

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.149/SB/2019

Sri S.S. Yadav, aged about 54 years, s/o Late Sri G.L. Yadav presently working and posted on the post of officiating Superintending Engineer, Public Works Department, Head Quarters, Uttarakhand, Dehradun.

.....**Petitioner**

vs.

1. State of Uttarakhand through Secretary, P.W.D., Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Engineer in Chief, Public Works Department, Yamuna Colony, Dehradun.

.....**Respondents**

Present: Sri L.K.Maithani, Advocate, for the Petitioner.
Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: OCTOBER 17, 2025.

Justice U.C. Dhyani (Oral)

An application was moved by Sri L.K.Maithani, Ld. Counsel for the petitioner for fixing the claim petition for hearing.

2. He submitted that Hon'ble High Court of Uttarakhand at Nainital has rendered a judgment on 03.09.2025 in WPSB No. 187/2022, therefore hearing of claim petition is required.

3. The Tribunal directed the Registry to summon the original record, which has been placed before the Bench today.

4. Copy of the judgment dated 03.09.2025 rendered by Hon'ble High Court has been filed in the Tribunal, with notice to Sri V.P.Devrani, Ld. A.P.O. It will be useful to reproduce the entire judgment of the Hon'ble Court hereinbelow, for convenience:

"The petitioner has filed the present Writ Petition praying for the following reliefs:

- i. *To set aside the impugned judgment dated 27.12.2021 passed by the learned Uttarakhand Public Service Tribunal in claim petition No. 149/DB/2019 "S.S.Yadav vs. State of Uttarakhand and others" (Annexure No.1 to this writ petition) and impugned judgment dated 13.01.2021 passed by the learned Uttarakhand Public Service Tribunal in Review Application No. 1/DB/2022 "S.S. Yadav vs. State of Uttarakhand and others" (Annexure No. 2 to this writ petition).*
 - ii. *Issue a writ, order or direction in the nature of certiorari quashing the impugned punishment order dated 13.01.2016 (Annexure No. 11 to this writ petition) passed by respondent no. 1 and impugned order dated 03.04.2018 and 03.05.2018 passed by respondent no.1 (Annexure No. 18 and 24 to this writ petition).*
 - iii. *Issue a writ, order or direction in the nature of mandamus directing the respondent concerned to provide the all service benefits to the petitioner keeping in abeyance the orders under challenge those are penal in nature.*
 - iv. *Issue a writ, order or direction in the nature of mandamus directing the respondent-authorities to give the fresh look on the representations of the petitioner dated 16.07.2016, 02.02.2017 and 21.04.2017 and pass the fresh order after hearing the petitioner and also effected office bearer taking into account the file noting dated 15.12.2020 received through RTI dated 27.07.2021 (Annexure No. 27 to the writ petition).*
3. The counsel for the petitioner submits that vide order dated 13.01.2016, Special Adverse Entry was given to the petitioner, which came to his knowledge in June, 2016 and the representation submitted against the said order was rejected by respondent no.1 on 03.04.2018. The petitioner challenged the said Order in Claim Petition No. 149 /DB/2019 on 25.11.2019 and there was a delay of 208 days as the Limitation of one year expired on 03.04.2019. The Claim Petition was dismissed vide order dated 27.12.2021 on the ground of Limitation and the Review Application was also dismissed on 13.01.2022. The aforesaid orders are challenged in the present Writ Petition.
3. Learned counsel appearing for the petitioner submits that in a similar matter, the Coordinate Bench of this Court in Writ Petition (S/B) No. 163 of 2025, Constable 23 N. P. Ganesh Prasad vs. State of Uttarakhand & others, had condoned the delay of 195 days and the matter was remitted back to the Tribunal for consideration and disposal on merits.
4. The counsel for the State does not dispute the said facts.
5. Learned counsel for the petitioner further drew the attention of this Court on para 31 of the impugned order dated 27.12.2021, wherein the learned Tribunal has observed as hereunder:

“Limitation is for the Tribunal, not for the Govt. We have observed that the impugned punishment ought not to have been given to the petitioner, for various reasons, enumerated herein above. The Govt. can always review or revise its own order. No time limit has been prescribed for the Govt. to do the same. Although the claim petition has substance on merits, but since the same has been filed beyond limitation period, therefore, no direction can be issued to the respondent authorities.”

