

**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. 49/2012**

Lokesh Kumar, S/o Sri Charan Singh, R/o Block Colony, Pauri Garhwal, District  
Pauri Garhwal.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Rural Development, Secretariat,  
Dehradun.
2. District Development Officer, Vikas Bhawan, Pauri, District Pauri.
3. District Development Officer, Haridwar.
4. Block Development Officer, Pauri Garhwal.

.....Respondents.

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

Sri U.C. Dhaundiyal, Ld. A.P.O.  
for the respondents

**JUDGMENT**

**DATE: MARCH 23, 2018**

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

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

*“(A) To set aside the impugned recovery order dated 19.05.2012 (Annexure No. 1) passed by the respondent No. 4.*

*(B) To set aside the impugned punishment order dated 12.02.2004 (Annexure No. 2) passed by the respondent No. 2.*

*(C) To pass any other suitable order as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

*(D) To allow the claim petition with cost.”*

2. The petitioner while working as Assistant Accounts Clerk in the office of Block Development Officer, Bhagwanpur was issued charge sheets on 16.10.2003 (Annexure No. 13 and 13B) alleging that he has withdrawn and misappropriated the amount from the government account through a fake cheque in the name of one Sri Kiran Singh.

3. According to the petitioner, at that time, Sri Omprakash was the Block Development Officer and the petitioner’s duty was only to maintain the accounts of income and expenditures as directed by the Accounts Officer. A falsely created cheque in the name of Sri Kiran Singh was prepared by ghost mind of earlier Block Development Officer, who misappropriated the whole amount, for which, the District Accountant conducted a detailed inspection on 24.04.2001, and when his report was prepared and direct suspicious was shown on the superiors of the petitioner, they plotted episode to save themselves and by using criminal force, petitioner was compelled to write a confession on the same day i.e. 24.04.2001 for which, the petitioner made written complaint to the SDM on 25.04.2001.

4. The charge sheet issued on 16.10.2003 was responded to by the petitioner vide his reply dated 28.10.2003 (Annexure: 14). The inquiry officer after conducting inquiry submitted his report on 24.12.2003 (Annexure: 15). Thereafter, show cause notice was issued to the petitioner on 22.01.2004, which was replied by him on 04.02.2004 (Annexure: 16).

5. According to the petitioner, without conducting a proper inquiry and without taking evidence and giving proper opportunity, punishment order dated 13.02.2004 (Annexure: 2) was passed by respondent No. 3 on the basis of which, the recovery order dated 19.05.20012 (Annexure: 1) was passed by the respondent No. 4.

6. The facts also reveal that the petitioner filed a writ petition No. 823 of 2004 before the Hon'ble High Court against the recovery order in which an interim stay order was issued on 22.07.2004 (Annexure: 17). Annexure: 11 also reveals that the after his suspension and start of inquiry, petitioner filed a writ petition No. 993 (S/S) of 2003 before the Hon'ble High Court and the Hon'ble High Court vide order dated 24.09.2003 disposed of the writ petition with the direction to complete the inquiry within two months from the date of production of a certified copy of its order and a decision shall be taken within 15 days, failing which the suspension order will stand revoked and the arrears of salary shall be paid to the petitioner.

7. Although, the complete record has not been filed, but the copy of the order of this Tribunal dated 14.11.2008 (Annexure: 18) reflects that the writ petition of the petitioner was relegated by the Hon'ble High Court vide order dated 16.09.2008

on the ground of alternative remedy to this Tribunal and this Tribunal in Claim Petition No. 106/2008, vide order dated 14.11.2008 passed the following order:

*“Heard learned counsel for the petitioner and Ld. A.P.O.*

*The case is relegated by Hon’ble High Court. We have perused the file and found that no departmental remedy has been exhausted as contemplated in the Public Services Tribunal Act. Therefore, petition is not maintainable. However, petitioner is given an opportunity to file representation before the respondents regarding his grievance. Respondents shall decide representation within three months from the date representation is filed before them.”*

8. According to the petitioner, in compliance of the direction of the Tribunal, he preferred a representation on 23.12.2008 (Annexure: 19) before respondent No. 3 but till date, his representation dated 23.12.2008, has not been decided.

9. When the petitioner was not paid salary, he filed another writ petition before the Hon’ble High Court for payment of his salary. His petition was also heard by the Division Bench of Hon’ble High Court in Special Appeal No. 50/12, which was disposed of vide order dated 26.03.2012 (Annexure: 20) with the order that payment of salaries due and payable for the period prior to his suspension shall be paid as quickly as possible, but not later than one month from the date of service of a copy of court’s order upon respondent No. 2.

10. In compliance of the Hon’ble High Court order dated 26.03.2012, respondents prepared a bill of four months’ salary of the petitioner and same was deposited in the account of Block

Development Officer vide impugned order dated 19.05.2012 and total amount of Rs. 46,797/- was ordered to be sent to the Account of DDO, Haridwar in view of the recovery order passed by him, whereas, representation of the petitioner dated 23.12.2008 is still pending before the respondents and without deciding the same, the recovery was ordered to be made from the salary of the petitioner, which is illegal and arbitrary.

