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

Present: Hon'ble Mr. Ram Singh

------ Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-------Vice Chairman (A)

**CLAIM PETITION NO. 39/SB/2015**

Shyam Sundar Yadav, aged about 50 years S/o. Late Sri G.L. Yadav, Presently posted as Superintending Engineer (In charge), Office of the Engineer-in-Chief, Public Works Department, Dheradun.

……Petitioner

**Versus**

1. State of Uttarakhand through Secretary Public Works Department, Secretariat, Dehradun.
2. Public Service Commission Uttarakhand, Gurukul Kangri Haridwar, through Secretary.
3. Public Works Department Uttarakhand, through Engineer-in-Chief, Yamuna Colony, Dehradun.

…….Respondents.

Present: Sri T.R.Joshi , Sri K.S.Verma
and Sri Khazan Singh Ld. Counsel
for the petitioner.

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

**JUDGMENT**

**DATED: NOVEMBER 17, 2017**

**(Hon'ble Mr. D.K.Kotia, Vice Chairman (A)**

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

"(A) Quash/ set aside the impugned punishment order dated 29.12.2014 passed by Secretary Public Works Department, Uttarakhand Government, Secretariat Dehradun, whereby three punishments have been inflicted upon the petitioner viz, (i) Censure Entry in the service book (ii) Withholding one increment for two years, and (iii) Recovery of sum of Rs. 3.84 lac in equal installments, along with consent of Public Service Commission, Uttarakhand dated 09.12.2014 and order dated 21.05.2015 passed on the representation of the petitioner.

(B) Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(C) Award cost of the petition."

2.1 When the petitioner was posted as Executive Engineer, P.W.D. from 26.11.2004 to 26.05.2006 in Construction Division, Srinagar (District Pauri), a charge sheet was issued to the petitioner on 18.08.2011 (Annexure: A 24) mainly for irregularities in making payment of Rs.3.84 lacs in respect of Consultancy (Design and Drawing) contract for Chauras Bridge at H.N.B., Garhwal University, Srinagar.

2.2 Out of three charges, two charges which were found proved against the petitioner read as under:-

"आप दिनांक 26.11.04 से दिनांक 26.05.06 तक की अवधि में निर्माण खण्ड, लोक निर्माण विभाग, श्रीनगर में अधिशासी अभियन्ता के पद पर कार्यरत थे, उक्त अवधि में आपके द्वारा एच0एन0बी0,गढ़वाल विश्वविद्यालय के चौरास परिसर को जोड़ने हेतु अलकनन्दा नदी पर सेतु निर्माण के सम्बन्ध में अनियमिततायें बरती गई। इस हेतु आपको निम्नवत् आरोपित किया जाता है।

आरोप संख्या–1

निर्माण खण्ड, लोक निर्माण विभाग, श्रीनगर की लेखा परीक्षा प्रतिवेदन संख्या –73/2006–07, दिनांक 11.02.08 में उल्लेख किया गया है कि आपके द्वारा आबन्ध संख्या –14 ईई, दिनांक 06.01.05 के अन्तर्गत मार्च 06 में रू0 3.84 लाख का भुगतान किया गया तथा बाद में इस अनुबन्ध को अधिशासी अभियन्ता निर्माण खण्ड, लोक निर्माण विभाग, श्रीनगर के कार्यालय आदेश संख्या –165 /अनुबन्ध सं0 05.06.06 द्वारा निरस्त करना पड़ा। इस कार्यालय ज्ञाप में वर्णित विवरण से स्पष्ट है कि इसमें वर्णित स्थितियों का संज्ञान आप द्वारा पहले लिया जा सकता था। अतः

आप रू0 3,84 लाख के निरर्थक व्यय हेतु दोषी हैं। अतः आप राज्य कर्मचारी आचरण नियमावली, 2002 के प्रस्तर–3 के भी दोषी हैं। उक्त आरोप के साक्ष्य में निम्न अभिलेख देखे जायेंगे–

1. लेखा परीक्षा प्रतिवेदन संख्या –73/2006 –07 की प्रमाणित प्रति।
2. अधिशासी अभियन्ता , निर्माण खण्ड, श्रीनगर का कार्यालय ज्ञाप संख्या–1180/7 सी, दिनांक 05.06.06 ।
3. राज्य कर्मचारी आचरण नियमावली के प्रस्तर –3 उद्धरण प्रति।

