

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 71/DB/2019**

Suresh Chandra S/o Shri Raja Ram aged about 53 years, Executive Engineer, Minor Irrigation Department Uttarakhand, Rudraprayag, R/o 292, Vasundhra Enclave, Shimla Bypass Road, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through its Secretary, Minor Irrigation Department Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Secretary to the Govt. of Uttarakhand, Minor Irrigation Department, Secretariat, Subhash Road, Dehradun.

....Respondents

Present: Sri J.P.Kansal, Advocate, for the petitioner

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

**JUDGMENT**

**DATED: MAY 29, 2020**

**Per: Justice U.C.Dhyani**

1. By means of present claim petition, the petitioner seeks to quash impugned order dated 07.05.2019 (Annexure: A1), among others.
2. Facts, necessary for adjudication of the present claim petition, are as follows:
  - (i) The petitioner was initially appointed as Assistant Engineer on the basis of selection and recommendations of the U.P. Public Service Commission. In the year 2009-10, the petitioner was

posted as Executive Engineer in Minor Irrigation Division, Udham Singh Nagar. He was also given additional charge of Executive Engineer, Minor Irrigation Division, Nainital. He was also discharging the duties of Superintending Engineer Incharge, for Udham Singh Nagar, Nainital and Almora divisions. At that time, in these three divisions, about 1240 projects were under progress.

(ii) Respondents served a charge sheet dated 29.08.2017 upon the petitioner (charge sheet along with reports- Annexure: A3, A4 and A5). The allegations of irregularities committed in the construction of a tank, constructed during the year 2009-10 in *Tok Kuvalli*, under *Nainital Vikas Khand, Okhla Kanda Samuhik Sinchai* Project, were levelled against the petitioner and his subordinates. This charge sheet was based on preliminary inquiries conducted by the District Magistrate, Nainital and Superintending Engineer, Pithoragarh. The petitioner submitted replies to the charge sheet, denying allegations *vide* reply dated 12.09.2017 and Supplementary reply dated 09.10.2017 (copies Annexure-A6 and A7). Disciplinary inquiry was conducted against the petitioner. The punishment was imposed upon him on the basis of the inquiry report. *Vide* Office Memorandum dated 07.05.2019 (Copy Annexure: A1), the petitioner was awarded the following punishments:

- (i) Recovery of Rs. 3478.89, which was 7.5% of the government loss Rs. 46385.24;
- (ii) Stoppage of two increments with cumulative effect.

3. Aggrieved against the impugned order dated 07.05.2019 (Copy Annexure: A1), present claim petition has been filed.

4. The petitioner has filed copies of relevant documents in support of his claim petition. The reference of these documents shall be given during the course of discussion, as and when required.

5. Counter Affidavit has been filed on behalf of the respondent State, justifying departmental action, along with relevant documents. Averments contained in the Counter Affidavit and contents of those documents shall be dealt with appropriately in the body of this decision, as per requirement of the situation.

6. Rejoinder affidavit has been filed by the petitioner reasserting the facts contained in the claim petition.

7. Written arguments have also been filed by the petitioner. Written arguments in reply have been filed by learned A.P.O., on the instructions of the respondent department.

8. Principal grounds, which have been taken by the petitioner in support of his claim petition, are as follows:

- (i) Inquiry officer did not conduct the inquiry in accordance with law/ principles of natural justice and, therefore, the inquiry report by the inquiry officer is not sustainable.
- (ii) Respondent No. 2 is not the appointing authority of the petitioner and has no power to pass the impugned order. [Secretary to the Government of Uttarakhand in Minor Irrigation Department has been arrayed as respondent No. 2].
- (iii) Impugned order has been passed without consulting the Uttarakhand Public Service Commission (PSC).
- (iv) Respondents have not suffered any financial loss and therefore, no 'misconduct' has been committed by the petitioner.

9. In pleadings [para 4(2) of the claim petition], the petitioner has averred that he had heavy workload and being Superintending Engineer, Incharge, he had to visit Dehradun frequently and therefore, he was not in a position to check measurement of the work of each site with the measurement recorded in the measurement book. For minor projects, he had to rely upon Junior Engineer and Assistant Engineer of

the respective sites. The petitioner has also averred in para 4(3) of the claim petition that the charge sheet is based merely on the preliminary inquiries, conducted by the District Magistrate, Nainital and Superintending Engineer, Pithoragarh, and these inquiries were conducted in the absence of the petitioner.

