

**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. 32/NB/DB/2023

Anzar Ahmad, aged about 54 years, s/o Anwar Khan, r/o Seer Gotia
Rudrapur District Udham Singh Nagar.

.....petitioner

VS.

1. State of Uttarakhand through Secretary Panchayati Raj Department,
Dehradun.
2. Director, Panchayati Raj Directorate, Uttarakhand, Dehradun.
3. Upper Chief Officer, District Panchayat, Udham Singh Nagar.
4. Chief Development Officer, District Udham Singh Nagar.

.....Respondents

Present: Sri M.C.Pant, Advocate for the petitioner

Sri Kishore Kumar, A.P.O. for the respondents no. 1, 2 & 4

Sri A.D. Tripathi, Advocate for the respondent no. 3.

JUDGMENT

DATED: MAY 09, 2025

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

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

- (i) *To declare impugned order of dismissal dated 05-04-2022(contained as Annexure No. 1) is arbitrary, illegal and also suffers from legal malafide and thus liable to be quashed after calling entire records from the Respondents, along with its effect and operation also or to mould the relief appropriately, keeping in view the facts highlighted in the body of the petition.*

(ii) To direct the respondent no. 3 to forthwith reinstate the petitioner with continuity in service along with all arrears of salary and other benefits had it been the impugned order was never being in existence keeping in view the peculiar fact and circumstances of the case or to mould the relief appropriately, keeping in view the facts highlighted in the body of the petition.

(iii) To award damages and compensation to petitioner such amount which may be quantified this Hon'ble Court and same may be recovered from the respondents.

(iv) To issue any other order, rule or direction, which this Hon'ble tribunal may deem fit and proper in the circumstances of the case.

(v) Award cost of petition.

2. The brief facts of the case are as follows:

2.1 The petitioner was appointed on the post of Tax Collector on 23.01.1995 at Zila Panchayat, Nainital. The petitioner was suspended on the charges of embezzlement in June 1998, while he was posted at District Udham Singh Nagar and was reinstated in service with salary after deducting the embezzled amount from the salary in the year 2001.

2.2 The petitioner was convicted by Judicial Magistrate, Udham Singh Nagar in 2012. He was acquitted from the charges on 06.03.2020 by the Session Judge, Udham Singh Nagar. During the pendency of the case, the suspension of the petitioner was revoked and he was reinstated to the service with salary benefits.

2.3 The Upper Chief Officer, Zila Panchayat, Udham Singh Nagar vide his letter No. 5747 dated 11.02.2021 informed that the petitioner was only present for 121 days from May 2002 till November 2020 and sought an explanation for absence from duties within 15 days. The petitioner, on 23.06.2021 furnished his detailed clarification to the Upper Chief Officer, Udham Singh Nagar with the medical certificates and other documents in support of his long absence. It is submitted that the petitioner was always present in the office and ready to discharge his duties but the Respondents never allocated any work to him.

3. The petitioner has challenged the impugned orders on the following grounds:

3.1 The entire action of the concerned authorities suffers from vice of arbitrariness and also based upon personal vengeance and annoyance of the concerned authorities. The inquiry could not prove a single charge against the petitioner nor could justify any evidence which shows that petitioner was in fact a sacrificial victim of the conspiracy of the respondents.

3.2 The respondents have not adhered to the Punishment and Appeal Rules. The enquiry officer never informed him about the place of enquiry and material relied upon, nor he got an opportunity to present his case in front of the enquiry officer or produce any evidence and cross examine prosecution witness. The enquiry report was never given to the petitioner and the right of the petitioner to deal with the enquiry was taken away. The punishing authority has made up its mind on the basis of alleged enquiry report and held the petitioner guilty before considering his reply to the show cause notice. Thus, there is a procedural error and grave violation of the rules.

3.3 The disciplinary authority utterly failed to consider the fact that the petitioner was never absent wilfully but the respondents themselves prevented him from joining duties.

3.4 The respondent no. 3 has not applied the principles laid down by the Apex Court in respect of dealing with the reply against the report of enquiry officer and made up his mind for awarding the punishment and no opportunity was given to petitioner to submit his reply to proposed action in accordance with law laid down by Apex Court in case of MD ECIL Vs B.Karunakaran.

