

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

Satish Chandra Pandey (Male) aged about 56 years, S/O Late Sri Deep Chandra Pandey, presently serving as Head Assistant, in the office of Commissioner, Kumaon Division, Nainital.

Vs.

1. State of Uttarakhand, through Secretary, Revenue Department, Government of Uttarakhand, Dehradun
2. Board of Revenue, Uttarakhand, Mussoorie Bypass Ring Road, Ladpur, Dehradun, through its Commissioner-cum-Secretary.
3. Commissioner, Kumaon Division, Nainital, District Nainital.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

DATED: JULY 14, 2025

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

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

"I. To set aside the impugned punishment order dated 14-08-2023 passed by the Respondent No. 3 (Annexure No. 1 to Compilation-I).

II. To set-aside the impugned appellate order dated 20-02-2024 passed by the Respondent No. 2 (Annexure No. 2 to Compilation-I).

III. To direct the Respondents, particularly Respondent No. 3 to grant all consequential benefits to the petitioner.

IV. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

V. To allow the claim petition with cost.”

2. Brief facts of the case are that-

2.1 The petitioner was initially appointed as Junior Clerk w.e.f. 15-06-1998 on Compassionate ground. He was promoted to the next higher posts of Senior Assistant and Head Assistant in the years 2017 and 2022 respectively.

2.2 In the month of May, 2023, an appeal against the order of the Secretary, Lake Development Authority, Nainital was preferred by one Sri Vinod Kumar before the Respondent No. 3, Commissioner, Kumaon Division, Nainital, ex-officio Chairman of the Lake Development Authority. When his appeal was not decided by the Presiding Officer i.e. Respondent No. 3, he approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 1332 (M/S) of 2023 (Vinod Kumar Vs. State of Uttarakhand and others). In view of the order passed by Hon'ble High Court, the Respondent No. 3 took up the matter on administrative side and passed a punishment order dated 07.06.2023 of strict warning against the petitioner.

2.3 After passing the above punishment order and the writ petition was heard on 21.06.2023, the Hon'ble High Court has shown unhappiness towards the Presiding Officer, as such, the Respondent No. 3 passed suspension order dated 23-06-2023 and on the same day i.e. 23-06-2023, a charge sheet was issued by the Respondent No. 3 to the petitioner, but petitioner was not given 15 days time to submit his written statement as per Rule 7(iv) of the concerned Rules, i.e. Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003. The relevant extracts of concerned Rule-7(iv) is reproduced below:-

“7(iv) The charged government servant shall be required to put in a written statement of his defence in person on a specified date, which shall not be less than 15 days from the date of issue of charge sheet.”

Even then, the petitioner submitted his reply on 28.06.2023 within the aforesaid short period refuting all the charges.

2.4 The Respondent No. 3 appointed the enquiry officer vide order dated 03-07-2023 and the concerned enquiry officer, without holding any enquiry in the matter submitted his enquiry report on 27-07-2023. The copy of the enquiry report was never given to the petitioner, either by the Enquiry Officer or by the Disciplinary Authority. Due to non-furnishing of enquiry report to the petitioner, the petitioner's right to file objections against the said enquiry report, got seriously prejudiced and the same has resulted in miscarriage of justice to the petitioner.

2.5 The respondent No. 3 straight away passed the impugned punishment order dated 14-08-2023 imposing a major penalty of stoppage of two annual increments with cumulative effect upon the petitioner. Apart from the aforesaid major penalty, a further direction/punishment has been issued that the petitioner should not be given duties of the important desks like judicial work etc. in future.

2.6 Although, the petitioner was given opportunity of personal hearing on 07-08-2023, but the said course of action is neither provided in the statutory Rules, 2003, nor the same can be a substitute to the statutory requirement of furnishing enquiry report and affording reasonable opportunity to submit objections against the enquiry report.

2.7 The petitioner submitted a detailed statutory appeal before the Appellate Authority i.e. Respondent No. 2 in the matter on 07-11-2023 through proper channel and the petitioner has specifically averred that the copy of the enquiry report was never served upon the petitioner and passed the impugned order in utter violation of the statutory Rules of 2003 as well as in violating the principle of natural

justice. As such, there was no justification for the alleged personal hearing in the absence of prior furnishing of enquiry report. The Respondent No. 2 cursorily rejected the statutory appeal of the petitioner, without considering the grounds raised in the appeal. The punishments imposed on the petitioner by means of the impugned order, are other than the punishments provided in the said statutory rules.

2.8 The Hon'ble Apex Court in the case of Punjab National Bank and others Vs. Kunj Bihari Mishra, reported in (1998) 7 SCC 84, has highlighted the necessity of issuance of second show cause notice before imposing major penalty upon an employee. The Hon'ble Supreme Court in the case of Punjab National Bank and others Vs. K.K.Verma, reported in (2010)13 SCC 494, after following the judgment of Kunj Bihari Mishra (supra), has held that right to represent against the findings in the enquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty and the denial of right to represent against the findings in the enquiry report will make the final order vulnerable. The impugned orders are totally illegal and arbitrary which cannot be justified in the eyes of law.