आरोप पत्र –2

अनुबन्ध संख्या –14 ईई, दिनांक 06.01.05 के अनुसार कन्सलटैन्ट द्वारा किये गये कार्यों का भुगतान TOR के बिन्दु 3 Sequence of project preparation के Stage-III Phase -II एवं बिन्दु– 8 के Payment Schedule के अनुसार निम्नवत् किया जाना थाः–

| क्रं0सं0 | विवरण | अनुबन्धित लागत का भुगतान हेतु प्रतिशत |
|---|---|---|
| 1. | Submission of Inception Report | 10% |
| 2. | Submission of Preliminary Project Report Phase-I | 20% |
| 3. | Approval of Preliminary Project Report Phase-I | 10% |
| 4. | Submission of Draft DPR Phase-II | 25% |
| 5. | Approval of final DPR | 25% |
| 6. | On prorate basis every 6 months from the date of award till physical completion of the Bridge work. | 10% |

उपरोक्तानुसार क्रम संख्या –2 की एक्टिविटी के उपरानत क्रमांक –3 का भ्गतान सक्षम अधिकारी के अनुमोदन के पश्चात किया जाना था, किन्तु आप द्वारा उच्चाधिकारियों के संज्ञान में न तो प्रकरण को लाया गया न ही उनका अनुमोदन प्राप्त किया गया तथा Preliminary project Report Phase -1 का अनुमोदन कराये बगैर मद संख्या– 4 Draft DPR Phase II के प्रस्तुतीकरण पर रू0 3.84 लाख का भुगतान किया गया, जो बाद में निरर्थक रहा। अतः आप उच्चाधिकारियों को महत्वपूर्ण सूचना न देने, उनकी उपेक्षा करने एवं उक्त कारण से रू0 3,84 लाख के निरर्थक व्यय हेतु दोषी हैं। अतः आप उत्तराखण्ड राज्य कर्मचारी आचरण नियमावली ,2002 के प्रस्तर–3 के भी दोषी है। उक्त अरोप के साक्ष्य में निम्न अभिलेख देखे जायेंगे–

1. TOR की प्रमाणित प्रति।
2. अधिशासी अभियन्ता का पत्रांक –2527 / शिकायत , दिनांक 26.08.08 की प्रमाणित प्रति।
3- राज्य कर्मचारी आचरण नियमावली, 2002 के प्रस्तर –3 के उद्धरण की प्रति।"

2.3 The petitioner, in his reply dated 17.11.2011 (Annexure: A 30) to the charge sheet, denied the charges levelled against him.

2.4 The Chief Engineer, Level-II, P.W.D., Almora was appointed the inquiry officer and he submitted his inquiry report to the Principal Secretary, P.W.D, on 25.01.2014 (Annexure: A 32). The inquiry officer found two charges (which have been quoted in paragraph 2.2 of this order) proved against the petitioner.

2.5 Agreeing with the inquiry report, the disciplinary authority sought the explanation of the petitioner providing him the copy of the inquiry report on 26.02.2014. The petitioner replied to this on 04.04.2014 (Annexure: A 31) and submitted that he has been wrongly found guilty.

2.6 The disciplinary authority did not find any substance in the explanation of the petitioner and the same was not accepted. The disciplinary authority decided to impose the following minor penalties upon the petitioner under Rule 3(a) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003:-

(i) Censure Entry;

(ii) Withholding of one increment for a period of two years; and

(iii) Recovery of Rs. 3.84 lacs, the whole pecuniary loss caused to the Government.

2.7 Since the services of the petitioner are under the purview of the Uttarakhand Public Service Commission, the appointing authority consulted the PSC in regard to the proposed punishment on 30.05.2014. The PSC gave its consent on the proposed punishment on 09.12.2014.

2.8 Thereafter, the disciplinary authority passed the punishment order dated 29.12.2014 (Annexure: A) confirming the minor penalties mentioned in paragraph 2.6 above.

2.9 The petitioner submitted a representation against the punishment order on 21.02.2015 (Annexure: A 27). The same was considered under Rule 13 and 14 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 and the said representation was rejected on 21.05.2015 (Annexure: A 34).

