

**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. 51/SB/2016

Brijesh Kumar Jain, Presently posted General Manager (Technical Audits) Head Office, Uttarakhand Pey Jal Nigam, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, Pey Jal, Government of Uttarakhand, Dehradun.
2. Uttarakhand Pey Jal Nigam, having its Head Office at 11 Mohini Road, Dehradun through its Chairman.
3. Managing Director, Uttarakhand Pey Jal Nigam, having its Head Office at 11 Mohini Road, Dehradun.

.....Respondents.

Present: Sri T.R.Joshi, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondent No.1.

Sri Deepak Singh, Counsel
for Respondents No. 2 & 3.

JUDGMENT

DATED: APRIL 23, 2018

Justice U.C.Dhyani (Oral)

Present claim petition has been filed by the petitioner for following reliefs:

“ (a) In view of the facts and grounds as mentioned above the petitioner prays that this Hon'ble Tribunal may graciously be pleased to quash/ set aside the Punishment Order/ Office Memorandum dated

23/05/2015 Annexure-1 awarding punishment of Censure Entry to the petitioner and order dated 29.08.2016 Annexure-2, passed in appeal.

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

(c) Award the cost of the petition”.

2. Briefly put, case of the petitioner is as follows:

Petitioner was posted as General Manager (Nodal), Construction wing, Uttarakhand Pey Jal Nigam (UKPJM) in the year 2014. On 10.01.2014, he applied to the Managing Director, UKPJM for grant of permission to travel abroad during the period 12.02.2014 to 20.04.2014. On 25.01.2014, the petitioner was transferred to the post of General Manager (SWAP), Headquarter, under the order of Chairman, UKPJM. On 07.02.2014, Managing Director, UKPJM granted permission to the petitioner to travel abroad during the period 12.02.2014 to 20.04.2014 with the condition that the petitioner will obtain approval of leave from the competent authority. On 07.04.2014, transfer order dated 25.01.2014 was challenged by the petitioner before the Hon'le High Court of Uttarakhand at Nainital by way of filing writ petition No. 104(S/B) of 2014. Petitioner was permitted to join on his post subject to the rights and contentions raised in the writ petition.

Pursuant to permission granted by the M.D., UKPJM on 10.04.2014, petitioner applied for grant of leave to travel abroad, to Chief General Manager, Construction Wing. After returning from foreign Country on 05.05.2014, the petitioner applied to the Chief General Manager, Construction Wing, UKPJM, for sanction of leave after converting casual leave into earned leave. On 06.05.2014, Chief General Manager, Construction Wing, UKPJM, sent a communication to the petitioner, wherein petitioner was informed that office of Chief General Manager is not competent to forward the representation dated 05.05.2014 of the petitioner to the Headquarter. The same was, accordingly, returned to the petitioner in original, stating that the petitioner may directly communicate with the head office. Pursuant to

the transfer order dated 25.01.2014, petitioner joined on the transferred post of General Manager (SWAP) on 28.07.2014. Writ petition No. 104 (S/B) of 2014 was disposed of by the Hon'ble High Court *vide* order dated 09.09.2014.

