

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 14/NB/DB/2015**

Nandan Singh Naganyal S/o Sri Dhan Singh Naganyal, aged about 49 years, Presently posted as Sub Divisional Magistrate, Someshwar, District Almora.

.....Petitioner

**VERSUS**

State of Uttarakhand through Secretary, Department of Personnel, Government of Uttarakhand, Dehradun.

.....Respondent

Present: Sri Piyush Garg, Ld. Counsel  
for the petitioner  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondent

**JUDGMENT**

**DATED: May 10, 2018**

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

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

*“(i) To quash the impugned order dated 15.09.2014 passed by Secretary Department of Personnel Government of Uttarakhand Dehradun/ respondent awarding punishment by stopping one increment in salary with cumulative effects.*

*(ii) Grant any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.*

*(iii) Award the cost of the petition to the petitioner."*

2. Briefly stated, the facts are that the petitioner while posted as Sub Divisional Magistrate/Assistant Collector, Bazpur decided a revenue case, bearing no. 22/94, Kartar Chandra and 12 others, Under Section 229B of ZA and LR Act vide order dated 30.3.2013 in which the State Government and Municipal Board, Rudrapur were also impleaded as defendant no. 9 and 10. As the case was decided against the State Government, the District Magistrate, Udham Singh Nagar reported the matter to the government, alleging that the Revenue Court, headed by the S.D.M., Bazpur (present petitioner of this petition) committed a serious irregularity and ignoring the provisions of law, case has been decided against the government, on account of which, government had suffered a huge loss.

3. At government level, matter was taken up, the petitioner was charge sheeted and after getting his reply to the charge sheet, Sri Chandra Shekhar Bhatt, was appointed as an inquiry officer.

4. The delinquent officer (petitioner) denied all the charges and has submitted that he decided the matter before him, in the judicial capacity as a court, following the due provisions of law, hence disciplinary proceedings cannot be started against him. The inquiry officer, after completing the inquiry, submitted his report that the petitioner has committed irregularity in performing his duties as court of Assistant Collector. Show cause notice was issued and after getting the reply to the show cause notice, the disciplinary authority punished the petitioner vide order dated 15.9.2014 with stoppage of one increment, with cumulative effect. The review petition filed by the petitioner was also dismissed.

Hence, this petition was filed by the petitioner for the abovementioned relief on the following grounds-

- i. That the respondent has passed an illegal and improper order without considering the explanation submitted by the petitioner.
- ii. That the order passed by the petitioner was in bonafide discharge of his judicial duty in the capacity of a Judge. In a judicial matter any error of facts as well as error of law, even if committed, though specially denied, can be challenged and assailed only before the appellate authority and the genuineness and validity of the order can be examined only by the superior court of law and judicial exercise of the powers cannot be made a basis for departmental inquiry. Order passed in judicial capacity, cannot be scrutinized or criticised on administrative side, specially when the order in question is still pending consideration before the appellate court.
- iii. That the petitioner as Presiding Officer of a revenue court, followed the appropriate procedure of law and as per the provisions provided by revenue court manual, all the defendants, including the government, were afforded proper opportunity and on behalf of the respondent no. 9 and 10 (Government & Nagarpalika), Government Advocate had submitted that no evidence is to be adduced and after hearing him, the matter was decided on merit.
- iv. That before the court of the petitioner, the State was an aggrieved party by the order passed by the petitioner in exercise of his powers of Revenue Court. The disciplinary proceedings conducted by the respondent resulted into great miscarriage of justice which will amount an

unnecessary and undue pressure upon the authorities in exercising their judicial powers. The respondents can only challenge his order before the appellate authority. Major punishment has been awarded without having any evidence against the petitioner to prove any charge of substantial nature. Hence this petition.

5. The petition was opposed by the respondent on the ground that all the necessary provisions for conducting the inquiry were followed and the petitioner was given full opportunity to defend himself, during the inquiry. The petitioner in his judgment, has not made a separate point wise analysis on the issues and by ignoring the documents available on records/rules and law and by misusing his powers, transferred Nazul Land and category-4 land under U.P. Z.A., in favour of some private persons and caused a huge loss to the government. The petitioner exercised his powers against the provisions of law, for which the relevant charges were framed. Petitioner ignored this legal position that the sale deed in favour of private persons was not of sufficient stamp, it was not duly registered hence, it was a document with zero value in the eyes of law. The fact was ignored that that the right of possession of unauthorized occupants remains till their possession and it cannot be transferred by any documents. The decision in favour of the private persons was passed against the record and law. It was also contended that the first claim of the private persons was decided against them and by order of the appellate court, that matter was sent back for reconsideration, but the same was decided by the petitioner in favour of the private persons without taking any further evidence on record. According to the respondent, there was no procedural lacuna or perversity in conducting the inquiry. The respondents were within their right to conduct the disciplinary proceedings, which were conducted as

per law and punishment awarded does not suffer from any defect hence, the petition deserves to be dismissed.

6. The petitioner also filed rejoinder affidavit and it was reiterated that that the disciplinary proceedings cannot be started on administrative side.