10. In Annexure-A1, it has been indicated, *inter alia*, that the works stated to have been constructed, were not, in fact, constructed on the site, thereby, causing loss of Rs. 46385.42 to the government. The allegations, in a nutshell, against the petitioner are that (i) the payment was made to the contractor for certain works, which were not constructed on the site, and (ii) for other works, there was difference in actual measurement of the construction on the site and corresponding entries in the Measurement Book (MB).

11. Learned counsel for the petitioner submitted as follows:

- (i) Since the petitioner had heavy workload, so it was not humanly possible for to him to attend all the sites. He was dependant on his junior colleagues.
- (ii) The charge sheet dated 29.08.2017 is based on preliminary inquiries conducted by the District Magistrate, Nainital and Superintending Engineer, Pithoragarh, which inquiries were conducted in the absence of the petitioner. He had no opportunity to place his case before these officers.
- (iii) The petitioner submitted replies to the charge sheet, which are on record.
- (iv) The inquiry officer acted in violation of law and principles of natural justice. The inquiry officer did not record evidence of any witness of the department and, as such, the petitioner had no opportunity to cross-examine the witness (es) or to check the genuineness of the documents referred to in the inquiries, made by the District Magistrate, Nainital and Superintending Engineer, Pithoragarh. On the contrary, the inquiry officer

required the petitioner to give explanation to disprove the charges made against him in the charge sheet. The reports of District Magistrate, Nainital and Superintending Engineer, Pithoragarh could not have been taken as evidence, therefore, the charge sheet is wholly illegal.

- (v) Appointing authority of the petitioner is the Governor of Uttarakhand and only H.E. could have imposed punishment upon the petitioner.
- (vi) Respondent No.2 had no power to pass the impugned order.
- (vii) The impugned order has been passed without consulting the Uttarakhand Public Service Commission (PSC).
- (viii) *Pradhan* and *Up-Pradhan* of the concerned village had accepted their mistakes and agreed to pay the amount. They, accordingly deposited the amount. The respondents, therefore, did not suffer any financial loss on account of any action of the petitioner. Copy of the letter of *Pradhan* and *Up-Pradhan*, which is addressed to the Hon'ble Chief Minister has been enclosed as Annexure-A10 to the claim petition.
- (ix) Since the petitioner acted *bonafidely*, therefore, no misconduct is established against him.
- (x) Reference of Rule 7(vii) of the Uttarakhand Government Servants Conduct Rules, 2003 (in short, Rules of 2003) has been given to show that the inquiry officer ought to have called the witnesses to give their evidence and prove the documents relied upon by the respondents.
- (xi) Since the department did not lead any oral evidence, therefore, the petitioner had no opportunity to cross-examine any witness.

12. Learned A.P.O., in reply, submitted as follows:

- (i) On a complaint of one *Adhyaksha, Jan Sewa Samiti, Kaladungi*, which complaint was addressed to the Hon'ble Chief Minister

regarding irregularities, measurement and payment of the Tank/Protection wall of Community Irrigation Scheme at village *Tok Kuvaj, Mahtoli Block Okhalkanda*, District Nainital, a matter was enquired into by C.D.O., Nainital and the inquiry report was sent to the Government *vide* letter dated 17.05.2014. Copy of the inquiry report has been enclosed as Annexure No. R-1 to the C.A..

- (ii) Secretary, Minor Irrigation, Government of Uttarakhand, forwarded the inquiry report dated 17.05.2014 to the Chief Engineer, Minor Irrigation Department *vide* letter dated 15.07.2014. The Chief Engineer is the appointing authority of the Junior Engineer/(Addl.) Assistant Engineer. A report was called for from Executive Engineer. Relying upon the report of the Executive Engineer, Minor Irrigation, Nainital, a report *vide* letter dated 01.11.2014 was sent to the Secretary, Minor Irrigation Department, considering that the role of the *Gram Pradhan* is dubious and recommending that an independent inquiry should be conducted. Copies of the letters dated 15.07.2014 and 01.11.2014 have been enclosed as Annexures R-2 and R-3 to the C.A.
- (iii) The District Magistrate, Nainital was asked to conduct an independent inquiry. He submitted a report dated 15.12.2015, which confirmed the irregularities and false measurement/payment, which report was forwarded by the Secretary, Minor Irrigation Department to the Chief Engineer, Minor Irrigation Department *vide* letter dated 29.02.2016. In the inquiry report, the District Magistrate found that serious irregularities were committed in construction of irrigation tank and protection wall of the Community Irrigation Scheme, which resulted in a loss of Rs. 46385.42 to the government. The role of the *Gram Pradhan* was found dubious and action against Sri D.R. Arya, Additional Assistant Engineer was recommended. On the basis