3.5 There is another grave error in the impugned order, as the respondent no. 3 while agreeing with the conclusion of the inquiry officer in respect of not proving charges against the petitioner, has not given any opportunity to the petitioner for such disagreement and mechanically and arbitrary awarded the punishment and also not considered this aspect that this punishment is not commensurate to the charges, hence on this count the impugned order is in nullity.

4. C.A./W.S. has been filed on behalf of the respondent no.3. The same C.A./W.S. has been adopted on behalf of respondents no. 1, 2, & 4 by learned A.P.O. The facts of the C.A/W.S. in brief are as under:

4.1 By office order No. 103 of 1998 Anzar Ahmad was suspended from service, and by order No. 2293 dated 21-03-2001, he was reinstated on the post of tax collector on full pay, and two years annual increments withheld with cumulative effect, and the amount of Rs1,06,194.00 shown by office letter No. 508 A dated 18-11-1998 was to be adjusted from his back months salary/ pay.

4.2 A disciplinary enquiry was conducted against the petitioner (Anzar Ahmad) by the enquiry officer (District Panchayat Raj Adhikari) Udham Singh Nagar, submitted his report vide letter No. 378 dated 27-August 2010, proving an embezzlement of Rs. 2,07,807.00 and only allegations imposed were strictly proved against the petitioner.

4.3 A criminal case was instituted against the petitioner (Anzar Ahmad) bearing No. 1006 of 1999 in Thana Rudrapur Under Section 406 and 409 IPC and Criminal C No. 3768/2012, the Court of Chief Judicial Magistrate Udham Singh Nagar in which the petitioner was held guilty beyond reasonable doubt and he was convicted for imprisonment of 06 years with fine of Rs 5000/-. The petitioner was subsequently acquitted by the Third Additional District & Sessions Judge, Rudrapur vide its order dated 06-03-2020 setting aside the order dated 19-11-2012 passed by C.J.M., Rudrapur.

4.4 The petitioner was asked to submit an explanation within 15 days vide office letter No. 5747 dated 11-02-2021 that he remained absent from duty without any sanctioned leave and attended the office only 121 working days, from May 2002 to November 2020 as per office record. The petitioner submitted his explanation dated 23-06-2021 putting allegations on the office in his defence. No grounds were given for his unauthorized absence, he was absent from office since year 2002.

4.5 Previously, the inquiry report submitted by Enquiry Officer proved that the petitioner was in Jail on the charge of embezzlement from 04-04-2008 to 30-5-2008, and he was absent from office w.e.f. 16-5-2002, he never joined the office after his release from jail.

4.6 The petitioner has been given ample opportunity of hearing and filed his explanation relating the charges imposed on him, the same is evident from the letters in the office record. District Panchayati Raj Adhikari was appointed as inquiry officer during his suspension period for fact finding enquiry. He submitted the report in which all the charges were proved against the petitioner. Before passing the dismissal order, a three-members Enquiry Committee was appointed as enquiry officer in the present case and Enquiry Committee submitted its report that though the appellate court acquitted the petitioner for misappropriation of public money but he remained absent from govt. service without any sanctioned leave. The Committee recommended that Zila Parishad being administrative department to initiate proceedings against the delinquent employee under the provisions of statutory service rules and Govt. Orders issued time to time.

4.7 The relevant rules have a provision when an employee remains absent from duties for more than 5 years, a disciplinary action should be initiated against such employee and he should not be permitted to join govt. service without prior permission/approval of the appointing authority. Although the Appellate Court has acquitted the petitioner from the charges of misappropriation of public money but he himself admitted the fact that he misappropriated the public money by not depositing in the office and same may be adjusted from his salary. Based on the fact that the petitioner misappropriated the public money and remained absent for long time from the government service, there is no merit in his petition and hence, liable to be dismissed.

