

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 48/NB/SB/2019

Lakhiram Jaguri, S/o Late Shri Durga Dutt Jaguri, R/o Presently residing at Kalakoti House Near Kefit fitness Studio, Tayal Chatur Singh, Delavchaur, Haldwani.

.....Petitioner

VERSUS

1. State of Uttarakhand through Additional Chief Secretary, Government of Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary, Public Works Department, Civil Secretariat, Government of Uttarakhand, Dehradun.
3. Head of the Department, Public Works Department, Yamuna Colony, Dehradun.
4. R.P. Bhatt (Retd. Chief Engineer), Presently posted Technical Advisor of Additional Chief Secretary, PWD, Civil Secretariat, Dehradun.
5. Uttarakhand Public Service Commission through Secretary, Haridwar, Uttarakhand.

.....Respondents

And

CLAIM PETITION NO. 01/NB/DB/2020

Lakhiram Jaguri, S/o Late Shri Durga Dutt Jaguri, R/o Presently residing at Kalakoti House Near Kefit fitness Studio, Tayal Chatur Singh, Delavchaur, Haldwani.

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1. State of Uttarakhand through Additional Chief Secretary, Government of Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary, Public Works Department, Civil Secretariat, Government of Uttarakhand, Dehradun.
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4. R.P. Bhatt (Retd. Chief Engineer), Presently posted Technical Advisor of Additional Chief Secretary, PWD, Civil Secretariat, Dehradun.

5. Uttarakhand Public Service Commission through Secretary, Haridwar, Uttarakhand.

.....Respondents.

Present: Dr. Kartikey Hari Gupta, Advocate, for the petitioner.

Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: DECEMBER 30, 2020

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. Claim petition No. 48/NB/SB/2019 has been filed by the petitioner for the following reliefs:

“(i) To issue an order or direction calling for records and quashing the order dated 10 January, 2019 and/or any further proceedings on the basis of this order (Annexure No. 1) passed by Respondent No. 1.

(ii) To issue an order or direction calling for records and quashing the illegal ex parte enquiry report dated 29.03.2018 (Annexure No. 1) prepared by Respondent No. 4.

(iii) To issue an order or direction calling for records and quashing the order dated 16 July, 2018 (Annexure No. 8) passed by Respondent No. 1.

(iv) To issue an order or direction directing the respondents to accept the departmental enquiry report dated 09.05.2018 (Annexure No. 6) prepared by enquiry officer/Chief Engineer PWD and take a final decision on that.

(v) To issue an order or direction to the respondent No. 3 to issue no objection certificate and further to provide all pension, gratuity, other retirement dues along with interest.

(vi) To issue an order or direction quashing the part of order dated 26.08.2019 (Annexure No. 17) stopping the gratuity of the petitioner and further directing the respondents to pay complete gratuity amount of the petitioner.

(vii) To issue any other suitable, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(viii) Further prays that the Hon'ble Tribunal may direct the respondents to pay the cost of the litigation.”

2. Claim petition No. 01/NB/DB/2020 has also been filed by the petitioner for the following reliefs:

i. To issue an order or direction calling for records and quashing the order dated 12 December, 2019 (Annexure No. 1).

ii. To issue any other suitable, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iii. Further prays that the Hon'ble Court may direct the respondents to pay the cost of the litigation."

3. Both the petitions are in respect of the same departmental proceedings and orders which were passed in successive dates hence, both are being decided jointly.

4. Petitioner, serving as Assistant Engineer in P.W.D., Construction Division-II, Dehradun, was served a charge sheet on 26.08.2016, leveling four charges against him for the alleged irregularities done in the construction and reinforcement work of 3 motor roads, done under contract No. 10 package No. 14, in district Haridwar, funded by Asian Development Bank (ADB) in the year 2009-10. Reply to charge sheet was submitted by him on 06.10.2016 denying from the charges.