On 01.10.2014, petitioner submitted a representation to the M.D., UKPJN, for grant of earned leave. On 19.11.2014, the petitioner was asked by the General Manager (Admin.), Head Office, to submit an explanation regarding non-compliance of Condition No. 5 of the permission, granted on 07.02.2014, in favour of petitioner, for traveling to foreign Country. On 24.11.2014, petitioner submitted his explanation to General Manager (Admin), Headquarter, wherein he applied for sanction of casual leave in compliance of the interim order of Hon'ble High Court passed on 07.04.2014 (copy supplied to him on 10.04.2014). Petitioner disclosed that due to unavoidable circumstances, he had to stay for longer period in foreign Country against the permission granted on 07.02.2014. On 09.12.2014, General Manager (Admin), Head Office, addressed a letter to petitioner, stating therein, that the petitioner had travelled to foreign Country without complying with the condition of permission dated 07.02.2014, which is a serious irregularity and amounts to violation of Sub Rule (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002. On 11.12.2014, petitioner submitted his explanation, stating therein, that in terms of permission granted on 07.02.2014, an application for sanction of casual leave was moved before the Chief General Manager (Construction Wing), UKPJN. On 01.04.2015, Managing Director, UKPJN, sent a letter to the petitioner with imputation that petitioner travelled abroad without obtaining due permission and due sanction of leave from the competent authority. In reply thereto, petitioner submitted, on 06.04.2015, that the M.D., UKPJN granted permission on 07.02.2014 and then only he travelled to foreign Country. On 23.05.2015, Chairman, UKPJN awarded punishment of 'censure entry' to the petitioner. Petitioner approached the Hon'ble High Court of Uttarakhand at Nainital, who, *vide* order dated 26.06.2015 relegated

the matter to be filed before the Tribunal. This Tribunal decided the claim petition No. 27(S/B)/ 2015, B.K.Jain vs. State of Uttarakhand and others, on 18.05.2016.

The earlier order dated 18.05.2016, passed by this Tribunal in claim petition No. 27/SB/2015 may be seen at Annexure No. 18 of present claim petition. Largely, the facts of claim petition have been mentioned in the judgment dated 18.05.2016, and therefore, this Court does not think it necessary to repeat those facts.

An appeal was filed by the petitioner on 31.05.2016 before the UKPJM, such an appeal was dismissed. Hence present claim petition.

3. After hearing Ld. Counsel for the parties at length, a legal question which has cropped up before this Tribunal, during the course of hearing, is—**whether the appellate authority has ‘really’ decided the appeal ?** Attention of the Court is drawn towards page 30 of Annexure-R-1, whereby departmental appeal of the petitioner was decided.
4. **If we look at the proceedings of the Board of Directors of UKPJM, we find that departmental appeal has not been decided, in the manner, it ought to have been decided.**
5. Reasons are not far to seek. The appointing authority of Chief Engineer, Chief General Manager, General Manager, Superintending Engineer is Chairman, UKPJM. If they are aggrieved with any of the orders of appointing authority, they are required to file departmental appeal before the appellate authority, which is, Board of Directors. In other words, any person aggrieved with the orders of appointing authority, can approach Board of Directors, in departmental appeal.
6. It is surprising to note that in the 13th meeting of Board of Directors, the Board constituted three-men committee, comprising of Managing Director, UKPJM; Director, Finance, UKPJM; and Chief General Manager, UKPJM to examine/ scrutinize departmental

appeals and desired that such committee should submit its' report/ recommendation to the Chairman, UKPJN for decision, according to law. M.D., UKPJN was to be the Chairman of such committee and G.M., UKPJN was to be the Presenting Officer. This arrangement was to continue till the next meeting of the Board of Directors/ Governors. The issue relating to present petitioner was considered by the committee. Explanation furnished by the petitioner was not found sufficient by the Board of Directors. When the matter was referred to the Chairman, UKPJN, he referred the matter to the Government. The appellate authority/ again M.D., Uttarakhand Pey Jal Sansadhan Vikas Evam Nirman Nigam, relying upon the report of the committee, constituted by the Board of Directors, found no substance in such appeal, which was dismissed *vide* order dated 29.08.2016.

7. This Court is reminded of a decision rendered by Hon'ble Apex Court in **State of West Bengal vs. Shivananda Pathak, (1998) 5SCC 513**, in which Hon'ble Apex Court observed that Ld. Single Judge of Calcutta High Court, in the given facts of the case, should have dissociated himself from second Division Bench. Once judgment and order of a Single Judge is overruled in an appeal by Division Bench, that Judge cannot sit in another Division Bench in a collateral proceeding between the same parties to re-write the overruled judgment. Reference of this decision is being given here only to enunciate a legal principle. Facts of this case are definitely at variance with *Shivananda Pathak's case (supra)*
8. Hon'ble Apex Court observed that all Judicial (or Quasi Judicial) Functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind. An essential requirements of judicial adjudication is that the Judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudice or has a biased mind, he disqualifies himself from acting as an adjudicator.