11. According to the petitioner, no inquiry was conducted as per law neither any evidence was recorded against the petitioner, hence, the impugned punishment order dated 12.02.2004 and recovery order dated 19.05.2012 issued on that basis, are illegal. Hence this petition was filed for the relief sought as above.

12. The petition was opposed by the respondents with the contention that in compliance of the recovery order passed as per law, the amount of salary of Rs. 46,797/- was recovered by the respondent No. 4 and was sent to the respondent No. 3 and respondent No. 4 was not having any information about the pendency of any petition in this Tribunal. On its merit, the petition has been opposed on the ground that the petitioner was responsible to maintain the documents and concerned financial matter in a proper manner and the responsibility lies upon him to maintain the work of accounts and all concerned records of account was required to be kept in safe custody. The transfer of superior officer does not make any difference in the duty of the petitioner regarding custody of financial record. Mr. M.S. Rana, after taking charge, while discharging his duty meticulously as B.D.O., found that Cheque No. 93994 for Rs. 1,60,890 was, not only forged but was also prepared fraudulently and it was en-

cashied. The petitioner was interrogated for this fault and he confessed his guilt on 24.04.2001 before the D.D.O. and other officials. He also gave undertaking that he would deposit the disputed amount of Rs. 1,60,890 within some reasonable time. The confessional statement of the petitioner was made in writing in the presence of the then BDO, Sri Omprakash and other persons and a copy of his confessing statement dated 24.4.2001 was filed by the respondents along with their C.A. Respondents have also submitted that the petitioner also deposited an amount of Rs. 30,000 on 01.05.2001 vide receipt No. 78207 towards the recovery of the said amount. After holding some further enquiry, it was also revealed that two more cheques No. 774820 for Rs. 77980 in the name of Kirat Singh dated 14.1.1999 and cheque No. 250280 dated 7.6.1999 of Rs. 60,000 in the name of Kirat Singh were also encashed and these two cheques were also forged in the same manner. After disclosure of this forgery, a report was lodged at the Police Station as crime No. 77/01 against the petitioner in which he was sent to Jail. According to the respondents, a proper inquiry was conducted, inquiry report was sent to the petitioner with a show cause notice and after his reply, the punishment order was passed, against which, no appeal or revision has been filed by the petitioner. Hence, according to the respondents, his petition is premature and deserves to be dismissed.

13. The petitioner filed his rejoinder affidavit and has submitted that on the basis of his forcible confession, the report was prepared and the recovery has been made in forcible and illegal manner. The petitioner has also submitted that in compliance of the order of this Tribunal dated 14.11.2008, the

petitioner moved his representation to respondent No. 3 on 23.12.2008 (Annexure:19) and without deciding his representation, recovery has been made, hence, petition deserves to be allowed.

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

15. As per the contention of the petitioner in para 28 of the claim petition, the Hon'ble High Court dismissed the petition vide its order dated 16.09.2008 on the ground of alternative remedy before the Public Services Tribunal. Para No. 29 of the Claim petition also clarified that in compliance of the order dated 16.09.2008, the petitioner approached this Tribunal by filing claim petition No.106/2008, in which this Tribunal passed an order on 14.11.2008, whereby, an opportunity was given to the petitioner to move his representation and the respondents were directed to decide his representation within a period of three months from the date of its filing. The petitioner in his petition and rejoinder affidavit also mentioned that his representation dated 23.12.2008, moved before the respondent No. 1, has not been decided till today, as per the order of this Tribunal and without deciding his representation, impugned recovery order dated 19.05.2012 has been made effective and salary has been deducted by the respondents.

16. This court is of the view that the impugned recovery order dated 19.05.2012 (Annexure: 1) passed by the respondent No. 4 cannot be passed till the representation of the petitioner dated 23.12.2008, moved in compliance of this Tribunal's order, is decided by the respondents. Hence, relief 'A' sought by the petitioner deserves to be allowed.

17. Regarding relief 'B' sought by the petitioner to set aside the impugned punishment order dated 12/13.02.2004 (Annexure: 2), the petitioner was already granted opportunity by this Tribunal vide order dated 14.11.2008 and the direction of the Tribunal has not been complied with till today. Without deciding the said representation, impugned punishment order dated 12/13.02.2004 cannot be executed because the petitioner's representation dated 23.12.2008 is for reconsideration/revision of the impugned punishment order dated 12/13.2.2004. In view of the above, the petition deserves to be partly allowed.

**ORDER**

The claim petition is partly allowed. The impugned recovery order dated 19.05.2012 (Annexure: 1) is hereby set aside and the respondents are directed to decide pending representation of the petitioner dated 23.12.2008 in compliance of this court order dated 14.11.2008, passed in claim petition No. 106/2008, within a period of three months from today, till then effect of impugned punishment order dated 12/13.02.2004 (Annexure: 2) will remain suspended. No order as to costs.

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

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

*DATE: MARCH 23, 2018*  
*DEHRADUN*

KNP