2.10 The petitioner has filed the present claim petition against the punishment order (Annexure: A 1) and against the rejection of his representation (Annexure: A 34).

2.11 During the pendency of the claim petition, in the interest of justice, it was found appropriate by the Tribunal to send back the case to the appointing authority to provide a personal hearing to the petitioner. The order of the Tribunal dated 18.10.2016 reads as under:-

> "During the course of writing the judgment, it was noticed that in the claim petition, the petitioner has stated that in his revision/ review (against the punishment order dated 29.12.2014) dated 21.02.2015 (Annexure: A 27), a specific prayer was made by him to provide an opportunity of personal hearing which was not allowed by the authority vide order dated 21.05.2015 (Annexure: A 34). A perusal of the revision/ review of the petitioner reveals that he has mentioned in it that he would present some facts, which were not available for consideration in the inquiry/ at the time of passing the punishment order, during the personal hearing. Though, it is not prescribed under the rules to provide personal hearing at the stage of revision/ review, we feel that since the petitioner wants to be personally heard and he has made the request in writing in his revision/ review, it would be appropriate that the petitioner be heard and given a chance to present these facts before the authority. For an objective consideration of the petitioner's revision/ review and also for fair play and justice, such a personal hearing should be given. In view of this, we direct the competent authority to decide the revision/ review dated 21.02.2015 afresh, after affording an

opportunity of personal hearing to the petitioner, within a period of two months. The petitioner is also directed to co-operate with the authority in the proceeding, so that the proceeding may be completed within the stipulated period of two months. We also make it clear that the personal hearing will be confined to new material or evidence which could not be produced or was not available at the time of passing the punishment order dated 29.12.2014(Annexure: A 1)."

2.12 In pursuance to the Tribunal's direction as above, the disciplinary authority provided opportunity of personal hearing to the petitioner on 23.11.2016, 15.12.2016 and 23.02.2017. During the course of personal hearing, the petitioner also submitted a representation to the disciplinary authority and the same was also got examined by the disciplinary authority. The disciplinary authority thereafter, passed a detailed order dated 15.03.2017 and did not find any new fact/ evidence to alter the punishment imposed upon the petitioner vide order dated 29.12.2014 (Annexure: A 1). The concluding paragraph of the order dated 15.03.2017 reads as under:-

"उपर्युक्तानुसार स्पष्ट है कि मा0 अधिकरण के निर्णयादेश दिनांक 18.10.2016 के अनुपालन में विषयगत प्रकरण में श्री यादव को व्यक्तिगत सुनवाई के युक्ति–युक्त अवसर प्रदान किये गये तथा श्री यादव के द्वारा प्रस्तुत अभिलेखों के आधार पर तत्कालीन जांच अधिकारी/मुख्य अभियन्ता स्तर –1,क्षे0 का0, लो0नि0वि0, पौड़ी से तथ्यात्मक आख्या प्राप्त की गयी। साथ ही, जांच अधिकारी की जांच आख्या के संबंध में प्रमुख अभियन्ता, लोक निर्माण विभाग की भी तकनीकी परीक्षण आख्या प्राप्त की गयी। इसके अतिरिक्त श्री यादव के द्वारा सुनवाई के दौरान संज्ञान में लाये गये तथ्यों का तकनीकी दृष्टिकोण से पुनः परीक्षण कराये जाने के दृष्टिगत 02 सदस्यीय समिति भी गठित की गयी।

अतएव प्रकरण में उपर्युक्तानुसार की गयी सुसंगत कार्यवाही के आलोक में श्री यादव के द्वारा अपने प्रत्यावेदन दिनांक 25.11.2016 के माध्यम से प्रस्तुत 59 दस्तावेजों तथा सुनवाई के दौरान प्रस्तुत अन्य अभिलेखों के परीक्षणोपरान्त ऐसे कोई नवीन तथ्य/ अभिलेख उद्घाटित नही हो पाये, जो कि विषयगत अनियमितता के प्रकरण में श्री यादव को प्रदत्त शास्ति को विलोपित किये जाने के लिये औचित्यपूर्ण/ तथ्यात्मक सिद्ध हों। तद्नूसार एतद्द्वारा श्री यादव के प्रत्यावेदन दिनांक 25.11.2016 एवं अन्य संगत प्रत्यावेदन को बलहीन

पाते हुये उन्हें अस्वीकार कर विषयगत प्रकरण का निस्तारण किया जाता है।"

3. Apart from the claim petition and the written statement, the petitioner and Respondent Nos. 1 and 3 have also filed supplementary affidavits and rejoinder affidavits. They have also filed various documents. In spite of sufficient service, the Respondent No.2 did not appear and also did not file any W.S.

