

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh
.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat
.....Vice Chairman(A)

CLAIM PETITION NO. 15/NB/DB/2025

Baal Sugriv Singh, aged about 60 years, s/o late Sri Amar Singh, r/o Village-Matiha, Police Station-Nanakmatta, District Udham Singh Nagar, presently posted as Warder, District Jail Haridwar, Uttarakhand.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Inspector General, Prison Administration and Reform Services, Uttarakhand, Dehradun.
3. Inquiry Officer/ Superintendent, District Jail, Dehradun.

..... **Respondents**

Present: Sri Sanjay Bhatt & Sri Prem Prakash Bhatt, Advocates, for the petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

DATED: JULY 03, 2025

Hon'ble Sri A.S.Rawat, Vice Chairman(A)

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

A. To, set aside the impugned orders dated 05-06-2020 (Annexure No. A1) and 23-06-2020 (Annexure No.2) passed by Respondent No. 2 and order dated 03-05-2021 (Annexure No. A and 15-01-2025 (Annexure No. A4.) passed by Respondent No. 1.

B. To direct the Respondents to release the arrears of salary with interest for the period 05-08-2011 to 27-11-2012 while the Petitioner was kept under suspension and was paid only subsistence allowance.

C. To sanction and release benefit of second ACP with grade pay of Rs. 4200/-and third ACP of Rs. 4600/- from due

dates along with arrears of salary accrued thereon with penal rate of interest.

D. To release annual increments with consequential benefit which were withheld in compliance of order dated 05-06-2020 and to restore the promotion of Petitioner on the post of Head Warder granted vide order dated 07-09-2017 and pay all the consequential benefits

E. To Issue any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

F. Award cost of the Petition to the present Petitioner.

2. This is a second round of litigation. Earlier, the petitioner had filed Writ Petition No. 901 (S/S) of 2021 before the Hon'ble High Court, which was transferred to this Tribunal and reclassified and renumbered as Claim Petition No. 05/NB/SB/2023. The said claim petition was decided by this Tribunal vide order dated 15.07.2024. The facts are same as in the earlier claim petition. Therefore, instead of mentioning the facts in detail again, the relevant paragraphs of the judgment dated 15.07.2024 are being reproduced, for the sake of brevity, as under:

“4. Petitioner was Jail Warder on 03.08.2011, when a jail inmate escaped from jail. In relation to such incident (which occurred on 03.08.2011), preliminary enquiry was conducted by Sri Manoj Kumar, Superintendent, Sampurnanand Camp, Sitarganj, Udham Singh Nagar. Prima facie, the petitioner was found guilty (Annexure No. 2). He was put under suspension on 05.08.2011. Sri Mahendra Singh Gwal, Superintendent, District Jail, Haridwar, was appointed as enquiry officer. Sri Gwal, enquiry officer/ Superintendent, District Jail, Dehradun, submitted enquiry report to I.G., Prison, Uttarakhand, on 06.12.2016 (Annexure No. 4). He was found guilty of charge under para 1118(10), 1194(a), (b), (h), (i) of Jail Manual and Rule 3 of Government Servants Conduct Rules, 1956. The delinquent petitioner was found guilty of carelessness, as a result of which, Shabbir, s/o Kallan escaped from the jail.

5. Considering the period of suspension, he was reinstated in service vide order dated 27.11.2012 (Annexure No. 5).

6. On the basis of enquiry report, Additional D.G.P./ I.G., Prison, vide order dated 05.06.2020, directed that the petitioner shall be punished with withholding of five annual increments without cumulative effect. Vide order dated 23.06.2020, he was reverted from the post of *ad-hoc* Head Jail Warder to Jail Warder (Annexure No. 7).

7. The petitioner preferred appeal to the Govt. in Home Department. The Secretary, Home, Govt. of Uttarakhand, *vide* office order dated 03.05.2021 (Annexure No. 9) dismissed petitioner's departmental appeal. The orders of I.G., Prison and Secretary, Home, Govt. of Uttarakhand (Disciplinary Authority as well as Appellate Authority), are under challenge in present petition.

