

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

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 50/NB/DB/2022

Govardhan Singh, aged about 46 years, S/o Sri Sonpal Singh, presently posted as Executive Engineer, Minor Irrigation Division, Nainital, District Nainital.

..... **Petitioner**

Vs

1. State of Uttarakhand through Secretary Minor Irrigation Department, Uttarakhand, Government of Uttarakhand Dehradun.
2. Chief Engineer and Head of Department, Minor Irrigation Department, Uttarakhand, Dehradun, Minor Irrigation Bhawan, Indraprasth Colony, Lane No. 3, Natthanpur, Jogiwala, Dehradun.
3. Mr. Chandan Singh Kanwal S/o Late Shri Nar Singh Kanwal, R/o S. Bag, Kaladhungi Road, Haldwani, District-Nainital.

..... **Respondents**

Present: Sri Sanjay Bhatt & Sri Prem Prakash Bhatt, Advocates
for the petitioner

Sri Kishore Kumar, A.P.O. for the respondents no. 1 & 2

Sri Vikas Pandey, Advocate, for the respondent no. 3

JUDGMENT

DATED: MAY 08, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN(A)

This claim petition has been filed by the petitioner for following reliefs:

“A. Issue appropriate, order or direction, to call for the record of case and quash / set aside the impugned order dated 04-04-2022 passed by Joint Secretary, Government of Uttarakhand,

Minor Irrigation Department and consequential order dated 24-05-2022 passed by Chief Engineer and Head of Department, Minor Irrigation Department, whereby punishment of recovery of Rs. 3,39,668.00 has been imposed against the Petitioner for the alleged loss caused to the government.

B. Issue appropriate, order or direction, directing the official Respondents not to proceed any further with the recovery of Rs. 3,39,668.00 pursuant to impugned order dated 04-04-2022 passed by Joint Secretary, Government of Uttarakhand, Minor Irrigation Department and consequential order dated 24-05-2022 passed by Chief Engineer and Head of Department, Minor Irrigation Department.

C. Issue any suitable, order or direction, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

D. Award the cost of the petition to the Petitioner.”

2. Brief facts of the case are that-

2.1 Petitioner was initially appointed as Junior Engineer in the Minor Irrigation Department on 31-12-1999 and was promoted on the post of Assistant Engineer vide office memorandum dated 14-01-2011. Petitioner was further promoted on the post of Executive Engineer in the year 11-01-2019.

2.2 A detailed project report was prepared by the then Assistant Additional Engineer on 17-09-2012 to construct an irrigation canal called E.R.M.-M.I. Scheme in Esai Naggar No. 02, Village Rampur Lamachaur, Block-Haldwani, District-Nainital under Accelerated Irrigation Benefit Programme (in short AIBP). Total length of the canal was 1300 meter which was divided into three parts namely Part A, B and C. The longitudes and latitudes of head, tail and other posts on proposed gule were given in the detail project report.

2.3 On 15-10-2016, a short time tender notice was published which specifically mentioned that the contractor would be responsible for any defect in construction of gule.

2.4 Respondent No. 3 was declared qualified bidder, a contract bond was signed between the department and contractor on 13-12-2016 and a total estimated cost of project was Rs. 9,99,025.28 with tender cost of Rs. 8,49,171.49.

2.5 The contractor did not construct gule in the selected site. He neither sought change of site nor did he even inform the petitioner about the work being done by him. Petitioner was not even informed by the Junior Engineer with regard to non- completion of project in the prescribed site with the prescribed specification and within stipulated time.

2.6 Mr. Chandan Singh Kanwal, the contractor, wrote a letter to the Executive Engineer on 29-08-2018 with copies thereof to the Junior Engineer/Additional Assistant Engineer, Assistant Engineer, Superintending Engineer and Chief Engineer of the department that he had completed the work on 12-03-2017, he had requested the Junior Engineer and Assistant Engineer for measurement of gule but they did not take any steps for almost one and half month. The Executive Engineer wrote letters to the petitioner to conduct site inspection and submit a report in the matter, which he replied vide letter dated 05-10-2018 requesting that he is not in a position to conduct site inspection in absence of the then Junior Engineer and requested to direct the Junior Engineer to provide support to the petitioner during site inspection.

