

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

(Virtual)

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 06/NB/DB/2020

Amar Nath Jukaria, s/o Late Sri Andev Jukaria, presently posted as Additional Assistant Engineer, Minor Irrigation Division, Pithoragarh, District Pithoragarh.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Minor Irrigation, Govt. of Uttarakhand, Dehradun.
2. Chief Engineer and Head of Department, Minor Irrigation Department, Uttarakhand, Dehradun.
3. Superintending Engineer, Minor Irrigation Circle, Pithoragarh, District Pithoragarh.
4. Executive Engineer, Minor Irrigation Division, Pithoragarh.

.....Respondents.

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

JUDGMENT

DATED: NOVEMBER 15, 2021

Justice U.C.Dhyani (Oral)

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

(A) To quash and set aside the impugned order dated 04.12.2018 passed by Respondent No.2 as well as the impugned order dated 02.05.2019 passed by Respondent No.1.

(B) To issue appropriate order directing the official respondents not to recover any amount from the petitioner and to refund entire amount with interest already recovered from the petitioner pursuant to the impugned order of punishment dated 04.12.2018.

(C) Any other order or direction which this Ld. Tribunal may deem fit and proper under facts and circumstances of the case.

(D) Award cost of the petition to the present petitioner.”

2. Brief facts, necessary for adjudication of present claim petition, are as follows:

2.1 When the present claim petition was filed, the petitioner was posted as Additional Assistant Engineer, Minor Irrigation Division, Pithoragarh. On 29.05.2008, a quotation tender notice was issued by the office of Executive Engineer, Pithoragarh, whereby bids were invited from the interested bidders to supply 50,000/- bags of cement at the departmental store at Pithoragarh.

2.2 M/S Maihar Cement, Bareilly Road, New Mandi Gate, Haldwani was given the work order after scrutiny of bids. As per the work order the cement was to be delivered in the store of the department at Pithoragarh within a week from the date of demand and further, it was also mentioned in the work order that if any dispute arises between the department and the supplier, the same will be raised before the District Judge, Pithoragarh (Copy of work order dated 13.06.2008- Annexure: A 1). During rainy season, many roads got damaged, due to which it was difficult to supply the cement to the various sites where the work was to be implemented, from Pithoragarh, therefore, on 01.08.2008, a letter was issued by the Executive Engineer to M/S Maihar Cement to stop the supply of cement unless demand is made. But the Firm, on 20.08.2008 wrote to the Executive Engineer, requesting to ensure lifting of cement from Tanakpur as the entire cement has been stored in the distribution point at Tanakpur. In reply to the Firm's letter, the Ex.En. issued a letter dated 22.08.2008 referring earlier letters dated 13.06.2008(Annexure: A-1) and 01.08.2008, *inter alia*, stating that the cement be supplied at Pithoragarh as per the demand and natural calamity may also be taken

into account. Payment of the entire cement was made to the Firm but the Firm failed to supply entire cement as agreed between them.

2.3 On 30.04.2009, the department issued a letter to the Firm directing to supply the entire cement, which was not complied with by the Firm. The matter was referred to the District Magistrate, who, *vide* order 01.06.2009 directed the Firm to comply with the directions issued by the department *vide* order dated 30.04.2009. In response to District Magistrate's order dated 01.06.2009, the Firm issued a letter to the District Magistrate that, as per the agreement, 50,000/- bags of cement were to be supplied, out of which 42,000/- bags have already been supplied but remaining bags of cement could not be supplied due to fault of the department.

2.4 Subsequently, the Ex.En. issued letter dated 08.12.2010 and again on 27.04.2011, referring all the earlier communications with a warning to ensure supply of remaining cement or to refund the amount with interest, which was replied by the Firm on 07.05.2011, and eventually the Firm failed to ensure supply of remaining cement or to refund the payment received from the department for the same.