8. It is the submission of Sri Sanjay Bhatt, learned Counsel for the petitioner that the petitioner has been exonerated of the charge leveled against him by the Judicial Magistrate, Khatima, District Udham Singh Nagar, *vide* order dated 15.10.2016 (Annexure No. 1). Sri Bhatt submitted that the petitioner faced charge under Section 223 IPC as an accused in the Court and he was acquitted of such charge. In the body of judgement dated 15.10.2015 (Annexure No. 1), it has been mentioned that the prosecution has not been able to prove the case against the accused beyond reasonable doubt but the appellate authority has not considered this fact in his appellate order dated 03.05.2021 (Annexure No. 9).

9. In reply, learned A.P.O. submitted that the said fact finds mention at internal page no. 7 of the order dated 05.06.2020 (Annexure No. 6) of the disciplinary authority (I.G. Prison).

10. Sri Sanjay Bhatt, learned Counsel for the petitioner, reiterated that the said fact has although been mentioned at internal page no. 7 of report dated 05.06.2020 but the said plea of the delinquent petitioner has not been properly dealt with or discussed in the order dated 03.05.2021 of the appellate authority.

11. Learned Counsel for the petitioner drew attention of the Bench towards para nos. 11 to 22 of the petition to submit that the petitioner has wrongly been held guilty in departmental proceedings. Sri Bhatt further submitted that material error of law has occurred, which has the effect of changing the nature of the case, therefore, liberty may be granted to the petitioner to file representation for reviewing the order passed by authorities below.

12. Rule 14 of the Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010) (for short, 'Rules of 2003') reads as under:

"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]

13. Learned A.P.O. submitted that the petitioner can file representation (for reviewing the order) as a matter of right. It is his entitlement, hence, liberty of the Tribunal is not required to file the review application.

14.....

15. The petition thus stands disposed of, with the consent of learned Counsel for the parties, leaving it open to the petitioner to file statutory review under Rule 14 of the Rules of 2003, as prayed for by him. Delay in filing the same is condoned in the interest of justice. No order as to costs.

.....”

3. In compliance of the above judgment, the petitioner preferred statutory review petition under rule 14 of the Rules of 2003, inter-alia, challenging the order of punishment and revision passed by the disciplinary authority. The petitioner also prayed for releasing of arrears of salary with interest for the period 05.08.2011 to 27.11.2012 while the petitioner was kept under suspension and sanction release of benefit of second ACP and third ACP along with arrears. The respondent no. 1 has dismissed the review petition vide order dated 15.01.2025 without assigning any reason for such dismissal and without considering the facts, legal provisions and grounds pleaded in the review petition, which is under challenge in the present claim petition.

4. C.A./W.S. has been filed on behalf of the respondents, stating therein that-

4.1 बंदी पलायन की घटना में की गयी विभागीय कार्यवाही में सक्षम प्राधिकारी महानिरीक्षक, कारागार द्वारा इन्हें दण्डित किया गया है। जेल मैनुअल के पैरा-1118 (10) का स्पष्ट उल्लंघन किया गया। उक्त जेल मैनुअल के प्रस्तर-1118 (10) में स्पष्ट रूप से कहा गया है कि किसी सक्षम प्राधिकारी द्वारा उसे दिये गये किसी विधिपूर्ण आदेश का जानबूझकर पालन न करना या असावधानी करना। याची द्वारा बंदी की सतर्क निगरानी न रखे जाने के कारण बंदी पलायन करने में सफल हुआ, जिसके लिए याची उक्त प्रस्तर के लिए पूर्णरूप से दोषी है। यदि याची द्वारा उच्चाधिकारियों के आदेशों का एवं जेल मैनुअल के नियमों के अनुसार अपने दायित्वों का निर्वहन सतर्कता से किया जाता तो बंदी पलायन करने में सफल नहीं होता। याची को झूटी के प्रति लापरवाही एवं अनियमितता के लिए नियमानुसार दण्ड से दण्डित किया गया, जो नियमानुसार सही है।

