

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

Present: Hon'ble Mr. Ram Singh
-----Vice Chairman (J)
Hon'ble Mr. A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 124/DB/2019

Sharan Pal Singh Kunwar, S/o Late Sri Kripal Singh Kunwar, aged about 46 years, Forest Range Officer (Ex Cadre), Haridwar Range, Rajaji Tiger Reserve, Uttarakhand.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary (Forest), Civil Secretariat, Dehradun.
2. Principal Chief Conservator of Forest (HoFF), Uttarakhand, 85, Rajpur Road, Dehradun.
3. Director/Conservator of Forest, Rajaji Tiger Reserve, Uttarakhand, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Advocate for the petitioner
Sri V.P.Devrani, A.P.O. for the respondents

JUDGMENT

DATED: JUNE 30, 2020

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

1. The petitioner has challenged the suspension order dated 01.10.2019 and sought the following reliefs:

"a. To issue claim order or direction to call for records and quash the order of suspension dated 01.10.2019 enclosed as Annexure:1.

b. To give any other relief that this Hon'ble Court may deem fit and proper in the circumstances of the case.

c. To give cost to the petitioner."

2. Briefly stated, the petitioner while posted as Range Officer in the forest department, was suspended vide order dated 01.10.2019 by

the respondents on the ground of financial irregularities, and for violation of the Uttarakhand Government Servants (Discipline & Appeal) Rules, 2003. Respondents never served any charge sheet to the petitioner until filing of the claim petition, neither he was informed about any complaint or result of any preliminary inquiry.

3. The petitioner has alleged that suspension order was passed, on account of the fact that he approached the Hon'ble High Court, against his transfer. The order of suspension has been passed without any application of mind and it is in violation of government rules and guidelines. The petitioner approached the Hon'ble High Court and challenged the same, from where, his petition was decided on the ground of alternative remedy. Hence, he has approached this Tribunal and sought the abovementioned reliefs.

4. Respondents opposed the petition by filing Counter Affidavit and have submitted that petitioner while posted as Forest Ranger in Rajaji Tiger Reserve, misused his public office and got involvement in embezzlement of public money. One Sri Aditya Sharma, a member of private organization namely 'People for Animal, Haridwar, filed a complaint dated 16.03.2019, addressed to the Principal Secretary, Forest, alleging misappropriation of public money by the petitioner. On the basis of which, Conservator of Forest, ordered to conduct a fact finding inquiry. The inquiry officer vide his letter dated 21.09.2019, submitted a report to the respondent No. 2 and found that the petitioner was guilty of misappropriation of public money, while discharging his public duty.

5. It is also contended that respondent No. 2 after being fully satisfied with matter and the report, suspended the petitioner *vide* order dated 01.10.2019 and his petition is premature and is not maintainable. The suspension is not a punishment and it is only procedural formality under the Discipline Rules, otherwise, the

petitioner could have tampered with the inquiry proceedings. The embezzlement of public money is a serious matter and the petitioner is under obligation to face the disciplinary proceedings and to prove himself to be not guilty. In view of the serious allegations, the petitioner is liable for dismissal from service, after inquiry, hence, suspension is justified. There is no illegality or irregularity in the order hence, the petition deserves to be dismissed.

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

7. The impugned order of suspension dated 01.10.2019, clearly mentions that a complaint was made against the petitioner by one Sri Aditya Sharma, which was investigated through Conservator of Forest, Forest Department and in the preliminary inquiry, the allegation was found correct. Hence, the appointing authority, respondent No. 2 founding the petitioner *prima facie* guilty of the alleged allegation, suspended him with immediate effect. Petitioner has contended that while passing the suspension order, compliance of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, as amended in 2010, has not been made. We have gone through the rules. Rule 4, is the relevant rule on this point, of which, Sub Rule (1) was amended in 2010, dated 28.05.2010. The amended rule reads as under:

“मूल नियमावली में नियम 4 के उपनियम (1) के स्थान पर निम्नलिखित उपनियम रख दिया जायेगा; अर्थात:-

