

**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)

**CONTEMPT PETITION NO. C-03 /DB/2022**

*(Arising out of, Claim petition No. 75/DB/2019, decided on  
27.06.2019)*

Devi Prasad Thapliyal.

.....Petitioner

**vs.**

The Chairman, Garhwal Mandal Vikas Nigam Ltd. & another.

.....Respondents

Present: Sri Aman Rab, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

**JUDGMENT**

**DATED: MARCH 22, 2022**

**Justice U.C.Dhyani (Oral)**

Present contempt petition has been filed by the petitioner, against the respondents (alleged contemnors), for the following reliefs:

“i) Punish the contemnors for contempt of the orders of this Hon'ble Tribunal dated 27.06.2019 passed in claim Petition No. 75/DB/2019.

ii) Direct the contemnors to implement the order of this Hon'ble Tribunal dated 27.06.2019 passed in Claim Petition No. 75/DB/2019.

iii) Pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case.

iv) Award the cost of the petition to the petitioner against the contemnors.”

2. Ld. Counsel for the petitioner submitted that a copy of present contempt petition has been served on the respondents Garhwal Mandal Vikas Nigam through email.

3. It will be useful to reproduce the entire text of the judgment rendered by this Tribunal on 27.06.2019 in Claim Petition No. 75/DB/2019, Devi Prasad Thapliyal vs. State and others, herein below for convenience:

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

- “(i) Set aside/ quash the impugned order dated 02.03.2019 bearing letter No. 1494/Vy0 P0 passed by the respondent no.3 (Annexure: A) terminating the petitioner with immediate effect
- (ii) Graciously be pleased to direct the respondents to release full wages of the petitioner from the date of termination along with the interest @ 12% p.a.
- (iii) Graciously be pleased to pass any such other relief or reliefs as this Hon’ble Tribunal may deem just and proper in the circumstances of this case.
- (iv) Award the cost of the petition to the petitioner against the respondents.”

2. Facts, giving rise to present claim petition, are as follows:

Petitioner, who was initially appointed as Kitchen Helper, on daily wages basis, was regularized on 01.12.1988, in the pay scale of Rs.305-390/- in Hotel Drona. The petitioner was thereafter, working as Waiter with Respondent No.2. The petitioner was posted at different places from time to time. In March, 2018, the petitioner was transferred to Joshimath and was performing his duties at Old Tourist Guest House (for short, TGH). Manager of TGH was not happy with the posting of the petitioner. He made a false complaint against the petitioner to Respondent No.3 on 25.08.2018. Allegations were levelled against the petitioner that he consumed alcohol and used vulgar language in TGH compound, which resulted in inconvenience to the tourists. Petitioner was suspended *vide* order dated 01.09.2018 by Respondent No.3, who issued the charge sheet to him on 12.09.2018. Charge of misconduct under Rule 5(5), 5(12) and 5(17) of the Model Conduct, Discipline and Appeal Rules of Garhwal Mandal Vikas Nigam (for short, GMVN) were levelled against the petitioner, who replied to the same and denied all the charges levelled against him *vide* letter dated 21.12.2018. Deputy General Manager (Admin) was appointed as inquiry officer, who *vide* report dated 28.01.2019, confirmed the charges. A show cause notice was given to the petitioner on 04.02.2019. The petitioner submitted his reply to Respondent No.3 on 20.02.2019. Opportunity of personal hearing was granted to the petitioner by Respondent No.3 on 02.03.2019. Petitioner appeared before Respondent No. 3 and reiterated his defenses. The petitioner, in Para XXIII of the petition, has given a reference of decision rendered by Hon’ble Calcutta High Court to say that medical examination of the petitioner, who had been subjected to a departmental inquiry related to intoxication, is necessary. In Para XXIV, a reference of the decision of Hon’ble Apex Court has been given. According to the petitioner, his services were terminated *vide* order dated 02.03.2019 (Annexure: A), which is illegal, unreasonable and arbitrary. Hence, present claim petition.

3. Sub-section (5) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 reads as below:

“The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of his grievances.”

4. There is provision for filing an appeal under Rule 42 of Model Conduct, Discipline and Appeal Rules of GMVN. There is a schedule appended to such Rules which provides that challenging the punishment order passed by the appointing authority, i.e., Managing Director, GMVN, an appeal may be filed before the Board of Directors. Admittedly, such departmental appeal has not been filed by the petitioner.

5. The Tribunal, therefore, considers it fit to direct the petitioner to file a departmental appeal against the impugned order, if he is so advised.

6. The impugned order was passed on 02.03.2019. The claim petition has been filed before this Tribunal on 26.06.2019. As per the scheme of appeal, the same should have been filed within one month of passing the impugned order, which has not been done in the instant case. The petitioner was probably under the impression that he could have filed the claim petition directly before this Tribunal. Hence, there could be delay in filing the departmental appeal.

7. It is, therefore, directed that if an appeal is filed by the petitioner before the Board of Directors, the delay in filing the same shall be condoned, in the peculiar facts of the case.

The claim petition is, accordingly, disposed of, at the admission stage itself. No order as to costs.”

4. It is the submission of Ld. Counsel for the petitioner that the petitioner filed the departmental appeal immediately after obtaining the certified copy of the order passed by the Tribunal on 27.06.2019.

5. In response to the query of the Bench as to why petitioner's departmental appeal was not decided by the Board of Directors of Garhwal Mandal Vikas Nigam Limited (for short, GMVN), Ld. Counsel for the petitioner replied that he had received a reply from GMVN on 18.12.2021, substance of which is that, on receipt of a copy of the judgment rendered by the Tribunal, Sri Devi Prasad Thapliyal submitted an appeal, which was received in the office of GMVN on 27.08.2019. The same was put up on 03.10.2020 in Board of Directors' 125<sup>th</sup> meeting. A committee was constituted to examine the matter. It was resolved that the decision will be taken up in the next meeting of the Board. Meeting of the Board of Directors was convened on 19.02.2021, but, soon thereafter the Members nominated in the

Board were removed. Report of the committee could not be obtained. New Members of the Board ( or new Directors) have not been appointed. The appeal of Sri Devi Prasad Thapliyal shall be taken up in the next meeting of the Board of Directors.

Text of the reply has been filed by the petitioner as Annexure: C-5 to the contempt petition.

6. On a perusal of the aforesaid reply, this Tribunal finds that there is no willful disobedience of the order/ direction of the Tribunal. The Tribunal, therefore, does not think it proper/ expedient to take action against the Respondents under the Contempt of Court Act, 1971.
7. One of the objects of contempt jurisdiction is to enforce compliance of the orders of the Court. Ld. Counsel for the petitioner, therefore, prayed, at this stage of dictation, that present contempt petition be converted into execution application. Such prayer of Ld. Counsel for the petitioner is accepted, in the interest of justice.
8. The contempt/ execution petition is, accordingly, disposed of at the admission stage, by reminding GMVN that a duty was cast upon the Board of Directors (of GMVNL) to do something, which has not been done.
9. Reiterating the order dated 27.06.2019, Respondent GMVN is directed to place the departmental appeal of the petitioner before the Board of Directors in its next meeting for consideration and disposal in accordance with law.
10. Petitioner is directed to serve a copy of this order upon GMVN, within 10 days from today.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MARCH 22, 2022*  
*DEHRADUN*