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

6 Learned Counsel for the petitioner argued that the petitioner was initially asked an explanation on 11.02.2021 for his long absence without any approval of leave. He submitted explanation citing the reasons for his long absence and alleged that he was not allowed to join duties by the respondent authorities. No formal charge sheet has been issued to the petitioner as mandated under Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 (as amended 2010). A three-members Enquiry Committee was constituted by the Disciplinary Authorities to look into the allegation against him which submitted the report recommending to take action as per the relevant rules. Based on the recommendation of the committee, the petitioner was dismissed from the service.

7 Learned Counsel for the respondents argued that the petitioner has remained absent for long time from May 2002 to November 2022 and he worked for 121 days during this period. He has been given ample opportunities to submit reasonable cause for his absence. After taking into consideration his explanation, the disciplinary authority invoked the provisions under Sub-para-2 of the Govt. Order no. 1162/XXX(2)/2005 dated 07.05.2005. Rule 36 of the Zila Panchayat Employees Service Rules, 1970 and F.R. Part-II (II-IV), and passed the order of termination from the service. Earlier also, the fact finding enquiry conducted by the District Panchayati Raj Adhikari during suspension period of petitioner and proved the charges against him.

8 In this case, the Disciplinary Authority passed order for major penalty of dismissal from service. As per the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 (Amended Rule 2010), the

Disciplinary Authority was required to follow the procedure given in Rules 7 & 9 of the said Rules, which read as under:

7. Procedure for imposing major punishment—

Before imposing any major punishment on any Government Servant, an inquiry shall be conducted in the following manner:--

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be signed by the Disciplinary Authority: Provided that where the appointing authority is Governor, the charge- sheet may be signed by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge sheet.

(4) The charge sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged Government Servant shall be permitted to inspect the same.

(5) The charged Government servant shall be required to put in a written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also required to state whether he desires to cross examine any witness mentioned in the charge sheet whether he desires to give or produce any written or oral evidence in his defence. He shall be also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub rule(8) he will forward the following to the Inquiry Officer, namely:(a) A copy of charge sheet and details of misconduct or misbehavior (b) A copy of written defence statement, if any submitted by the government servant (c) Evidence as a proof of the delivery of the documents referred to in the chargesheet to the government servant (d) A copy of statements of evidence referred to in the chargesheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to the produced in his defence:

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under provisions of Section-86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the Inquiry Officer may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to charges.

(13) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the Service of the notice on him or having knowledge of the Date, The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statement of witnesses mentioned in the chargesheet in absence of the charged Government Servant

(14) The Disciplinary Authority, if it Considers it necessary to do so, may, by an order, appoint a Government Servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge

(15) The charged Government Servant may take the assistance of any other Government Servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits:

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Authority 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 if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any such evidence, as provided earlier, and may examine, cross examine and reexamine him.

(17) This rule shall not apply in the following case;--i.e. there is no necessity to conduct an inquiry in such cases:-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided these rules; or

(c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry in the manner provided in these rules.”

9. Action on Inquiry Report—

(1)-----

(2) -----

(3)-----

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges, is of the opinion that any penalty specified in rule-3 should be imposed on the charged Government Servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government Servant, if any, and subject to the provisions of rule-16 of these rules, pass a reasoned order imposing one or more penalties mentioned in rule-3 of these rules and communicate the same to the charged Government Servant.

9. On the basis of the above, we find that no formal charge sheet has been issued to the petitioner. The enquiry proceedings have not been conducted as mandated under the Rules. The Disciplinary Authority did not provide a copy of the inquiry report along with the proposed punishment, thereby, no opportunity was given to the petitioner to make representation against the proposed punishment. Thus, the provisions of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 (as amended 2010) have not been followed. In view of the aforesaid rules, we find that the process of inquiry, adopted by the respondents, was in violation of Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 (as amended 2010).

10. In view of the above, we do not find it necessary to deal with other points raised by the counsel for the parties.

11. For the reasons stated in the preceding paragraphs, the petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. The impugned punishment order is hereby set aside. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law. It is further clarified that no opinion has been expressed on the merits of the case. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

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

DATE: MAY 09, 2025
DEHRADUN
KNP