4.2 जेल मैनुअल के प्रस्तर-1119 में उल्लिखित किया गया है कि अपराधिक मामलों में दोषमुक्त (1) जब कोई अधिकारी किसी आपराधिक न्यायालय में अभियोजित किया जा रहा हो और मामलों के गुणदोष पर विचारण के पश्चात् उसके

विरुद्ध लगाये गये आरोप से अनभिज्ञ घोषित किया जाता है तो यह विनिश्चय अन्तिम रूप से स्वीकार किया जायेगा और ऐसा अधिकारी विभाग द्वारा दण्डित नहीं किया जायेगा जब अपराध जिसके लिए उसका विचारण हो रहा था उसके दण्डित किये जाने का मुख्य आधार था।

4.3 अतिरिक्त न्यायिक मजिस्ट्रेट, खटीमा, जिला उधमसिंहनगर के समक्ष फौजदारी वाद संख्या-1976/2011, धारा-223 भा०द०स० एफ०आई०आर० संख्या-131/11, थाना सितारगंज में पारित आदेश दिनांक 15.10.2015 में पारित आदेश में श्री बाल सुग्रीव सिंह को धारा-223 भा०द०स० में संदेह का लाभ देते हुए, दोषमुक्त किया गया था, जबकि पलायित बंदी इनकी अभिरक्षा से पलायन करने में सफल हुआ था।

4.4 विभागीय कार्यवाही में जांच अधिकारी द्वारा दोषी पाया गया जिसके आधार पर महानिरीक्षक, कारागार के आदेश संख्या-208/अध-4 (वि०का०) /11 दिनांक 05.06. 2020 द्वारा जेल मैनुअल के पैरा-1118 (10), 1194 (क) (ख) एवं (ज) तथा सरकारी कर्मचारी आचारण नियमावली, 1956 के नियम-3 का उल्लंघन किये जाने पर विभागीय कार्यवाही के अन्तर्गत दण्ड स्वरूप आगामी पाँच वेतनवृद्धियाँ बिना भविष्यगामी प्रभाव के दण्ड से दण्डित किया गया था।

4.6 कारागार मुख्यालय के पत्र संख्या-1909/अध-4/वि०का०/2011, दिनांक 29.01.2021 द्वारा श्री बाल सुग्रीव सिंह, बंदीरक्षक के विरुद्ध हस्त पुस्तिका खण्ड-2 (भाग-2 से 4) के मूल नियम-54 के अन्तर्गत निलम्बन काल के अवशेष वेतन के संबंध में कारण बताओं नोटिस जारी किया गया था, जिसका प्रत्युत्तर याची से प्राप्त होने के उपरान्त कारागार मुख्यालय के आदेश संख्या-39/43/वि०का०/अध-ब०र०/2011, दिनांक 04 जुलाई, 2021 (संलग्नक-7) द्वारा निलम्बन काल के अवशेष वेतन से वंचित कर तथा उक्त निलम्बन अवधि को सेवा में जोड़े जाने एवं पेंशन आदि हेतु अर्ह मान जाने के आदेश निर्गत किये गये थे।

4.7 विभागीय कार्यवाही की पत्रावली में उपलब्ध साक्ष्यों, आरोप पत्र एवं कारण बताओं नोटिस के प्रत्युत्तर से स्पष्ट हैं कि याची द्वारा जेल मैनुअल के प्रस्तर-911 के स्पष्ट रूप से उल्लंघन किया गया, बंदी को उपनलकर्म की अभिरक्षा में शौच करने हेतु भेजा गया, जिससे बंदी पलायन करने में सफल हो गया। उक्त तथ्यों के दृष्टिगत उक्त कर्मचारी को जेल मैनुअल के प्रस्तर-1118(10), 1194 (क) (ख) एवं (ज) तथा सरकारी कर्मचारी आचारण नियमावली, 1956 के नियम-3 के उल्लंघन का उत्तरदायी पाया गया, जिसके दण्ड स्वरूप श्री बाल सुग्रीव सिंह बंदीरक्षक को “आगामी पांच वेतनवृद्धियाँ बिना भविष्यगामी प्रभाव से रोकी जाती है” के दण्ड से

