

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 20/NB/DB/2015

Barahma Prakash Sagar, S/o Late Sri Ram Sagar, R/o Tehsil Kichcha, District
Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand, through Principal Secretary, Revenue, Civil Secretariat, Dehradun.
2. Commissioner, Kumaon Division, Uttarakhand.
3. Collector, District Udham Singh Nagar.

.....Respondents

Present: Sri Udhyog Shukla, Ld. Counsel
for the petitioner

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: MAY 17, 2017

(HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J))

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

“(i) To quash the impugned order dated 24.8.2011 passed by the respondent no. 3 annexed as Annexure No. 1 to the petition, the appellate order dated 18.12.2012 passed by the respondent no. 2 annexed as Annexure No. 2 to petition and the order dated 5.8.2013 passed by the respondent no. 1 annexed as Annexure

No. 3 to the petition, on the review application preferred by the petitioner.

(ii) To direct the respondents to resettle the salary payable to the petitioner after granting him the benefit of three increments as withheld as a consequence of the impugned orders.

(iii) To pass any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of the petition to the petitioner."

2. Briefly stated facts are that the petitioner was appointed in the year 1985 as Mall Moharrir/Junior Clerk in Nainital and was considered and promoted in 1992 on the post of Vasil Vaquil Navis (Senior Clerk) and was working on the post of Senior Assistant since 1999.

3. On 30.07.2005, the petitioner was placed under suspension on certain allegations of negligence in discharging of duties. A charge sheet was issued on 23.08.2005 (Annexure No. 4) by the respondents. The propriety of the suspension, was challenged by the petitioner in August 2005 by way of writ petition bearing no. 1091 of 2005 before the Hon'ble High Court of Uttarakhand at Nainital and vide interim order dated 3.8.2005, the suspension order was stayed. The reply to the charge sheet dated 23.8.2005 was submitted by the petitioner on 19.9.2005 denying the allegations. The writ petition no. 1091 of 2005 was disposed of by the Hon'ble High Court vide judgment dated 27.09.2005 (Annexure: 7) and the respondent authorities were directed to complete the enquiry within a period of four months and interim

order was extended. In April 2007, the petitioner was promoted on the post of Administrative Officer Grade-II, Sitargaj.

4. Needless to say that when an employee is being considered for promotion during subsistence of suspension order and an enquiry, the normal recourse to be adopted is that promotion order to be kept in sealed envelopes till conclusion of the enquiry, but the said recourse was not adopted in the case of the petitioner and considering his past service record, the respondents being satisfied about propriety of the petitioner, awarded him promotion. The cadres of Administrative Officer were having two classifications i.e. Grade-II and Grade-I. The State Government vide order dated 9.2.2010 taken a decision to merge the two grades of Administrative Officer Grade-I and Grade II into one Administrative Officer. The petitioner was transferred on 8.10.2010 to Rudrapur, but he is still Administrative Officer Grade-II. The District Magistrate on the basis of Government Order dated 9.2.2010, written a letter to the Commissioner on 24.1.2011 to merge both the cadres but for petitioner designation as Administrative Officer was recommended to keep pending because the alleged departmental proceedings were pending against him.

5. According to the petitioner, direction given by the Hon'ble High Court on 27.09.2005 in writ petition No. 1091 of 2005 to complete the enquiry within four months, was not being adhered to and enquiry was stretched beyond the period fixed by the Hon'ble High Court whereas, after issuance of the charge sheet and before the conclusion of the enquiry, the petitioner was also awarded promotion, hence, enquiry proceedings pending become void and non-est. The petitioner also raised the aforesaid contention before the respondents that since he was promoted, it

was presumed that the service record prior to promotion order, was unblemished and earlier disciplinary proceedings pending are vitiated. Instead of declaring the enquiry proceedings to have been dropped consequent to the promotion order and order of Hon'ble High Court, it was kept pending beyond the period fixed by the Hon'ble High Court and the same was not dropped and was concluded after a period of six years inspite of the repeated representation dated 11.4.2011 submitted by the petitioner.

