**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)

-------Member (A)

**CLAIM PETITION NO. 01/DB/2014**

S.Paramjeet Singh S/o S. Harbans Singh, aged about 56 years, Superintending Engineer, Minor Irrigation Circle, Haldwani R/o 245/I, Vijjai Park Extension, Dehradun.

**……Petitioner**

**Versus**

1. State of Uttarakhand through its Principal Secretary, Department of Minor Irrigation, Secretariat, Subhash Road, Dehradun-248001.
2. Principal Secretary to the Government of Uttarakhand, Department of Minor Irrigation & FRDC, Subhash Road, Dehradun-248001.
3. Secretary to the Government of Uttarakhand, Department of Minor Irrigation, Subhash Road, Dehradun-248001.

**.....Respondents**.

Present: Sri J.P.Kansal, Advocate
for the petitioner.
Sri V.P.Devrani, A.P.O.,
for the respondents.

**JUDGMENT**

**DATED: JULY 17, 2020**

**(Hon'ble Mr. Ram Singh, Vice Chairman (J)**

1. The petitioner has filed the present claim petition for seeking the following relief with the following words:-

> *"(a) the impugned orders dated 01.09.2011(Annexure-A1) and Annexure-A 30 be kindly quashed and set aside with all consequential benefits including pay of the post of the petitioner, annual increments, allowances etc. as would have been admissible had the impugned order would not have been passed together with interest @ 12% per annum from the date*

*of accrual of the benefits till the date of actual payment to the petitioner;*

*(b)The respondents be kindly ordered and directed to refund the amount recovered by the respondents pursuance to the above impugned order together with 12% per annum interest thereon from the date of recovery till the actual date of refund to the petitioner;*

*(c) Any other relief in addition to, modification or substitution of the above, as this Hon'ble Tribunal deems fit and proper on the facts and circumstances of the case be kingly allowed to the petitioner against the respondents; and*

*(d) Cost of this petition Rs.20,000/- be allowed to the petitioner against the respondents."*

2. The petitioner is presently working as Superintending Engineer in the department of Minor Irrigation, Government of Uttarakhand. During the year 2002-2004, the department of Minor Irrigation undertook many projects under Accelerated Irrigation Benefits Programme and other irrigation schemes in various districts of Garhwal Division. The petitioner was Executive Engineer at that time and supervised these projects. The petitioner was placed under suspension on 16.10.2008 due to alleged irregularities committed by him.

3. The petitioner was issued a charge sheet on 05.11.2008 containing seven charges. The charges against the petitioner were mainly related to the allegations that he did not make physical verification of works and also failed to discharge his duties as Drawing and Disbursing Officer leading to the illegal payments. The appointing authority appointed Shri Manjul Joshi, Additional Secretary, Government of Uttarakhand as Inquiry Officer on 20.01.2009. The petitioner replied to the charge sheet on 12.03.2009, 26.03.2009 and 22.09.2009 and denied from the charges.

4. The Inquiry Officer conducted the inquiry and submitted the inquiry report dated 31.03.2010 to the appointing authority. Thereafter, a show cause notice was issued by the appointing authority to the petitioner

on 21.04.2010 along with the copy of the inquiry report. The petitioner replied to the show cause notice on 11.05.2010. The appointing authority considered the reply to the show cause notice and found it unsatisfactory and after consulting the Public Service Commission, passed the punishment order on 01.09.2011 imposing upon the petitioner the punishments of (i) recovery of Rs.2,97,965; (ii) censure entry; and (iii) withholding of three increments with cumulative effect. It was also mentioned in the punishment order that the petitioner will not be paid salary of the suspension period except the subsistence allowance paid during the period of suspension.

5. The petitioner filed a "review" against the punishment order dated 17.10.2011 and thereafter, also sent reminders for disposal of his "review". The "review" was considered and the same was rejected by the competent authority on 20.12.2016.

6. The petitioner initially challenged the punishment order mainly on the ground that the inquiry officer was appointed even before reply to the charge sheet was submitted by the petitioner, which is in gross violation of the rules and the principles of natural justice and, therefore, the whole proceedings are void *ab-initio*. Apart from this, the petitioner also contended that inquiry was not conducted properly as per rules; documents enclosed with the charge sheet were not got proved by their authors; the respondents could not impose major and minor punishments simultaneously; the punishments imposed upon the petitioner are disproportionate to the alleged misconduct; the review petition has been decided in unlawful manner; the petitioner was not allowed opportunity to make submission on the advice of the UPSC; the material taken into consideration for awarding sentence was neither as per law nor the other material available on record was considered. The salary of the petitioner for suspension period was restricted to suspension allowance without following Rule 54 of the Fundamental Rules.