5. An inquiry was conducted by the Chief Engineer Level-I, and vide inquiry report dated 09.05.2018, petitioner was found not guilty and was exonerated from all charges levelled against him. After submission of final enquiry report dated 09.05.2018, petitioner retired from service on 31.05.2018.

6. After retirement, when petitioner applied for NOC from the department, then he was given a letter/show cause notice dated 04.06.2018 along with an ex-parte inquiry report dated 29.03.2018, prepared by Sri R.P.Bhatt, Respondent No. 4, which was served to him for the first time. Petitioner was having no knowledge about initiation of such ex-parte inquiry; no show cause notice was ever given to him and no specific fact about the wrong committed by the petitioner is mentioned

therein. Petitioner, with bonafide intention, submitted detailed reply dated 11.06.2018 along with evidence against the ex-parte inquiry report.

7. On the basis of the show cause notice dated 04.06.2018, the proceedings were started against the petitioner and vide letter dated 16.07.2018, Respondent No. 1 issued another show cause notice to the petitioner finding him guilty of financial irregularities and negligence, proposing major penalty against him. Petitioner further submitted reply to the show cause notice, denying from the charges.

8. Petitioner filed a claim petition No. 03/NB/DB/2019, challenging the show cause notice dated 04.06.2018, which was in two parts. The said petition was disposed of by this Court vide order dated 09.01.2019, with the direction to the respondents, to withdraw the show cause notice dated 04.06.2018 and liberty was granted to the respondents to proceed with the matter, if they so desire, only as per the requirement of the law and the principles of natural justice.

9. The respondents next day of the decision of the above petition on 09.01.2019, passed an order dated 10.01.2019, to recover an amount of Rs. 178.36 Lakhs on account of the loss caused to the Government from the Contractor as well as from the petitioner along with other Engineers, Sri Sushil Kumar Gupta, the then Executive Engineer, Sri Shrikant Sharma, the then Assistant Engineer in respective proportions and an amount of Rs. 15.60 Lakhs was ordered to be recovered from the pensionary dues of the petitioner, after concurrence of the Public Service Commission.

10. Thereafter, petitioner filed the present claim petition No. 48/NB/SB/2019 on 15.10.2019, seeking a direction for quashing the order dated 10.01.2019 and any further proceedings on the basis of this order along with direction to quash the ex-parte inquiry report dated 29.03.2018; the order dated 16.07.2018; and to direct the respondents to accept the inquiry report dated 09.05.2018, prepared by the Inquiry Officer, exonerating the petitioner from the charges and to take final decision thereof; to issue NOC; to quash the order dated 26.08.2019

stopping the payment of gratuity to the petitioner and for other suitable orders/reliefs.

11. The petitioner also filed a claim petition No. 15/NB/DB/2019, for direction to quash the order dated 10.01.2019, which was in the form of a letter, written by the Government to the Public Service Commission and, also sought other relief regarding pension, gratuity and other retiral benefits. On the objections of Government, about the petition to be is premature as the order dated 10.01.2019 was not a final order, that petition was disposed of by this Court vide order dated 09.04.2019 at the admission stage, with the liberty to the petitioner to submit his representation for granting such retiral benefits from the respondents, within 15 days and the respondents were directed to decide such representation by a speaking and detailed order, within an stipulated time; and for other reliefs, sought by the petitioner, the petition was held premature and it was disposed of with the liberty to file fresh petition before the appropriate forum, whenever, cause of action finally arises.

12. The State also filed a review petition No. 01/NB/DB/2019, for review of the order dated 09.01.2019, passed by this Tribunal in Claim Petition No. 03/NB/DB/2019, on the ground that in view of the liberty granted to them, to proceed with the matter, they have proceeded on the basis of other inquiry and another show notice dated 16.07.2018, after disagreeing with the inquiry report dated 09.05.2018, have completed the disciplinary proceedings against the respondent, but in view of the order dated 09.01.2019, they were not able to proceed further against the delinquent employees. That review petition was disposed of by this Court vide order dated 18.09.2019, clarifying the position that the State/respondent department were nowhere restrained to take and finalize the disciplinary proceedings as per the rules, and if they have finalized their proceeding on the basis of another notice dated 16.07.2018, their action was nowhere hit by Court's order dated 09.01.2019, rather they were granted liberty to proceed as per the Rules. If the petitioner feels aggrieved by any such order, he is having separate

cause of action and may challenge the same by way of separate claim petition as per the law.