6. After a period of six years, on 15.4.2011, the enquiry report (Annexure: 9) was submitted and the respondents issued a show cause notice to the petitioner on 27.04.2011 (Annexure: 10) to submit his reply on the report of the enquiry officer. The petitioner submitted his reply that prolonged enquiry, which was concluded on 15.4.2011 after a period of six years, is not correct and the show cause notice is in violation of the principles of natural justice and same is being issued after six years of its initiation. Disagreeing with the reply submitted by the petitioner, and agreeing with the purported findings recorded in the enquiry report dated 15.4.2011, the disciplinary authority by the impugned order of punishment dated 24.8.2011, imposed a punishment whereby three increments of the petitioner were stopped. The petitioner also invoked the appellate jurisdiction by filing an appeal before the Commissioner on 10.10.2011, but his appeal did not find favour and the same was dismissed vide order dated 18.12.2012 affirming the order of punishment dated 24.8.2011. The petitioner also filed revision against the order dated 24.8.2011 and 18.12.2012. Pending this petition, the services of the petitioner were transferred to Tehsil Kichha on administrative grounds and the petitioner was reverted to the post of Revenue Accountant

from the post of Administrative Officer and accordingly, he was relieved to join at Tehsil Kichcha on 27.6.2013. The petitioner filed a writ petition bearing no. 835 of 2013 before the Hon'ble High Court, challenging the order of reverting as well as relieving him and vide interim order dated 9.7.2013 passed by the Hon'ble High Court, the parties were directed to maintain status-quo. Thereafter, the respondents rejected the revision filed by the petitioner. Ultimately, the writ petition no. 835 of 2013 was disposed of vide order dated 25.10.2013, directing the respondents to join on transferred place within seven days and to file a representation before the competent authority, who shall take decision within three weeks on the representation. Thereafter, the petitioner joined at Kichha and filed his representation on 15.11.2013. The representation of the petitioner was not decided and thereafter, vide non-speaking order dated 16.12.2013, representation of the petitioner was rejected without application of mind and ignoring the direction of the Hon'ble High Court and the effect of order of promotion dated 25.4.2007 passed during pendency of the enquiry, was not considered. The petitioner submitted representation once again referring to the direction of the Hon'ble High Court and to consider the pleadings given by him. The second representation was also rejected by the respondents vide order dated 7.2.2013 (Annexure: 18).

7. The petitioner has challenged the impugned order dated 24.4.2011 passed by the respondent no. 3 (Annexure: 1), appellate order dated 18.12.2012 passed by the respondent no. 2 (Annexure: 2) and the order dated 5.8.2013 passed by the respondent no.1 (Annexure: 3) and to direct the respondents to resettle the salary payable to the petitioner after granting him the benefit of three

withheld increments as a consequence of the impugned orders along with cost of the petition on the following grounds.

8. That as per the Government order dated 10.2.1993, in the event of prolonged enquiry, if during the intervening period, an incumbent is promoted, it will render the disciplinary proceedings as to be useless. The respondents by a cryptic and non-speaking order dated 16.12.2013, without application of mind purporting it to be in compliance of the direction issued by the Hon'ble High Court dated 25.10.2013, rejected the petition of the petitioner and the authorities have failed to take into consideration the effect of the promotion order during the pendency of the enquiry proceedings. The show cause notice issued, is in violation of the principles of natural justice and after a period of six years of initiation of enquiry, the same not being completed in the stipulated time fixed by the Hon'ble High Court. The impugned orders passed, were against the settled principles of law, principles of natural justice and hence, deserve to be set aside.

