

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

Present: Hon'ble Sri Ram Singh

----- Vice Chairman (J)

&

Hon'ble Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 15/SB/2016**

Pradeep Kumar Bishnoi S/o Late Sri Jograj Singh, presently posted as Additional Assistant Engineer, Minor Irrigation, Circle Office, Pauri Garhwal.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary Minor Irrigation, Government of Uttarkahand, Civil Secretariat, Subhash Road, Dehradun.
2. Chief Engineer and Head of the Department, Minor Irrigation, Uttarakhand, Derhadun.
3. Superintending Engineer, Minor Irrigation Circle, Tehri.
4. Executive Engineer, Minor Irrigation Khand, Haridwar.

.....Respondents

Present: Sri L.K.Maithani, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondents

**JUDGMENT**

**DATE: FEBRUARY 09, 2017**

**DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. The petitioner has filed the present claim petition for seeking the following relief:-

*“(i) To issue an order or direction to the respondents to quash the order dated 16.10.2015 (Annexure No. A-1) with its effect and operation.*

*(ii) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*

*(iii) To award the cost of the case.”*

- 2.1 The petitioner while working as Junior Engineer in the Department of Minor Irrigation, Sub Division Roorkee in District Haridwar in 2008 did the construction work of ‘Gul’ at various places.
- 2.2 The Accountant General (Audit) Uttarakhand, Dehradun audited the minor irrigation works of 2008 in the year 2011 and, in one of its paragraphs, observed that on a work on cluster No. 295/2 done by the petitioner, there was less use of 184 bags of cement (only 3845 bags of cement were issued/used instead of 4029 bags for the work) hence, work of inferior quality was done by using less cement than that of the quality prescribed under the norms.
- 2.3 The explanation of the petitioner was sought in April, 2011 and in his explanation in June, 2011 (Annexure: A2), the petitioner stated that 240 cement bags which were surplus on other works were received back by him and out of these 240 bags, he issued 184 bags of cement for work on cluster No. 295/2 but due to mistake, he did not make entry of this in the monthly account/stock. The petitioner requested higher authorities to correct the record of stock accordingly.
- 2.4 Thereafter, on 09.09.2013, the Executive Engineer (EE) wrote a letter to the petitioner (Annexure: A3) that explanation given by him in June, 2011 to correct the record of stock in respect of work done in 2008 is not tenable. In this letter of 09.09.2013, the EE asked explanation of the petitioner giving him a notice as to why the cost of 184 cement bags amounting to Rs. 44160 be not recovered from him due to use of less quantity of cement. The

petitioner replied to this notice on 24.10.2013 (Annexure: A4) and again explained that the entry of issue of 184 bags of cement could not be made in monthly accounts due to mistake and mentioned that the issue of cement bags can be verified by the Measurement Book (M.B.). The petitioner also requested to close the matter of recovery against him.

- 2.5 After the explanation of the petitioner on 24.10.2013, the EE wrote to SE on 05.05.2015 (Annexure: R-4 to the W.S.) and the SE wrote to CE on 01.07.2015 (Annexure: R-5 to the W.S.) that the approval be given to recover Rs. 44160 from the petitioner. The Staff Officer of the CE wrote to the EE on 19.08.2015 (Annexure: A5) to take necessary action to recover Rs. 44,160 from the petitioner. A copy of this letter dated 19.08.2015 was also sent to SE. The SE, by an endorsement (undated) on this letter (dated 19.08.2015) itself, again sought explanation of the petitioner within 15 days. This was received by the petitioner on 04.09.2015 (Annexure: A5). The petitioner gave his explanation on 17.09.2015 (Annexure: A6) and stated in his explanation that there is no case of embezzlement/misappropriation against him. This explanation of the petitioner dated 17.09.2015 which was sought by the SE remained undecided. Meanwhile, the EE issued the recovery order against the petitioner on 16.10.2015 (Annexure: A1). The impugned order is reproduced hereunder:

“कार्यालय अधिशासी अभियन्ता,  
लघु सिंचाई खण्ड हरिद्वार।

पत्रांक 668/ल0सिं0/कार्य0/audit/2015.16 दिनांक 16 अक्टूबर, 2015

एतद्द्वारा श्री पी0के0 बिश्नोई, तत्कालीन कनिष्ठ अभियन्ता, उपखण्ड रुड़की के विरुद्ध सम्प्रेक्षा दल द्वारा कलस्टर टिकोला कलां की उपयोगना संख्या- 295/2 एवं कलस्टर गदर जुडा माईनर की उपयोगना संख्या- 300/7 में संयुक्त रूप से 184 बैग सीमेन्ट कम निर्गत किये जाने से कार्य की गुणवत्ता का अद्योमानक होने के कारण कार्यालय अधीक्षण अभियन्ता, लघु सिंचाई वृत्त पौड़ी के पत्र संख्या- 133/ल0सिं0/कार्य0-वसूली/(श्री बिश्नोई)/2015-16 दिनांक 01.07.2015 एवं