4. We have heard learned counsel for the petitioner and learned A.P.O. on behalf of respondents and we have also gone through all the record including the original file of inquiry.

5.1 In the charge sheet, the main charge against the petitioner is that the petitioner made a wrong payment of Rs.3.84 lacs to the consultant on 10.03.2006 for submission of the Detailed Project Report (DPR) without approval of the Preliminary Project Report (PPR).

5.2 As a brief background, it is pertinent to mention that an agreement/ bond was signed with the Consulting Engineer Services, New Delhi (CES) on 06.01.2005 for Rs. 13.94 lacs for the Consultancy (Design and Drawing) work in respect of Chauras Bridge at Srinagar.

5.3 According to the agreement with the CES on 06.01.2005, the work was to be completed by 05.07.2005.

5.4 As per the Terms of Reference (TOR) under the agreement for consultancy with the CES, "sequence of project preparation" has been described in clause 3 as under: -

**1. <u>Stage-I</u> <u>Inception Report</u> (IR)**

The consultant is required to submit an inception report within 15 days from the date of award of the work;

2. **<u>Stage-II- Phase-I</u> <u>Preparation of Preliminary Project Report (PPR)</u>**

The consultant shall commence the preparation of Preliminary Project Report in accordance with the accepted Inception Report

and shall submit Draft PPR within 60 days from the date of commencement of services.

**3.Stage-III – Phase- II Detailed Project Report**

**The consultant is required to submit Draft DPR within 45 days after the approval of PPR under Phase-**I.

5.5 As per the Terms of Reference (TOR) under the agreement for consultancy with the CES, "Payment Schedule" has been prescribed in clause 8 as under:-

**"8. Payment Schedule**

Payment schedule for the work shall be as follows:

| | | |
|---|---|---|
| i) | Submission of Inception Report | 10% of the Contract Value |
| ii) | Submission of Phase-I (PPR) | 20% of the Contract Value |
| iii) | Approval of Phase-I (PPR) | 10% of the Contract Value |
| iv) | Submission of draft Phase-II report (DPR) | 25% of the Contract Value |
| v) | Approval of final DPR report. | 25% of the Contract Value |
| vi) | On Prorata basis every 6 months from the date of award till physical completion of the bridge work. | 10% of the Contract Value |

5.6 **Apart from the design consultant (the CES), another consultant was also engaged for the proof checking of the design by an independent proof consultant in a time bound manner. For proof checking, "Stup Consultant, New Delhi" was engaged on 23.09.2005 for Rs.8.84 lacs. Some of the relevant clauses of the Terms of Reference under the agreement of proof checking with the Stup Consultant are as under**:-

**1. OBJECTIVE**

The main objective of the proof consultancy service is to scrutinize the detailed design calculation and drawings developed by Design Consultants for the various bridges and structures so that the detailed working drawings can be finalized and issued to the contractor before

start of work at site. The objective of proof consultancy is not only to bring out defficiencies, if any, in the design but also specify in detail the modifications required in the design and drawings based on independent proof checking.

**2. SCOPE OF SERVICES**

The scope of consultancy services shall include, but not limited to the following:

.....

iii) Scrutiny of the detailed design calculations and drawings developed by the Design Consultant on the basis of General arrangement drawings for all the bridges. Proof checking shall include marking comments/ corrections in the designs, notes and drawings taking into consideration the safety, durability and economy aspects and ensuring that the same are incorporated in the documents and drawings by the Design Consultant before giving the final clearance. The proof –checking must be done in such a way that these designs, documents, date reports are adopted without necessity of further checking by the client or any other agency.

.....