9. Respondents have opposed the petition on the ground that on account of negligence and dereliction of duty, the petitioner was suspended. The enquiry was initiated and he was awarded promotion because his proposed suspension was kept in abeyance by the Hon'ble High Court. The petitioner's contention is not tenable that the enquiry against him was automatically ended due to his promotion in 2007. The petitioner was granted regular promotion due to non completion of enquiry and it was because of the stay order passed by the Hon'ble High Court. Final conclusion of the enquiry could not come up in time and ultimately, the petitioner was punished in 2011. At the time of promotion C.R. entries of past 10 years were considered. Due to transfer of

enquiry officer, the enquiry proceedings could not be completed in time and thereafter, on completion of enquiry on 15.4.2011, the impugned punishment was passed. The revision application of the petitioner being devoid of legal force was rightly rejected. The appeal was also decided on merit. Filing of representation again and again by the petitioner was wrong and it was rejected accordingly. The claim of the petitioner is without any ground and is liable to be dismissed with cost.

10. Rejoinder affidavit has also been filed on behalf of the petitioner and the same facts have been reiterated as already stated in the petition.

11. We have heard learned counsel for the petitioner and learned A.P.O. for the respondents and also perused the available record.

12. The first argument on behalf of the petitioner is that after reply to the charge sheet in September 2005, Hon'ble High Court passed a direction on 27.9.2005 in Writ Petition No. 1091 of 2005 to complete the enquiry within a period of four months. An interim order against the suspension order was also extended. Consequently, earlier order of suspension was stayed and remained unaffected. In the year 2007, petitioner was promoted on the post of Administrative Officer on the basis of his credential but disobeying the direction of Hon'ble High Court, the enquiry was not concluded within four months from September 2005 neither any extension of time to complete the enquiry was sought for, from the Hon'ble High Court. Hence, in these circumstances, any such enquiry after January, 2006 was not warranted and it must have been terminated automatically. The same enquiry was

kept pending and was resumed in 2011 after a period six years to which reply was submitted. In view of the court, such prolonged enquiry after a period of six years is not correct and was in violation of the order of Hon'ble High Court and against the principles of natural justice. The court is of the view that resuming the same enquiry after a period of six years, will be treated non-est.

13. The court is of the view that such an enquiry or charges also became infructuous by the conduct of the disciplinary authority itself because in April 2007, the petitioner was promoted by the respondent after considering his service record and after being satisfied about the propriety of petitioners' credential. Whenever, pending enquiry, any employee is awarded promotion by his Controlling Authority, the effect of such action is that the authority considered him eligible for promotion ignoring any such type of enquiry and in this case, the proceedings of DPC for promotion was not kept in the sealed cover and promoting the petitioner on higher post as a regular promotion, was a sufficient conduct to show that even in view of the appointing authority itself, the enquiry was ineffective and was no hindrance to further promotional career of the petitioner.

14. The court is of the view that the conduct of the appointing authority awarding promotion to the petitioner in 2007 rendered the pending enquiry useless, disobeying the order of Hon'ble High Court and non-completion of the enquiry within four months from September 2005, was sufficient to hold that the enquiry was non-est and on the basis of such pending enquiry, no such punishment can be given to the petitioner. In the present case, surprisingly, after a period of six years, the same pending enquiry was

concluded and after issuing a show cause notice and ignoring the explanation of the petitioner, the impugned punishment of withholding of three increments was passed. This court is of the view that resuming of enquiry after six years is in violation to the order of Hon'ble High Court and ignoring the fact that the appointing authority himself promoted the petitioner four years back, was such that such enquiry should have been treated as non-est and when restarting of the enquiry on the ground of transfer of Enquiry Officer was not justified, hence on that basis, awarding of punishment is wrong in law and needs to be set aside and the petition deserves to be allowed.

ORDER

The claim petition is allowed. The impugned punishment orders dated 24.8.2011 passed by respondent No. 3 (Annexure No: 1), appellate order dated 18.12.2012 passed by respondent no. 2 (Annexure No: 2) and the order dated 05.08.2013 passed by the respondent no.1 (Annexure No.3) are hereby set aside. The respondents are directed to resettle the salary payable to the petitioner after granting him the benefit of three withheld increments by the said order, and to grant him all other consequential benefits. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: MAY 17, 2017

NAINITAL

KNP