3. C.A./W.S. has been filed on behalf of respondent no. 3, which has been adopted on behalf of respondents no. 1 & 2 also. It has been stated in the C.A/W.S. that the petitioner has committed negligence/ignorance while discharging his duties and also tried to fix the responsibility on the presiding officer comes under indiscipline and misconduct. Thus, the disciplinary proceedings were initiated against him as per the directions of the Hon'ble High Court and after going through the material facts, the punishment orders have been passed against him. After going through the reply, inquiry officer were appointed for enquiring the case and the Inquiry officer after a thorough and detail enquiry submitted his enquiry report and after receiving the enquiry report the disciplinary authority had given opportunity of hearing personally on 07-08-2023 to the petitioner. The disciplinary authority while passing the punishment order has followed

the procedure as prescribed in the Discipline and Appeal Rules, 2003 and after due consideration passed the orders for debarring the petitioner from the work of judicial proceedings.

It is submitted that pursuant to the order and directions of the Hon'ble High court in writ petition no. 1332 of 2023 M/S "Vinod Kumar Vs State of Uttarakhand and others" in which the Hon'ble High Court has held that the punishment of warning is no punishment for the act of the petitioner, thus a detail enquiry was conducted against him as per the Discipline and Appeal Rules. The petitioner is not entitled to any relief from this Hon'ble Tribunal because the order of punishment has been passed by following the rules and procedure and the charges were fully proved against him. The present claim petition is devoid of merit and is liable to be dismissed.

4. No R.A. has been filed on behalf of the petitioner.
5. Heard learned counsel for the petitioner and the Learned A.P.O. and perused the documents.
6. Learned Counsel for the petitioner argued that the petitioner was given the charge-sheet but was given only seven days' time to submit the reply as against 15 days' time as per rule. The Enquiry Officer was appointed, but no date was fixed for holding the enquiry and the enquiry officer submitted the report without conducting the enquiry in detail. The copy of the enquiry report was not given to the petitioner due to which he could not submit his objections against it. The enquiry was conducted in utter violation of the Discipline and Appeal Rules, 2003 and punishment order was passed. The petitioner filed an appeal before the appellate authority that the copy of the enquiry report was never given to him and there is no justification for holding the personal hearing. The appeal of the petitioner was rejected in a cursory manner. The entire process has been conducted without following the Uttarakhand Government Servants (Discipline and Appeal) Rules 2003. The disciplinary authority did not serve second show cause notice to the petitioner which is against the guidelines laid down in the

judgement of the Hon'ble Apex court in the matter of Punjab National Bank and others vs Kunj Bihari Mishra reported in (1998) 7 SCC 84. Hon'ble Supreme Court in the matter of Punjab National Bank and others vs K.K. Verma, reported in (2010) 13 SCC 494 has held that the right to represent against the findings in the enquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty and the denial of the right to represent against the findings in the report will make the final order vulnerable. In view of the above, the impugned orders are liable to be set aside and the claim petition is liable to be allowed.

7. Learned A.P.O. argued that in pursuance of the order of the Hon'ble High Court in the matter of Mr. Vinod Kumar Vs State, the petitioner was given warning in response to the punishment given to the petitioner, the Hon'ble High Court observed that the reader of the court is manipulating and creating false evidence, mere warning to such person will not cleanse the polluting environment. Some stringent action should be taken against him. The disciplinary authority after receiving the enquiry report awarded the punishment after following the procedure prescribed in the Discipline and Appeal Rules, 2003. In view of the above, the claim petition is liable to be dismissed.

8. Based on the arguments of Learned Counsel for the parties and the documents presented to the Tribunal, we find that the petitioner has been awarded major punishment by the Disciplinary Authority without following the procedure as laid down in the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003, amended in 2010. The enquiry report as well as the decision of the Disciplinary Authority to accept or reject the report was not given to the petitioner for submission of the reply in his defense. The Appellate Authority also did not consider these issues in the appeal and upheld the decision of the Disciplinary Authority. Since, while passing the impugned orders, the respondent authorities have not followed the procedure laid down in the Discipline and Appeal Rules, 2003, we think it appropriate to keep the impugned orders of the

Disciplinary Authority and the Appellate Authority dated 14/8/2023 and 20/02/2024 in abeyance. The respondents may initiate disciplinary proceedings against the petitioner from the stage of giving second show cause notice before awarding the punishment.

9. Accordingly, the claim petition is disposed of with the direction to the respondents to initiate disciplinary proceedings from the stage of giving second show cause notice to awarding the punishment and complete the proceedings within three months, from the date of presentation of certified copy of this judgment. Till then, the impugned orders of the Disciplinary Authority and the Appellate Authority dated 14/8/2023 and 20/02/2024 will be kept in abeyance. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: JULY, 14, 2025
DEHRADUN
KNP