कार्यालय मुख्य अभियन्ता एवं विभागाध्यक्ष, लघु सिंचाई विभाग, उत्तराखण्ड देहरादून के पत्र संख्या- 756/ल0सिं0/वसूली/2015-16 दिनांक 19 अगस्त, 2015 द्वारा दिये गये निर्देशों के क्रम में श्री पी0के0 विश्नोई से 184 बैग सीमेन्ट की वसूली रू0 240.00 प्रति बैग की दर से कुल रू0 44160.00 (चालिस हजार एक सौ साठ मात्र) निर्धारित की गयी है। इस धनराशि को तत्काल प्रभाव से श्री विश्नोई द्वारा जमा की जानी है। धनराशि जमा न करने की स्थिति में इस धनराशि को इनके मासिक वेतन से कटौती किये जाने हेतु आदेशित किया जाता है।

(ए0के0 पाठक)

अधिसासी अभियन्ता  
लघु सिंचाई खण्ड हरिद्वार।”

- 2.6 The petitioner filed an appeal on 29.01.2016 (Annexure: A9) against the recovery order dated 16.10.2015 which was received by him on 04.11.2015. The same remains undecided. Meanwhile, the petitioner has retired on 31.10.2016.
3. Respondents Nos. 1 to 4 have opposed the claim petition and filed separate (but identical) written statements. The main contention of the respondents is that the recovery order against the petitioner has been rightly issued in pursuant to the Audit para. The explanation of the petitioner was sought and after due consideration of the same, the impugned order has been passed.
4. The petitioner has also filed rejoinder affidavit and the same averments have been reiterated and elaborated in it which were stated in the claim petition.
5. We have heard both the parties and also perused the record.
6. Learned counsel for the petitioner has argued that the impugned order has not been passed in accordance with the ‘Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (hereinafter referred as “Discipline and Appeal Rules”). It is the contention in written statements of all the respondents that the ‘Discipline and appeal Rules’ are not applicable in the present case.

7.1 Paragraph 12 of the written statements reads as under:

“12. प्रस्तर 4(10) का कथन असत्य एवं अप्रसांगिक कथन है। याची ने स्पष्टतः 184 सीमेन्ट के बैगों की कमी की भूल स्वीकार की है तथा अभिलेखों जो कि एनेकजर के रूप में संलग्न हैं, के अनुसार उन पर 184 सीमेन्ट बैग कम उपयोग होने के कारण रू0 44160/- की वसूली नियत की गयी है, जो उचित है। इस प्रकरण में याची से मात्र सीमेन्ट बैगों की वास्तविक कीमत की वसूली के आदेश पारित किये गये हैं। यह अनुशासनात्मक कार्यवाही का मामला नहीं बनता है, जिसके फलस्वरूप यह प्रकरण पनिशमेन्ट एण्ड अपील रूल 2003 की परिधि में नहीं आता है।”

7.2 Paragraph 14 of the written statements is also reproduced below:

“14. प्रस्तर 4(12) के कथन के सम्बन्ध में स्थिति स्पष्ट करना है कि यह दण्ड सम्बन्धी प्रकरण नहीं है तथा ना ही इस पर पनिशमेन्ट एण्ड अपील रूल 2003 के प्राविधान लागू होते हैं।”

7.3 **While respondents have contended that the recovery order has not been passed under the “Discipline and Appeal Rules”, it has not been stated by the respondents neither in the written statements nor at the time of hearing as to under which Rule or Government Order or Standing Order or any other provision, the recovery order has been passed.**

8. It would be appropriate to look at the relevant provisions of the “Discipline and Appeal Rules” which are extracted hereunder:

“1. (1) These rules may be called the “The Uttaranchal Government Servant Discipline and Appeal) Rules, 2003”.

(2) They shall come into force at once.

(3) **They shall apply to Government Servants** under the rule making power of the Governor under the proviso to Article 309 of the Constitution except the Officers and Servants of the High Court of Judicature at Nainital covered under Article 229 of the Constitution of India.