7. We have heard learned counsel for the parties and perused the record.

8. Undoubtedly, the disciplinary proceedings against the petitioner were started on account of his judgment passed in a revenue case before his court in which the matter was decided against the government. The record also reveals that the said judgment has been challenged by the government on judicial side before the court of Commissioner, Kumoun, which is still pending.

9. The main contention of the petitioner is that the disciplinary proceedings cannot be started against him by the State Government on administrative side because the petitioner passed the judgment, exercising his judicial powers, in which the state government was also party and all the parties were given opportunity of hearing as per law and the judgment was passed after considering all record. The main contention of the petitioner is that his order, passed on judicial side cannot be criticised except in appeal because of the reasons that the government itself was a party before him and the case was decided by him against the government in judicial capacity.

10. Learned counsel for the petitioner has cited the following case laws of the Hon'ble Apex Court:

- i. **Junjarrao Bhikaji Nagarkar vs. Union of India & others, 1999(6) Supreme 523.**

ii. **Union of India & others vs. Duli Chand, 2006(8) Supreme 644**

iii. **Ramesh Chander Singh vs. High Court of Allahabad & Another, 2007(3) Supreme 106.**

iv. **Inspector Prem Chand vs. Govt. of NCT of Delhi & others, 2007(3) Supreme 717.**

On the basis of above, it has been argued on behalf of the petitioner that the disciplinary/departmental inquiry on the basis of wrong interpretation of law cannot be a ground for misconduct unless it is deliberate and actuated by malafides to maintain any charge sheet against a quasi judicial authority, something more has to be alleged than a mere mistake of law. A wrong interpretation of law cannot be a ground for misconduct, of course, it is a different matter altogether if it is deliberate and actuated by malafide.

11. We have gone through all the judgments passed by the Hon'ble Apex Court. In **Junjarrao Bhikaji Nagarkar vs. Union of India & others**, following were the observations of the Hon'ble Apex Court:

*“Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act but we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:*

*(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;*

*(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;*

*(iii) if he has acted in a manner which is unbecoming of a Government servant;*

*(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;*

*(v) if he had acted in order to unduly favour a party;*

*(vi) if he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago "though the bribe may be small yet the fault is great".*

*The instances above catalogued are not exhaustive, however, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."*

12. In **Union of India & others vs. Duli Chand**, it was held by the Hon'ble Apex Court that the disciplinary proceedings against the person discharging judicial or quasi-judicial functions can be proceeded if the judicial powers were exercised negligently or recklessly and the disciplinary authority may punish him if he had negligently allowed the claim of the private parties.

13. Learned A.P.O. has submitted that in view of the circumstances laid down by the Hon'ble Apex Court, the disciplinary proceedings can be initiated. He has referred to the charge sheet and the inquiry report and in the charge No. 1 (J), it was specifically mentioned that in the written statement filed by the government before the court of respondent, it was specifically pleaded that the land Khasra No. 66m, 69m and 70 m was Nazul land and was entered as non-ZA land and remaining land belongs to the category-4 and it was government property and as per law, no ownership right on the basis of possession can be perfected on any government land. Furthermore, the land in question was situated within the municipal limit, hence it was beyond the scope

of ZA and LR Act. This point raised by the respondent, was every specific, but it was totally ignored and was decided by the petitioner ignoring the record and the law, and private party was benefited. The specific charge was framed and prima-facie, there was sufficient material to show the recklessness in discharge of duty by the petitioner and the petitioner had acted in order to do unduly favour to the private parties.

14. The court agree with the argument of the respondent that in such circumstances, the respondents were within their right to start disciplinary proceedings against the petitioner apart from filing the appeal before the appropriate forum. It has been argued by the respondent that during the disciplinary proceedings, the charges were framed in clear terms; reply of the petitioner was duly considered and thereafter, the inquiry officer was appointed. The petitioner was given every opportunity to defend himself during the inquiry and a detailed discussion was made about the conduct of the petitioner in the inquiry report. Proper show cause notice was issued as per law and after considering his reply to the show cause notice, the impugned punishment order was passed. We agree with the argument of the respondent that there is no irregularity or procedural lacuna in conducting the disciplinary proceedings.

15. The Hon'ble Apex Court in its judgment has laid down the principle that ordinarily the disciplinary proceedings should not be started against an officer acting judicially, but the government is not precluded from taking the disciplinary action for violation of the Conduct Rules. It was also held that such disciplinary proceedings should be taken with caution. In the present case, the detailed reasons were mentioned for starting of such proceedings and there were prima-facie materials to show



the recklessness and misconduct on the part of the petitioner in discharge of his duty. The disciplinary authority was within their right to take a decision on administrative side and if the judicial order, passed by the petitioner, is unwarranted in law and is beyond the record, the disciplinary proceedings were rightly started.

16. The charges levelled against the petitioner were very specific and the reply of petitioner was duly considered and punishment order was passed after considering all the circumstances and the record. The punishment of the petitioner was also proportionate to the charge and this court is of the view that the petition has no merit and deserves to be dismissed.

### **ORDER**

The claim petition is hereby dismissed. No order as to costs.

Sd/-

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

Sd/-

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

*DATE: MAY 10, 2018*  
*NAINITAL*

*KNP*