

**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.134/NB/DB/2023**

Ranjeet Kumar (Male) S/O Late Sri Vikram Lal, R/O Ward-Hatrangia, Lohaghat,  
District Champawat.

.....**Petitioner**

Vs.

1. State of Uttarakhand, through Secretary, Home Department, Government of Uttarakhand, Dehradun
2. Director General of Police, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaon Range, Nainital.
4. Superintendent of Police, Champawat.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner  
Sri Kishore Kumar, A.P.O. for the Respondents

**JUDGMENT**

**DATED: MAY 19, 2025**

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

*"I. To set-aside the impugned punishment order dated 13-09-2019 passed by the Respondent No. 4 (Annexure No. 1 to Compilation-I).*

*II. To set-aside the impugned appellate order dated 10-07-2023 passed by the Respondent No. 3 (Annexure No. 2 to Compilation-I).*

*III. To direct the Respondents, particularly Respondent No. 4 to forthwith reinstate the petitioner on the post of Sweeper with back wages.*

*IV. To direct the Respondents, particularly Respondent No. 4 to grant all consequential benefits to the petitioner.*

*V. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*VI. To allow the claim petition with cost."*

2. The brief facts of the case are that the petitioner was initially appointed as Class-IV employee (Sweeper) in District Police Office, Champawat vide order dated 12-11-1999. He joined duties on 14-11-2019 under the respondent No. 4.

2.1 An F.I.R. was lodged against various persons including petitioner on 03-03-2019 alleging some scuffle on the occasion of Holi festival. The said F.I.R. was lodged under Section-308 and 323 I.P.C. Vide judgment dated 20-12-2003, the petitioner was *inter-alia* convicted under Section-323 and 308 I.P.C. read with Section-34 I.P.C for imprisonment of three years and fine of Rs 500.

2.3 The petitioner along with others, preferred Criminal Appeal No. 09 of 2014 (Vikram Lal and others Vs. State of Uttarakhand and others) against the judgment dated 20-12-2003. During the pendency of the said Criminal Appeal, the petitioner was enlarged on bail by the Hon'ble High Court of Uttarakhand. The said Criminal Appeal was ultimately decided by the Hon'ble High Court vide judgment dated 20-03-2018 and instead of 03 years sentence awarded by the Learned Trial Court, the petitioner was inter-alia released on the basis of period already undergone.

2.4 The aforesaid judgment dated 20-03-2018 was challenged before the Hon'ble Supreme Court of India in SLP (Criminal) No. 679 of 2020. Although the said SLP was filed in the year 2019 itself but there were some defects, as such it could be numbered only on 07-01-2020. The aforesaid SLP remained pending before the Hon'ble Supreme Court, and there was also Covid-19 Pandemic which started from 15-03-2020, as such, there was no occasion for the petitioner to file any Statutory Appeal against the aforesaid dismissal order.

2.5 The respondent No. 4 vide impugned order dated 13-09-2019 without waiting for the fate of Appeal/SLP in the matter, dismissed the petitioner from service without holding any enquiry whatsoever. The petitioner filed appeal on 05-05-2022 before the respondent No. 3 specifically mentioning the fact that he has preferred the SLP before the Hon'ble Supreme Court which is pending consideration.

2.6 The said appeal was dismissed by the respondent No. 3 vide order dated 17-06-2022 only on the ground of delay without going into the merit of the case.

2.7 Feeling aggrieved, the petitioner approached this Hon'ble Tribunal by filing Claim Petition No. 19/NB/DB/2023 (Ranjeet Kumar Vs. State of Uttarakhand and others) and the Hon'ble Tribunal set aside the appellate order dated 17-06-2022 and ordered to decide the case on merit. The appellate authority vide the order dated 10-07-2023 upheld the decision of the disciplinary authority.

2.8 It is submitted that the reliance placed by the respondent No. 4 while passing the impugned order on Article-311 of the Constitution of India as well as government orders dated 28-12-2005 issued by State of Uttarakhand and order dated 12-10-1979 is totally erroneous and misconceived, hence emphatically denied. The said reasoning given by the Respondent No. 4 for passing the impugned dismissal order has no legs to stand in the eyes of law.

