

**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. 06/SB/2021

Rajesh Kumar Saini s/o Late Kalyan Singh, aged about 42 years, presently posted as TG-II at KV Substation Hydel Colony, Sell Vihar, Tehsil, District Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Energy, Civil Secretariat, Dehradun.
2. Director, Human Resources, Uttarakhand Power Corporation Limited. Secretary.
3. Executive Engineer, Electricity Distribution Board, 18- E.C. Road, Dehradun.

.....Respondents.

Present: Mr. Shashank Pandey, Advocate, for the petitioner.
Mr. V.P.Devrani, A.P.O., for the Respondent No.1.
Ms. Anupama Gautam, & Mr. Arjun Singh Bisht, Advocates,
for Respondents No. 2 & 3. (online)

DATED: MARCH 02, 2022

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks the following reliefs:

- a. To issue order or direction to quash order dated 09.01.2014 vide which the petitioner has been punished with a penalty (Annexure: A 1).
- b. To issue order or direction to quash order dated 15.09.2020 vide which the petitioner has been again punished along with interest. (Annexure: A2).
- c. To issue order or direction, directing the respondent to give to the petitioner an amount deducted as penalty till date.
- d. To give the cost of the petition to the petitioner.”

2. Brief facts of the incident giving rise to the present claim petition, brief submissions of Ld. Counsel for the parties, as also law governing the field, were discussed by the Tribunal while passing orders on the interim relief application. It will be appropriate to reproduce the order dated 23.07.2021, passed on the interim relief application for convenience, as below:

“In present claim petition, which has been filed for quashing order dated 09.01.2014 (Annexure: A-1) and also for quashing order dated 15.09.2020 (Annexure: A-2), among others, an interim relief application has been filed to direct the respondents to forthwith stop the deduction of Rs.10,000/- from the salary of the petitioner during the pendency of the present claim petition.

2. The genesis of the present claim petition is F.I.R. dated 10.12.2013 (Annexure: A-4), which was lodged by the petitioner against unknown thief. The facts were that, on 10.12.2013 at 13:40 hours, an unknown thief stealthily took away petitioner’s bag containing Rs.1,57,410/- from Counter No.6 of Punjab National Bank, Rishikesh. The petitioner had gone to bank to deposit the Government money in the said bank.

3. After investigation, a report in the final form (FR) was filed by the Investigating Officer in Case Crime No. 375/2013 under Section 380 IPC on 22.12.2014 (Copy: Annexure: A-7). Inspector, Kotwali Rishikesh sent a letter to Executive Engineer, Electricity Distribution Division, Rishikesh on 17.08.2015 that FR has been filed in the aforesaid Case Crime No. 375/2013. The Superintending Engineer, Electricity Distribution Circle (Rural) UPCL, Dehradun, wrote a letter to Executive Engineer, Distribution Division, Rishikesh Dehradun on 15.09.2020 (Copy: Annexure- A 2), for realizing the stolen sum of Rs.1,57,410/- in the installments of Rs. 10,000/0 per month from the petitioner. The petitioner made a representation to the Executive Engineer, Electricity Distribution Division, Rishikesh on 27.09.2017 (Copy: Annexure- A 12) to stop realizing Rs.10,000/- per month from the salary of the petitioner.

4. Separate objections have been filed on the interim relief application on behalf of Respondent No.1 and Respondents No. 2 & 3.

5. Ms. Anupama Gautam, Ld. Counsel for Respondents’ No. 2 & 3 submitted that, in the instant case, negligence of the petitioner is writ large on the face of it. The petitioner was entrusted a responsibility, which responsibility was not discharged by him with devotion and that is why, it is

a case of clear 'misconduct' on the part of the petitioner. The petitioner has caused financial loss to the respondent department. Ld. Counsel for Respondents No. 2 & 3 further submitted that since the petitioner is negligent in discharging his duties, which is unbecoming of good conduct of an employee, therefore, it is well within the power of the department to take appropriate action against the erring employee. Negligence of the petitioner has caused loss to the Govt. (Respondent Department). As per petitioner's own admission (in F.I.R.), he left the cash unattended.

6. Ld. A.P.O. submitted that the petitioner has caused huge loss to State Exchequer and such loss is liable to be recovered from him. Sympathetic view has been taken by the department against the petitioner for recovering Rs.1,57,410/- in monthly installments of Rs.10,000/- only.

7. There is no denying the fact that it appears to be a case of negligence on the part of the petitioner, who left the Govt. cash unattended, which was allegedly stolen away by unknown thief. Nevertheless, a show cause notice or charge sheet was required to be issued to the delinquent employee, depending upon the gravity of the misconduct, before taking a decision to punish him suitably. Admittedly, neither any show cause notice was issued to the petitioner, nor any charge sheet was served upon him, before passing the impugned order. That being so, it amounts to denial of hearing to the petitioner and is, *per se* violation of principles of natural justice. The same requires interference, at least as an interim measure. Due process of law has not been followed in the instant case.

8. Without prejudice to rival contentions at the stage of final hearing, further recovery of Rs.1,57,410/- in monthly installments of Rs.10,000/- from the petitioner is hereby stayed till further orders of the Tribunal.

9. Interim relief application and objections thereon are, accordingly, disposed of."

3. Counter Affidavit was filed on behalf of Respondents No. 2 & 3, which C.A. was adopted by Ld. A.P.O. for Respondent No.1/State .
4. W.S. has been filed on behalf of respondents on the similar lines, which were taken by the respondents during hearing of interim relief application. No R.A. has been filed.
5. It is the submission of Sri Shashank Pandey, Ld. Counsel for the petitioner that the interim order dated 23.07.2021 be made absolute. Ld. Counsel for the respondents opposed the same. They, however, submitted that if the Tribunal is of the view that the interim order should be made absolute, liberty may be given to Respondents No. 2 & 3 to proceed against the petitioner with departmental proceedings, in accordance with law.
6. Based on the analogy and reasoning given by the Tribunal in its order dated 23.07.2021, this Tribunal is of the view that the impugned

order should be set aside, while allowing the claim petition, leaving it open to Respondents No. 2 & 3 to proceed with the departmental proceedings, if they are so advised, but only in accordance with law.

7. The gravamen of Tribunal's reasoning has been given in Para 7 of the order dated 23.07.2021. No show cause notice or charge sheet was issued to the delinquent employee/ petitioner, before taking a decision to punish him suitably. The same amounts to denial of opportunity of hearing to the petitioner *per se*, which is denial of principles of natural justice. It is settled law of the land that if any departmental action is required to be taken against the delinquent petitioner, the same is required to be done only after following due procedure of law, which has not been done in the instant case.
8. The impugned order, therefore, requires interference.
9. The claim petition is, accordingly, allowed. Impugned order dated 15.09.2020 is set aside, leaving it open to the respondent department to proceed with the departmental proceedings against the petitioner, if they are so advised, but in accordance with law. If no departmental proceedings are initiated within a period of six months, amount recovered from the petitioner be returned to him, within nine months from today. In the circumstances, no order as to costs.

RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 02, 2022
DEHRADUN

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