2.5 During audit, the loss to the public exchequer came into light and consequently a show cause notice was issued to the petitioner *vide* letter dated 30.04.2011 (Copy: Annexure- A 2), stating that the petitioner made the entries in the measurement book regarding advance payment and also made recommendation in the voucher for payment. Petitioner submitted his reply dated 11.05.2011 (Copy: Annexure: A 3) stating that he made the entries of proforma bill in measurement book as per the direction of the Ex.En. but he never made recommendation for payment neither in the measurement book nor in the voucher.

2.6 A three members inquiry committee was constituted to look into the dispute of cement which submitted its report dated 06.07.2011 (Copy: Annexure- A 4), stating, *inter alia* that a total loss of Rs.23,60,579/- has been caused to the department due to negligence of the Executive Engineer, Assistant Engineer, Divisional Account Officer

and Cashier. The inquiry report was placed before the Govt. *vide* letter dated 25.07.2011. .

2.7 On 22.09.2011, a charge sheet was issued to the petitioner for the charge of entry of bill in the measurement book without ensuring supply of cement (Copy of charge sheet: Annexure-AA 5). On 22.09.2011 (the self same day), the Secretary to the Govt. of Uttarakhand issued a letter to the Chief Engineer, directing him to ensure the supply of remaining cement from the Firm or to proceed for recovery of advance payment made to the Firm. (Copy of letter 22.09.2011: Annexure- A 6). Petitioner submitted reply on 17.10.2011 (Copy: Annexure- A 7) to the charge sheet dated 22.09.2011. Inquiry officer was appointed to give an opportunity of personal hearing on 14.12.2011. The inquiry officer finally submitted his report on 19.12.2011, stating that entry in the measurement book was not made as per law, as such the petitioner was guilty of negligence and he is responsible for financial loss caused to the department to the tune of Rs.5,90,144.75/- (Copy of inquiry report: Annexure- A 8). Taking note of the inquiry report, the Secretary issued further show cause notice to the petitioner on 16.01.2012 (Copy: Annexure- A 9), seeking his response to the inquiry report within 14 days. Petitioner submitted reply to the show cause notice on 06.02.2012 (Copy: Annexure- A 10) with specific explanation, to the charges and findings recorded by the inquiry officer with regard to the entry of bill in the measurement book stating therein that he made entry in the measurement book pursuant to the oral direction and endorsement made by the Executive Engineer in the proforma bill but he never made recommendation for payment in the voucher. The proforma bill clearly indicates that payment was made by the Executive Engineer to the Firm on 03.07.2008 whereas the entry was made in the measurement book on 04.07.2008, therefore, the petitioner cannot be held responsible for the advance payment made to the Firm by the Executive Engineer. Further, in respect of non-supply of cement by the Firm, recovery proceedings have been initiated against the defaulter Firm, which is evident from letter dated 18.09.2015 and letter dated 15.07.2016 (Copies: Annexure- A 11).

2.8 Apprehending the denial of promotion once again, the petitioner filed a writ petition before the Hon'ble High Court of Uttarakhand, which was finally disposed of by the Hon'ble Court on 24.11.2017 directing the Chief Engineer and HOD to consider and take a final decision by concluding the disciplinary proceedings within a period of two months from the date of production of certified copy of the order. It was also directed that the question relating to right to promotion of the petitioner will be decided necessarily on the basis of the outcome of the disciplinary proceedings. (Copy of order dated 24.11.2017: Annexure- A 12).

2.9 Thereafter, the disciplinary proceedings were concluded followed by order of punishment dated 04.12.2018. The inquiry report was submitted before the Govt. and the Principal Secretary issued a letter on 16.04.2018 directing the Chief Engineer /HOD to take final decision on merits. In the letter, the Secretary specifically observed that the payment was made by the Executive Engineer before making entry in the measurement book and that for the financial loss caused to the department, the Drawing and Disbursing authority as also the Account Section is guilty. (Copy of letter dated 16.04.2018: Annexure- A 13).