13. After the decision of review petition dated 18.09.2019, the respondents finalized the disciplinary proceedings against the petitioner vide order dated 12.12.2019, whereby an order for recovery of an amount of Rs. 15.60 Lakhs was finalized against the petitioner on account of the loss caused to the Government. Other disciplinary proceedings were accordingly finalized and concluded, without giving any other punishment to the petitioner.

14. The order dated 12.12.2019 has been challenged by the petitioner in another claim petition No. 01/NB/DB/2020 filed on 07.01.2020, seeking the reliefs to set aside and quash the order dated 12.12.2019 and to pass any other suitable order or direction as the Court deem fit and proper in the circumstances of the case.

15. Accordingly, both the petitions No. 48/NB/SB/2019 and 01/NB/DB/2020 are before the Court for the reliefs sought as above, on the following grounds.

16. That on the basis of the charge sheet, inquiry report dated 09.05.2018 was submitted in which petitioner was exonerated from the charges and without disagreeing and rejecting that inquiry report, Respondents have relied upon another secret inquiry report dated 29.03.2018, prepared by Respondent No. 4, Sri R.P. Bhatt, who was not authorized to hold an inquiry against the petitioner; he was neither Disciplinary Authority nor Appointing Authority of the petitioner; the principles of natural justice were not followed and even after the direction of the Court dated 09.01.2019, the order dated 10.01.2019 was passed. The impugned order wrongly mentions that some new facts had surfaced and such report is on wrong findings. The petitioner never caused any financial loss to the department, as he was not a person having power to take a decision on policy matter. Petitioner is a retired person hence, the impugned order of recovery has been passed in violation of Civil Service

Regulation. The respondents have no authority to withhold the pension of the petitioner without the order of the Governor of the State, whereas, sanction of the Governor was never taken after retirement of the petitioner to institute any such proceedings. The impugned proceedings and orders are bad in the eyes of law, as they are in respect of an event, which took place more than four years before the institution of present illegal proceedings, against the petitioner, hence, barred under Civil Service Regulation 351A. The gratuity has been denied to him without any justified reasons. Respondents have no right to stop this benefit. Hence, these petitions have been filed by the petitioner for the reliefs sought as above.

17. Both the petitions were opposed by the respondents on the ground that the petitioner was *prima-facie* found guilty of committing irregularities during the construction and repair works. The disciplinary authority disagreeing with the inquiry report of Chief Engineer, dated 09.05.2018, issued another notice dated 16.07.2018 and after recording his own finding, ascertained the guilt of petitioner on the basis of technical report and on the basis of the technical calculation, and due to negligence of the petitioner with other officials, a loss of Rs. 178.36 Lakhs was ascertained to the Government. Petitioner was guilty of not re-determining the rates of Cement Concrete Pavement as per the JCC Clause 36 and 37 of the Contract. The petitioner and other officials were found guilty of not executing the work as per the specifications/standard prescribed and as such for the aforesaid irregularities, they were found guilty under the provisions of Rule 03(1) and (2) of the Uttarakhand State Employees Conduct Rules, 2002. As per Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, the Disciplinary Authority himself can inquire into the allegations or can appoint any of his subordinate authority to inquire about the allegations as inquiry officer. As per Rule 9 of the said Rules, if the Disciplinary Authority does not agree with the reasons given by the inquiry officer, it would be open to the Disciplinary Authority to hold further inquiry in accordance with the