of inquiry report of the District Magistrate, Nainital, the services of Addl. Assistant Engineer were suspended *vide* order dated 02.03.2016. A charge sheet was issued against him. The Superintending Engineer, Minor Irrigation Circle, Pithoragarh was appointed the inquiry officer *vide* order dated 22.04.2016, who submitted his report *vide* letters dated 04.02.2017 and 23.03.2017. In the inquiry report, Sri Suresh Chandra (petitioner), the then Executive Engineer, Minor Irrigation Department and Sri Shiv Mangal Singh, the then A.E.(since retired), were also found responsible for loss caused to Govt. as per G.O. dated 05.09.2008. The inquiry report was forwarded by the Chief Engineer, Minor Irrigation to the Additional Secretary, Minor Irrigation Department, Government of Uttarakhand *vide* letter dated 12.04.2017. Thereafter, a charge sheet was issued to the petitioner and his reply was sought *vide* letter dated 29.08.2017. When the petitioner submitted his reply on 12.09.2017, the Chief Engineer, Irrigation Department, was appointed the inquiry officer *vide* O.M. dated 19.12.2017.

- (iv) The inquiry officer (Chief Engineer, Irrigation Department) informed the petitioner *vide* letter dated 25.01.2018 for hearing and for filing replies. The delinquent engineer resubmitted his written reply *vide* letter dated 02.02.2018 and supplementary reply dated 24.02.2018, along with other documents. The inquiry officer inspected the site on 16.06.2018. At the time of inspection, both the petitioner and Sri D.R.Arya, Addl. A.E. were present at the working site but they did not submit any document or furnish explanation except the one which were submitted by him earlier. [Note: *The Tribunal noticed that there was no indication of presence of petitioner at the working site*].The inquiry report has been enclosed as Annexure: R-12 to the C.A.

- (v) Chief Engineer, Level-II, Irrigation Department found that the petitioner made wrong payment of certain works, which caused financial loss of Rs. 46385.42 to the government. The petitioner, in his written reply, had submitted that he was in-charge of two divisions and one circle, due to which he made payment on the recommendation of the Assistant Engineer. According to learned A.P.O., petitioner-Executive Engineer ought to have made the payment after doing inspection of the works done at the site, but he did not do so and made payment only on the recommendations of the Assistant Engineer. The petitioner, Executive engineer is also responsible for the irregularities, besides Junior Engineer and Assistant Engineer, who were held guilty of wrong measurements and wrong entries in the Measurement Books, alongwith other irregularities.
- (vi) As per inquiry report and on the basis of the guidelines laid down in G.O. No. 1373 dated 05.09.2008, the punishment order was passed by the competent authority *vide* letter dated 07.05.2019. The same was done in consultation with the Uttarakhand Public Service Commission *vide* letter No.2 dated 01.04.2019. The approval of the governor was not required under the rules. Sri Shiv Mangal Singh, the then Assistant Engineer was also involved in the matter, but since he had retired long ago, therefore, no action was taken against him.

#### **RULE-POSITION**

13. The petitioner-delinquent has been awarded two types of punishment *viz.*, (i) the recovery of money for the loss caused to the government and (ii) stoppage of two increments with cumulative effect. Whereas, first one is a 'minor punishment', the second one is a 'major punishment'.



14. The procedure to be followed in cases of minor punishment, as per Punishment and Appeal Rules, 2003, (for short, Rules of 2003), is as follows:-

*“Procedure for imposing minor penalties.—(1) where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule-3*

*(2) The Government Servant shall be informed of the substance of the imputations within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated the concerned Government Servant.”*

15. Rule 7 of the Rules of 2003, provides the procedure for major penalty. The same reads as below:-

*“7. Procedure for imposing major penalties--*

*Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner :-*

*(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.*

*(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority :*

*Provided that where the Appointing Authority is Governor, the chargesheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.*

*(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same alongwith oral evidences, if any, shall be mentioned in the charge sheet.*

*(iv) The charged Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to state whether he desires to cross examine any witness mentioned in the charge sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry exparte.*

*(v) The charge sheet, alongwith the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall*

be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge sheet could not be served in aforesaid manner, the chargesheet shall be served by publication in a daily news paper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged Government Servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged Government Servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in Uttaranchal under provisions of Section-86 of the Uttar Pradesh Reorganization Act, 2000.