2.9 The dismissal from service is admittedly a major punishment which cannot be imposed upon any personnel without holding a thorough departmental enquiry. It is further submitted that while passing the impugned dismissal order, the Respondent No. 4 has not considered the government order dated 30-05-2005 issued by State of Uttarakhand which specifically provides that even if a person is convicted by the competent Court of law, even then the appointing authority has to apply its mind on different aspects like (1) Entire conduct of the concerned employee, (2) Seriousness of the offence committed by him, (3) the proposed impact of his alleged misconduct, (4) Whether the conviction was of a nature of technical or negligible and all other circumstances. However, in the aforesaid impugned order, the aforesaid consideration is altogether missing as such, the impugned punishment order is de-hors the aforesaid government order dated 30-05-2005. It is further submitted that the said government order is still in effect and has not been cancelled till date.

2.10 The petitioner has rendered about 20 years of service in the department w.e.f. 14-11-1999 till 13-09-2019 with unblemished service record and it is not the case of the Respondents at all that during his entire service career of about 20 years, the petitioner has committed any misconduct in the department. It is a matter of fact that the alleged F.I.R. was lodged against the petitioner before induction into service.

2.11 The petitioner has a family and school going children and liability of entire family rests on the shoulder of the petitioner and he was/is the sole bread earner of his family consisting of 08 members. The details of petitioner's family are as follows:-

- 1-Smt. Samanta (mother) (aged about 65 years)
- 2-Smt. Sulekha (wife) (aged about 42 years)
- 3-Km. Muskan (daughter) (unemployed, aged about 23 years)
- 4-Km. Payal (daughter) (unemployed, aged about 21 years)
- 5-Km. Kashish (daughter) (minor, aged about 17 years)
- 6-Aashish (son) (minor, aged about 15 years)
- 7-Km. Shadagi (daughter) (minor, aged about 13 years)

2.12 The dismissal of petitioner's services at this stage is totally inhuman and after working for more than 20 years in the department, he has been thrown out of employment and he has been lurching into the road. It goes without saying that as youngster at the age of about 14 to 22-23 years, the maturity is altogether missing and various times, a small negligence becomes very fatal in the eyes of law. However, instead of giving a chance to such youngster to improve their conduct, taking stern action against them cannot be justified in the eyes of law at all. Copy of few such judgments shall be produced during the course of hearing, if needed. In this view of the matter also, the impugned dismissal order cannot be sustained in the eyes of law.

2.13 Even otherwise also, it is submitted that as per the provisions of Probation of Offenders Act, the conviction of any employee has no effect on the service condition of the employee concerned, if the same is his first offence. In this view of the matter also, the impugned orders

cannot be sustained. However, the said SLP has been cursorily dismissed by the Hon'ble Supreme Court by refusing to grant permission to appeal, vide order dated 12-09-2022.

2.14 The impugned appellate order dated 10-07-2023 would reveal that the Respondent No. 3 in last portion of Page No. 3 of the said order has recorded a finding that the impugned punishment order has been passed against the petitioner as he has obtained appointment by concealing the factum of pendency of criminal case against him. The same is totally contradictory to the what has been stated by the Respondent No. 4 in the punishment order. Lastly, in Para No. 4, the appellate authority has again recorded a finding that the petitioner has committed a gross misconduct by concealing the pendency of criminal case at the time of his appointment. In this regard it is submitted that the disciplinary authority as well as appellate authority is still not sure as to whether the petitioner's services have been dismissed either on account of conviction by the Criminal Court or on account of concealment of pendency of criminal case at the time of appointment. Moreover, it is settled position in law that in both the cases, the course of action is totally different and the Rules for the same are also different. As such, the Respondents owe an explanation to this Hon'ble Court to explain the exact reason for dismissal of petitioner's services. The impugned order is admittedly a stigmatic, punitive and arbitrary one and the same is also shockingly disproportionate. It is not the case of the Respondents herein that his appointment made in 1999 which was allegedly obtained by concealing the pendency of criminal case, has been cancelled. As such, in view of the matter, the impugned orders cannot be sustained in the eyes of law and deserve to be set-aside and the claim petition is liable to be allowed.

