

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

CLAIM PETITION NO. 117/SB/2024

Sri Ramesh Singh Kathait, aged about 59 years, S/o Late Sh. Autaar Singh Kathait, presently posted as Assistant Agriculture Officer, Scale-2, R/o Shibbu Nagar Kotdwar Uttarakhand.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Agriculture, Government of Uttarakhand, State Secretariat, Subhash Road, Dehradun.
2. Director General, Agriculture, State Secretariat, Subhash Road, Dehradun.
3. Director Agriculture, Directorate of Agriculture, Krishi Bhawan, Nanda-Ki-Chowki, Premnagar, Dehradun-248007.

..... Respondents

Present: Sri Abhishek Chamoli, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

JUDGEMENT

Dated: 07th February, 2025

Justice U.C. Dhyani (Oral)

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

“(i) To quash and set aside Impugned Order dated 30/06/2014 respondent no. 3 by which Punishment of “Adverse Entry” is awarded in the Service record of the petitioner and Recovery of Rs-55007(*Fifty Five Thousand and seven Rupees*) is issued against the petitioner, arbitrarily and illegally, had it been the impugned order was never being in existence, after calling entire record from the respondents, keeping in view of the facts highlighted in the body of the petition.

(ii) To quash and set aside impugned Appellate order dated 27/03/2024 by which Departmental Appeal of the petitioner was rejected by the respondent no.2.

(iii) To issue any other order or direction which this court may deem fit and proper in the circumstances of this case in the favour of the petitioner.

(iv) To award the cost of the Petition.”

2. During the financial year 2002–03 & 2005–06, the petitioner was working in the Watershed Management Unit Satpuli Distt Pauri, as Assistant Watershed Manager, where it was found that the petitioner along with the other similarly situated group -3 employees had committed serious financial irregularities under the 10th Five year Scheme of National Watershed Development due to which the Govt had to suffer huge financial loss of Rs 2,26,520/- This financial irregularity came to the knowledge of the department on the basis of report of Technical Audit

2.1 When, these irregularities came to the knowledge of the department, the respondent no. 2 i.e. (Director Agriculture Uttarakhand) appointed Sri Pawan Kumar (Joint Director of Agriculture, Kumaon Mandal, Haldwani), as the enquiry officer.

2.2 The departmental inquiry was initiated under Rule 7 of the Uttarakhand Government Servants (D & A) Rules 2003 against the petitioner and accordingly, under the provision of Rule 7(1) Sri Pawan Kumar (Joint Director of Agriculture, Kumaon Mandal Haldwani) was appointed as Inquiry officer who was directed to provide the charge sheet for necessary approval of the punishing authority as per provision of Rule 7 (2) of the Uttarakhand Government Servants (D & A) Rules 2003. As per Rules 7(4) & (5) of the aforesaid Rules, the chargesheet dated 26.07.2008 containing as many as 2 charges was served upon the petitioner on 24.09.2008 through the office of Joint Director Agriculture, Kumaon Mandal Haldwani. For furnishing the reply of chargesheet, 15 days were given. The Appointing Authority appointed another Inquiry officer namely Dr. Parmaram (Joint Director Quality Control Directorate, Uttarakhand) *vide* its letter dated 31.10.2008.

2.3 When the petitioner did not submit the reply to the charge sheet dated 26.07.2008 till the year 2010, the Inquiry Officer again sent a letter dated 10.11.2010 to the petitioner to furnish the reply of the charge sheet within 15 days in his defence, else otherwise, it will be presumed that he has nothing to say in the matter.

2.4 After due participation in the departmental inquiry the petitioner furnished the reply of the charge sheet dated 26.07.2008 on 18.12.2010, which was sent by the Agriculture & Soil Conservator Officer Tharali (Chamoli) *vide* its letter dated 28.12.2010 to the Inquiry Officer.