provisions of Rule 7 and after disagreeing with the findings about any of the charges, he can proceed further after recording his finding with reasons. Under Rule 13 of the said Rules of 2003, there is a provision of revision also. Under the said provisions, the Govt. after being *prima-facie* not satisfied with the inquiry report of the inquiry officer, vide Govt. Memo dated 08.02.2018, directed the technical consultant, Respondent No. 4, and Lalit Mohan (other officer), taking cognizance of all records and facts, to report about the matter. Subsequently, on the basis of technical consultant's report submitted to the Govt., the loss to the govt. was ascertained and it was held that the petitioner and other concerned officers had committed irregularities during execution of the work. Under the G.O. dated 28.04.2003 and under Article 351(a) of the Constitution of India, recovery of loss from the pension of employee of the whole or part about any pecuniary loss caused to the Govt., can be made. Respondents have contended that the proceedings were continuing against the petitioner since, before his retirement and were concluded after his retirement, hence, there was no need for the sanction of the Governor, separately. The other officers have also been punished with the punishment of stoppage of increments and the loss caused to the government has also been recovered as per the rules, in prescribed proportion. The disciplinary proceedings against the petitioner have been dropped and the only order to recover an amount of Rs. 15.60 Lakhs from his gratuity has been passed, which is as per Rules and the petitions deserve to be dismissed as the proceedings have been finalized as per Rules.

18. The petitioner has also filed Rejoinder Affidavits, reiterating the facts of the claim petition.

19. We have heard both the sides and perused the record.

20. There has been a series of litigation by the petitioner, challenging the disciplinary action started against him, relating to road construction work done in the year 2009-10 in district Haridwar. The respondents

found the petitioner *prima-facie* guilty of committing irregularities during the construction, improvement and repair work of roads in district Haridwar, named as contract package No. 14. The date of start of this contract work was 23.03.2009, and it was to be completed by 22.09.2010. The contract was signed by the Project Director/Chief Engineer (ADB), PWD with M/S NKG Infrastructure Ltd. The petitioner was working as Assistant Engineer in Construction Division-II, PWD and was found *prima-facie* guilty of committing irregularity during the construction and repair work, Disciplinary Proceedings were initiated against him as well as other officers, as per the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003.

21. The charge sheet was served upon the petitioner on 26.08.2016, alleging four charges against him, about irregularities done in the construction and reinforcement work of three motor roads, done under the contracts, which was funded by ADB in the year 2009-10. Reply to the charge sheet was submitted by the petitioner, denying the charges levelled against him. Thereafter, inquiry officer was appointed. On completion of inquiry, the inquiry report dated 09.05.2018 was submitted and the petitioner was found not guilty about all the four charges levelled against him. After submission of final inquiry report dated 09.05.2018, the petitioner retired from service on 31.05.2018.

22. The petitioner was served with a show cause notice dated 04.06.2018, to show cause as to why a major penalty of recovery of an amount be not completed against him. The notice was in two parts, first part of this was based on the inquiry conducted by the Chief Engineer Level-I, while second part was based on the another inquiry dated 29.03.2018, conducted by the Respondent No. 4. Petitioner challenged the same before this Court through claim petition No. 03/NB/DB/2019, on the ground that Appointing Authority without applying its mind and without recording his opinion, about agreeing or disagreeing with the inquiry report dated 09.05.2018, issued show cause notice dated 04.06.2018 and a wrong procedure has been adopted. That petition was

disposed of on 09.01.2019 with the direction to the respondents to withdraw show cause notice dated 04.06.2018, and respondents were given liberty to proceed with the matter, if they so desire, only as per the requirement of law and the principles of natural justice. But the respondents on the very next day of order of the Court i.e. 10.01.2019 finalized the disciplinary proceedings and passed an order that a loss of Rs. 178.36 Lakhs was done on account of the irregularities, dereliction of duties of the petitioner as well as other Assistant Engineers and Executive Engineers. As per the G.O. dated 12.05.1999, 50% of amount i.e. 89.80 Lakhs was to be recovered from the government officials, and out of which 35% amount of Rs. 15.60 Lakhs to be recovered from the petitioner from his pensionary dues, as he was a retired employee. For other government officials, who were in service, a punishment of major penalty of withholding of two increments with cumulative effect along with recovery of loss was also passed. The petitioner filed claim petition No. 48/NB/SB/2019, challenging the order dated 10.01.2019, and the claim petition No. 01/NB/DB/2019 challenging the order dated 12.12.2019 for recovery of amount.