2.7 The Executive Engineer vide order dated 06.10.2018 constituted an enquiry committee of three engineers and directed them to submit inquiry report within a week.

2.8 The site engineer (Junior Engineer) replied the letter of Executive Engineer dated 05-10-2018 stating therein that the contractor did not undertake any work in Esai Nagar-2 therefore measurement is not possible. The report submitted by the site engineer was also forwarded by the petitioner to the Executive Engineer and Superintending Engineer vide letter dated 12.12.2018. On 22-12-2018 the Executive Engineer directed the Petitioner to conduct measurement

of gule constructed by the contractor and prepare bills so that after allocation of fund payment be made to the contractor. On 10-01-2019, petitioner informed the contractor about the letter written by the executive engineer on 06-10-2018. In the meantime, certain correspondences were also made between the Departmental engineers and Chief Development Officer on 11-02-2019. In response to the letter of Chief Development Officer, petitioner informed him that as per report of site engineer the contractor did not undertake the work as per site plan. On 11-02-2019, petitioner also submitted his report to the Chairman of enquiry committee, inter alia, stating that contractor did not construct the gule in the prescribed site and he did not inform the petitioner about the work being done by him or the extension of time. On 04-02-2019 the then site engineer submitted a report before the enquiry committee with the same averments that the contractor did not construct the gule in the prescribed site and that no application seeking extension of time to construct the gule or during its implementation was ever given by the contractor.

2.9 The six members enquiry committee submitted its report on 27-02-2019, inter alia, holding that gule was not constructed as per the estimate, in the prescribed site, and that a gule was constructed with the similar dimension, in a place which is approximately 500 meters away from the prescribed site.

2.10 The three members inquiry committee also submitted its detail report, inter alia, holding that the contractor did not construct the gule at the prescribed site; the site engineer only pointed out the site and prescribed norms as per estimate but did not bother to inspect the site from time to time; the Assistant Engineer signed the bond but he did not inspect the site from time to time; the executive engineer was obliged to conduct regular review of project which he did not do. In the meantime, one more report was prepared and submitted by the Superintending Engineer, inter alia, holding that contractor did not construct the gule in the prescribed site; the site engineer and superior engineers did not conduct site inspection from time to time; the gule was

constructed 500 meters away from the prescribed place and that there was no financial loss caused to the public exchequer. The inquiry officer proposed punishment of strong warning to the site engineer and Assistant Engineer as well as Executive Engineer. On 27-08-2019 a charge sheet was given to the petitioner containing one charge of providing wrong layout, not conducting inspection of site and not sending the sample of material for lab testing.

2.11 Petitioner denied the charges vide his reply dated 18-09-2019 and submitted that he was neither informed by the contractor nor by the site engineer about construction of gule as per the estimate and that no time extension was ever sought from him; the site incharge has informed that the contractor did not construct the gule in the prescribed place. The Chief Engineer and Head of Department submitted a proposal to the government vide letter dated 27-07-2019 and sought amendment in the project, so that payment be made to the contractor. On 12-05-2020, the Under Secretary of the Government sought clarification from the Chief Engineer on 4 points showing inclination of government to make the payment to the contractor.

2.12 The Assistant Engineer, in compliance of the instructions of the Govt. gave report on all the four points and requested that for amendment of project a committee be constituted. On 04.07.2020, a report was also submitted by the Executive Engineer to Superintending Engineer, inter alia, stating that contractor did not construct the gule in the proposed site. Finally, the State Government took a decision to make the payment to the contractor and consequently directed the Chief Engineer and Head of Department vide letter dated 17-12-2021 to ensure payment of Rs. 8,49,171/-. In compliance of order of government dated 17-12-2021, the Chief Engineer wrote a letter dated 20-12-2021 to the Executive Engineer to make payment to the contractor. Consequently, payment was made to the contractor.