2.5 The inquiry officer conducted inquiry against the petitioner on the basis of reply as furnished by the petitioner and on the basis of documentary evidence available on record. He submitted his inquiry report dated 22.06.2013 to the respondent no. 2 i.e. (Director, Agriculture, Uttarakhand) under Rule 8 of the said rule. Charges No. 1 & 2 were found proved against the petitioner by the Inquiry Officer. Affording the second opportunity to the petitioner, a show cause notice dated 25.06.2013 along with the copy of the Inquiry report was given to the petitioner by the respondent no. 2 for reply within 15 days. The reply of the show cause notice was given by the petitioner on 16.07.2013 in his defence.

2.6 On being found the reply unsatisfactory, the punishing authority as per provision of rule 10(1) of the above mentioned rule, imposed minor punishment of recovery Rs 55,007/- loss caused to the State Govt. *vide* its order dated 30.06.2014 along with the punishment of Adverse Entry in the character roll for committing serious financial irregularities by the petitioner.

2.7 Petitioner preferred representation dated 04.12.2023 to the Director General, Agriculture & Horticulture Department, Uttarakhand with the prayer to grant him promotion on Group -1 Cadre post. The said representation was disposed of by the Director General Agriculture & Horticulture Department *vide* its order dated 27.03.2024 mentioning therein that the Minor punishment order

dated 30.06.2014 by which a recovery amounting Rs. 55,007/- (Fifty thousand and seven rupee) is still in existence against the petitioner and has not been quashed and set aside by any Court of law till date therefore the petitioner is not entitled to get the promotion.

3. Sri Ramesh Chandra Kathait has filed affidavit in support of the petition. Relevant documents have been filed by him in support of the petition.

4. The petition has been contested on behalf of the respondents. Sri Bhagwan Das, Soil and Conservator Officer, Kotdwar, Uttarakhand, has filed counter affidavit on behalf of respondents.

4.1 According to the C.A. thus filed, as per Section 5(1)b(i) of the P.S.T Act, 1976, the limitation period for filing the claim petition/reference before the Tribunal against the impugned order dated 30.06.2014 expired on 30.06.2015 after availing all the mandatory departmental remedies whereas the claim petition has been preferred on 24.09.2024 before the Tribunal to quash and set aside this order after the lapse of more than 10 years delay. Moreover, the Tribunal has no jurisdiction to condone the delay of a single day as per the provision of the P.S.T Act, 1976, as applicable to the State of Uttarakhand. As such the claim petition is liable to be dismissed being a stale claim without going into the merits.

4.2 Non-statutory appeal/representation dated 04.12.2023 of the petitioner does not cover up the limitation gap of impugned order dated 30.06.2014 issued by the respondent no. 2. Hence, the claim petition, being devoid of any merit, is liable to be dismissed with an exemplary cost.

4.3 It is the submission of learned A.P.O. that in WPSB No. 118/2008, Lalita Verma vs. State of Uttarakhand and others, decided on 17.05.2013 & Special Appeal No. 300/2015, Ram Lal vs. State of Uttarakhand and others, decided on 03.07.2017 would be applicable where there is a major punishment given to the

delinquent employee. Here, the petitioner has been given the minor punishment of Recovery and Adverse Entry on 30.06.2014. Hence, the referred judgment and the provisions of the Rules of 2010 are not applicable to the present case.

4.4 It is further submitted by learned A.P.O. that there is no recurring cause of action to the petitioner against the impugned order of recovery amounting to Rs. 55,007/- dated 30.06.2014 upto the year 2024. Hence no continue cause of action duly accrued to the petitioner for filing the present claim petition for want of cause of action.

DISCUSSION

5. First, the issue of limitation. In para 19 of the C.A./ W.S., it has been indicated that recovery order is still in existence. The petitioner has, therefore, continuous cause of action, hence Section 5(1)(b)(i) of Uttar Pradesh Public Services Tribunal Act, 1976, will not apply. The claim petition is found to be within limitation.