**3. METHODOLOGY**

a) Immediately after placement of the Proof Consultant in position, the detailed design and drawings for the various components of the bridges and structures prepared by the Design Consultant shall be forwarded to the Proof Consultant who will check these in accordance with the relevant IRC Codes and MORTH Specifications. Minor modifications in the design and drawings shall be carried out by the Proof Consultant at their end and the detailed drawings notifying such minor modifications shall be forwarded by them to the Design Consultant for preparation of the final drawings. The final drawings incorporating the required

modifications shall be duly approved and stamped 'Recommended for Approval" by the Proof Consultant.

b).....

c) The proof consultants shall provide expeditiously review various inputs received by them and send their comments and recommendations for approval to the client within the time frame mentioned below:-

| | Type of Report | Time Schedule (From the date of receipt of report) |
|---|---|---|
| i) | Inception report & QAP | 7 days |
| ii) | Draft preliminary Project report (Phase-I) | 7 days |
| iii) | Final PPR (Phase-I) | 7 days |
| iv) | Draft DPR (Phase-II) | 7 days |
| v) | PQ document and bid document for each package | 5 days |
| vi) | Final DPR | 15 days. |

**Payment schedule for the work shall be as follows:-**

| | | |
|---|---|---|
| 1. | Approval of Inception report | 10% of contract value |
| 2. | Approval of Phase-I (Draft PPR) | 15% of contract value |
| 3. | Approval of Phase-I (Final PPR) | 10% of contract value |
| 4. | Approval of Draft DPR (Phase-II) | 25% of contract value |
| 5. | Approval of PQ document & bid document | 10% of contract value |
| 6. | Approval of Final DPR (Phase-II) | 20% of contract value |
| 7. | On prorata basis every six months from the date of award of contract of the construction work till Physical completion of the bridge. | 10% of contract value |

6.1 Learned counsel for the petitioner has argued that the payment of Rs.3.84 lacs for submission of draft PPR was rightly made by the petitioner on 10.03.2006 in accordance with clause 8(iv) of the "Payment Schedule" of the TOR under the agreement of consultancy with the CES. It has been further submitted that clause 3 of the TOR "Sequence of project preparation" has been wrongly equated with clause 8 "the sequence of payment" (the relevant clauses of TOR have

been quoted in paragraph 5.4 and 5.5 of this order) and there is no rider in clause 8 of TOR for payment of submission of DPR. Learned A.P.O. in his counter argument has submitted that after considering the contention of the petitioner in this regard , it was held by the inquiry officer and the disciplinary authority that the draft DPR was to be submitted by the CES within 45 days after the approval of PPR (clause 3 of TOR) and after the "approval of PPR", the DPR was to be prepared and only after that the payment of "submission of draft PPR" could be made to the CES and the petitioner made payment of "submission of draft PPR" wrongly without "approval of PPR" by the competent authority in violation of conditions in TOR. It is the contention of the respondents that the explanation of the petitioner that there is no rider in clause 8 of TOR and the "sequence of project preparation" and the "sequence of payment" cannot be equated, are not sustainable and it was not accepted by the authorities.

6.2 Learned A.P.O. has also contended that apart from the "Design Consultant" (CES), the "Proof Consultant" (Stup Consultant) was also engaged and agreements with both were signed by the petitioner. The petitioner received the DPR in October, 2005. The petitioner did not take comments of the "Proof Consultant" (Stup Consultant) on the draft DPR as per the agreement ( relevant clauses of the TOR under the agreement with the Stup Consultant are quoted in paragraph 5.6. of this order). The petitioner made the payment of Rs. 3.84 lacs on 10.03.2006 to the "Design Consultant" (CES) for an unchecked DPR. The petitioner after payment also raised some doubts regarding DPR on 26.03.2006 after the payment of DPR on 10.03.2006. Thus, the petitioner made payment for unchecked and incomplete DPR. The petitioner made the payment without bringing the deficiencies of DPR in the knowledge of senior officers/ Proof Consultant. The DPR was ultimately abandoned resulting in a loss of Rs.3.84 lacs to the Government. The petitioner was, therefore, rightly found guilty of improper handling/ management of the project. The petitioner has denied above contentions in detail in the claim petition with many

letters, correspondences, technical issues and documents. Perusal of record reveals that all these were duly considered by the disciplinary authority/ Government and the same were found untenable while passing the punishment order/ review order.