4. C.A./W.S. has been filed on behalf of respondents in which it has been stated that-

4.1 याची के द्वारा विभाग में कार्यरत रहने के दौरान कभी भी अपने कार्य में रुचि नहीं ली कई बार याची लम्बे समय तक बिना सूचना के कार्य से अनुपस्थित रहता था,

याची का यह कथन असत्य है कि उसके द्वारा विभाग में कार्यरत रहने के दौरान पूर्ण निष्ठा एवं ईमानदारी से अपने कार्य का निर्वहन किया। याची द्वारा सेवा पूर्व उनके विरुद्ध आपराधिक मामले को छिपाकर नौकरी प्राप्त की हैं न्यायालय द्वारा उक्त मामले में दिनांक 20.12.2013 को दण्डादश पारित करते हुए तीन वर्ष का कठोर कारावास तथा पाँच सौ रुपये अर्थदण्ड से दण्डित किया गया। माननीय न्यायालय द्वारा की गयी दोषसिद्धि की पुष्टि करते हुए कारावास की सजा को कम कर जेल में बितायी गयी अवधि के दण्डादेश में परिवर्तित किया गया।

4.2 भारत का संविधान के अनुच्छेद 311(2)(ए) में यदि किसी सरकारी कर्मचारी को न्यायालय के द्वारा दोष सिद्ध कर दिया जाता है तो उस मामले में जाँच की आवश्यकता नहीं है तथा उत्तराखण्ड सरकार के शासनादेश सं० 1543/कार्मिक-2/2005, दिनांक 28/12/2005 के 2005 के प्रस्तर 6-7 में प्रावधानित किया गया है कि न्यायालय द्वारा दोष सिद्ध के आधार पर यदि शास्ति दिया जाना हो तो न्यायालय के द्वारा की गयी दोष सिद्धि के आधार पर समुचित शास्ति आदेश पारित कर देना चाहिए। उ०प्र० शासन के शासनादेश सं० 06/10/79-कार्मिक-1- दिनांक 12 अक्टूबर 1979 के अवलोकन से भी स्पष्ट होता है कि आपराधिक मामले में सरकारी सेवक के दोष सिद्ध होने की दशा में संविधान के अनुच्छेद 311 (2) में निर्धारित प्रक्रिया अपनाये जाने की आवश्यकता नहीं है तथा उत्तराखण्ड पुलिस अधिनियम 2007 के नियम 8 तथा उत्तर प्रदेश अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड और अपील नियमावली) 1991 का नियम 8 के अनुसार आपराधिक मामले में दोष सिद्ध कर्मचारी को पदच्युत, हटाने अथवा पक्तिच्युत करने जैसा दण्ड देने से नियुक्ति प्राधिकारी को नहीं रोकता है।

उत्तर प्रदेश सरकारी कर्मचारी आचरण नियमावली 1956 सहपठित उ० प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली 1991 में व्यवस्था दी गयी है कि:-

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यदि किसी आपराधिक (फौजदारी) आरोप में दोषसिद्धि के आधार पर बिना विभागीय जाँच के कोई दण्ड दिया जाना हो, तो अपील के निर्णय की प्रतीक्षा किये बिना दण्डादेश जारी किया जा सकता है, परन्तु अपील में निचले न्यायालय का निर्णय पलट जाने अर्थात् आरोपित सरकारी सेवक के निर्दोष पाये जाने पर विभाग स्तर पर जारी दण्डादेश वापस ले लिया जायेगा, क्योंकि तब दोषसिद्धि विद्यमान न रहने के कारण बिना विभागीय जाँच कार्यवाही के पारित उक्त दण्डादेश अवैध होगा, जैसा कि शासनादेश संख्या-13/16/77-कार्मिक-1. दिनांक-24 सितम्बर, 1977 में स्पष्ट किया गया है।

उक्त नियमों एवं व्यवस्थाओं के आलोक में शपथकर्ता द्वारा पारित आदेश दिनांक 13.09.2019 विधि सम्मत, है एवं किसी प्रकार के हस्तक्षेप की आवश्यकता नहीं है एवं याची द्वारा प्रस्तुत याचिका आधारहीन होने के कारण निरस्त किये जाने योग्य है।

4.3 याची के जनपद में स्वच्छक के पद पर कार्यरत रहने के दौरान भी उसका विभाग में आचरण सही नहीं रहा, याची/कार्मिक दिनांक 20.04.2014 से 23.04.2014 तक कुल 04 दिवस अनुपस्थित रहा तथा दिनांक 09.11.2013 से दिनांक 10.11.2023 तक 02 दिवस