(ix) The Inquiry Officer may ask any question, he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the Service of the notice on him or having knowledge of the Date the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge sheet in absence of the charged Government Servant.

(xi) The Disciplinary Authority, if it Considers it necessary to do so, may, by an order, appoint a Government Servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government Servant may take the assistance of any other Government Servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority having regard to the circumstances of the case so permits :

Provided that this rule shall not apply in following case:--

- (i) *Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) *Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or*
- (iii) *Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."*

16. It is trite law that the procedure prescribed for major penalty may be adopted while awarding minor penalty, but the converse is not true. In the instant case, procedure meant for major penalty was adopted and both types of punishments were given to the delinquent petitioner.

#### **DISCUSSION**

17. The imputation against delinquent employee is that the work relating to stone masonry and cement pointing, as mentioned in the Measurement Book and shown to have been constructed, was not, at all, available on the site. In other words, whereas, stone masonry and cement pointing work was stated to have been performed, the said work was not, in fact, performed and was not available on site. The second imputation is that the measurements of irrigation tank and retainer wall were wrongly depicted in the Measurement Book. There was no coherence between the actual measurement of irrigation tank and retainer wall, as on the spot, and the recorded measurement of the same in the Measurement Book.

18. The explanation offered by the petitioner was that the entire task was to be performed by the consumer *Jal Upbhokta Samuh* (Water Consumer Group) and the petitioner had nothing to do with it. It was although admitted at internal page 2 of the explanation (Annexure: A6) that the payment was to be made only after the recommendations of the answering Executive Engineer. At internal page no. 2 of Annexure: A6, it has also been indicated that petitioner was required to release payment only on the recommendations of the

Assistant Engineer. The Superintending Engineer, Minor Irrigation, Circle Pithoragarh in his report found the involvement of office bearers of the *Jal Upbhokta Samuh*, among others. They have admitted their guilt and also made good the loss caused to the government. It was also indicated at the internal page No. 2 of the explanation that it was not the duty of the petitioner to have performed what is alleged against him. Neither the measurement work, nor entry in the Measurement Book was done by the petitioner. His original posting was Executive Engineer, Udham Singh Nagar and he was in additional charge of Superintending Engineer, Minor Irrigation Circle, Haldwani and Executive Engineer, Minor Irrigation, Nainital. He was required to look after other projects in district Almora also and, therefore, the payment was to be made only on the recommendations of the Assistant Engineer. He was not answerable for the loss caused to the government, according to petitioner.

19. In his Supplementary reply (Annexure: A7), it was mentioned by the petitioner that involvement was of *Jal Upbhokta Samuh*, whose members accepted their mistakes and made good the loss to the government. There was no involvement of the petitioner. It was also indicated in Annexure: A7 that Mr. D.R.Arya, Addl. Assistant Engineer *vide* letter dated 07.09.2017 admitted his mistake and, therefore, the petitioner should be exonerated of the charges levelled against him.

20. District Magistrate, Nainital and Superintending Engineer, Minor Irrigation, Division, Pithoragarh, in their reports dated 15.12.2015 (Annexure: CA R4) and dated 23.03.2017 (Annexure A5), have clearly indicated that Sri D.R. Arya, Addl. Assistant Engineer, Minor Irrigation Department and the office bearers of the *Gram Sabha* have caused loss to the government. S.E. has also raised finger on Ex.En. also, with the aid of G.O. No. 1373 dated 05.09.2008. The payment of Rs. 46385.42 was wrongly made. There was serious lapse on the part of the office bearers of the *Gram Sabha* and Addl. Assistant

Engineer. There is, therefore, no hesitation in coming to the conclusion that there was irregularity and carelessness on the part of the office bearers of the *Gram Sabha* and Addl. Assistant Engineer, who was looking after the project, in releasing the payment. This fact is under no dispute that the petitioner was supervisory and senior officer to the J.E. and Addl. A.E., who were responsible for wrongly depicting the measurement in the Measurement Book and were also responsible for causing release of the payment for the construction which was never done. The payment could have been released only after the endorsement or sanction of the petitioner- Executive Engineer. It was therefore, his responsibility as supervisory officer, to inspect the site, see that the measurements are actual in the Measurement Book, see that the construction for which payment are to be made have been constructed on the site and then only the petitioner should have ordered release of money. His job was supervisory in nature. This was admittedly not done.