23. First point raised by the petitioner is that the charges under the disciplinary proceedings started against the petitioner, were inquired and investigated by the Chief Engineer Level-I, and in his inquiry report dated 09.05.2018, all the four charges against the petitioner were found not proved and he was exonerated from the charges. The Disciplinary Authority without disagreeing with the inquiry report dated 09.05.2018 and without applying its judicial mind, issued show cause notice dated 04.06.2018, hence, the proceedings against the petitioner are not as per the rules. Learned A.P.O. in response to this argument, has submitted that they have completed their disciplinary proceedings and issued a recovery order, not on the basis of show cause notice dated 04.06.2018, but the Disciplinary Authority after considering the inquiry report dated 09.05.2018 applied his judicious mind and disagreeing with the report of the inquiry officer, came to the conclusion that petitioner is guilty of

irregularities and dereliction of his duties and, thereafter a show cause notice dated 16.07.2018 was again issued to the petitioner. The show cause notice is Annexure: 8 on the file of Claim petition No. 48/NB/SB/2019, which itself clarifies that the inquiry report submitted by the inquiry officer was duly considered by the Appointing Authority and the Appointing Authority was of the view that the inquiry officer has not touched and considered the important points. The Disciplinary Authority recording his own finding on the points of difference, finally disagreeing with the report, came to the conclusion that the petitioner has committed irregularities and failed in his duties and a loss to the government was caused on account of lapses on his part as well as on the part of other officers. Hence, disagreeing with the report and recording its own conclusion about the misconduct/irregularities of the petitioner, another show cause notice dated 16.07.2018 was issued. Petitioner was required to submit his reply, as to why the recovery be not made and penalty be not imposed. We find that after service of such notice dated 16.07.2018, and after considering all the facts, the order dated 12.12.2019 was rightly issued and it was as per the procedure and within the domain of the disciplinary authority.

24. Learned counsel for the petitioner has argued that the Disciplinary Authority has based his finding on the basis of an ex-parte inquiry, conducted by respondent No. 4, a technical advisor, who was neither authorized by the Disciplinary Authority, to conduct the inquiry, nor was a departmental officer. Respondents have argued that the Disciplinary Authority/Appointing Authority is well within his right to disagree with the inquiry report dated 09.05.2018. The report of technical officer was a material for the assistance of the Disciplinary Authority to ascertain the amount of loss and Disciplinary Authority independently made up his mind considering all the facts and drawn his own conclusion about the guilt of the petitioner.

25. We find that the Disciplinary Authority is well within his right to disagree with the inquiry report. He may differ by recording the reasons

and may draw his own conclusion on the basis of material before him. The report of technical expert was a material, collected to arrive at the conclusion, about the amount of loss, even if, it is not considered as a full proof inquiry report before issuing the notice dated 16.07.2018. The disciplinary authority after considering the inquiry report and other material, recorded his own reasons in detail and has come to the conclusion that on account of the irregularities and non-fulfillment of the duties by the petitioner, a huge loss to the government has been incurred.

