

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 10/SB/2016

Surendra Singh, S/o Late Sri Sannu Singh, Senior Assistant, Pashupalan
Vibhag, Kalsi Circle, District, Dehradun (Uttarakhand)

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Pashupalan, Government of Uttarakhand, Civil Secretariat, Subhash Road, Dehradun.
2. Director, Pashupalan Vibhag, Uttarakhand, Mothorowala, Dehradun.
3. Pariyojana Nideshak, Bhed Avam Uen Prashar Sansthan, Pashulok, Rishikesh, Dehradun.
4. Pariyojana Nideshak, Pashu Prajanan Farm, Kalsi Circle, Dehradun.

.....Respondents.

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

Sri Umesh Dhaundiya, Ld. A.P.O.
for the respondents.

JUDGMENT

DATE: MARCH 10, 2017

1. The petitioner has filed this petition for the following reliefs:

*“i) To quash the impugned order dt. 22.07.2015
and 06.08.2015 (Annexure No. A-1 and A-2 to the*

petition) and appellate order dated 17.3.2016 (Annexure No. A-8) with its effect and operation.

ii) To issue an order or direction to the concerned respondent to pay the recovered and withholding amount with interest.

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

iv) To award the cost of the case."

2. The facts given rise to the petition are that the petitioner was working on the post of Senior Assistant since 01.03.1993 in the office of Livestock Extension Officer Training Centre, Pashulok, Rishikesh, district Dehradun. This training centre was set up for two years diploma to the trainees by the department and the facility of hostel was also provided therein. Being Senior Assistant in the office, the petitioner was discharging his duties to receive the amount paid by the trainees to the department and after issuing the receipt, he used to deposit the money in the treasury.

3. During the year 2006-07, the electricity bill of the hostel for the month of November, 2006 and for the month of April, August and September, 2007 were not deposited by the trainees and hence, no receipt was issued by the petitioner, but on this ground, after a lapse of 7 years, in November, 2013, Joint Director of the department called for an explanation of the petitioner in this respect to which, the petitioner submitted his reply. On 01.05.2014, an Enquiry Officer was appointed and the petitioner submitted his reply in the enquiry which was started on the complaint of one Sri Rajesh Kumar. On 03.06.2014, the

petitioner appeared before the enquiry officer, but neither the complainant nor any other person or trainee officers were called for by the enquiry officer. After submission of the report by the enquiry officer, the respondent no. 3 issued a letter on 30.09.2014 along with enquiry report to the petitioner for his reply. The petitioner submitted his reply on 16.10.2014, but ignoring the reply of the petitioner, the respondent no. 3 passed the impugned order dated 22.07.2015 by which the order of recovery of amount Rs. 22,920/- from the pay of the petitioner was passed and his increments for one year were withheld. In July, 2015, the petitioner preferred an appeal to the respondent no. 2, which was not decided. Thereafter, the petitioner came before the Tribunal with this petition.

4. During hearing of the petition, an order was passed in February, 2016 by the Tribunal directing the respondents to decide the departmental appeal of the petitioner, but the appeal of the petitioner was rejected without application of judicious mind and without perusal of the real facts. Hence this petition has been argued with the request to quash the punishment orders dated 22.07.2015, 06.08.2015 and the appellate order dated 17.03.2016 along with its effect and operation and to pay the recovered and withheld amount to the petitioner.

5. The petitioner has challenged the impugned order on the ground that the impugned order is bad in the eyes of law and was passed in utter violation of Rules and principles of natural justice and non-reasoned and non-speaking order was passed on the false complaint of one Mr. Rajesh Kumar. Neither the complainant nor any other person or trainees were called for examination during the course of the enquiry and statements

were never recorded, neither the petitioner was given any opportunity to cross-examine the witnesses nor the statements of trainees were recorded to ascertain whether they have deposited any amount or not. The Chief Technical Officer, who was the Warden of the training centre was responsible to collect the amount of the fees, but he was not called for in the enquiry and his statement was also not recorded, neither any complaint was made by any of the trainee officer to the Warden. The petitioner handed over the concerned register long back, to his successor, Sri Naveen Gairola in 2012 and after handing over of the register, the entries were altered. The false complaint was made by one Sri Rajesh Kumar, Administrative Officer who was having enmity with him because of the reason that the petitioner had filed a writ petition before the Hon'ble High Court against his promotion on the post of Administrative Officer and due to this reason, Sri Rajesh Kumar was annoyed towards the petitioner and he used to put pressure to withdraw his petition to which the petitioner has refused. So, this false complaint was made against the petitioner after a lapse of 7 years and the enquiry officer had deliberately ignored all these important facts and arbitrary and malafide order against the principles of natural justice has been passed, which is violative to principles of natural justice and constitution of India.

6. The petition has been replied by the respondents on the ground that proper enquiry was conducted and it was found that the petitioner was responsible to collect the electricity dues and after collecting the dues, he never recorded the same in the concerned cash book and register and embezzlement of the same was made. The enquiry officer has recorded his conclusion

in the enquiry report and found that the petitioner has been negligent towards his duties and he is responsible in both circumstances whether he has received the amount of electricity dues from the trainee officers or not and on account of his dereliction of duties, the State suffered a loss of Rs. 22,920/- After giving an opportunity of hearing, the proper order was passed and his appeal was also dismissed having no ground for interference and the petition deserves to be dismissed.