7. Respondents in their joint written statement opposed the claim petition and have stated that the inquiry was conducted as per rules and

sufficient opportunity was provided to the petitioner to defend himself. There was sufficient evidence against the petitioner and he has rightly been found guilty. The charge sheet issued to the petitioner was signed by the disciplinary authority which is as per rules. The appointment of inquiry officer was also as per rules as the relevant rules permit appointment of inquiry officer with the institution of the departmental proceedings. The inquiry was based on documentary evidences only, which were in the knowledge of the petitioner. There was no need to get them proved by oral evidence. No prejudice had been caused to the petitioner so it cannot be said that the inquiry proceeding are vitiated or there is violation of any principle of natural justice. The punishment was imposed upon the petitioner after consultation with the Uttarakhand Public Service Commission and there is no rule in the Government Servants (Punishment and Appeal) Rules, 2003 according to which the advice of the UPSC is required to be provided to the petitioner for his comment. The review of the petitioner against the punishment was duly considered and the same was rightly rejected by the competent authority.

8. The petitioner has filed the rejoinder affidavit and the same averments which were stated in the claim petition have been reiterated and elaborated in it. The petitioner/respondents have also filed supplementary affidavits/ documents.

9. Earlier, the matter was heard and decided by the Tribunal, and vide order dated 04.01.2018, punishment order was set aside on the ground of appointment of inquiry officer before considering the reply of the petitioner to the charge sheet and it was held that the respondents have taken a wrong path to conduct the inquiry as per the settled legal position, hence, finding procedural lapse, respondents were given liberty to proceed afresh against the petitioner in accordance with law.

10. The Tribunal *vide* judgment and order dated 04.01.2018 also observed that after considering the explanation of the delinquent officer, if found necessary to hold an inquiry only at that stage, an inquiry officer

could be appointed after considering their reply. Holding the procedure not in accordance with law, the claim petition was allowed and the punishment order dated 01.09.2011 (Annexure: A1) and order dated 20.12.2016 (Annexure: A 30), rejecting the review application of the petitioner, were set aside and without expressing any opinion on the merits of the case, it was left open to the competent authority to proceed afresh against the petitioner in accordance with law.

11. The respondents State challenged the judgment of the Tribunal before Hon'ble High Court in WPSB No. 81 of 2019. The above writ petition was disposed of on 17.06.2019 with the following orders:-

> "*12. Appointment of an inquiry officer, even before receipt of the respondent-claim petitioner's reply to the charge-sheet, is at best a procedural aberration. Save cases where a delinquent employee would suffer substantial prejudice, for non-compliance of such a requirement, the Tribunal cannot be swayed by mere technicalities for, even if an Inquiry Officer had been appointed, it was always open to the disciplinary authority, after receipt of the respondent-claim petitioner's reply to the charge-sheet and if he was satisfied therewith, to direct the Inquiry Officer not to proceed with the inquiry. The very fact that the disciplinary authority/Appointing Authority have chosen not to do so, would itself reflect their satisfaction that the inquiry should be proceeded with.*
> *13. In the light of the law declared by the Supreme Court, in S.K. Sharma, it is only in cases where the delinquent employee suffers prejudice on account of violation of a procedural Rule, would interference be justified. It is not even contended before us by Mr. Rakesh Thapliyal, learned counsel for the respondent-claim petitioner, much less established, that the delinquent employee suffered substantial prejudice for violation by the petitioner of the procedural requirement of appointing an Inquiry Officer only after considering the reply submitted to the charge-sheet. Since the law laid down by the Supreme Court, in S.K. Sharma, is binding on this Court under Article 141 of the Constitution of India, and as this judgment was not noticed by the Division Bench of this Court in the aforesaid two judgments, reliance placed thereupon by the respondent-claim petitioner is of no avail. We are satisfied, therefore, that the Tribunal ought to have examined the matter on merits and should not have, in the absence of substantial prejudice being shown to have been caused, set aside the order of punishment for a procedural violation.*
> *14. We, therefore, set aside the order impugned in the writ petition, and remand the matter to the Tribunal for its*

> *examination afresh on merits and in accordance with law. Suffice it to make it clear that we have not expressed any opinion on the findings of the Inquiry Officer, or on the nature of the punishment imposed by the disciplinary authority as affirmed by the Appointing Authority, as these are all matters for the Tribunal to examine, in the first instance, in accordance with law*."