“(1) कोई सरकारी सेवक जिसके आचरण के विरुद्ध कोई जांच अनध्यात है या उसकी कार्यवाही चल रही है, नियुक्ति प्राधिकारी के विवके पर जांच की समाप्ति के लम्बित रहने तक, निलम्बन के अधीन रखा जा सकेगा। निलम्बन आदेश में इस बात का स्पष्ट उल्लेख किया जायेगा कि संबंधित कार्मिक के विरुद्ध अभिकथन इतने गम्भीर हैं कि उनके स्थापित होने की दशा में दीर्घ शास्ति दी जा सकती है।

परन्तु निलम्बन तब तक नहीं करना चाहिए जब तक कि सरकारी सेवक के विरुद्ध अभिकथन इतने गम्भीर न हों कि उनके स्थापित हो जाने की दशा में सामान्यतः दीर्घ शास्ति का समुचित आधार हो सकता हो;

परन्तु यह और भी कि राज्यपाल द्वारा इस निमित्त जारी आदेश द्वारा सशक्त संबंधित विभागाध्यक्ष समूह 'क' और 'ख' के सरकारी सेवक या सरकारी सेवकों के वर्ग को इस नियम के अधीन निलम्बित कर सकेगा;

परन्तु यह और भी कि समूह "ग" और "घ" के किसी सरकारी सेवक या सरकारी सेवकों के वर्ग के मामले में नियुक्ति प्राधिकारी अपनी शक्ति इस नियम के अधीन अपने निम्नतर प्राधिकारी का प्रत्यायोजित कर सकेगा।"

8. It is argued by the petitioner that he was appointed by the respondent No. 1 but he has been put under suspension by the respondent No.2. It is also contended that in the suspension order, it has not been specifically mentioned that the allegations against the petitioner are so serious that in case of their establishment, he may be inflicted any of the major penalties. We have gone through the order passed, wherein, it is nowhere mentioned by the authorities while passing the order, that he is satisfied with the fact that the charges are so serious, that it may result into major penalty. Hence, literal compliance of the rules, has not been made.

9. It is also contended that no charge sheet has been served upon the petitioner till date whereas, as per the G.O. No. 1626/Karmik-2/2002 dated 23.01.2003, the guidelines were issued that an employee can only be suspended in cases, where charges are so serious that the major penalty shall be the result of successful inquiry and it should be written in the order. The suspension is not a punishment, but the government itself mentioned in the G.O. that suspension should not be invoked until the charges are so serious that in case of approval of these charges, the punishment of dismissal, the reduction in rank might be awarded. This power of suspension should be invoked very carefully. The government orders very clearly laid down that as far as possible, the charge sheet should be served in such cases, before the suspension. If suspension is made, the charge sheet should be served without any delay i.e. within a period of three weeks. If charge sheet is not served in such time, the reasons should be recorded. Obviously, the charge sheet has not been served in this matter after such a long time. Till the final

hearing, respondents were not able to file any proof that the charge sheet has been served to the petitioner hence, in such circumstances, the court is of the view that while passing suspension order, guidelines laid down by the rules and the G.O., have not been followed.

10. In such circumstances, the court is of the view that the impugned order of suspension dated 01.10.2019 needs to be set aside, as it was not passed after complying with the rules and the G.O.. Respondents are directed to reinstate the petitioner immediately within a period of one month from date of this order.

11. However, the respondents will be at liberty to proceed with the inquiry and the charges levelled against the petitioner, as per rules, and respondents may also invoke the power of suspension, as per the provisions of laws, if needed, after passing a reasoned order, complying with the requirements of law. Hence, following order is hereby passed.

ORDER

The claim petition is allowed. The impugned order of suspension dated 01.10.2019 is hereby set aside. The Respondents are directed to reinstate the petitioner immediately within a period of one month from this order.

However, the respondents will be at liberty to proceed with the inquiry of the charges levelled against the petitioner, as per the rules and may also invoke the provisions of suspension, as per the rules, if needed, after passing a reasoned order, as per the rules.

No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JUNE 30, 2020
DEHRADUN.
KNP