तक बिना सूचना के कार्य से अनुपस्थित रहा (इस 6 दिवस का बिना वेतन अवकाश स्वीकृत किया गया), दिनांक 16.09.2011 से स्वीकृत 03 दिवस के आकस्मिक अवकाश से अनुपस्थित होने के कारण याची को निलम्बित भी किया गया, दिनांक 27.10.2014 से दिनांक 28.11.2014 तक कुल 53 दिवस तक याची बिना सूचना के अपनी ड्यूटी से अनुपस्थित रहा, जिसका याची के द्वारा चिकित्सकीय प्रमाण-पत्र प्रस्तुत करने पर चिकित्सावकाश स्वीकृत किया गया। इस प्रकार याची की दोषसिद्धि हो जाने के उपरान्त शासनादेश दिनांक 30.05.2005 के प्रस्तर 02 में वर्णित व्यवस्था के कम में याची को दीर्घ दण्ड देने से पूर्व उसके सम्पूर्ण आचरण, उसके द्वारा कारित अपराध की गम्भीरता, दुराचरण से प्रशासन पर पड़ने वाले प्रभाव पर विचार करने की आवश्यकता नहीं थी, क्योंकि अपराध गम्भीर प्रकृति का था और नगण्य प्रकृति का नहीं था।

5 R.A. has been filed on behalf of the petitioner in response to the W.S. and averred that allegations against the service record of the petitioner are not supported by any documents. The respondents placed reliance on the repealed rules which are not in operation in the Uttarakhand after 2002. The petitioner has relied on the judgement of the Hon'ble High Court of Allahabad in the writ application no 4422 of 2015 in the matter of Vishwanath Vishwakarma Vs. State of UP, in which Hon'ble High Court gave reference of the decision of the Hon'ble Apex Court and the other courts and set aside the termination order passed without conducting the enquiry about the conduct of the employee which led to his conviction as well the conduct of the employees during his service before deciding the punishment.

6. We have heard learned Counsel for the parties and perused the record carefully.

7. Learned Counsel for the petitioner has argued that the petitioner was held guilty by the trial court and was given punishment of imprisonment of 03 years and fine of Rs. 500/- in 2003 against which he appealed in the Hon'ble High Court of Uttarakhand at Nainital. The Hon'ble High Court upheld the judgment of the trial court but reduced the sentence of imprisonment to the period already undergone and the petitioner was released on bail. The petitioner filed SLP (Criminal) No. 69679 of 2020 dated 07.01.2020 which remained pending in the Hon'ble Apex Court for long time due to Covid-19 and finally, it was dismissed on 22.09.2022. In the meantime, the Appellate Authority

passed the order of dismissal from the service of the petitioner on 17.06.2022 on the ground of delay. The petitioner filed claim petition before this Tribunal and this Tribunal vide order dated 27.02.2023 directed respondent no. 3 to decide the appeal on merits. The respondent no. 3 rejected the departmental appeal of the petitioner. Respondent no. 4 in his order dated 13.09.2019 has given the reference of Article 311 (2) (a), Govt. of Uttarakhand order no.1543/Karmik-2/2005 dated 28.12.2005 and G.O. No. 6/10/79-Karmik-01 dated 12.10.1979. The order passed by the disciplinary authority in this case is totally erroneous which has been passed without conducting departmental enquiry as well as following the provisions of the order dated 30.05.2005 which are as under:

“..... Even if person is convicted by a competent court of law, even then the appointing the authority has to apply its mind on different aspects alike:

- (i) Entire conduct of the concerned employee;
- (ii) Seriousness of the offence committed by him;
- (iii) Proposed impact of alleged misconduct and
- (iv) Whether conviction was of nature of technical and negligible.”