12. In compliance of the order of the Hon'ble High Court, the matter was again fixed for hearing in the Tribunal on merits.

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

14. The principal grounds which have been taken by the petitioner in support of the claim petition are as follows:

i. The inquiry officer did not conduct the inquiry in accordance with law/principles of natural justice and therefore, the inquiry report of inquiry officer is not sustainable.

ii. The alleged inquiry is no inquiry in the eye of law hence, major penalty imposed in pursuance thereof, and the entire disciplinary proceedings are illegal, vitiated and are ineffective, as are liable to be set aside.

iii. The appointment of the inquiry officer is illegal, in contravention of the rules and principles of natural justice.

iv. In accordance with law, rules and orders, the respondents could not have imposed major and minor penalties simultaneously.

v. Impugned order has been passed without consulting the Uttarakhand Public Service Commission (PSC).

vi. Respondents have not suffered any financial loss and therefore, no 'misconduct' has been committed by the petitioner. The disciplinary authority was biased under the political influence and predetermined to punish the petitioner.

15. As per pleadings of the claim petitioner, the petitioner has averred that he had heavy workload and was dependent on the reports of the Junior Engineer and Assistant Engineer. The alleged work was to be done through

the villagers and Gram Pradhan. It has been contended that initial charge sheet given to the petitioner mentioned only two evidences for every charge i.e. (i) photocopy of estimate of the concerned scheme and (ii) the photocopy of muster-roll of the concerned scheme. Subsequently, vide O.M. no. 1356 dated 07.09.2009, the preliminary inquiry report received from the Collector, Dehradun was added as additional evidence (third evidence) for every charge to which the petitioner gave his reply on 22.09.2009 in which, he again denied from the charges, mentioning inter-alia, that this inquiry committee was constituted under the chairmanship of the Collector, but the inquiry was further delegated to the officers junior to the petitioner. These junior officers belonging to other department than the inquiry officer submitted their verification report on the basis of the statement of some villagers and the departmental daily-wage labourer. It has been contended that the construction work of the minor irrigation department were to be executed by the beneficiary group and with their consent, the inquiry report of the junior officers does not mention that villagers whose statements were recorded, were the member of the beneficiary groups and that according to the local situation and disputes in construction, the statements of the villagers can be biased.

16. It has been contended that the verification report of the junior officers of the departments has been made main proof in the inquiry against the petitioner and has been used to calculate the financial loss caused to the government, due to the non-construction/short construction of the 7 schemes relating to 7 charges of the charge sheet. The measurement book was not made available during the inquiry as same was reported to be with the then junior engineer who was also charge sheeted with the petitioner and Assistant Engineer (who had died in the meantime).

17. One fact is also important to note that, as per the contention of the petitioner, earlier reports of the Chief Engineer and report of Superintending Engineer to the Collector, Uttarkashi mentioned that no government loss has been reported in the scheme relating to charge No.1

and Executive Engineer vide his letter dated 15.04.2008 has demanded Rs. 1.8 lakh for the repair of this scheme treating it to have been made in Sankri. Similarly, for the scheme relating to 2nd charge, the committee has based its finding on the basis of the statement of the daily wage labourer and nothing has been mentioned about visiting the site which involves about 10 K.M. travelling on foot. For the daily-wage labourer, the Executive Engineer is the appointing authority and their statement cannot be made basis of the charges against his appointing officer. The letter of the Executive Engineer dated 06.09.2008, addressed to Collector, Uttarkashi along with the statements of the public representative of the villages, makes it clear that the scheme has been constructed but at a different place. For this deviation, the Assistant Engineer is responsible. He should have got the deviation approved from the Executive Engineer (petitioner). The petitioner has contended that about the scheme of charge No. 3, the verification report has based its findings on the basis of the daily-wage labourer while the then Block Pramukh, Mori Block in his letter has accepted that this scheme has been constructed and the then Executive Engineer has also verified this construction work. The petitioner has also contended that this can be verified from the statement of the former Pramukh of Mori Block, which was not done. Regarding scheme of Charge No. 4, the verification report is based on the statement of one Sanjay Kumar, while no statement of any public representative of that village or members of the concerned beneficiary groups is available on record. The Village Pradhan has stated the scheme to have been constructed in full length, in handing over certificate, and Naib Tehsildar, Mori in his report has also mentioned that the constructions have been made in full length. This contrary evidence has been ignored. Regarding the scheme of charge No. 5, petitioner has also contended that the verification report is based on the statement of one villager, while the earlier report of the then Chief Engineer did not hold the delinquent, guilty for this scheme and the certificate of the Village Pradhan has also been filed with his earlier reply. In the verification report, this scheme has been reported to be damaged due to heavy rains. It

might be possible that the length of the damaged portion has not been estimated fully. The petitioner has also contended that it has been brought to his notice that this scheme as part of Satta Scheme has been constructed in Dooni Satta.