6.3 The counsel for the petitioner has also argued that the Draft DPR was used by the department for disposal of tenders in December, 2005, January, 2006 and March, 2006. It was used to discuss/ decide the type of bridge suitable for Chauras Bridge. Respondents in their counter argument have submitted that the DPR paid by the petitioner was for pre-stressed concrete bridge and the DPR was never used for the construction of the bridge. Moreover, the act of calling/ postponing tenders does not relieve the petitioner from his duty of obtaining the approval of PPR from the competent authority before making payment of Rs.3.84 lacs for the draft DPR.

6.4 Learned counsel for the petitioner has also argued that due to technical reasons, the approval of PPR was not possible without DPR and, therefore, the approval of PPR was inter-connected with the DPR. In his counter argument, learned A.P.O. has stated that the inquiry officer and the disciplinary authority after considering the reply to the charge sheet/ show cause notice have found that there was no technical problem in obtaining the approval of PPR before the preparation of DPR and the petitioner was also bound to get the draft DPR checked by the Proof Consultant.

6.5 Learned counsel for the petitioner has also argued that the payment of draft DPR was a payment of running bill to be finally adjusted against the final bill. While finalizing the payment to the CES on 28.11.2006, the successor of the petitioner has treated payment of DPR of Rs. 3.84 lacs made by the petitioner on 10.03.2006 as work done and, therefore, no loss of money has caused to the Government. Learned A.P.O. has stated that it was a clear loss to the Government. The draft DPR paid by the petitioner was incomplete and unchecked and it was prepared before the approval of PPR. The petitioner was punished for wrong

payment of Rs.3.84 lacs as running bill and, therefore, it was found appropriate by the disciplinary authority to recover Rs. 3.84 lacs, the loss caused to the Government from the petitioner.

7. Here, it would be pertinent to mention that this Tribunal is making a judicial review and not sitting as appellate authority. **It is settled principle of law that in judicial review, re-appreciation of evidence as an appellate authority is not made.** The Hon'ble Supreme Court, in case of **B.C.Chaturvedi vs. Union of India, 1995(5) SLR, 778 in para 12 & 13** has held as under:

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.* ***Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.*** *When an inquiry is conducted on charges of misconduct by a public servant,* ***the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge****. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence****. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the*

*conclusion or finding be such as no reasonable person would have never reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.*

13 ***The disciplinary authority is the sole judge of facts**. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. **Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal**. In Union of India v. H.C. Goel (1964) I LLJ 38 SC , this Court held at page 728 that **if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued**."*

8. The Hon'ble Apex Court in para 24 of **Nirmala J. Jhala Vs. State of Gujrat 2013(4) SCC 301** has also held as under:-

*"The decisions referred to hereinabove highlight clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set-aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from malafides, dishonest/corrupt practice. In other words, the authority must act in good faith. **Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge**. **If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the***

> ***Court to interfere***. *The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice.* ***This apart, even when some defect is found in the decision- making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene****."*

9. It is also well settled law that the judicial review is directed not against the 'decision' but is confined to the examination of the 'decision making process'. Hon'ble Supreme Court in **S.R. Tewari Vs. Union of India 2013 (6) SCC 602** has held as under:-

> "The court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, **as the scope of judicial review is limited to the process of making the decision and not against the decision itself** and in such a situation the court cannot arrive on its own independent finding."

10. It is clear from the above judgments that the scope of the judicial review is very limited. The Court or the Tribunal would not interfere with the findings of the fact arrived in the enquiry proceedings excepting the cases of malafide or perversity or where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity would have arrived at that finding. The Court or Tribunal cannot re-appreciate the evidence like an appellate authority so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. While exercising the power of judicial review, the Tribunal cannot substitute its own conclusion with regard to the misconduct of the delinquent for that of the departmental authority. **In case of disciplinary inquiry, the**

**technical rules of evidence and the doctrine of 'proof beyond doubt' have no application. "Preponderance of probabilities" and some material on record would be enough to reach a conclusion whether or not the delinquent has committed misconduct**.

