

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 17/NB/DB/2015

Brijendra Kumar, S/o Sri Hardeo Singh, Presently posted as Executive Engineer, Irrigation Department, Nainital.

.....**Petitioner**

VERSUS

1. State of Uttarakhand through Principal Secretary/Secretary, Irrigation Department, Dehradun.
2. Chief Engineer & Head of the Department, Irrigation Department, Dehradun.

.....**Respondents**

Present: Sri M.C.Pant, & Sri D.S.Mehta, Ld. Counsels
for the petitioner.

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

JUDGMENT

DATED: MARCH 14, 2018

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

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

“(i) *To quash the impugned order dated 28/8/2014 and its consequential recovery order dated 27/11/2014*

alongwith its effect and operation and after calling the entire record.

- (ii) To issue order or direction to grant all benefits of salary and other service benefits had it been the impugned order was never in existence.*
- (iii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. As per averment of the petition, while working as Executive Engineer in the Irrigation Department, petitioner was charge-sheeted on 31.12.2011 by the Respondent No. 1 for charges, relating to the integrity, misconduct and wrong payment for maintenance and painting work of the stores of the department. The charge sheet was replied by the petitioner and denied all the charges levelled against him. However, the suspension order, issued earlier by the respondents, was revoked in view of the judgment of the Hon'ble High Court passed in Writ Petition No. 364 (S/B) of 2010 according to which inquiry was ordered to be concluded within six months.

3. According to the petition, the sham show inquiry was conducted in violation of the Rules. The Inquiry Officer himself played the role of prosecutor and the judge, and without informing the date and place of the inquiry, statements of departmental witnesses were recorded and no opportunity for cross-examination of the witnesses was provided to the petitioner.

4. After submission of inquiry report, show cause notice was issued to the petitioner on 13.07.2012, which was replied by him on 12.10.2012, in which many irregularities were pointed out, but without considering his reply, the disciplinary authority passed the impugned punishment order on 28.08.2014 (Annexure: 1) and he was punished

with stoppage of one increment, and recovery of Rs. 4,74,022.50 was also ordered on account of damage to the State. Thereafter, petitioner submitted an application for review against the punishment order dated 28.08.2014 on 04.06.2015, but till date, it has not been decided by the respondents. Hence, this petition was filed for the above mentioned relief.

5. The respondents in their Counter Affidavit have submitted that financial irregularities were committed by the petitioner during his posting as Executive Engineer w.e.f. 09.06.2010 to 29.10.2011 and without completion of the work on spot, payments were made. The petitioner was, *prima-facie* found guilty and was suspended. He was issued a show cause notice and after his reply, inquiry officer was appointed as per law. Full opportunity of hearing was provided to the petitioner, and three charges were found proved against him by the inquiry officer after completing the inquiry in a just and fair manner. After giving proper opportunity of show cause against the inquiry report, the impugned punishment order dated 28.08.2014 and recovery order dated 27.11.2014 were rightly passed. The claim petition is devoid of merit and same is liable to be dismissed. According to the respondents, punishment order has been passed as per rules and recovery has been ordered in right proportion against the officers, who were found guilty for this irregularity. As per the contention of the respondents, without waiting the decision of his review application, the petitioner filed this petition, which is premature and not maintainable and is liable to be dismissed.

6. In his Rejoinder Affidavit, the petitioner has reiterated that as the punishment order was passed by the Secretary of the Government, hence, there is no appellate forum available to the petitioner. There is no whisper in the impugned punishment order about those facts, which were highlighted by the petitioner in his reply and the

appointing authority did not consider the important issues raised by him. Reply of the petitioner was not considered at all before passing the punishment order. The issues raised in the petitioner's letter dated 6.04.2015 are very material which has not been disposed of and, accordingly, review application, is still pending awaiting the decision of the respondents since a long period. Hence, this claim petition deserves to be allowed.

7. We have heard both the sides and perused the record.

8. Learned counsel for the petitioner has raised certain points in his argument.

9. He has raised the point that while issuing the charge sheet, the disciplinary authority specifically mentioned that the petitioner is guilty of certain misconduct for which charges were levelled, hence, he had a prejudice mind as reflected by the language of the charge sheet. The court is of the view that charge sheet was a formal expression of the events in a set language and it was not the final decision of the disciplinary authority and inquiry was ordered after considering the reply of the petitioner, hence, in view of the court, this argument has no force.

10. The other argument of learned counsel for the petitioner is that, reply to the show cause notice submitted by the petitioner was not considered at all before passing the impugned punishment order. Learned A.P.O. has submitted that the petitioner's contention was fully considered by the disciplinary authority.

11. Record reveals that the charge sheet (Annexure: 10) was issued on 31.12.2011, which was replied by the petitioner on 02.2.2014 (Annexure: 11). After considering his reply, the inquiry officer was appointed on 24.02.2012 vide Annexure: 12. The inquiry report was submitted by the inquiry officer and the same was served

on the petitioner vide letter dated 13.07.2012 (Annexure: 15). The petitioner submitted his reply (Annexure: 16) to the show cause notice on 12.10.2012. Thereafter, the impugned punishment order dated 28.08.2014 (Annexure: 1) was passed and in consequence of the same, recovery order dated 27.11.2014 was issued. The record also reveals that raising some important points, petitioner filed his application for review (Annexure: 17) dated 06.04.2015 against the punishment order dated 28.08.2014 and specifically raised the point that the disciplinary authority, accepting the report of the inquiry officer, wrongly assessed the loss of Rs. 47,40,225.00 to the government, in which Income Tax and Vat were also included while that amount was earlier deducted by the department and this amount was not separated from the amount to be recovered from the petitioner, and the punishment order was passed in haste, without considering his reply. He has also raised the objection, that in the inquiry 8 officers were found guilty, whereas, the disciplinary authority only punished 3 officers and 5 officers were allowed to let free, which is not correct. He has also raised the objection that proportion of the recovery as per rules from the petitioner cannot exceed 7.5% of the loss, whereas, 10% has been ordered to be recovered from him, which is against the rules. This application of the petitioner (Annexure: 17) having very important points, has not been disposed of by the respondents till today.

12. It is an admitted fact that the punishment order was passed by Secretary to the Government, against which no appeal lies and the petitioner has raised very important material points in his review application dated 06.04.2015 (Annexure: 17), which should be considered and disposed of by the respondents before deciding the matter by the court. Learned A.P.O. has failed to show that such application has been disposed of by the respondents till today, and he has argued that this application was not a review petition. The court is of the view that although, it is not titled as review petition, but

Annexure-17 covers all the necessary ingredients of a review petition, which should be disposed of by the respondents.

13. The court is of the view that the matter needs to be remanded back to the respondents for deciding his application dated 06.04.2015 for review of the impugned punishment order, pending with the respondents. The petition deserves to be allowed to that extent.

ORDER

The claim petition is partly allowed and the respondents are directed to decide the review application dated 06.04.2015 (Annexure: 17) of the petitioner by a detailed and speaking order, within a period of three months from today and till the disposal of this application, the effect of the impugned punishment order dated 28.08.2014 will remain suspended. It is, however, clarified that this court has not expressed any view on the merits of this case. No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: MARCH 14, 2018
NAINITAL
KNP