26. The court cannot go into the subjective satisfaction of the disciplinary authority about the fact. Moreover, in this case, on factual basis, sufficient reasons have been recorded as to how the petitioner failed in his duties and in what manner, he was negligent and how irregularity was committed. The Disciplinary Authority in detail has recorded that the inquiry officer conducted the inquiry, of the charges levelled against the guilty officers, in a cursory manner and has not taken cognizance of some important aspects of the matter. The petitioner and other concerned officials committed the violation of the contract so executed, which was made available to them pursuant to the office memo dated 08.02.2018. On the basis of the inquiry report of the technical advisor, the rate of cement concrete pavement comes out @ 2000.00 per Sq. meter whereas, in the sanctioned calculation, the departmental rate was Rs. 4810/- per cubic meter. The JCC clause 36 & 37 were not followed. In view of the disciplinary authority, the petitioner has violated the terms and conditions of the contract and recommended wrong proposal to the higher authorities. Respondents in their Counter Affidavit clarified in details how and in what manner, the petitioner was negligent for causing loss to the government. The standard of IRC/Morth which was measured in Sq. Meter were not made as per the standard of conditions. This court cannot interfere in the factual finding of the department about the loss. We have to see whether the correct procedure to complete the disciplinary proceedings has been followed or not.

27. In this respect, the relevant law is summarized in Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003, according to which the major or minor penalties have been prescribed in Rule 3. As per Rule 3(a), recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders, is a 'minor penalty'. Vide order dated 12.12.2019, a recovery of an amount of Rs. 15.60 Lakhs, on account of loss caused to the Govt. has been made and in this manner, the punishment finally awarded to the petitioner can be described as a 'minor penalty', because it is not covered in the category of major penalties mentioned in Column (b), which are as follows:

“(b) Major Penalties-

- (i) Withholding of increments with cumulative effect;*
- (ii) Reduction to a lower post or grade or time scale or to lower stage in a time scale;*
- (iii) Removal from the Service which does not disqualify from future employment;*
- (iv) Dismissal from the Service, which disqualifies from future employment.*

Explanation: The following shall not amount to penalty within the meaning of this Rule, namely,

- (i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfill any other condition in accordance with the rules or orders governing the service;*
- (ii) Reversion of a person appointed on probation to the Service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;*
- (iii) Termination of the Service of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the Service for the rules and orders governing such probation.”*

Although the procedure for imposing major penalty was adopted against the petitioner, which is enumerated in Rule-7, according to which, Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as inquiry officer to inquire into the charges and after serving charge sheet and giving an opportunity of hearing, the inquiry officer, may submit his report. The inquiry officer submitted his report to the Disciplinary Authority. Rule 9 of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 prescribes the procedure to

be adopted by the Disciplinary Authority on the inquiry report. Rule 9 of the said Rules reads as under:-

“9. Action on Inquiry Report--

(1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government Servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule-7.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government Servant shall be exonerated the Disciplinary Authority of the charges and informed him accordingly.

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges, is of the opinion that any penalty specified in rule-3 should be imposed on the charged Government Servant, he shall give a copy of the inquiry report and his findings recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government Servant, if any, and subject to the provisions of rule-16 of these rules, pass a reasoned order imposing one or more penalties mentioned in rule-3 of these rules and communicate the same to the charged Government Servant.”

28. Hence, as per the above Rule, the Disciplinary Authority may either agree or disagree with the inquiry report or may remit the case for re-inquiry. The Disciplinary Authority after disagreeing with the inquiry report may record its own finding and reasons for the same. The Disciplinary Authority after recording his own findings on the charges with reasons, may serve a show cause notice, with proposed penalty as specified in the Rules. He is under obligation to give copy of the inquiry report, along with its own findings recorded under sub-rule (2) to the charged Govt. Servant, and after considering the reply of the employee, may pass a reasoned order imposing one or more of the penalties under Rule 3 of the said Rules.

29. In this case, the disciplinary authority as per the Rules, and within his own domain, disagreeing with the findings of the inquiry officer recorded, his own reasons and then issued a show cause notice dated 16.07.2018, to the petitioner and after considering his reply and all the circumstances, passed the punishment order dated 12.12.2019, whereby a minor penalty for recovery of an amount of Rs. 15.60 Lakhs as pecuniary loss caused to the Government, has been passed.

30. We find that there is no procedural lacunae in the proceeding completed by the Disciplinary Authority on the basis of show cause notice dated 16.07.2019 and completed vide order dated 12.12.2019.