2.13 On 04-04-2022, the State Government issued office order whereby a penalty of Rs. 3,39,668/- was imposed against the Petitioner.

This order has been communicated by the Chief Engineer and Head of Department, Minor Irrigation Department, to the Executive Engineer, Minor Irrigation Division, Nainital vide letter dated 24-05-2022. Official Respondents did not bother to look into the charter of duties of Junior Engineer, Assistant Engineer and Executive Engineer. The charter of duties clearly reveals that Assistant Engineer is only responsible for supervision of project and over all charge of lay out, estimate, testing of sample, measurement of project etc. lies with the Junior Engineer. All the three reports of Inquiry Committee and impugned order endorse the fact that gule was not constructed in the prescribed site as per prescribed specification rather it was constructed in a different location of 500 meter away from the prescribed site. Therefore, there was no occasion on part of the Petitioner to inspect the site, measure the gule and make the payment to the contractor.

2.14 The impugned order has been passed against the petitioner only on two grounds firstly; the clear indication of site was not made in the DPR and that no notice was given to the contractor calling upon him that he did not construct gule in the designated site. Both these grounds do not sustain against the petitioner because he did not prepare the DPR and there was no occasion for him to issue notice to the contractor for not constructing gule in the prescribed site inasmuch as neither the site engineer nor the contractor informed the Petitioner, at any point of time, that gule is being constructed in a different location.

2.15 All the three inquiry reports suggested that gule was constructed in a different location of 500 meter away from the prescribed site and no loss was caused to the public exchequer, therefore imposing penalty of Rs. 3,39,668/- against the petitioner cannot sustain. The petitioner made the payment only in compliance of decision of government dated 17-12-2021 communicated by the Chief Engineer vide letter dated 20-12-2021. Therefore, no fault can be attributed to the petitioner in making the payment to the contractor and causing monetary loss to the public exchequer.

2.16 The inquiry report submitted by the Superintending Engineer dated 07-04-2019 held the Site Engineer, Assistant Engineer, Executive Engineer and Contractor responsible for constructing the gule in a different location but the penalty has been imposed only against the petitioner and Site Engineer whereas no penalty has been imposed on the Executive Engineer and contractor.

2.17 There was no specific charge with regard to alleged financial loss caused to the public exchequer and only a reference of financial loss was made in the charge sheet, but the same could not be proved in any departmental inquiry. The petitioner replied the charge sheet but neither departmental inquiry was held thereafter nor was any show cause notice or inquiry report was ever given to the Petitioner pursuant to charge sheet dated 27-08-2019, therefore there has been a violation of mandatory provision of Government Servant (Disciplinary and Appeal) Rules, 2003.

2.18 Petitioner was posted as Assistant Engineer during 2016-17 when the work was entrusted to the contractor. The layout plan was to be given to the contractor by the site incharge i.e. Junior Engineer therefore, deviation, if any, in the lay out cannot be attributed to the Petitioner. All the three inquiry reports suggested that gule was not constructed in the place for which it was sanctioned; there was only one finding against the petitioner that he did not issue notices to the contractor during subsistence of bond period but this was not the charge in the charge sheet. Moreover payment was made to the contractor only in compliance of directions issued by the Respondents No. 1 and 2 as they came to the conclusion that work was completed by the contractor, though in a different location, therefore firstly there was no financial loss caused to the public exchequer and secondly the petitioner did not play any role in taking decision to make payment to the contractor, therefore no recovery can be effected from the petitioner.