Respondent no. 3 in his order dated 10.07.2023 has mentioned that the petitioner concealed the facts related to the Crime committed by him before joining the service and got the appointment which itself is a serious offence and he has been convicted for that crime, which has been upheld by the Hon'ble High Court also. Learned Counsel for the petitioner further argued that the issue related to the offence committed before joining the service and its concealment by the petitioner has not been contested by the petitioner as no charge sheet has been issued to him on this aspect, so making it as one of the basis for passing order of termination is not sustainable. The respondent authorities did not consider his entire service of about 20 years and the liability of rearing of his family on his shoulder. The FIR was lodged against the petitioner before joining the service should not be taken into consideration and taking such strict action on this basis cannot be justified in the eye of the law. Learned Counsel for the petitioner has relied upon the judgment of Hon'ble High Court of Uttarakhand passed



in Special Appeal No. 303 of 2015, Pawan Kumar vs. State of Uttarakhand & others, in which the Hon'ble High Court has given the reference of the judgment of Hon'ble Apex Court passed in Avtar Singh vs. Union of India & others, 2016 (8) SCC 471, in which, it has been held that-

*"35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of powers has to be in reasonable manner with objectivity having due regard to facts of cases.*

*36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering, post/nature of duties/services and power has to be exercised on due consideration of various aspects."*

Learned Counsel for the petitioner has also relied upon the Judgment of the Hon'ble High Court of Allahabad in the Writ Application No. 4422 of 2015 in the matter of Vishwanath Vishwakarma Vs State of UP, in which the Hon'ble High Court has cited the judgment of Hon'ble Apex Court in the matter of **Union of India vs. Tulsi Ram Patel: AIR 1985 SCC (1416)**. The relevant paragraph of the this judgment is quoted herein below:

*".....the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the*

second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry.”

Learned Counsel for the petitioner further argued that in view of the facts mentioned above, Govt. Orders and the ruling of the Hon'ble Courts, the impugned orders are liable to be set aside and the claim petition is liable to be allowed.

8. Learned A.P.O. has argued that the petitioner has been convicted for the crime committed by him before joining service. He has been dismissed from the service as per the provisions and Article 311(2)(a). The respondent authorities have duly considered the provisions as mentioned in G.O. dated 30.05.2005. The conduct of the petitioner even during the service was not satisfactory and which has been mentioned by the appellate authority in his order. There is no lacunae in the order of punishment given by the respondent authorities in view of the above, the claim petition is liable to be dismissed.

9. Based on the arguments of learned Counsels for the parties and perusal of the documents, we find that the petitioner has committed an offence for which an FIR was lodged against him before joining the service and this fact has been concealed by the petitioner at the time of appointment. Later on, he was convicted for this offence. Even the concealment of the fact that the petitioner has committed an offence for which an FIR was pending against him at the time of joining the service is overlooked in view of the judgment of Hon'ble Apex Court, which has been relied upon by the learned Counsel for the petitioner. The fact is that the petitioner has been convicted by the Trial Court and the decision of the Trial Court has been upheld by the Hon'ble High Court of Uttarakhand at Nainital by reducing the punishment. The disciplinary authority has made a reference of the G.O. dated 28.12.2005 while passing the order of dismissal from service and the appellate authority has upheld this decision and mentioned the conduct of the petitioner while deciding the appeal. The disciplinary authority did not consider the conduct of the petitioner rationally, which led to his conviction. The appellate authority although says that the petitioner cannot be retained in the service in a disciplined police force

but the fact had the police might have conducted the inquiry related to the character and antecedents of the petitioner properly at the time of his appointment in the police department, it would have found out that there was an FIR against the petitioner. It is expected that such fact finding by the police in case of the appointment in the police department must be more rigorous than for the other departments. The respondent authorities did not consider the fact that the petitioner is a Class IV employee (*Safai Karmchari*), who has put 20 years of the service in the department, he cannot be judged according the parameters set for the persons posted at higher level as well as in sensitive posts. This shows that the respondent authorities have not considered all the aspects of the matter and passed the punishment orders against the petitioner.

10. In view of the facts, we find that the punishment order dated 13-09-2019 passed by the Respondent No. 4 and appellate order dated 10-07-2023 passed by the Respondent No. 3 are liable to be set aside.

### **ORDER**

The claim petition is hereby allowed. The impugned order dated 13-09-2019 and appellate order dated 10-07-2023 are hereby set aside. The respondent no. 4 is hereby directed to reinstate the petitioner in service with immediate effect alongwith with all consequential benefits. No order as to costs.

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

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

DATE: MAY 19, 2025  
NAINITAL  
KNP