दण्डित किया गया। याची की कारागार मुख्यालय द्वारा संचयी प्रभाव से वेतनवृद्धियां को नहीं रोका गया है। विभागीय कार्यवाही में दिये दण्ड की अनुमन्यता दण्ड अवधि समाप्ति के पश्चात् उक्त वेतनवृद्धियां प्राप्त हुई। कारागार मुख्यालय के आदेश दिनांक 29.09.2008 द्वारा संतोषजनक सेवा के आधार 14 वर्षीय प्रथम प्रोन्नतीय वेतनमान का लाभ दिनांक 13.08.2007 से स्वीकृत किया गया है। शासनादेश संख्या-872/xxvii/(7)/2011, दिनांक 08.03.2011 पुनरीक्षित वेतन संरचना में लागू ए0सी0पी0 के अन्तर्गत अनुमन्य वित्तीय स्तरान्वयन में वेतन निर्धारण की प्रक्रिया शासनादेश संख्या-589/xxvii/(7)/2011, दिनांक 01 जुलाई, 2013 राज्य कर्मचारियों के लिए एस्योर्ड कैरियर प्रोगेशन स्कीम (ए0सी0पी0) की व्यवस्था के संबंध में। उक्त में दी गयी व्यवस्थाओं के अन्तर्गत संतोषजनक सेवा होने पर वित्तीय लाभअनुमन्य किये जाने का प्राविधान है। अतः याची का मा० अधिकरण से कोई अनुतोष पाने का अधिकारी न होने के कारण याचीगण की याचिका निरस्त किये जाने योग्य है।

5. We have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner argued that the petitioner has been acquitted in the criminal case by the Additional Judicial Magistrate Khatima, Distt Udham Singh Nagar on 15.10.2015. The Additional Director General of Police/Inspector General of Prison, Uttarakhand, the disciplinary Authority in this case, initiated Departmental Proceedings against the petitioner for violation of Paras 1118(10), 1194(ka), 1194(kha), 1194(ja) and 1194(jha) Jail Manual and Rule-3 of the Government Servant Conduct Rules, 1956, on 05.08.2011 and awarded punishment of stoppage of five increments without cumulative effect on 05.06.2020. The respondent No. 2 further demoted the petitioner from the post of the Head Warder to the Warder vide order dated 23.06.2020. The Secretary, Department of Home, Uttarakhand vide order dated 03.05.2021 upheld and dismissed the appeal of the petitioner and upheld the decision of the Disciplinary Authority. The petitioner filed a Revision Petition on 29.07.2021 against the decision of the Appellate Authority, which was disposed of vide order dated 15.01.2025 by upholding the decision of the Appellate Authority. The petitioner has challenged the order of the respondent authorities on the ground that the petitioner has been

acquitted in the criminal proceedings and the charges in the Criminal Proceedings and the Disciplinary proceeding are same. So, as per Para-1119 of Jail Manual, the petitioner should not be punished departmentally as he has been acquitted in the criminal case. He has further argued that for the same set of the charges, the departmental and the criminal proceedings cannot be held. Learned Counsel for the petitioner further relied on the following judgements:-

- I. The judgment of the Hon'ble Supreme court in the matter of G.M. Tank vs. State of Gujarat and others in the Civil Appeal No 2582 of 2006 dated 10.05.2006.
- II. The judgement of the Hon'ble High Court of Madras, in Writ Petition No.30503 of 2008 & M.P.Nos.2 of 2008 & 1 of 2010, Dated 27.01.2012, P.Chinnadurai vs. The Inspector General of Registration, Chennai-28.

Based on the facts mentioned above and the judgment of the Hon'ble courts, learned Counsel for the petitioner prayed that the impugned orders are liable to be set aside and claim petition be allowed.