**Definitions—**

“2. In these Rules, unless there is anything repugnant in the subject or context--

- (a) .....
- (b) .....
- (c) .....
- (d) **“Departmental Inquiry” means the inquiry under rule-7 of these Rules;**
- (e) .....
- (f) .....
- (g) .....
- (h) **“Government Servant” means a person appointed to public services and posts in connection with the affairs of the State of Uttaranchal;**
- (i) .....
- (j) .....

#### **Penalties—**

**“3.** The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants-

##### **(a) Minor Penalties--**

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) **Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;**
- (iv) Fine in case of persons holding Group “D” posts:

##### **(b) Major Penalties--**

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;
- (iii) Removal from the Service which does not disqualify from future employment;
- (iv) Dismissal from the Service, which disqualifies from future employment.”

#### **Procedure for imposing major punishment--**

**“7.** 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

misbehaviour 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.....”

.....

#### **Procedure for imposing minor penalties-**

“10. (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in rule-3.

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated to the concerned Government Servant.”

#### **Appeal-**

“11. (1) Except the orders passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.

(2) The appeal shall be addressed and submitted to the Appellate Authority. A Government Servant Preferring an appeal shall do so in his own name. The appeal shall contain all material statements and arguments relied upon by the appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4) The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.

“12. The Appellate Authority shall pass such order as mentioned in (a) to (d) of rule-13 of these rules, in the appeal as he thinks proper after considering :-

- (a) Whether the facts on which the order was based have been established;
- (b) Whether the fact established afford sufficient ground for taking action; and

- (c) Whether the penalty is excessive, adequate or inadequate.”

“13. Notwithstanding anything contained in these rules, the Government may of its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

- (a) confirm, modify or reverse the order passed by such authority, or
- (b) direct that a further inquiry be held in the case, or
- (c) reduce or enhance the penalty imposed by the order, or
- (d) make such other order in the case as it may deem fit.”

9. Perusal of aforesaid rules reveals that the “Discipline and Appeal Rules” apply to Government Servants. The petitioner admittedly is a government servant. The “Departmental Inquiry” has been defined as inquiry under Rule-7 of the “Discipline and Appeal Rules”. Rule 7 deals with the procedure for major punishment. Major Penalties have been defined under Rule-3(b). The petitioner has not been awarded any major punishment and, therefore, Rule-7 does not apply and there was no need to initiate the departmental inquiry under Rule-7 by issuing the charge sheet and conducting an inquiry. “Recovery” of loss to the government has been ordered against the petitioner and recovery of any pecuniary loss caused to Government has been included as minor penalty under Rule-3(1) (iii) of the “Discipline and Appeal Rules.” The procedure for imposing minor penalties has been prescribed under Rule-10 of the “Discipline and Appeal Rules.”

10. **In view of paragraph 7.3, 8 and 9 above, it is clear that the “Discipline and Appeal Rules” apply in the case at hand and the contention of the respondents that the “Discipline and Appeal Rules” do not apply, cannot be accepted.**

11.1 In the case at hand, the petitioner has contended that against the order of recovery for causing financial loss to the Government (Annexure: A1), he had filed an appeal which has not been decided by the respondents.



- 11.2 **As has been noted earlier that it is provided under Rule 11 of the “Discipline and Appeal Rules” that a government servant is entitled to “Appeal” against any punishment order to the next higher authority.**
- 11.3 It is also pertinent to mention here that Section 4 of the Public Services Tribunal Act provides that no reference shall ordinarily be entertained by the Tribunal until all departmental remedies (under the rules applicable to the petitioner) are exhausted.
- 11.4 It would be, therefore, justified that the controversy in question is first considered by the appropriate forum at the Government level. Since the subject matter of the claim petition needs scrutiny of the facts and also the appreciation/reappreciation of evidence, it would be more appropriate and in the in the interest of justice if the grievance of the petitioner is first considered and decided by the Departmental Appellate Authority.
12. In view of above, we allow the petitioner to avail the remedy of “Appeal” under Rule 11 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 as amended from time to time. The petitioner may file the fresh “Appeal” before the Appellate Authority within 21 days from the date of receipt of the certified copy of this order and the Appellate Authority, after receiving it, will decide the Appeal in accordance with law and rules (also affording an opportunity of hearing to the petitioner) expeditiously possible preferably within a period of two months.

The petition is disposed of accordingly, no order as to costs.

RAM SINGH  
VICE CHAIRMAN (J)

D.K.KOTIA  
VICE CHAIRMAN (A)

*DATED: FEBRUARY 09, 2017*  
*DEHRADUN.*  
*KNP*