9. Hon'ble Apex Court went on to observe further that bias may be defined as a pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner, so much so that such pre- disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartially in a particular case.
10. It may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case of applying the tests of "real likelihood of bias" or "reasonable suspicion of bias". Reasonable suspicion test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities.
11. Judges are not infallible. As human beings, they can commit mistakes even in the best of their judgments reflective of their hard labour, impartial thinking and objective assessment of the problem put before them. In the matter of interpretation of statutory provisions of while assessing the evidence in a particular case or deciding questions of law or facts, mistakes may be committed bona fide which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts. Such a mistake can be committed even by a Judge of the High Court which are corrected in the Letters Patent Appeal, if available.
12. Hon'ble Apex Court has thus, evolved a new form of bias, namely, bias on account of judicial obstinacy. The other forms are – pecuniary bias, personal bias, bias as to subject matter in dispute or policy bias etc.
13. An order of a Secretary, in U.S., was annulled on the ground that the case was heard by an examiner, there were oral arguments

before another officer, and the order was made by the Secretary without any further hearing before himself. [*Morgan v. U.S., (1936) 298 E.S. 468 (481) (known as Morgan I)*]. *The gravamen of this decision is- one, who decides, must hear.*

14. In *Bombay Municipal Corporation vs. Dhondu, AIR 1965 SC 1486 (1488)*, it has been held that the function of making Quasi Judicial decision, cannot be delegated to another person or body, in the absence of statutory provisions authorizing such delegation.

15. The impugned appellate order, in any case, has to go. It cannot be allowed to sustain. In disciplinary proceedings, an appellate authority has crucial role to play. A quasi judicial authority, cannot be permitted to delegate its entire power to a committee. [In this case, Board of Directors, as an appellate authority]. This Tribunal would, therefore, desire the *Board of Directors, Uttarakhand Pey Jal Sansadhan Vikas Evam Nirman Nigam* to revisit its resolution dated 23.07.2016 which has permitted delegation to a committee headed by M.D., *Uttarakhand Pey Jal Sansadhan Vikas Evam Nirman Nigam*. In the instant case, the order passed by the disciplinary authority (*Chairman, Uttarakhand Pey Jal Sansadhan Vikas Evam Nirman Nigam*), has indirectly been affirmed by the same authority, i.e., Chairman, Uttarakhand Pey Jal Sansadhan Vikas Evam Nirman Nigam. The appeal should be heard by an authority, superior to the appointing authority. The same has not been done in the instant case. The Board of Directors is certainly superior to the Chairman, but, Board of Directors, delegating its power to a Committee, and then Committee's recommendation being approved by the Chairman, again is, contrary to the principle of natural justice. Hence, the appeal has not been decided by the Board of Directors, but, Chairman again, who is appointing authority. Even if the appellate order is pretended to be passed by the Board of Governors, but, in fact, it is not. The fact remains that the decision, in appeal, has again been taken by the Chairman, Uttarakhand Pey Jal Sansadhan Vikas Evam Nirman Nigam,

who is the appointing authority of the petitioner. Such an order, as has been mentioned above, cannot be allowed to sustain. **Appellate order, in the humble opinion of this Court, should have been passed by the Board of Directors, after applying its mind, and not by the Chairman alone.**

16. The appellate authority's order dated 29.08.2016 (Annexure- 2) is, accordingly, set aside. The matter is relegated to the appellate authority to decide the matter afresh, in accordance with law, keeping in view the observations, made by this Court, in the body of this judgment, as above.
17. It is made clear that this Court has not gone into the merits of the case.
18. It is expected that the appellate authority shall decide departmental appeal of the petitioner within a period of twelve weeks from the date of presentation of certified copy of this order before such authority.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 23, 2018
DEHRADUN

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