7. Learned A.P.O. argued that the petitioner was given benefit of doubt and acquitted in the criminal proceedings against him. The respondent authorities found that the petitioner failed to discharge his duties properly. The incident of escaping of a convict from the custody is a serious offence, which cannot be taken lightly. The petitioner has been held guilty for violating the Paras 1118(10), 1194(ka), 1194(kha), 1194(ja) and Rule-3 of the Government Servants Conduct Rules, 1956. He has been rightly awarded punishment by the Disciplinary Authority. The service law Chapter-18, provides that in case the misconduct of the Government servant constitutes an offence also, then it is at the discretion of the Disciplinary Authority to hold the Criminal and Disciplinary proceedings against the Govt. Servant simultaneously. Hence, the claim petition is liable to be dismissed.

8. Based on the argument of the Learned Counsels for the parties and the documents placed before the Tribunal, we find that a criminal case u/s 223 of IPC was filed against the petitioner. The Additional Judicial Magistrate, Khatima, Distt Udham Singh Nagar gave the benefit of doubt and acquitted him vide judgement/order dated 15.10.2015. A Departmental Proceeding was initiated against the petitioner on 30.09.2011, which culminated with the order dated 05.06.2020 of Disciplinary Authority awarding the penalty of stoppage of five increments without cumulative effect. The Appellate Authority rejected the appeal of the petitioner and upheld the decision of the Disciplinary Authority vide order dated 03.05.2021. The petitioner submitted a revision application against the order of the Appellate Authority, which was also rejected by the Revision Authority on 15.01.2025.

9. The Disciplinary Authority has given the judgment, considering all the aspect of the relevant rules under Jail Manual applicable in this case. He has also considered the plea of the petitioner that he should be exonerated in the disciplinary proceedings, as he has been acquitted in the criminal case, which has been instituted on the same ground, on which disciplinary proceedings were initiated. The Disciplinary Authority has considered the fact in his decision that the petitioner has been given benefit of doubt and has been acquitted in the criminal proceedings. So, as per para 1119(2) of Jail Manual, the petitioner has been awarded punishment.

10. The contention of the learned counsel for the petitioner that the disciplinary proceedings cannot run simultaneously with the criminal proceedings, is not tenable, as it is provided in the Chapter-8 of the Service Law also that both proceedings can be conducted simultaneously. Learned counsel for the petitioner contended that the punishment awarded to the petitioner in the disciplinary proceedings is against the provisions of Jail Manual. We do not agree with the contention of the petitioner, as there are provisions in the Jail Manual for proper management of the custody of the convicts in and outside

jail, which have not been followed by the petitioner. The petitioner failed in his duties to keep convict in his custody properly, which led to the escape of the convict. The fact is that the convict escaped from the custody of the petitioner, although, the criminal intent of the petitioner could not be proved but administrative lapses are there on the part of the petitioner due to his negligence and not following the rules as laid down in the Jail Manual.

11. The judgement of Hon'ble Supreme Court in the matter of *G.M. Tank vs. State of Gujarat and others in the Civil Appeal No 2582 of 2006* dated 10.05.2006, as cited by learned Counsel for the petitioner in support of his case, is not applicable in the instant case, as the petitioner was honorably acquitted in that case. The judgement of the Hon'ble High Court of Madras in Writ Petition No.30503 of 2008 & M.P.Nos.2 of 2008 and 1 of 2010, *P. Chinnadurai Vs. The Inspector General of Registration, Chennai-28* is also not applicable in this case, as the facts here are different.

12. In view of the above, we hold that there is no need to interfere in the impugned orders of the Disciplinary, Appellate and the Revisional Authorities issued on 05.06.2020, 03.05.2021 & 15.01.2025 respectively. There is also no need to interfere in the order dated 23.06.2020 of the Inspector General of Prison, demoting the petitioner from the post of Head Warder to the post of Warder, as it is as per the condition laid down in the ad- hoc promotion order dated 7/9/2017. Hence, the claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: JULY 03, 2025
DEHRADUN
KNP