

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

**REVIEW APPLICATION NO. 05/SB/2024
[IN CLAIM PETITION NO. 14/SB/2024]**

Sri Arun Kumar Goel, aged about 61 years, s/o Late Sri Pooran Mal Goel, r/o Mahadev Vihar, General Mahadev Singh Road, Dehradun, retired as Superintending Engineer from the office of Engineer-in-Chief, P.W.D., Dehradun.

.....Petitioner/review applicant

VERSUS

1. 1. State of Uttarakhand through Principal Secretary, Public Works Department, Government of Uttarakhand, Secretariat, Dehradun.
2. Engineer-in-Chief and Head of Department, Public Works Department, Dehradun, Uttarakhand.

.....Respondents

Present: Sri Arun Kumar Goel, review applicant (online)
Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: JULY 08, 2024

Justice U.C.Dhyani (Oral)

In order to succeed in review jurisdiction, the review applicant has to show that there is some error apparent on the face of record or clerical or arithmetical mistake or there is any other sufficient reason.

2. Having heard the petitioner/ review applicant, the Tribunal finds that neither there is any error apparent on the face of record nor clerical or arithmetical mistake in the judgment sought to be reviewed. The Tribunal does not find 'any other sufficient reason' to review the order dated 14.06.2024 passed in claim petition no. 14/SB/2024, Arun Kumar Goel vs. State of Uttarakhand and others, relevant paragraphs of which read as under:

"8. When the Bench was about to conclude the hearing, it was brought to its notice by the petitioner that departmental enquiry, pursuant to Tribunal's order dated 04.07.2022 passed in Claim Petition No. 101/DB.2021, has been conducted by Sri Deepak Kumar Yadav, the then Chief Engineer, P.W.D., Haldwani.

9. A claim petition for determining the seniority of Sri Deepak Kumar Yadav (enquiry officer of the instant case) *vis-à-vis* Sri Arun Kumar Goel (petitioner herein) was decided by the Tribunal. Copy of the judgment delivered by this Tribunal on 06.09.2018 in Claim Petition No. 33/DB/2015, S/Sri Deepak Kumar Yadav & Khagendra Prasad Upreti vs. State of Uttarakhand and 4 others, has been filed by the petitioner with this claim petition as Annexure: A-20.

12. Attention of the Bench has been drawn towards representation dated 11.03.2023 given by the petitioner to the Principal Secretary, P.W.D., Govt. of Uttarakhand, to submit that the action of Sri Deepak Kumar Yadav was prejudicial and biased.

13. Attention of the Bench has also been drawn towards the statement of the petitioner, which was recorded on 06.09.2022 by the enquiry officer, (the then) Chief Engineer, P.W.D., Haldwani (Annexure: A-7), in which the petitioner pinpointed, in unequivocal terms, that he (enquiry officer) had challenged the seniority of the petitioner before the Public Services Tribunal, as a consequence of which, he (enquiry officer) was given promotion, but the petitioner has not been given such promotion. Impartial enquiry was required to be conducted. Annexure: A-7 is a questionnaire, which contains questions asked by the enquiry officer (Sri Deepak Kumar Yadav) and replies given by the petitioner (Sri Arun Kumar Goel).

14. The question, which arises for consideration of the Bench is- whether enquiry should have been conducted by Sri Deepak Kumar Yadav, the then Chief Engineer, P.W.D., Haldwani, when there was a litigation between the parties for determining their *inter se* seniority and the Tribunal had adjudged *vide* order dated 06.09.2018 that the seniority list dated 24.06.2015 was illegal, void and was set aside? Claim Petition No. 33/DB/2015 of Sri Deepak Kumar Yadav & Sri Khagendra Prasad Upreti, was allowed by holding that the State of Uttarakhand could not promote Respondent No. 4 Sri Arun Kumar Goel as Assistant Engineer *w.e.f.* 01.07.1990, as it did not have jurisdiction and was not competent to do the same.

15. **It is the cardinal principle of law that justice must not only be done but must also manifestly appear to have been done.**

16. The enquiry officer, in the instant case, might have done justice, from his own end, but it does not appear, from a common man's point of view, that the justice manifestly appeared to have been done. It has been brought on record that the factum of litigation was pointed out

by the petitioner to the Principal Secretary, P.W.D., Govt. of Uttarakhand and the enquiry officer himself, but, still, the enquiry by the same enquiry officer continued.

17. Ld. A.P.O. submitted that no such application was given by the petitioner either to the Principal Secretary, P.W.D. or the enquiry officer. Had the petitioner made a prayer for change of enquiry officer, the disciplinary authority would have considered the same. No such prayer was ever made by the petitioner. Ld. A.P.O. further pointed out that once Sri Deepak Kumar Yadav was appointed as enquiry officer, it was difficult for him to request the Principal Secretary, P.W.D. to appoint any other enquiry officer in his place. Had the petitioner made such request to the Principal Secretary, P.W.D., the authority concerned would have certainly considered such request of the petitioner as per rules, learned A.P.O. emphasized.

18. The Bench is conscious of the limitations of Sri Deepak Kumar Yadav, enquiry officer, as pointed out by learned A.P.O., but, at the same time, is also conscious of the fact that principles of natural justice are *grundnorm*, which have to be followed in any case, come what may! (Doctrine of Necessity' is the exception). Disciplinary proceedings are *quasi-judicial* in nature. Nobody should have occasion to raise finger on the impartiality and independence of the enquiry officer. **Caesar's wife must be above suspicion.**

19. An enquiry officer, who has personally contested the seniority of the delinquent, could not be permitted to conduct the departmental enquiry against such delinquent, in normal circumstances. The Tribunal should uphold the 'Rule of Law'.