18. Regarding scheme of charge No. 6, the petitioner has contended that the verification report the length of Gool made has been stated to be 300 meters on the basis of the statement of the villagers. While the earlier report submitted by the Assistant Engineer, Naugaon on the basis of the joint inspection with Executive Engineer, the length has been reported to be 292 meter. This report has been sent by the Chief Engineer to government. For the verification of this fact, summoning present Assistant Engineer, Naugaon for examination during inquiry was necessary and it was in the interest of justice that verification of the facts should have been made by the inquiry officer. Regarding scheme of charge No. 7, it has been contended that the verification report does not mention any statements of the villagers or other evidence. While certificate of the *Village Pradhan* was earlier submitted to the government with Chief Engineer's report, the last bill of muster roll was not passed by the petitioner as the last bill does not carry his signatures. Petitioner has also contended that when the petitioner inspected this scheme, 300 meter length was already completed and the work had been reported in the verification report, was of gool construction of 365 meter length. The joint inspection report of the Assistant Engineer, Naugaon and Executive Engineer, Purola has also reported construction work to be available on spot.

19. Referring to the above points, the petitioner has argued that when he denied for this verification report of junior officers, which was forwarded to the government by the Collector, Dehradun and which has been used as 3$^{rd}$ and main evidence against the accused, it was necessary to prove it before the inquiry officer. This evidence was never proved before the inquiry officer, inspite of denial and sanctity of report, by the petitioner.

The petitioner has also mentioned other evidences in his favour, both documentary as well as of oral.

20. It is the contention of the petitioner that during final inquiry which resulted into major penalty, due opportunity of hearing as per principles of natural justice must have been given to him, which was not done. Although, the petitioner did not make specific requests for examination/cross examination of any witnesses, even then, it was incumbent upon the inquiry officer to record the statements of the officers, who had submitted the verification report to the Collector as well as statements of the villagers/daily-wage labourer on the basis of whose statements, that report was prepared. Examination of witnesses must have been made in the presence of the petitioner before the inquiry officer and due opportunity of cross-examination must have been given to the petitioner. Without verifying the evidence which was denied by the petitioner, the inquiry officer has relied upon it. It was necessary that inquiry officer should have satisfied himself with the truth of the verification report, as to in what circumstances, the verification has been conducted, how the verification team came in contact with the villagers/daily wages labourer. To arrive at the right conclusion, examination/cross examination of concerned village pradhans, former Block Pramukh, the then Naib Tehsildar, other public representatives, members of beneficiary groups, Assistant Engineer, Naugaon and others, who were part of the verification report must have been made and petitioner must have been given opportunity to cross-examine them.

21. The inquiry proceedings are quasi-judicial in nature and inquiry officer, conducted the final inquiry, is supposed to act following the principles of natural justice and in the event of denial of the evidence by the charged employee, he should get the evidence proved, affording the charged employee an opportunity of cross-examining the witnesses even if he has not specifically asked for the same. The inquiry officer should at his own also summon the witnesses and consider all other evidences,

documentary or oral, as maybe relevant to arrive at the true picture of the case.

22. We find that the inquiry officer has relied upon the evidence of preliminary inquiry before him, without their proof before him, specially after denial of the facts by the petitioner, he failed to get it proved. During preliminary inquiry in the form of collecting verification report, the petitioner was not involved as party, neither he participated in the proceedings before the Collector, who forwarded his report to the government hence, it was very much necessary that the evidence used against him must have been tested after giving an opportunity of hearing, and in this respect, the inquiry officer has failed to follow his duties as per the law. We find that the inquiry officer and also the disciplinary authority have ignored the above essential requirement of law for proving the evidence and considering all relevant evidences including those as highlighted by the petitioner in his defence and this has resulted in denial of fair hearing to the petitioner.

