

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

Present: Hon'ble Mr. Justice U.C.Dhyani  
----- Chairman

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

**CLAIM PETITION NO. 12/DB/2016**

Suresh Chand Singh, S/o Sri Karan Singh, presently posted as Chief Agriculture, Civil Secretariat, Dehradun.

**WITH**

**CLAIM PETITION NO. 19/DB/2017**

Abhay Saxena, S/o Sri Girish Saxena, aged about 50 years, Presently posted as Chief Agriculture, Pithoragarh.

**WITH**

**CLAIM PETITION NO. 20/DB/2017**

Anjani Kumar Upadhyay, S/o Sri Vishnu Dev Upadhyay, aged about 51 years, Presently posted as Incharge Joint Director, Agriculture, Kumaon Mandal, Haldwani.

**WITH**

**CLAIM PETITION NO. 21/DB/2017**

Dinesh Kumar, S/o Sri Jagnayan Singh, aged about 46 years, Presently posted as Joint Director, Agriculture, Nanda-ki-Chowki, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Agriculture, Civil Secretariat, Dehradun.
2. Director, Agriculture, Directorate of Agriculture, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Counsel  
for the petitioner.

Sri U.C.Dhaundiya, A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: MARCH 21, 2018**

**Justice U.C.Dhyani (Oral)**

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, all the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience. Claim Petition No. 12/DB/2016 S.C.Singh vs. State and others will be the leading case.

2. By means of claim petition No. 12/DB/2016 S.C.Singh vs. State and others, petitioner seeks following reliefs:

“(i) To issue order or direction to the respondent no.1 quashing the impugned order No. 465/XIII-1/2014-4(20)2010 dated 07.04.2014 by which the respondent no 1 has given the punishment to the petitioner (i) stoppage of two increments with cumulative effect (ii) integrity not certified and adverse remark, (iii) recovery of Rs.26,925/-, which are illegal and arbitrary..

(ii) To issue order or direction quashing the charge sheet dated 29.12.2010 along with its effect and operation also.

(iii) Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case. .

(iv) To award cost of this petition to the petitioner.”

In claim petition No. 19/DB/2016, Abhay Saxena vs. State and others, principal prayers of the petitioner are as follows:

“(i) To issue order or direction to the respondent no.1 quashing the impugned order No. 467/XIII-1/2014-4(19)2010 dated 07.04.2014 by which the respondent no 1 has given the punishment to the petitioner (i) stoppage of two increments with cumulative effect (ii) integrity not certified and adverse remark, (iii) recovery of Rs.3,525/-, which are illegal and arbitrary..

(ii) To issue order or direction quashing the charge sheet dated 29.12.2010 along with its effect and operation also.”

While filing claim petition No. 20/DB/17, Anjani Kumar Upadhyay vs. State and others, petitioner has sought following reliefs:

“(i) To issue order or direction to the respondent no.1 quashing the impugned order No. 446/XIII-1/2014-4(18)2010 dated 07.04.2014 by which the respondent no 1 has given the punishment to the petitioner (i) stoppage of two increments with cumulative effect (ii) integrity not certified and adverse remark, (iii) recovery of Rs.80,687/-, which are illegal and arbitrary..

(ii) To issue order or direction quashing the charge sheet dated 29.12.2010 along with its effect and operation also.”

In claim petition No. 21/DB/17, Dinesh Kumar vs. State and others, petitioner’s principal prayers are as follows:

“(i) To issue order or direction to the respondent no.1 quashing the impugned order No. 468/XIII-1/2014-4(19)2010 dated 07.04.2014 by which the respondent no 1 has given the punishment to the petitioner (i) stoppage of two increments with cumulative effect (ii) integrity not certified and adverse remark, which are illegal and arbitrary.

(ii) To issue order or direction quashing the charge sheet dated 29.12.2010 along with its effect and operation also.”

Impugned order dated 07.04.2014 (Annexure: A 1) is common in all the above noted claim petitions.

3. Brief facts giving rise to the above noted claim petitions are as follows:

Petitioners were posted as Chief Agriculture Officers in different districts in the year 2009-10. On the basis of certain complaints, Sri K.C.Pathak, Deputy Director was appointed to conduct the preliminary inquiry, who submitted his report on 16.09.2010. It was found that the petitioners were involved in sale and purchase of *Dhaincha Seed*. Thereafter, charge sheet was issued to the petitioners

on 29.12.2010. Petitioners submitted their replies to the same. Sri Chandan Singh Mehra, Director, Seed Certification Agency, was appointed as inquiry officer. Inquiry report was submitted on 01.10.2011, copy of which was given to the petitioners on 17.10.2011 along with show cause notices. Replies to the show cause notices were submitted by the petitioners. After considering the departmental evidence and replies of the petitioners, petitioners were found guilty. They were punished with the following:

- (a) **Stoppage of two increments with cumulative effect;**
- (b) **Withholding of integrity and censure entry; and**
- (c) **Recovery of money for the loss caused to the Government by the petitioners.**

4. It is the submission of Ld. Counsel for the petitioners that departmental appeal in claim petition No. 12/DB/2016 and review petitions in claim petition Nos. 19/DB/2017, 20/DB/2017, 21/DB/2017 are pending before the appropriate authority and have not been decided so far.
5. Ld. A.P.O. concurs with the same and admits that the departmental appeal or review petitions of the petitioners, as the case may be, are, in fact, pending decision before the appropriate authority.
6. It is also the submission of Ld. Counsel for the petitioners that, since withholding of integrity has not been provided as punishment under the Uttarakhand Government Servants (Discipline And Appeal) Rules, 2003 (hereinafter referred to as Rules of 2003), therefore, such punishment in the impugned order, being outside the purview of the statutory Rules, is a nullity and cannot be enforced against the petitioners. Ld. Counsel for the petitioner has relied upon a decision of Hon'ble Apex Court of Vijay Singh vs. State of U.P. and others 2012(3) Recent Service Judgment(RSJ) 620, in support of his contention.
7. Sub rule (1) of Rule 11 of the Rules of 2003 provides that, 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. In the instant cases, since impugned decision has been taken by His Excellency, the Governor of Uttarakhand, although communicated by Principal Secretary to the Government in Agriculture Department, therefore, no appeal can lie against the impugned order.

8. In the decision of *Shobha Sinha vs. State of Bihar and Others* (2013)16 SCC 456, Hon'ble Apex Court has observed that there shall be no appeal against the order of the Government. However, review petition may be filed in the form of memorial.
9. Thus, it is held that petitioner of Claim Petition No. 12/DB/2016 could not have filed departmental appeal against the order of the Government, in which the Governor was the appointing authority. However, it was open to him to file review petition in the form of memorial.
10. It has further been observed by the Hon'ble Apex Court in the case of *Shobha Sinha (supra)* that, although Rule gives right to a Government servant to prefer an appeal against order of punishment, but, where the order is passed by the Government itself, though no appeal is provided, still remedy of review is accorded to such an officer who may file the same in the form of memorial. Keeping in mind this provision, Ld. Single Judge, while deciding *lis* pending before him, had referred the matter back to the Government and pursuant to those directions, the delinquent had filed his representation/ memorial before the review committee, which was specifically constituted for this purpose. It was also observed by the Hon'ble Supreme Court that it was the bounden duty of the Government to consider the same, taking it to logical conclusion.
11. Considering the facts of the cases, we want the Government to do exactly the same. In claim petition No. 12/DB/2016, the appeal was

filed by the delinquent against the order of the Government, which he could not have filed. Remedy of review was, and is, however, available to him. The delinquent did not do the same. Taking a leaf out of the judgment of Hon'ble Supreme Court in Shobha Sinha (*supra*), we direct the petitioner of claim petition No. 12/DB/2016 to file his representation/ review petition, afresh, before the appropriate authority under Rule 14 of the Rules of 2003, within four weeks from today, and if such review is filed by the petitioner of claim petition No. 12/DB/2016 S.C.Singh vs. State and others, the appropriate authority is directed to consider the same, as per law, taking it to a logical conclusion, within a period of twelve weeks of presentation of review petition before such authority.

12. We feel it appropriate to quote the provision of review, capsulated in Rule 14 of the Rules of 2003, herein below for the sake of convenience:

**“Review-** The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has; the effect of changing the nature of the case.”

13. In respect of Claim Petitions No.19/DB/17 Abhay Saxena vs. State and others, 20/DB/17 A.K.Upadhyay vs. State and others and 21/DB/17 Dinesh Kumar vs. State and others, admittedly, petitioners' review petitions are still pending with the Government and have not been decided so far.

14. We, therefore, pass similar order, as we have passed in relation to the petitioner of Claim Petition No. 12/DB/2016, in respect of petitioners of Claim petition Nos. 19/DB/17, 20/DB/17 and 21/DB/17, as follows:

The petitioners of the above noted claim petitions, will file their representations/ review petitions, afresh, before the appropriate authority, under Rule 14 of the Rules of 2003, within a period of four weeks from today, and if such review petitions are filed by the petitioners, the appropriate authority is directed to consider the same, as per law, taking it to a logical conclusion, within a period of twelve weeks of presentation of review petition(s) before such authority.

15. It is made clear that we have not expressed any opinion on the merits of the claim petitions.
16. Above noted claim petitions thus stand disposed of. No order as to costs.

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

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MARCH 21, 2018*  
*DEHRADUN*

VM