20. The impugned order calls for interference. The same should be set aside. Enquiry should be conducted either by the Disciplinary Authority itself or by appointing another enquiry officer.

22. In such situation, irresistible conclusion would be that the order dated 01.08.2023 should be set aside by directing Respondent No.1 to appoint another enquiry officer, who should conduct fair enquiry. Petitioner has now retired.

24. Claim Petition is disposed of by setting aside order dated 01.08.2023 and directing the Disciplinary Authority to appoint another enquiry officer, who should complete the departmental enquiry by giving proper opportunity of hearing to the petitioner and complete it, without unreasonable delay, in accordance with law. Petitioner shall cooperate in the enquiry. No one should unduly drag the proceedings.

25. It is made clear that the Tribunal has not gone into other legal aspects of the case

3. In para 4 of the review application, the review applicant has mentioned that the judgment of the Hon'ble Supreme Court *in Civil Appeal No. 2571 of 1977, Kashinath Dikshita vs. Union of India*, has been ignored by the Tribunal.

4. After having gone through the decision rendered by the Hon'ble Apex Court in *Kashinath Dikshita vs. Union of India, AIR 1986 SC 2118*, in the humble opinion of this Tribunal, the said ruling is not applicable to the case of

the review applicant. In *Kashinath Dikshita's* decision (*supra*), the Hon'ble Apex Court interfered with the decision of Hon'ble Allahabad High Court, *inter alia*, on the ground that copies of the statements of the witnesses and the copies of the documents relied upon by the disciplinary authority, in order to establish the charges against the employee, were not supplied. Copies of relevant portions of the documents were also refused on the ground that no prejudice was occasioned to the employee on account of non-supply of the documents. Hon'ble Apex Court held that the employee has been denied reasonable opportunity to defend himself and thus interfered with the employee's dismissal order.

5. The impugned order of dismissal of *Sri Kashinath Dikshita* was passed on 10.11.1967. The matter reached up to Hon'ble Apex Court, who was pleased to decide the appeal in the year 1986. It is under these circumstances that the Hon'ble Apex Court observed that the State Govt. should not be permitted to hold a fresh enquiry against the appellant on the charges in question, besides interfering with the order of dismissal dated 10.11.1967 on merits.

6. Here the review applicant was given special adverse entry on 29.10.2020. He filed claim petition which was decided by the Tribunal on 04.07.2022. Pursuant to order dated 04.07.2022, an order of censure entry was passed, which was subject matter of challenge in claim petition no. 14/SB/2024, relevant paragraphs of which have been reproduced in para 2 of this judgment. The Tribunal has not decided the claim petition on merits. On facts, the review applicant cannot be permitted to draw parallel with the case of *Kashinath Dikshita (supra)*. Hence, he cannot be given benefit of such ruling in this review application. The facts are different. The Ruling is distinguishable. There is no error apparent on the face of record.

7. In para 5 of the review application the review applicant has quoted yet another decision rendered by Hon'ble Apex Court in *Civil Appeal No. 4901 of 2005, P.V. Mahadevan vs. M.D. Tamilnadu Housing Board*.

8. Hon'ble Apex Court, in the decision rendered in *P.V. Mahadevan vs. M.D. Tamilnadu Housing Board*, AIR 2006 SC 207, has observed that the disciplinary enquiry was initiated against the delinquent after 10 years. There was inordinate and unexplained delay of 10 years in issuance of charge memo. The Hon'ble Apex Court observed that protracted disciplinary enquiry against a Govt. employee should be avoided not only in the interest of Govt. employee but in public interest. There was a specific provision under the relevant Act providing for annual audit of accounts. Plea that period from the date of commission of irregularities by the delinquent to the date on which it came to the knowledge of department, cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the department, was found to be untenable. The incident took place in 1975-76. The Tribunal quashed the charge memo and the departmental enquiry, on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings, with reference to an incident that took place in 1975-76. The Hon'ble Court held that there was hardly any explanation worth consideration as to why the delay occurred. The Hon'ble Apex Court, under the circumstances, held that allowing the Govt. to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the delinquent.

9. There is nothing of that sort in the case of present review applicant, who has retired recently as Superintending Engineer (Civil) on 31.12.2022. It is not a case of protracted disciplinary proceedings against the review applicant. *P.V.Mahadevan's* decision (*supra*) cannot be applied to the case of the petitioner on merits, much less in review jurisdiction. It may be noted here, at the cost of repetition, that judgment/ order sought to be reviewed by way of present review application, was not decided by the Tribunal on merits. In stead, it was decided on the ground that an officer, who personally contested the seniority of the petitioner, could not be permitted to conduct the departmental enquiry against such delinquent in normal circumstances. The disciplinary authority was directed to appoint another enquiry officer, who should conduct fair enquiry.

10. To sum up, neither there is any error apparent on the face of record nor any clerical or arithmetical mistake in the judgment sought to be reviewed. There is no 'other sufficient reason' either.

11. The review application, therefore, fails and is dismissed , at the admission stage. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 08, 2024
DEHRADUN

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