21. The reasons have been assigned by the delinquent petitioner in his replies. These replies do not appear to be satisfactory. The petitioner cannot be absolved of supervisory responsibility of not verifying the facts on the site even if there was heavy workload. Responsibility is responsibility. Addl. Charge is as good as main charge. One cannot take a plea that since he was overburdened with work, therefore, he could not verify the actual constructions and actual measurements on the spot. Although, the inquiry officer, in his report, has indicted Addl. Assistant Engineer, but has also held the petitioner- Executive Engineer partially guilty for the same.

22. A recovery of Rs. 3478.89 has been made from the petitioner which is a minor punishment. As per Rule 3(A) of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (in short the 'Rules of 2003'), recovery from pay of the whole or part of any pecuniary loss caused to the government by negligence or breach of

orders, is a minor penalty. The standard of proof in departmental proceedings is preponderance of probability. The evidence has to be adjudged from the point of view of a reasonable prudent person. If a layman is asked a question, as to who is responsible for such lapse, he or she will definitely give a reply that the Executive Engineer, in the aforesaid circumstances, is also answerable for the lapse. His reply would be in the affirmative. The petitioner-Executive Engineer was negligent, as supervisory officer, in not verifying the constructions on the site. He was negligent in not visiting the site and not verifying the facts as to whether particular constructions were, in fact, raised on the site and also, whether other constructions so raised were correctly mentioned in the Measurement Book. Although, it was the primary responsibility of the concerned Junior Engineer and (Addl.) Assistant Engineer, who recorded such facts in the Measurement Book or in other documents, but since the petitioner-Executive Engineer was their supervisory authority and only on the basis of his certification, the payments were to be released and since the petitioner-Executive Engineer did not verify the facts by making a visit on the site, therefore, he was definitely negligent in performing his duties which caused pecuniary loss to the government.

23. The quantum of recovery ordered from the petitioner-Executive Engineer was in accordance with the G.O. No. 1373/11-2004-2014(05)/2005 dated 05.09.2008. The Executive Engineer, according to para (11) of the G.O. dated 05.09.2008, was required to pay 7.5%, which was equal to 15% of the 50% for the anomaly in construction on the site and wrong depiction in the Measurement Book. Inquiry officer has recorded his finding on the basis of such Govt. Order, which assumes great significance in the backdrop of present claim petition. It does not lie in petitioner's mouth to say that since the Govt. loss has been deposited by others, therefore, no recovery should be made from him. G.O. dated 05.09.2008 prescribes a mechanism to

recover loss from delinquent officials. One cannot have a cake and eat it too.

24. It is, therefore, apparent that the petitioner-Executive Engineer was negligent in his duties. He offered his explanation, which explanation was not found sufficient and, therefore, a recovery of Rs. 3478.89 was ordered against the petitioner, quantity of which was as per the G.O. dated 05.09.2008, besides permanent stoppage of two increments. [or stoppage of two increments with cumulative effect].

25. To summarize, the inquiry was conducted by Sri Mukesh Mohan, Chief Engineer, Irrigation Department. The charges levelled against the petitioner were mentioned in the charge sheet. The petitioner has denied the charges levelled against him. No oral evidence was offered against the delinquent petitioner. Three documents were enclosed with the charge sheet. These documents are- (i) the inquiry conducted by the District Magistrate (ii) the inquiry conducted by Superintending Engineer, Minor Irrigation, Circle, Pithoragarh and (iii) copy of the Rules of 2003. So far as the inquiries conducted by the District Magistrate and Superintending Engineer are concerned, they were in the form of preliminary inquiries as far as the petitioner is concerned. There was no occasion for the petitioner to have participated in the same. A perusal of the preliminary inquiry report of S.E., minor irrigation, would indicate that the same dealt, not only with the role and involvement of *Gram Pradhan, Up Ggram Pradhan*, Addl. Assistant Engineer and Junior Engineer, but also of the Executive Engineer in the light of G.O. of 2008. This preliminary inquiry report of S.E. was filed as documentary evidence in support of charge sheet. The preliminary inquiries indicated that the officers of the *Gram Sabha*, Assistant Engineer and Junior Engineer admitted their mistakes and agreed to make good the loss to the government. Admittedly, there was no participation of the petitioner in those preliminary inquiries. The preliminary inquiries are fact finding inquiries, in which,