2.10 According to the claim petition, the Chief Engineer/ HOD did not bother to apply his mind on the letter of the Govt. dated 16.04.2018, rather it requested the Superintending Engineer to propose the punishment, who is neither the inquiry officer nor the disciplinary authority. The S.E. issued a letter on 15.05.2018, whereby punishment was suggested and recommended against the petitioner in two parts, i.e. (i) recovery of Rs.3,78,048/- and (ii) stoppage of two annual increment for one year (Copy of letter: Annexure- A 15).

2.11 Without giving opportunity to the petitioner, either by the Chief Engineer/ HOD or by S.E., a final order was passed on 04.12.2018, whereby the recommended punishment has been imposed upon the petitioner (Copy: Annexure- A 16).

2.12 Petitioner filed a Claim Petition No. 35/NB/DB/2018, Amarnath Jukaria vs. State and others before this Tribunal, which was disposed of

as premature in view of Section 4(5) of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (Copy of order dated 07.01.2019: Annexure- A 18). Petitioner, accordingly, filed a statutory appeal on 18.01.2019 (Copy: Annexure- A 19) . The departmental appeal was rejected *vide* order dated 02.05.2019 (Copy: Annexure- A 20). Hence, present claim petition.

3. Counter affidavit has been filed on behalf of respondents stating therein that since the claim petition is devoid of merits, therefore, the same is liable to be dismissed with costs. What are the principal grounds of challenge to the impugned order? Ld. Counsel for the petitioner replied that- (i) Principal Secretary to the Government, *vide* order dated 16.04.2018 (Annexure: A-13) never indicted the petitioner, (ii) report of the inquiry officer is non-speaking report, which is solely based upon the recommendation of Superintending Engineer (Annexure: A- 15) and (iii) the appellate authority's order is also a non-speaking order. Ld. A.P.O., on the other hand, defended departmental action taken against the petitioner, arguing that the petitioner, as Junior Engineer, has wrongly made the entry in the measurement book and Principal Secretary to the Govt. in Minor Irrigation Department, never exonerated the petitioner. Ld. A.P.O. further submitted that the Principal Secretary to the Govt. has taken a view that 50% of the loss caused to the Govt. be recovered from the Executive Engineer and the balance 50% be recovered from other Govt. officials including the officials of the Accounts Department.
4. The Engineer-in-Chief/HOD, Minor Irrigation Department, Uttarakhand, *vide* Office Order dated 04.12.2018 awarded two minor punishments to the petitioner- (i) recovery of Rs.3,78,048/- and (ii) stoppage of two annual increments for a period of one year.
5. Office Order dated 04.12.2018 was based upon the recommendations of Superintending Engineer, Minor Irrigation Division Pithoragarh dated 15.05.2018. The punishment was awarded taking recourse to Rule 3(a) Clause (2) Para 2 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 [*as mentioned in the impugned order*] (for short, Rules of 2003). The impugned order dated

04.12.2018 has been passed by the disciplinary authority on the basis of recommendations given by the Superintending Engineer. There is no provision in the Rules of 2003 to seek recommendation / suggestion by the disciplinary authority from the subordinate officer, rather the Rule specifically creates a bar for such recommendation, therefore, the same appears to be bad in the eyes of law. The inquiry report was submitted to the Govt. and the Principal Secretary issued a letter on 16.04.2018, directing the Chief Engineer/ HOD to take final decision on merits. The Chief Engineer/ HOD requested the Superintending Engineer to propose the punishment. Such request is unknown to service jurisprudence inasmuch as the S.E. was neither an inquiry officer nor the disciplinary authority to suggest or recommend the punishment. The S.E. issued letter on 15.05.2018, whereby punishment was suggested and recommended against the petitioner in two parts- *i.e.* (i) recovery of Rs. 3,78,048/- and (ii) stoppage of two annual increments for one year (Annexure: A -15). A final order was passed on 04.12.2018, which is impugned in present claim petition and runs contrary to the Rules of 2003. It may be noted here that the Office Order dated 04.12.2018 is purely based upon the recommendations of S.E.. The Disciplinary Authority/ Engineer-in-Chief (HOD) should have given his own findings as to whether the delinquent petitioner is guilty or not and if he was guilty, what punishment was to be awarded to him. The impugned order dated 04.12.2018 does not mention anything to indicate that the disciplinary authority, while issuing the impugned order has applied his mind, while holding the petitioner guilty of misconduct and awarding him punishment. It also appears that the reply filed by the petitioner was not considered while passing the order dated 04.12.2018. The inquiry officer should also have considered the reply (to the notice) given by the charged official. Office Order dated 04.12.2018 is liable to be set aside on these grounds alone, leaving it open to the disciplinary authority to pass a fresh speaking order, in accordance with law.