3. C.A./W.S. has been filed on behalf of respondents no. 1 & 2, in which it has been stated that:-

3.1 याची द्वारा प्रस्तुत तथ्य जोकि दस्तावेजों पर आधारित हैं, स्वीकार हैं। विभाग द्वारा याची के विरुद्ध उत्तराखण्ड सेवक अनुशासन एवं अपील नियमावली 2003 (यथासंशोधित 2010) के नियम 3क(3) जिसमें आदेशों की उपेक्षा या उनका उल्लंघन करने के कारण सरकार को हुई आर्थिक हानि का पूर्णतः या अंशतः वेतन से वसूल किया जाने का प्रावधान के आधार पर याची के विरुद्ध रु0 3,39,668.00 मात्र की वसूली के आदेश पारित किये गये। उत्तरदाता विभाग द्वारा उपरोक्त आदेशों को पारित करते समय समस्त नियमों एवं विधि के सिद्धान्तों का पालन किया है अतः उपरोक्त आदेश विधि सम्मत है एवं याची की याचिका खण्डित होने योग्य है। माननीय उच्च न्यायालय उत्तराखण्ड द्वारा रिट याचिका संख्या WPSB No- 201 of 2018 "Suresh Chandra vs. State of Uttarakhand and others" में पारित आदेश दिनांक 14.07.2022 के आधार पर याची की याचिका बलहीन होने के कारण निरस्त होने योग्य है।

3.2 याची द्वारा कनिष्ठ अभियन्ता को ही स्थल प्रभारी होने के कारण कार्य की गुणवत्ता/प्रगति आदि हेतु जिम्मेदार बताया है। इस प्रकार याची दूसरे को दोषारोपित कर स्वयं को बचाने का प्रयास कर रहे हैं जोकि पूर्णतः असत्य एवं अनुचित है। योजना निर्माण हेतु सहायक अभियन्ता (याची) द्वारा ठेकेदार के साथ अनुबन्ध किया गया था जिसके अनुसार योजना का कार्य दिनांक 13.12.2016 से दिनांक 12.04.2017 के मध्य पूर्ण किया जाना था, परन्तु आश्चर्यजनक रूप से याची द्वारा न तो कभी योजना स्थल का निरीक्षण किया गया और न ही यह जानने का प्रयास किया गया कि योजना निर्माण की क्या स्थिति है। यहां तक कि याची को लम्बे समय तक इस बात की भी जानकारी नहीं थी कि ठेकेदार द्वारा योजना स्थल पर कार्य प्रारम्भ किया गया है या नहीं, अथवा योजना स्थल पर कार्य हुआ है या नहीं जोकि याची के अपने कार्यों एवं दायित्वों के प्रति लापरवाही एवं उदासीनता को दर्शाता है। ठेकेदार श्री चन्दन सिंह कनवाल द्वारा प्रस्तावित स्थल से लगभग 500 मी० की दूरी पर प्रस्तावित कार्य स्थल से भिन्न स्थल पर ग्राम पंचायत लामाचौड़ खास के ग्राम नरीपुर में तीन भागों में कुल 788.80 मी० (क्रमशः 426.30 मी०, 197.50 मी० एवं 165.00 मी०) गूल का निर्माण कराया गया।

3.3 ठेकेदार श्री चन्दन सिंह कनवाल द्वारा दिनांक 29.08.2018 को भुगतान के सम्बन्ध में प्रेषित पत्र के सम्बन्ध में जिसमें ठेकेदार द्वारा अवगत कराया गया कि उसके द्वारा निर्माण कार्य दिनांक 12.03.2017 को पूर्ण कर लिया गया था, परन्तु अनुरोध के बावजूद भी कनिष्ठ अभियन्ता एवं सहायक अभियन्ता द्वारा उसके कार्यों का मापन एवं भुगतान नहीं किया गया है। ठेकेदार द्वारा उक्त पत्र दिनांक 12.03 2017 से लगभग डेढ़ वर्ष के पश्चात लिखा गया था। अधिशासी अभियन्ता द्वारा इस सम्बन्ध में दिनांक 01.09.2018, 12.09.2018, दिनांक 19.09.2018 एवं दिनांक 04.10.2018 को याची को शिकायती पत्र पर कार्यवाही करने के निर्देश दिये गये, परन्तु याची द्वारा दिनांक 15.

