.

7. The short question which arises for consideration of the Bench is, whether due enquiry was required at the time of conducting disciplinary proceedings for the second time? The Tribunal has observed that in the second round of disciplinary enquiry, the petitioner submitted that he has no fresh evidence to offer, therefore, enquiry officer indicated, on the basis of the evidence which was collected earlier, that the guilt of the petitioner/ delinquent employee is proved. An attempt has been made by Ld. A.P.O. to give explanation that since the delinquent employee submitted that he has no further evidence to submit, therefore, the enquiry officer relied upon the earlier evidence taken by the enquiry officer, and concluded the enquiry by finding the delinquent petitioner guilty of charge levelled against him.

8. Ld. A.P.O. made an endeavour to justify the departmental action by placing reliance on Rule 7(16) of the Uttarakhand Government Servant (Discipline and Appeal) Rules 2003, as amended in 2010, which sub-rule reads as under:

7(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.'

9. Rule 7(16) is not applicable to the case of the present delinquent petitioner. The Tribunal finds from order dated 12.11.2018 that WPSS No. 1143/2016 was allowed; termination order dated 21.01.2016 was set aside and liberty was given to the respondent department to initiate disciplinary proceedings against the petitioner. At internal page no. 2 of the judgment dated 12.11.2018, it has been mentioned that service of the delinquent employee was terminated by the Chief Engineer, Level-1, *vide* order dated 21.01.2016 by invoking provision of the Uttaranchal Temporary Government Servants (Termination of Services) Rules, 2003. Petitioner, therefore, challenged the termination order dated 21.01.2016 on the ground that it was passed without holding any enquiry.

10. In Para 3 of the decision dated 12.11.2018, the Hon'ble Court was pleased to observe that neither the enquiry report was enclosed with the C.A. nor any other documentary evidence was brought on record to show that the appellant (delinquent employee) was held guilty in the disciplinary inquiry in which his services were terminated. Sri Naveen Chandra, S.E., RWD, in his letter/ enquiry report dated 22.03.2018, which is addressed to Chief Engineer, Level-1, RWD, Uttarakhand, has mentioned that the enquiry report dated 12.10.2017 remains as it is. It has also been mentioned in such letter/ report that charge sheet and other enclosures remain as before.

11. In the 1st paragraph of such letter dated 22.03.2018 (Annexure: 43), it has been indicated that the enquiry officer had sent

enquiry report earlier on 12.10.2017, but the same was rejected and the enquiry officer was directed to conduct fresh enquiry.

12. The Tribunal observes that no departmental enquiry was conducted by the respondent department. Punishment was set aside by the Hon'ble High Court, who was pleased to give liberty to respondent to initiate enquiry. But, ironically, no enquiry was conducted even thereafter. In other words, neither any enquiry was conducted while giving punishment order in the 1st round, nor was any enquiry conducted while giving punishment in the 2nd round. It was, therefore, not proper on the part of the enquiry officer to hold that since the charge sheet, enclosures and enquiry report dated 12.10.2017 remain as it is, (therefore the delinquent petitioner is held guilty) on the basis of such documents. Although, the words, 'the petitioner is held guilty' have not been mentioned in the letter dated 22.03.2018, but the obvious reference would be that the petitioner has been held guilty on the basis of earlier enquiry report. It is strange to note that the delinquency of the petitioner was not enquired in the 1st round, then where is the question of relying upon the documents filed earlier, in the 2nd round? To make it further clear, enquiry officer relied upon the 1st inquiry, which was never conducted and was the sole basis of setting aside the impugned punishment order by the Hon'ble High Court in the 1st round of litigation. The enquiry officer relied upon the same enquiry in his letter dated 22.03.2018, which enquiry was never conducted. Then, where the question of holding the petitioner guilty?

13. Simply because the delinquent petitioner stated that he has no further explanation to furnish, the petitioner cannot be held guilty. The department had to prove, by cogent evidence, on the basis of preponderance of probability, that the charge is established against the delinquent petitioner. Nothing has been done in the instant case. It is a case of no enquiry, no evidence.

14. Therefore, there is no option before the Tribunal, but to set aside the impugned punishment order. Had the petitioner been

alive, the Tribunal would have directed the department to conduct fresh enquiry, as is often done by Hon'ble Courts and Tribunals in such cases. Petitioner has since passed away, therefore, no fresh enquiry can be conducted against him.

15. The impugned order is, accordingly, set aside. Consequences shall follow. The petitioner (in his absence, his legal representatives) shall be given all benefits, which were available to the original petitioner Sri Ram Lal *alias* Sri Ram Singh during his service period, after his reinstatement. After the death, his legal representatives shall be entitled and shall be released post retiral dues.

16. Respondents are directed to release all the benefits to the surviving members of the petitioner's family, as expeditiously as possible and without unreasonable delay.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 05,2025.
DEHRADUN

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