7. A rejoinder affidavit has also been filed on behalf of the petitioner reiterating the same facts, already mentioned in the main petition.

8. I have heard learned counsel for the petitioner and learned A.P.O. for the respondents and also perused the record.

9. The petitioner has been punished on account of dereliction of his duties and not depositing the electricity dues in the government account after receiving the same from the trainee officers. When the notice was issued to the petitioner, he denied from receiving any amount from the trainee officers on account of electricity dues. In his reply to the enquiry report, he has submitted that the mess and electricity dues were being collected through a register privately maintained by the contractor and trainee officers and he put his signature only on receiving of examination fee. The petitioner has also raised the question in his reply that the electricity dues for the relevant period were exempted by the departmental officer and because of this reasons, the electricity dues were not to be recovered. The following things were required to be ascertained by the enquiry officer:

- i. Whether the petitioner was duty bound to collect the dues on account of electricity from the trainee officers.
- ii. Whether such amount was collected and paid by the trainee officers and whether the petitioner knowingly did not enter this amount in any book or register and deposit the same in the government treasury.
- iii. Whether any embezzlement was made by him in any manner.
- iv. Whether any loss was caused to the State on account of his negligence/derelection of duties.

10. The court is of the view that the enquiry officer has not conducted the enquiry in a fair and judicious manner. The principles of natural justice were not followed because the trainee officers were not examined, who were the right persons to state that they have paid any such amount of electricity dues to the petitioner. Even if they have paid the amount, the trainee officers should have asked for the receipt on account of the payment. If receipt was not issued, the statements of the trainee officers were very relevant to be recorded and the petitioner should have been given an opportunity to cross examine them. Further, when the petitioner raised the question of electricity dues being exempted from payment by the trainees under the orders of his superior officers, then it was very much necessary to examine the witnesses to ascertain that any amount was realized by the petitioner on account of electricity dues from the trainee officers and was not deposited in government account.

11. According to the petitioner, the electricity dues were not paid by the trainee officers. If it was to be paid by the trainee

officers then they were the first persons to be questioned about the payment of any such amount to the petitioner and without ascertaining this fact, it cannot be said that the petitioner has embezzled the same or has caused any loss to the government because if such dues were remained outstanding towards the trainee officers that could have been realised from them after it comes to the knowledge of the department. Without ascertaining the fact that the trainee officers actually paid the amount to the petitioner, it cannot be said that the petitioner has failed to deposit the same in the department.

12. When petitioner has come up with the case before the enquiry officer that the payment of such dues was exempted by some senior officers and that he has not received any amount from the trainee officers, so without realizing the amount, the petitioner was not duty bound to deposit the same in the government treasury.

13. This court is of the view that the enquiry officer has not applied his judicious mind to ascertain the liability of the petitioner and in his enquiry report, he has written that even if he has not realized the amount from trainees, he has caused loss to the government. Without examining the trainee officers or the concerned trainee monitor, who was collecting the dues of mess and other dues and without any statement of warden, this conclusion is perverse and it reflects that the enquiry was conducted without following the principles of natural justice. The findings of the enquiry officer are perverse and are without any evidence. The disciplinary authority has not applied his mind to all the facts and circumstances of the matter. Unless it was proved that the petitioner has realized the amount of such dues

from the trainee officers and has not deposited the same in the department, he cannot be held responsible for the loss to the government because he was having no authority to realize the dues, disobeying the direction of his superiors. His superior officer has exempted the trainee officers from the payment of such electricity dues for the relevant months and the petitioner also placed these facts before the enquiry officer that should be taken into account which was not done properly. The complainant Mr. Rajesh Kumar has submitted his complaint after a lapse of 7 years to the department and the cognizance of his ill-will and enmity with the petitioner was not taken into count by the enquiry officer hence, the court is of the view that the enquiry officer has conducted the enquiry in a cursory manner and principles of natural justice were not followed; the findings of the enquiry are perverse and the petitioner was not given sufficient opportunity to cross examine the relevant and important witness/persons. The findings of the enquiry are contradictory in itself and the decision of the disciplinary authority was made without application of judicious mind and is without any reasonable ground and punishment order passed, needs to be set aside. Whatever loss was caused to the department on account of not realization of electricity dues, it was either on account of the order of superior officers, who have exempted the trainees from payment or on account of non-payment of the amount by the trainee officers because in the absence of the proof of payment of such dues by the trainee officers to the petitioner, he cannot be held responsible. Furthermore, the government was having all the opportunities to realize the dues of electricity amount from the trainee officers

who were the part of their department. In the result, the petition succeeds and the impugned orders need to be set aside.

ORDER

The petition is allowed. The impugned orders dated 22.7.2015 (Annexure: A-1) and order dated 06.08.2015 (Annexure: A-2) as well as appellate order dated 17.03.2016 (Annexure: A-8) are hereby set aside along with its effect and operation. The respondents are directed to refund the recovered amount, if any, from the petitioner. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: MARCH 10, 2017

DEHRADUN

KNP