

**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. 15/DB/2022**

Kailash Chandra Pandey, aged about 61 years s/o Late Sri Hari Dutt Pandey,  
r/o Aniket Vihar, Doon University Road, Mothrowala, Dehradun.

.....Petitioner

**vs.**

1. The State of Uttarakhand through Secretary, Food, Civil Supplies and Consumer Affairs Department, Govt. of Uttarakhand, Dehradun.
2. The Commissioner, Food, Civil Supplies and Consumer Affairs Department, Govt. of Uttarakhand, Dehradun.
3. The Divisional Food Controller, Garhwal Division, Government of Uttarakhand, Dehradun.

.....Respondents

Present: Dr. N.K.Pant, Advocate, for the petitioner.  
Sri V.P. Devrani, A.P.O., for respondents.

**JUDGMENT**

**DATED: JANUARY 24, 2022**

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

By means of present claim petition, petitioner, *inter alia* seeks to set aside G.O. No. 601 & 602 dated 28.07.2021 as well as Communication No. 471 dated 24.08.2021 and to direct the respondents for releasing the withheld pension of the petitioner, along with interest.

Petitioner also seeks to direct the respondents to pay salary to him from 01.05.2020 onwards.

2. The Tribunal does not feel it necessary to narrate detailed facts of the case in the body of the judgment, for, they are already part of record. Facts, to the extent they are necessary for adjudication of present claim petition shall, however, be mentioned in the subsequent paragraphs of the judgment
3. Primarily, Annexure: A-1 dated 28.07.2021, issued by Additional Secretary, Food, Civil Supplies & Consumer Affairs, Govt. of Uttarakhand, is in the teeth of present claim petition.
4. The petitioner is a retired Deputy Divisional Marketing Officer. A sum of Rs.72,27,083/- has been directed to be realized from him for the loss caused to the Government. Various documents have been brought on record, including application dated 14.07.2021, which has been addressed to Commissioner/ Secretary, Food & Civil Supply and Consumer Affairs, for releasing retiral dues of the petitioner.
5. The impugned order dated 28.07.2021 (Annexure: A-1) would indicate that the disciplinary proceedings started against the petitioner when stored food grains/ sugar stock was found less in Govt. warehouse. Petitioner's services were put under suspension. Preliminary enquiry was jointly conducted by the Finance Controller and Chief Marketing Officer, Food, Civil Supplies and Consumer Affairs Department. In the preliminary enquiry the petitioner was *prima facie* found guilty. Regular enquiry was initiated. Charge sheet was issued against the delinquent petitioner. Sri Lalit Mohan Rayal, Regional Food Controller, Kumaon Division, Haldwani was appointed as enquiry officer. Petitioner moved a representation alleging conspiracy against him. He made a request for enquiry by an independent committee or District Magistrate. Enquiry was handed over to District Magistrate, Dehradun, who, in his report dated 04.11.2020 found the petitioner guilty, along with others for the loss to the tune of Rs.1,44,54,167/- to the Govt. The Govt. in the Food, Civil Supplies & Consumer Affairs Department, therefore, decided to realize 50% of Rs.1,44,54,167/- = Rs.72,27,083/- from the petitioner. Therefore,

such an order was passed under Article 351 (A) of Civil Service Regulation in view of the fact that the petitioner has retired on 30.04.2020. Petitioner has filed an application on 22.11.2021 to RFC, Garhwal (Annexure: A 25) with the prayer that recovery against him should be stayed till the appeal is decided. Ld. Counsel for the petitioner drew attention of this Tribunal towards an unsigned and undated letter of the petitioner, addressed to the Principal Secretary, Govt. of Uttarakhand, Dehradun (Annexure: A 24) to show that the petitioner has filed an appeal against the impugned order dated 28.07.2021 and Circular dated 24.08.2021. Ld. Counsel for the petitioner submitted that the appeal has not been decided as yet. It is pointed out to Ld. Counsel for the petitioner that remedy of appeal is not available to the petitioner. Remedy of filing revision or review is available to him.

6. Ld. A.P.O. objected to the maintainability of the claim petition, *inter alia* on the ground that the same is pre-mature.

7. Rule 11(1) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (for short, the Rules) provides as under:

**“11 Appeal-(1)** Except the orders passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.”

*[Emphasis supplied]*

8. In the instant case, since the Govt. has passed the impugned order, therefore, remedy of statutory appeal would not be available to the petitioner.

9. Ld. Counsel for the petitioner submitted that the petitioner wants to file statutory representation under Rule 13 or Rule 14 of the Rules whichever is admissible.

10. Rule 13 and Rule 14 of the Rules read as below:

**“13. Revision-** Notwithstanding anything contained in these rules, the Government may on its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

(a) confirm, modify or reverse the order passed by such authority, or

- (b) direct that a further inquiry be held in the case, or
- (c) reduce or enhance the penalty imposed by the order, or
- (d) make such other order in the case as it may deem fit.”

*[Emphasis supplied]*

**14. Review-** The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has; the effect of changing the nature of the case.”

*[Emphasis supplied]*

11. Admittedly, the petitioner has not filed statutory representation to the Govt. under Rule 13 or Rule 14 of the Rules.
12. Sub- section (5) and sub-section (6) of Section 4 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (for short, the Act), read as below:

“(5) 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 grievances.

(6) For the purposes of sub-section (5) a public servant shall be deemed to have availed of all the remedies available to him if a final order has been made by the State Government, an authority or officer thereof or other person competent to pass such order under such rules or regulations or contract rejecting any appeal preferred or representation made by such public servant in connection with the grievance.

Provided that where no final order is made by the State Government, authority, officer or other person competent to pass such order with regard to the appeal preferred or representation made by such public servant within six months from the date on which such appeal was preferred or representation was made, the public servant may, by a written notice by registered post, require such competent authority to pass the order and if the order is not passed within one month of the service of such notice, the public servant shall be deemed to have availed of all the remedies available to him.”

*(Emphasis supplied)*

13. The import of sub-section (6) of Section 4 of the Act is that a public servant shall be deemed to have availed of all the remedies available to him if a final order has been made by the State Govt.....under such Rules.....rejecting.....representation made by such public servant in connection with the grievance. Since no such representation has been

given by the petitioner, therefore, the question of passing final order on the same does not arise.

14. The claim petition is, accordingly, disposed of at the admission stage, by granting liberty to the petitioner to file statutory representation against impugned order dated 28.07.2021 (Annexure: A-1). The Tribunal directs that if such statutory representation is filed by the petitioner, the same shall be decided by the appropriate authority at an earliest possible, without unreasonable delay, in accordance with law. The authority concerned may also consider granting interim relief to the petitioner, if considered proper, but in accordance with law.

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

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

*DATE: JANUARY 24, 2022*  
*DEHRADUN*

*VM*