09.2018 एवं दिनांक 05.10.2018 के द्वारा अधिशासी अभियन्ता को प्रेषित पत्र में मात्र यह कहा गया कि उनके द्वारा तत्कालीन अपर सहायक अभियन्ता श्री आर०ए०यादव से आख्या मांगी गयी है तथा उनकी आख्या प्राप्त होने पर ही आख्या उपलब्ध कराया जाना सम्भव होगा। इस प्रकार याची लगातार अपने कर्तव्यों एवं दायित्वों से भागते रहे।

3.4 अधिशासी अभियन्ता, लघु सिंचाई खण्ड, नैनीताल द्वारा गठित जांच रिपोर्ट में स्पष्ट किया गया है कि श्री आर०ए० यादव, अपर सहायक अभियन्ता द्वारा समय-समय पर कार्य का निरीक्षण नहीं किया गया। इसी प्रकार सहायक अभियन्ता, जोकि याची थे, के सम्बन्ध में भी जांच समिति ने स्पष्ट किया है कि उनके द्वारा समय-समय पर योजना की समीक्षा व निरीक्षण नहीं किये गये। यदि सम्बन्धित कनिष्ठ अभियन्ता/सहायक अभियन्ता (याची) अपने कार्यों के प्रति सजग रहते तो इस प्रकार की गम्भीर त्रुटि नहीं घटित होती।

3.5 अधीक्षण अभियन्ता द्वारा मुख्य अभियन्ता को प्रेषित आख्या में भी तत्कालीन अपर सहायक अभियन्ता के साथ-साथ याची के दोषी होने का उल्लेख किया गया है। इस प्रकार अधीक्षण अभियन्ता की रिपोर्ट में भी याची दोषारोपित हैं। इस प्रकार सभी जांच रिपोर्ट में याची को दोषी पाया गया जिसके फलस्वरूप उत्तराखण्ड शासन के पत्रांक 538 दिनांक 27.08.2019 के द्वारा याची को आरोप पत्र निर्गत किया गया और याची का पक्ष जानने के बाद सक्षम प्राधिकारी द्वारा समस्त तथ्यों, अभिलेखों आदि का गम्भीरता के साथ अवलोकन किया गया तथा वसूली आरोपित करने हेतु आदेश संख्या 184 दिनांक 04.04.2022 पारित किया गया है, जोकि उचित आदेश है।

3.6 उत्तराखण्ड शासन के पत्रांक 826 दिनांक 17.12.2021 के द्वारा यह अवगत कराया गया कि शासन द्वारा निर्माण कार्य का भुगतान सम्बन्धित ठेकेदार को किये जाने का निर्णय लिया गया है। साथ ही शासन के उक्त पत्र में यह भी स्पष्ट रूप से उल्लेख किया गया था कि प्रकरण में दोषी कार्मिकों के विरुद्ध कार्यवाही प्रचलित है। अतः इस सम्बन्ध में कार्यवाही पूर्ण होने के पश्चात पृथक से अवगत करा दिया जायेगा। शासन के उक्त पत्र की छायाप्रति संलग्न करते हुए तदनुसार मुख्य अभियन्ता एवं विभागाध्यक्ष के कार्यालय पत्रांक 1373 दिनांक 20.12.2021 के द्वारा अधिशासी अभियन्ता, लघु सिंचाई खण्ड, नैनीताल को अवगत करा दिया गया था। यह भी उल्लेखनिय है कि जून, 2019 से याची जनपद-नैनीताल में ही अधिशासी अभियन्ता के पद पर कार्यरत हैं। शासन द्वारा याची को आरोप पत्र निर्गत करने, उसका उत्तर प्राप्त होने तथा सभी तथ्यों पर सम्यक विचारापरान्त शासन द्वारा दोषी कार्मिकों के विरुद्ध वसूली निर्धारित किये जाने का आदेश दिनांक 04.04.2022 सक्षम प्राधिकारी द्वारा पारित किया गया है वह पूर्णतः उचित एवं नियमानुकूल है।