normally, there is no participation of the delinquent employee. The same happened here also in case of petitioner. The others participated and were indicted. The petitioner did not participate, but the role of Executive Engineer was highlighted in the report of S.E., in the light of G.O. of 2008, which was one of the documentary evidence in support of charge sheet. The preliminary inquiry reports, indicated irregularities in the project, for which, the officers of *Gram Sabha* and subordinates of the petitioner were held guilty. In general, there was carelessness or negligence on the part of the petitioner, who was partly responsible, as supervisory officer, for release of money, without verification of the constructions on the site *vis-à-vis* entries in the Measurement Book. Two sentences in the preliminary inquiry report of Superintending Engineer indicated that the Executive Engineer was to release the payment (but only after verification).

26. To sum up, two preliminary inquiries were filed in support of the charge sheet, besides a copy of the Rules of 2003. In those two preliminary inquiry reports, neither was there any participation of the petitioner nor could normally be and those, who participated in the inquiry, were held guilty on the basis of their admission. Inquiry report of S.E. speaks about the responsibility of Executive Engineer in view of G.O. of 2008 and this report was made part of charge sheet. If preliminary inquiry report of S.E. alongwith petitioner's replies are read together, a case of 'misconduct' is made out against the petitioner.

27. A common prudent person would normally believe that petitioner was negligent in performing his duties, so as to cause pecuniary loss to the government, as stipulated in Clause (iii) of Sub rule (a) of Rule 3 of the Rules of 2003 and the petitioner should be held guilty, on account of the same. Proposed documentary evidences and the names of witnesses proposed to prove the same along with oral evidences, if any, are to be mentioned in the charge sheet. In the instant case, no oral evidence was proposed. Only three documents



were enclosed, out of which, one was copy of the Rules of 2003 and other two were the copies of preliminary inquiry reports, in which, although there was no participation of the petitioner, but in one such report (of S.E.), petitioner has been indicted and this preliminary report, as has been stated above, has been filed in support of charge sheet by the inquiry officer. Writing (execution) of such report has nowhere been denied by the answering (delinquent) Executive Engineer.

28. Second show cause notice was given to the petitioner on 03.10.2018 by the Principal Secretary, Minor Irrigation Department, Govt. of Uttarakhand. The same is available on the Enquiry File. In his reply to such second show cause notice, petitioner quoted an observation of Hon'ble High Court of Uttarakhand in WPSB No. 171/2005, Paramjeet Singh vs State of Uttarkahand, as below:-

*“Shri Paramjeet Singh, Executive Engineer (petitioner herein) was held responsible only for supervision, verification, drawing and disbursing. Even in the charge sheet issued to the petitioner on 27.07.2005, the only charge is that he had not physically verified the work as per the standard and failed to discharge his supervisory duties as Drawing and Disbursing Officer as a result of which illegal payment were made. The Executive Engineer has to conduct verification of only 1 to 2% of the measurement. Therefore, the petitioner cannot be expected to verify the entire work. Even though the petitioner was the Drawing and Disbursing officer, he passed the bills on the basis of the verification reports of the Junior Engineer and Assistant Engineer. Hence, if at all there was any lapse on the part of the petitioner, it was only supervisory lapse.”*

*[Emphasis supplied]*

Supervisory lapse, admittedly, amounts to negligence and is, therefore, a 'misconduct'. [Please read with Rule 3(A) of the Rules of 2003]. By his own admission in replies to the charge sheet and second show cause notice coupled with G.O. dated 05.09.2008, the petitioner—Executive Engineer has committed 'misconduct' and has, therefore, rightly been held guilty by the inquiry officer.

