

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S. Nayal

-----Member (A)

REVIEW PETITION NO. 01/NB/DB/2019

State of Uttarakhand & others **vs.** Lakhiram Jaguri

Present:

Sri Kishore Kumar, Ld. A.P.O.

for the review applicant

Sri Kartikey Hari Gupta, Ld. Counsel

for the opposite party/respondent

ORDER

DATED: SEPTEMBER 18, 2019

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

1. This review petition has been filed on behalf of the State, for review of the order dated 09.01.2019, passed by this Tribunal in the original claim petition No. 03/NB/DB/2019, Lakhi Ram Jaguri vs. State of Uttarakhand & others, along with an application for condonation of delay. The review petition has been opposed by the petitioner of the claim petition, on the ground, that learned A.P.O. on behalf of the respondents were heard at that time, and this review petition has been filed after a long delay. There is also no valid ground to review the order dated 09.01.2019 and it deserves to be dismissed.

2. We have heard both the sides and perused the original claim petition.

3. The original claim petition was filed by Sri Lakhiram Jaguri for the following reliefs:

“(i) To issue an order or direction calling for records and quashing the order dated 04 June, 2018 (Annexure No. 1) passed by Respondent No. 1

(ii) to issue an order or direction calling for records and quashing the illegal ex-parte enquiry report dated 29.03.2018 (Annexure No. 1) prepared by Respondent No. 4”

(iii) To issue an order or direction calling for records and quashing the order dated 16 July 2018 (Annexure No. 8) passed by Respondent No. 1.

(iv) to issue an order or direction directing the respondents to accept the departmental enquiry report dated 09.05.2018 (Annexure No. 6) prepared by enquiry officer/ Chief Engineer, P.W.D. and take a final decision on that.

(v) To issue an order or direction to the respondent no. 3 to issue no objection certificate and further provide all pension, gratuity, other retirement dues along with interest.

(vi) Any other suitable, order or direction which this Hon’ble court may deem fit and proper in the circumstances of the case.

(vii) Further prayer that the Hon’ble Court may direct the respondents to pay the cost of the litigation.

4. On the first date of hearing for admission, learned A.P.O. on behalf of the respondents raised an objection that the original claim petition is premature as the petitioner challenged the show cause notice dated 04.06.2018, on the basis of which, the action was yet to be taken.

5. At that stage, the learned counsel for the petitioner had raised a legal point that in the inquiry report of the Chief Engineer, Level-I, the petitioner was exonerated from the charges levelled against him and in such situation, as per the rules, without disagreeing with the inquiry report and recording reasons, the disciplinary authority cannot proceed further as per the law and notice to the delinquent employee cannot be issued, whereas, the notice dated 04.06.2018 was issued, without recording any finding of disagreement with the inquiry report dated 09.05.2019.

6. On this preliminary technical point, the petition was disposed of at the admission stage with the direction to the respondents to withdraw the show cause notice dated 04.06.2019, but liberty was

granted to the respondents to proceed with the matter, if they so desires, as per the requirement of the law and principles of natural justice. Except, decision on this point, nothing was decided by this Court on its merit.

7. Now, the State through learned A.P.O. has filed this review petition that they should be heard on merits as they were not given an opportunity of hearing for making their submissions.

8. We find that on the date of hearing on admission, the submissions of the respondents were also heard and without touching any other merit of the petition, the petition was disposed of, only on the point of procedural lapse.

9. Now, the State has filed this review application after a long delay and we find no sufficient reason to justify the delay. Furthermore, as nothing was decided on merits of the petition and the right of the state respondent department was preserved for proceeding against the delinquent employee as per the procedure of law, hence, nothing more remains to be heard on this point. Learned A.P.O. has also argued that in view of the liberty granted to them, they proceeded on the basis of another enquiry and a notice dated 16.07.2018, wherein, the reasons for disagreeing with the inquiry report dated 09.05.2018 were mentioned. It has been contended that on the basis of the notice dated 16.07.2018, they have proceeded further and completed the proceeding against the respondent, but in view of the order dated 09.01.2019 of the Court, they are not able to proceed further against the delinquent employee (petitioner).

10. We find that there is no such technical ground to entertain their review application. The court also does not agree with the contention of the State that there is any hindrance in their right to proceed with the delinquent employee as per the rules.

11. The order of the court dated 09.1.2019 for which, review has been filed, decided nothing on merits. By the above order, the notice dated 04.06.2019 was not to be acted upon, and no proceeding on that basis was to be finalized, unless disagreeing with the inquiry report dated 09.05.2018.

12. The State, in this review petition has come up before this court, with contradictory stand. On the one hand, they are alleging that they are not able to proceed against the employee on account of the order dated 09.1.2019, while, on the other hand, they are arguing that they have proceeded as per the rules not on the basis of notice dated 04.06.2018, but on the basis of another notice dated 16.7.2018, on the basis of which, recovery is to be made.

13. We find that there is no reason to justify the delay as well as there is no reason to entertain the review petition, and review petition deserves to be dismissed. However, it is also made clear that State/respondent department were nowhere restrained to take and finalize the disciplinary proceedings as per the rules, and if they have finalized their proceeding on the basis of another notice dated 16.07.2018, their action is nowhere hit the order of the court dated 09.01.2019, rather, they were granted liberty to proceed as per the rules. If the respondent department has finalized any proceeding on the basis of notice dated 16.07.2018 and petitioner of the claim petition is aggrieved by any such order, he is having a separate cause of action for the same and he may challenge the same by way of separate claim petition as per the law.

14. The review petition is dismissed and disposed of accordingly.

Sd/-

(A.S.NAYAL)
MEMBER (A)

DATE: SEPTEMBER 18, 2019
NAINITAL
KNP

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)