23. Learned A.P.O. on behalf of the respondents has argued that petitioner has been awarded two types of punishments: first recovery of money for the loss caused to the government and censure entry, which is a minor punishment and second, stoppage of two increments with cumulative effect (which is a major punishment). It has been argued that as per the Punishment and Appeal Rules, 2003, the minor punishment can be inflicted after notice and considering his reply whereas, for major punishment, the detailed procedure of final inquiry has to be followed. Learned counsel for the petitioner has argued that from very initial stage, the respondents have adopted the procedure for major penalty and after issuing charge sheet, the reply to the charge sheet was not duly considered and even after denial of the facts in the charge, the final inquiry was conducted on the basis of so called documents which were never proved. It has also been argued that the verification report collected by Collector, Dehradun was facts based and when the facts were denied by the petitioner, giving detailed reasons then

it left no scope for the final inquiry officer to rely upon the unverified investigating reports, without examining the persons who prepared these documents. This fact was very much ignored by the inquiry officer that the report of the Chief Engineer and other departmental senior officers, which were in favour of the petitioner were ignored. It is also contended that the petitioner was working in the supervisory capacity and double punishment has been awarded to the petitioner without giving him proper opportunity of hearing and cross-examination of any witnesses.

24. Learned A.P.O. has contended that the whole matter was based on the documentary evidence hence, there was no need to call for the witnesses for examination/cross examination. We do not agree with this argument, specially when the petitioner denied from the sanctity of such documentary evidence hence, it was necessary for the inquiry officer to call persons preparing the same and after giving an opportunity of cross-examination to the petitioner, the veracity of the documents must have been proved and considered and thereafter, conclusion of the guilt must have been arrived at. The verification report got prepared by the Collector through junior officers was necessary to be proved before the inquiry officer, which was not done before awarding the punishment.

25. In the above circumstances, we find that the final inquiry resulting into major punishment was not conducted as per the rules, specially for awarding major punishment. The disciplinary authority also did not consider the reply of the petitioner in right perspective and ignored the fact of failure of defective inquiry. Accordingly, the major punishment awarded by the impugned orders (Annexure: A1) and Annexure A30 deserve to be set aside.

26. Learned A.P.O. has argued that it is an admitted fact that the petitioner was posted as an Executive Engineer, having a supervisory capacity and he was duty bound to supervise the work before making any payment. He has also argued that the part of punishment which relates to the recovery of loss is minor in nature. The petitioner was duty bound to verify the fact before making payment and it is clear supervisory lapse on his behalf. He was negligent

in performing his duty to this extent. We find that it might be possible that the petitioner acted upon the reports of the Junior Engineer and Assistant Engineer, but he was duty bound to properly supervise the work, which he failed and negligence on the part of the petitioner-Executive Engineer is such which can be punished simply by giving notice and by considering his reply. Learned A.P.O. has also argued that even if the final inquiry is found to be defective, then regarding punishment of recovery, the procedure of giving notice and considering his reply was sufficient. Although, court cannot substitute its own judgment in place of the decision arrived at by the competent authority, but propriety of the punishment and the act of negligence on the part of the petitioner must be considered. In exceptional cases, the court might to shorten litigation, think of substituting its own view as to the quantum of punishment in place of the punishment awarded by the Competent Authority. Although court is not modifying or altering the penalty but instead court can consider to set aside such part of the order of punishment which is excessive or disproportionate. The major punishment cannot be awarded without any due and proper inquiry, which was lacking in this case.

27. We find that full-proof of guilt of the petitioner was not rightly established and in the lack of following the principles of natural justice, awarding punishment of stoppage of increments with cumulative effect and censure entry need to be set aside, and for the part of the supervisory lapse only, the decision of the disciplinary authority regarding recovery of the compensation needs not to be interfered. Recovery of the amount of the loss caused to the government is also permissible under the different rules. Leaving it, the other punishment awarded by the disciplinary authority needs to be set aside as excessive and disproportionate.

28. Thus, we are of the view that this Tribunal should interfere in the impugned order to the extent of setting aside such part of the order, which provides for withholding of three increments with cumulative effect, and of awarding censure entry. The ends of justice will be met, if the order directing recovery of amount is affirmed, while setting aside the remaining part of the

impugned order. We find no ground to interfere in the order regarding payment of subsistence allowance during suspension. Following order is hereby passed.

**ORDER**

The claim petition is partly allowed and partly dismissed. Such part of the impugned order (Annexure: A1) which provides for the recovery is hereby affirmed.

So far as the remaining part of the impugned order relating to stoppage of increments with cumulative effect and censure entry is concerned, the same are hereby set aside.

No order as to costs.

**(A.S.NAYAL)**
MEMBER (A)

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

*DATED: JULY 17, 2020*
*DEHRADUN.*

*KNP*