6. It is trite law that the inquiry officer should be appointed only after the charge-sheet is served upon the delinquent official and he pleads not guilty to the charges. Charge-sheet should not be signed by the enquiry officer. In the instant case, enquiry officer was appointed before the charge-sheet was issued and he served the charge-sheet upon the petitioner. The charge-sheet was signed by the enquiry officer himself.

7. It will be apt to reproduce the judgement rendered by Hon'ble High Court of Uttarakhand in WPSB No. 118 of 2008, Smt. Lalita Verma vs. State of Uttarakhand and others, as under:

“An order of suspension was the subject matter of a writ petition, registered as Writ Petition No. 85 of 2008 (S/B), which was disposed of by permitting the petitioner to approach the Tribunal. Petitioner approached the Tribunal unsuccessfully. Tribunal held that the chargesheet, against the petitioner, has been issued on 16th June, 2008. Petitioner, accordingly, filed the present writ petition.

2. On the writ petition, by an order dated 30th June, 2008, proceedings pursuant to the charge-sheet were stayed and, at the

same time, the suspension order was also stayed. The reason was that the charge-sheet was purportedly issued by the inquiry officer and the suspension order did not contain any averment to the effect that an inquiry is contemplated against the petitioner and that the inquiry is in respect of allegations of serious nature, as is the mandate of Rule 4 of The Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003. Despite filing of the counter affidavit, no improvement has taken place. On the other hand, as it appears from the supplementary affidavit filed by the petitioner in Court today, the proceedings pursuant to the charge-sheet have been dropped.

3. In the circumstances, we affirm the interim order already passed and, thereby, dispose of the writ petition.”

8. Further, in Special Appeal No. 300 of 2015, Ram Lal vs. State of Uttarakhand, which was decided on 03.07.2015, Hon’ble High Court observed as under:

“As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that an Inquiry Officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the delinquent officer to submit his explanation and, if, after considering the explanation of the delinquent officer, it is found necessary to hold an inquiry, only at that stage, an Inquiry Officer can be appointed. As far as the charge sheet is concerned, after the amendment to the Rules in 2010, it is not disputed that the charge sheet is to be signed by the disciplinary authority. The power of issuing the charge sheet cannot be delegated to the Inquiry Officer. Therefore, in the light of these settled principles, if we examine the impugned order; it is clear that it is afflicted by two vices. Firstly, even without issuing a charge sheet and calling for an explanation, an Inquiry Officer has been appointed. This part of the order cannot be sustained. Equally without legal foundation and contrary to law is the direction to the Inquiry Officer to serve the charge sheet upon the appellant. These portions are clearly unsustainable and, therefore, they deserve to be quashed.”

9. Principles of Natural Justice require that the enquiry should be initiated only after the reply to the show cause notice/ charge-sheet is perused by the appointing authority/ disciplinary authority. Only when the appointing authority/ disciplinary authority is not satisfied with the reply of the delinquent employee and he is satisfied that there is a case for enquiry into the matter then only the disciplinary enquiry may be initiated. The same has not been done in the instant case. Interference is called for in the impugned order on this ground alone.

10. Even in the order dated 27.03.2024 of the appellate authority, the grounds taken by the petitioner in the appeal have not dealt with and discussed.

11. Director General, Agriculture and Horticulture, has simply mentioned in its order dated 27.03.2024, which is also impugned in present claim petition that there is no material on record to take a different view other than what was taken by the enquiry officer. This was not sufficient. Every material point which was taken by the petitioner in his representation ought to have been dealt with by the appellate authority properly. The same has not been done in the instant case.

12. As a result thereof, impugned punishment order dated 30.06.2014 and impugned appellate order dated 27.03.2024 are liable to be set aside and are accordingly set aside, leaving it open to respondent department to initiate fresh inquiry against the petitioner, if the department is so advised, in accordance with law.

No order as to costs.

13. It is clear that the Tribunal has not gone into other aspects of the case.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 07th February, 2025
DEHRADUN
RS