6. Further, the order passed by the appellate authority on 02.05.2019 suffers from the same vice. In the appellate order dated 02.05.2019, in para 4, it has been indicated that the petitioner has moved a representation for reviewing the order dated 04.12.2018. The statutory

appeal filed by the petitioner is not a representation. Further, statutory appeal is also not a review application, which has been rejected in the impugned order dated 02.05.2019 of the appellate authority. The appellate authority has simply dismissed the departmental appeal of the delinquent petitioner by saying that no new fact has emerged in a representation/ appeal of the petitioner. It has also been mentioned in the appellate authority's order that the facts, which have been mentioned in the representation, have already been taken cognizance by the inquiry officer/ department. Consequently, the appellate authority's order mentions that the representation/ appeal dated 18.01.2019 (Annexure: A-19) of the petitioner, the then Junior Engineer, is dismissed being devoid of force. It has not been decided on merits. Nothing has been mentioned therein to indicate that the appellate authority has decided the appeal on merits. The departmental appeal has, probably, been taken for reviewing the order, on representation. A statutory appeal should always be decided on merits, and also taking into consideration the grounds taken in the memo of appeal.

7. The delinquent petitioner has made an endorsement on the Bill NO. 013/08-09, which has been addressed to the Executive Engineer, Minor Irrigation Division, Pithoragarh, for Maihar Cement, as below:

“Entered in MB No. 07/9192

Page. No. 1315 Dated 04.07.2008

Sd/-

Junior Engineer”

8. It is the submission of Ld. Counsel for the petitioner that petitioner only made an entry of payment and has not made an entry regarding the particulars of the cement bags. Ld. A.P.O., on the other hand, submitted that by making an endorsement on the bill, the petitioner has, along with others, made an endorsement that the cement bags have been received. Further, a departmental inquiry committee was also constituted which submitted its report on 06.07.2011 holding that the petitioner along with Chief Assistant (Cashier), Divisional Accounts Officer and Executive Engineer was also responsible for making advance payment despite the fact that 9557

bags were not received by the establishment of Executive Engineer, Minor Irrigation Division, Pithoragarh.

9. The letter dated 16.04.2018, written by Principal Secretary to the Govt. in Minor Irrigation Department, which has been addressed to Engineer-in-Chief/ HOD, directed the appointing authority/HOD to take a decision on the involvement of the petitioner, on the basis of merits. Whereas Ld. Counsel for the petitioner submitted that the petitioner was never indicted by the Principal Secretary, Ld. A.P.O. contended that the petitioner was not exonerated by the Principal Secretary either. We find force in the contention of Ld. A.P.O. that the Principal Secretary in his letter dated 16.04.2018 has, if not indicted, has not exonerated the delinquent petitioner either.
10. Ld. Counsel for the parties pointed out that the petitioner has already retired and an amount of Rs. 3,78,048/- has already been recovered from him.
11. Without entering into further details, it will be suffice to say that both the impugned orders dated 04.12.2018 and 02.05.2019 were not passed on merits, as per law and, therefore, the impugned order dated 04.12.2018 passed by Respondent No.2 (Annexure: A-16) as well as impugned order dated 02.05.2019 (Annexure: A-20) are liable to be, and are accordingly, set aside leaving it open to the disciplinary authority to pass a fresh reasoned and speaking order, in accordance with law. Refund of the recovered amount from the petitioner along with interest, if any, shall abide by the decision(s) of the authorities concerned.
12. The claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 15, 2021
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