29. Two principal submissions, apart from those on which above narration has been recorded, were made by learned counsel for the petitioner. One, while awarding major penalty, no approval of the Hon'ble Governor was taken. The second limb of argument was that Uttarakhand Public Service Commission was not consulted. The documents have been filed to show that Uttarakhand Public Service Commission was consulted, who assented to imposing such penalty upon the petitioner [*vide* letter dated 01.04.2019 of the Secretary, Uttarkhand Public Service Commission to Principal Secretary to the Govt. in Minor Irrigation Department, Dehradun]. The Tribunal therefore, observes that Uttarakhand Public Service Commission was consulted before imposing major (and minor) penalty upon the petitioner.

30. Not every file has to go to Hon'ble H.E. the Governor, though the entire government machinery functions in his or her name. Article 162 and 166 of the Constitution read as below:

*"Art. 162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:*

*Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make law, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."*

***"Art.166. Conduct of business of the Government of a State.***

***(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor***

***(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.***

***(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.***

***....."***

31. Uttar Pradesh Government has framed Rules for conducting business. The same are also applicable in State of Uttarakhand as per Uttar Pradesh Reorganization Act, 2000. In the instant case, the file was admittedly not placed before H.E. Learned A.P.O. submitted that the approval of the Hon'ble Departmental Minister was taken on the file before issuing punishment order against the petitioner. Learned A.P.O. said so, on the basis of instructions received by him from the department concerned and on perusal of the enquiry file. The Tribunal therefore, observes that there was sufficient compliance of Article 166 read with rules, in the instant case.

32. To recapitulate, two preliminary inquiries holding the subordinate and office bearers of the *Gram Sabha* guilty, read with G.O. dated 05.09.2008, assigning responsibility of an Executive Engineer, coupled with observations of the Hon'ble High Court in WPSB No. 171/2005, Paramjeet Singh vs. State of Uttarakhand & others and admission of the delinquent petitioner in replies to the charge sheet and second show cause notice are sufficient to prove the 'misconduct' against the petitioner. No procedural impropriety has successfully been pointed out and even if there was any, for the sake of argument, no prejudice has been caused to the petitioner.

33. The next question would be—what is the extent of Court's power of judicial review on administrative action? This question has been replied in Para 24 of the decision in *Nirmala J. Jhala vs. State of Gujrat and others*, (2013) 4 SCC 301, as follows:

*"24.The decisions referred to hereinabove highlight clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/ corrupt practice. In other words, the authority must*

*act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.”*

34. ‘Judicial review of administrative action’ is possible under three heads, viz:

- (a) illegality,
- (b) irrationality and
- (c) procedural impropriety

Besides the above, the ‘doctrine of proportionality’ has also emerged, as a ground of ‘judicial review’, of late.

### **INFERENCE**

35. It has been held by Hon’ble Apex Court in Indian Oil Corporation Ltd. vs. Ashok Kumar Arora, AIR 1997 SC 1030 that where finding has been recorded in a departmental inquiry, the Writ Court cannot exercise the power of the Appellate Court/Authority. It can interfere only in cases of non-observance of principles of natural justice, finding being based on no evidence or the punishment being disproportionate. In the instant case, as has been mentioned above, the misconduct against the petitioner has been proved. The only question, which is left for the consideration of this Tribunal now is, whether interference is called for, in the order impugned, on the ground that punishment is disproportionate?

36. This Tribunal has quoted above the observations of Hon'ble High Court in the decision of WPSB No.171 of 2005, Paramjeet Singh vs. State of Uttarakhand & others. Whereas, the office bearers of *Gram Sabha* and subordinates of the petitioner-Executive Engineer were directly responsible for the loss caused to the government, the petitioner was responsible only to the extent of not performing his supervisory role properly. It was his duty to have ascertained the facts, on the site, before recommending release of payment. Petitioner did not do the same. He was negligent in performing his duties to that extent only. Even if he was overburdened with work and had many additional charges, the same would not make any difference. He has already submitted an explanation to this effect in his replies to the show cause notice and second show cause notice. Negligence on the part of the petitioner-Executive Engineer is writ large on the face of it. But there are mitigating circumstances in his favour, which compels this Tribunal to interfere in the order impugned, only to the extent of setting aside a part of punishment.

37. It was only in the year 1985 that Lord Diplock identified the ingredients of the concept of judicial review in *Council of Civil Service Union vs. Minister for the Civil Service*, 1985 AC 374. According to him, judicial review could be possible under three heads, namely, illegality, irrationality and procedural impropriety. The doctrine of proportionality was also relevant.