3.7 जहाँ तक अधिशासी अभियन्ता का प्रश्न है इस विषय में स्पष्ट करना है कि शासन द्वारा प्रकरण पर सम्यक विचारोपरान्त सहायक अभियन्ता एवं अपर सहायक अभियन्ता को ही दोषी पाया गया है और तदनुसार ही वसूली हेतु कार्यवाही की गयी है। सहायक अभियन्ता/कनिष्ठ अभियन्ता की उदासीनता एवं लापरवाही के कारण यह गम्भीर अनियमितता हुई है तथा शासन द्वारा उत्तरांचल सरकारी सेवक (अनुशासन एवं अपील) नियमावली 2003 का कोई उल्लंघन नहीं किया गया है।

4. C.A./W.S. has also been filed on behalf of respondent no. 3. It has been contended that Junior Engineer showed the site to the respondent no. 3 as the site was not mentioned in the tender notice. The Junior Engineer regularly visited the site and also interacted with the villagers. The answering respondent regularly visited the office of the petitioner for payment of his dues but each time he was assured that the amount due to him would be paid soon, but of no avail. The Junior Engineer and other officers regularly visited the site and gave instructions to the answering respondent. The departmental authorities were regularly informed and requested to pay the dues. However, on 29.08.2018 written request was made for payment of the dues. The site plan was never handed over, but was shown the place where the gule was to be constructed.

5. R.A. has also been filed on behalf of the petitioner against the C.As./W.S. filed on behalf of respondents no. 1, 2 & 3 denying the contentions of the respondents and has reiterated the averments made in the claim petition.

6. Heard learned Counsel for the petitioner, learned A.P.O. and learned Counsel for private respondent no. 3 and perused the record.

7. Learned Counsel for the petitioner has argued that the contractor has done the work at a different site and the report in this regard was submitted to the Executive Engineer also. The petitioner was required to do the supervision, preparation of the lay out was done by the Junior Engineer as per the charter of duties. The payment to the contractor has been made as per the directions of the Government. Junior Engineer is the field officer and he was responsible for the

measurement of the work done by the contractor. The payment of the bill raised by the contractor has been made by the Executive Engineer. The petitioner is not involved in this work. The proposal for work at the sites different from that of original proposal was approved by the Government and the order for the payment was also given by the Government. The enquiry has not been conducted as per the Uttarakhand Govt. Discipline and Appeal Rules, 2003 (as amended 2010). So the punishment of recovering amount of Rs. 3,39,668/- from the petitioner is not justified. He has pleaded that the claim petition is liable to be allowed and the recovery order passed by the respondent is liable to be set aside.

8. Learned APO argued that the amount paid to contractor Rs 8,49,170/- has been considered as a financial loss to the Government due to negligence and carelessness of these engineers and the Govt. has taken a decision as per the provisions of Uttarakhand Govt. Servants Discipline and Appeal Rules, 2003 (As amended 2010) to recover the loss caused to the Govt. from the salary of these engineers. The work has been done at a site which was not approved. The petitioner as well as the Junior Engineer did not inspect at all the work carried out at the site. The disciplinary authority in respect of Asstt. Engineer is the Govt of Uttarakhand, imposed a punishment of recovery of Rs 3,39,668/- as 40% of the loss incurred. As per the Discipline and Appeal Rules, 2003 (as amended 2010) the recovery of the loss caused to Government by the Government servant is a minor punishment. This fact has been held by the Hon'ble High Court of Uttarakhand in WP (SB) No. 201 of 2018, Suresh Chandra vs. State of Uttarakhand & others. So as such a detailed enquiry to impose a major punishment was not required.

9. Based on the arguments of the parties and the documents placed, we find that petitioner has never carried out any inspection of the work otherwise this situation would have not arisen. The petitioner was totally dependent on the Junior Engineer, the Field Officer for the completion of the work. Even the Junior Engineer did not visit the site

and the reports to Executive Engineer regarding the work were being submitted without verification. The petitioner and the Junior Engineer did not inspect the site even on the request of the contractor. Both officers went to site only when the contractor reported the matter to the Executive Engineer. They did not get tested the quality of the material used by the contractor in construction of the gule. This shows the disobedience of instructions, indifferent attitude to the duties and lack of commitment by the petitioner and the then Junior Engineer. In view of above we hold that the claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: MAY 08, 2025
DEHRADUN
RS/KNP