11. The perusal of entire record in the light of above reveals that in the case in hand, the inquiry was conducted in a fair and just manner. The departmental inquiry was initiated by the competent authority i.e., the Principal Secretary, PWD. The petitioner was issued the charge sheet under the signature of the competent authority. There were only documentary evidences proposed for the charges levelled against the petitioner. The petitioner was asked to submit his reply to the charge sheet along with any oral evidence which he would like to examine/ cross examine. He was also asked whether he would like a personal hearing. The petitioner participated in the inquiry. The petitioner submitted the reply to the charge sheet. In his reply to the charge sheet, the petitioner did not ask for any oral evidence from any person and also did not seek personal hearing. Since the petitioner denied the charges, the appointing authority decided to hold an inquiry. The Chief Engineer, Level II, PWD (who was two level higher than the petitioner) was appointed the inquiry officer. The authority entrusted to hold inquiry had jurisdiction, power and authority to reach a finding of fact or conclusion. The inquiry officer conducted the inquiry and considered the reply to the charge sheet submitted by the petitioner. It is settled position of law that this Tribunal in Judicial Review cannot interfere in the findings of the inquiry unless it is based on the malafide or perversity. The perversity can only be said when there is no evidence and without evidence, the inquiry officer has come to the conclusion of the guilt of the delinquent official. In the case in hand, there is sufficient evidence to hold the petitioner guilty for misconduct and there is no perversity or malafide in appreciation of evidence. The petitioner was also provided reasonable opportunity to defend himself. After receiving the inquiry report and agreeing with it, the disciplinary authority issued a show cause notice to the petitioner enclosing the

inquiry report. The petitioner replied to the show cause notice which was duly examined and considered by the disciplinary authority and passed a reasoned order awarding punishment to the petitioner. The petitioner also made a representation (review) against the punishment order which was also duly considered and rejected by the competent authority by passing a reasoned order. Before the Tribunal, the petitioner emphasized on the personal hearing which was not granted to him while disposing of representation/ review of the petitioner. In the interest of justice and fair play, the Tribunal remanded the case the case to the respondents to provide opportunity of hearing. Thereafter, the petitioner was allowed personal hearing also and the details regarding this have already been mentioned in paragraphs 2.11 and 2.12 of this order. Thus, the petitioner received the fair treatment. After careful examination of the whole process of awarding minor punishment to the petitioner, it is clear that there is no violation of any rule, law or principles of natural justice in the inquiry proceedings conducted against the petitioner.

12.1 Learned counsel for the petitioner has also contended that the petitioner has been made a victim and as many as three engineers have conspired against him. We do not find any substance in this allegation particularly when the decision in respect of departmental action/ punishment has been made by the Secretary/ Principal Secretary, PWD. As many as four Secretary/ Principal Secretary, P.W.D. have taken decision from the initiation of the departmental action to the final decision regarding punishment and also the disposal of representation/ review submitted by the petitioner against the punishment order.

12.2 Learned counsel for the petitioner has also argued that as many as three punishments have been imposed upon for one allegation which is against the rules. The plea of the petitioner is not sustainable. The Rule 9(4) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 provides that the disciplinary authority may pass a

reasoned order imposing one or more penalties mentioned in Rule-3 of the said rules.

12.3 The petitioner has contended many other issues in the claim petition which are not related to the charges levelled against him. It has not been found appropriate to deal with these issues.

13. Learned counsel for the petitioner has also referred the following case laws:-

(i) S.P. Chengalvaraya Naidu Vs. Jagannath AIR 1994 SC 853

(ii) Union of India Vs. H.C.Goel 1964 SCR (4) 718

(iii) Sreedharaiah and Another Vs. Suptd. Of police, Anantpur and others AIR 1960 Andhra Pradesh 473

(iv) Raghuvans Ahir Vs. State of Bihar AIR 1957 Pat 100

(v) Khem Chand Vs. Union of India (1958)SCR 1080

(vi) State Bank of India Vs. D.C. Agarwal AIR 1993 SC 1197

(vii) State of West Bengal Vs. S.N. Bose AIR 1964 Calcutta 184

(viii) State of U.P. Vs. Mohd. Sharif AIR 1982 Supreme Court 937.

We have gone through each of above cases and find that the facts, circumstances and rule position is entirely different in these cases compared to the case in hand and, therefore, these cases are not applicable in the present case and these are of no help to the petitioner.