31. Regarding the order dated 10.01.2019 passed by the respondent authority, under challenged in Claim petition No. 48/NB/SB/2018, the petitioner has argued that order dated 10.01.2019 should also be set aside. After considering the impugned order dated 10.01.2019, it is also clear that the said proceeding was also completed after the notice dated 16.07.2018. In that order too, the similar punishment of minor nature about recovery of Rs. 15.60 Lakhs from the pensionary benefits of the petitioner was passed. That order dated 10.01.2019 is now finally merged and has been finalized vide order dated 12.12.2019. We are of the view that the impugned order dated 10.01.2019 also does not suffer from any irregularity because of the reasons that the process of issuing the show cause notice dated 16.7.2018 to the petitioner was already completed.

32. Learned counsel for the petitioner has based his petition particularly on the basis that the proceedings have been finalized on the basis of an ex-parte inquiry conducted by the technical expert, respondent No. 4, in which he was not given an opportunity of hearing. We find that the petitioner was given opportunity of hearing in the inquiry, conducted by the Chief Engineer Level-I who submitted his report dated 09.05.2018. The Disciplinary Authority although taking the help of evidence collected by the technical expert, recorded his own conclusion, disagreeing with inquiry report dated 09.05.2018 and finally, concluded the guilt of the petitioner and issued a show cause notice dated 16.07.2018. The process

of collecting evidence by the technical expert may not be technically called an inquiry, it was the collection of evidences to ascertain the loss caused to the government apart from the departmental inquiry. The Disciplinary Authority recorded his own conclusion about the guilt of the petitioner. In this case, the Disciplinary Authority applied his own mind and after disagreeing, and rejecting the inquiry report dated 09.05.2018, finally concluded about the guilt of the petitioner with reasons and thereafter, a show cause notice was issued and a minor penalty was imposed. We find no procedural irregularity and are of the view that no prejudice has been caused, as sufficient opportunity of hearing was given to the petitioner and the disciplinary proceedings have been concluded as per the procedure and law.

33. The factum of pecuniary loss of Rs. 178.36 Lakhs to the Government on account of irregularities, of the government officials, was rightly distributed between the Contractor and the Govt. officials in the ratio of 50-50% as per the G.O. dated 12.05.1999. The 50% of the loss were further distributed between the Govt. officials in the ratio of 50% from Junior Engineer, 35% from Assistant Engineer and 15% from Executive Engineer hence, accordingly, from the petitioner, being Assistant Engineer, 35% of that part was rightly ascertained and ordered to be recovered.

34. Petitioner has also argued that the disciplinary proceedings against a retired employee cannot be started without the sanction of the Governor. Respondents have argued that the proceedings were already continuing against the petitioner since he was in service. We find that when the disciplinary proceedings were already initiated during his service period, then it can be concluded after retirement of an employee. There is no need to take any further permission of the Governor to complete any such proceedings, already initiated against an employee during his service period.

35. The petitioner has already been paid all pensionary benefits. The only amount of gratuity is yet to be paid out of which, respondents have

ordered to recover an amount of Rs. 15.60 Lakhs, as the pecuniary loss caused to the Government by the petitioner. The payment of gratuity is made as a matter of grace for service rendered and if any such loss to the Govt. was caused by the employee, then it can be withheld and recovered from such payment. Considering all the circumstances of the case and finding the fact that all pensionary benefits have already been granted to the petitioner, and as a minor punishment, the penalty to recover the amount of Rs. 15.60 Lakhs from the gratuity of the petitioner is permissible. Hence, petition of the petitioner fails; he is not entitled to any reliefs sought in both the petitions and accordingly, following order is hereby passed.

ORDER

The Claim Petitions No. 48/NB/SB/2019 and 01/NB/DB/2020 are hereby dismissed. Costs easy.

Let copy of this judgment be kept on the file of Claim Petition No. 01/NB/DB/2020.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: DECEMBER 30, 2020
NAINITAL
KNP