The principle of proportionality ordains that administrative measures must not be more drastic than is necessary for attaining the desired reason. The principles of reasonableness and proportionality cover a great deal of common grounds. 'Proportionality', it is held by House of Lords, requires the Court to judge whether the action taken was really needed, as well as whether it was without the range of courses of action that could reasonably be followed. Proportionality is, therefore, a more exacting test in some situations and is then to be

rejected as requiring the Court to substitute its own judgment for that of the proper authority. In *R. vs. Secretary of State for the Home Department, ex p Brind*, (1991) 1 AC 696, it was observed that the doctrine of proportionality may require a review Court to assess the balance which the decision maker has struck not merely whether it is within the range of rational or reasonable decisions. Secondly, proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations.

In *Ranjeet Thakur vs. Union of India*, (1987) 4 SCC 611, Hon'ble Supreme Court relied upon Lord Diplock in *Council of Civil Service Union Case (supra)*, as below:

*"...Judicial Review has, I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. the second, 'irrationality' and the third, 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community."*

In *Union of India vs. G.Ganayutham* , (1997) 7 SCC 463, the Hon'ble Apex Court responded to the question as to whether power of judicial review permits the High Courts or Administrative Tribunals to apply the principle of proportionality thus:

*"The position pertaining in the year 1997, of proportionality in administrative law in England and India was summarized:*

*(a) To find out if an administrative order was illegal or was one which no sensible decision-maker could have arrived at. The Court would consider whether relevant matters had been taken into account and not the irrelevant.*

*The court would not go into the correctness of the choice made by the administrator of several alternatives which may be available.*

*Nor will the Court substitute its own decision for that of the administrator. This is the Wednesbury test.*

*(b) The Court would interfere on grounds of illegality, procedural impropriety or irrationality.*

*The possibility of including proportionality being brought into English administrative law was not ruled out.*

*These are the principles laid down in the CCSU case.*

*(c) The English courts merely exercise a secondary judgment only to examine whether the decision-maker could have arrived at the primary judgment in the manner he has.*

*(d) Only if the European Convention is incorporated in England would the English Courts render primary judgment on the validity of administrative action. Since the Convention has incorporated the doctrine of proportionality.*

*(e) The position in India is that where no fundamental freedoms are involved the Courts will play a secondary role only. However, where fundamental freedoms are affected by any administrative or executive action, whether the Courts would assume a primary role and apply the principle of proportionality only if freedoms under Article 19, 21, etc. are involved and not Article 14, was left open for consideration.”*

In *M.P. Gangadharan vs. State of Kerala*, (2006) 6 SCC 162, Hon’ble Apex Court observed as below:

*“The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a strait-jacket formula. It must be considered keeping in view, the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of Wednesbury Unreasonableness, the court is leaning towards the doctrine of proportionality. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the Act was enacted”.*

38. The order impugned is, in the given circumstances, certainly disproportionate. Hon’ble Supreme Court has pointed out in the decision of *B.C. Chaturvedi vs. Union of India & others* (1995)6 SCC 749- that the Court might, in the exceptional cases,-to shorten litigation-think of substituting its own view as to quantum of punishment in place of the punishment awarded by the Competent Authority. But in the instant case, this Tribunal, conscious of its

limitation, is not inclined to substitute its discretion for that of the authority. It is not modifying or altering the penalty imposed by the disciplinary authority either. Instead, it thinks it proper to set aside such part of the order which is excessive or disproportionate.

39. This Tribunal is, therefore, of the view that this Tribunal should interfere in the order impugned to the extent of setting aside such part of the order, which provides for withholding of two increments with cumulative effect, in the peculiar facts of the case. The ends of justice will be met, if the order directing recovery of Rs. 3478.89 is affirmed, while setting aside the remaining part of the impugned order.

40. Order accordingly.

41. The claim petition is partly allowed and partly dismissed. Such part of the impugned order (Annexure: A1) which provides for the recovery of Rs. 3478.89 is hereby affirmed. So far as the remaining part of the impugned order relating to stoppage of increments with cumulative effect is concerned, the same is hereby set aside.

42. In the circumstances, no order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

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

*DATE: MAY 29, 2020*

*DEHRADUN*

*KNP*