14.1 There is a cardinal aspect of the case regarding imposition of punishment upon the petitioner which we feel necessary to deal with. Out of the three minor punishments imposed upon the petitioner, the minor punishment of recovery of Rs.3.84 lacs (which was paid to the consultant-CES for submission of DPR under clause 8 (iv) of TOR under the agreement) has also been imposed.

14.2 It is the finding of the departmental inquiry that the payment of Rs.3.84 lacs was a wasteful expenditure and was of no use and, therefore, the State Exchequer suffered the loss of this amount.

14.3 We have already stated that the disciplinary authority is the sole judge of facts and, therefore, we accept the conclusion of the disciplinary authority in paragraph 14.2 above.

14.4 While there is a pecuniary loss of Rs.3.84 lacs to the Government, the question arises whether the petitioner is solely responsible for this loss and the whole amount is recoverable from the petitioner?

14.5 Rule 3(a)(iii) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 regarding minor penalty of recovery reads as under:-

**3(a) Minor Penalties**

(iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders.

14.6 The running bill of Rs.3.84 lacs for payment of "submission of DPR" was prepared and recommended for payment by the subordinates (Assistant Engineer etc.)of the petitioner (Annexure: A 19) and the petitioner allowed/ approved the payment. Under these circumstances, can it be a fair conclusion to recover the whole amount of Rs.3.84 lacs from the petitioner?

14.7 According to clause 3 of TOR Stage-III-Phase-II Detailed Porject Report "The consultant is required to submit Draft DPR within 45 days after the approval of PPR under Phase-I" (which has been quoted in paragraph 5.4 of this order). The CES (the design consultant) submitted the draft DPR without approval of PPR. Under these circumstances, whether the CES should also not be made liable for the recovery of payment received by it without approval of PPR?

14.8 The contract for consultancy with the CES was cancelled on 05.06.2006 because the work of the CES was found to be of no use and it was wasteful expenditure. A penalty of Rs.1,47,242/- was also imposed upon the CES.

14.9 In view of Paragraph 14.8 above, the question is whether the loss to the Government was also recovered from the CES partly?

14.10 The final payment to CES was made by the Bill dated 28.11.2006 (Annexure: A 28). In this Bill, the "submission of DPR" has been shown as work done. The work of "submission of DPR" by CES without approval of PPR has not been objected to by the then Executive Engineer and Assistant Engineer and the respondents have not explained the finalization of the said Bill of CES without deduction of draft DPR payment. It has also not been explained that why the whole amount of Rs.3.84 lacs be recovered from the petitioner only?

14.11 The petitioner has stated in reply to the charge sheet (Annexure: A 30) on page 4 as under:-

"'शासनादेश संख्या –989/23–9–99–11ए0सी0/96 दिनांक 12.5.99 पठनीय है जिसके पृष्ठ 2 में स्पष्ट रूप से उल्लेख है कि त्रृटिपूर्ण मापी, निम्न गुणवत्ता या अधिक भगतान के कारण शासन को हुई हानि की वसूली 50% ठेकेदार से शेष 25 % कनिष्ठ अभियन्ता व 17½ % सहायक अभियन्ता तथा 7½ % अधिशासी अभियन्ता से किये जाने के निर्देश है।"

14.12 The inquiry officer and the disciplinary authority have not dealt with the submission of the petitioner in paragraph 14.11 above and the contention of the petitioner remains unanswered.

15. In view of paragraphs 14.1 to 14.12 above, we are of the view that the punishment of recovery of Rs.3.84 lacs only from the petitioner needs to be reconsidered. The respondents should examine the facts and decide it as per rules.

16. For the reasons stated above, the claim petition deserves to be partly allowed.

**ORDER**

The petition is partly allowed. While the punishment of censure entry and the punishment of withholding of one increment for two years is upheld and is not interefered, the punishment of recovery of Rs.3.84 lacs from the petitioner is quashed with the direction that the respondents will reconsider the issue of recovery from the petitioner in accordance with the facts, rules, Government orders and in the light of observations made in paragraphs 14.1 to 14.12 of this order and an appropriate order regarding recovery of pecuniary loss of Rs.3.84 lacs, if any, will be passed by the competent authority within a period of three months from today. No order as to costs.

**(RAM SINGH)**
VICE CHAIRMAN (J)

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

*DATE: NOVEMBER 17, 2017*
*DEHRADUN*

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