6. Thus, learned counsel for the petitioner contends that the petitioner is entitled for the benefit of the order passed by his Hon'ble Court in Writ Petition (S/B) No. 163 of 2025, as the learned Tribunal has though observed that the claim petition has substance on merits but the same has been dismissed on the ground of Limitation.

7. Having heard learned counsel for the parties, the Writ Petition is disposed of finally in terms of the order dated 23.05.2025, passed in Writ Petition (S/B) No. 163 of 2025. The order passed by learned Public Service Tribunal dated 27.12.2021 and 13.01.2022 are set aside and the matter is remitted back to the learned Tribunal for consideration and disposal on merits.

8. The Writ Petition stands ordered accordingly.”

[Emphasis supplied]

5. It may be noted here that the claim petition No. 149/DB/2019 was disposed of by the Tribunal *vide* order dated 27.12.2021. Although the Tribunal had observed that the claim petition has substance on merits, but since the same was filed beyond limitation period, therefore, no direction could be given to the respondent authorities. Operative portion of the judgment dated 27.12.2021 reads as under:

“33. It has been observed earlier that the Tribunal does not feel it necessary to discuss the merits of the claim petition further, as the claim petition is clearly barred by limitation.

34. The Tribunal also refrains from issuing any direction, leaving it open to the Govt. to review/ revise its own decision, if considered appropriate, as per law.

35 The claim petition is dismissed, as barred by limitation. No order as to costs”

6. Observation for reviewing/ revising its decision by the Government was given in view of Rule 14 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, which reads as below:

“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.”

31. Limitation is for the Tribunal, not for the Govt. We have observed that the impugned punishment ought not to have been given to the petitioner, for various reasons, enumerated herein above. The Govt. can always review or revise its own order. No time limit has been prescribed for the Govt. to do the same. Although the claim petition has substance on merits, but since the same has been filed beyond limitation period, therefore, no direction can be issued to the respondent authorities.”

7. Review petition was filed by the petitioner, which was dismissed.
8. The facts, giving rise to filing of the claim petition, are as under:

At the time of filing the claim petition, the petitioner was working and posted as Officiating Superintending Engineer (Civil) at Headquarters under the Respondent Department.

In the year 2007, for the construction of Nauli Suspension Bridge at river Pinder, Karanprayag, tender was invited by the then Executive Engineer without getting any technical approval. At that time, the petitioner was posted as Executive Engineer, Berinag. There was no role of the petitioner while recommending and inviting tender for the said project.

He was transferred from Berinag to Provincial Division, P.W.D., Karanprayag in October, 2007. After joining in Provincial Division, P.W.D., Karanprayag, the tender was opened by the petitioner on 20.12.2007. The work was started.

At the level of Superintending Engineer, the estimate was kept pending for two months. The Chief Engineer, Garhwal, after 23 days, made objections in the estimate and returned the same to Superintending Engineer on 17.05.2008. The petitioner removed the objections and thereafter sent the same to the Chief Engineer vide letter dated 23.05.2008, on which the Chief Engineer, Pauri gave his technical approval vide letter dated 03.06.2008.

According to the petitioner, there was no delay on his part in seeking technical approval. The delay was on the part of higher authority, due to which the first tender holder denied to extend the validity of tender beyond 20.03.2008. There was no fault or negligence on the part of the petitioner, but the respondents initiated departmental proceedings against the petitioner.

A charge sheet was issued to him, details of which have been given in para 4(iii) of the claim petition. Petitioner submitted his reply to the enquiry officer and denied the charges levelled against him. After enquiry, respondent

No. 1, vide impugned order dated 13.01.2016, punished the petitioner by awarding special adverse entry (Annexure No. A-1).

In para 4(v) of the claim petition, it has been indicated that the impugned order dated 13.01.2016 was never communicated to the petitioner and came to his knowledge only in June, 2016, when he received a copy of minutes of D.P.C.

Aggrieved by the said order, petitioner submitted his detailed representation to respondent No. 1 on 16.07.2016, with all documentary proof in support, but the respondent No. 1 did not pay heed to such representation of petitioner. The petitioner again moved reminders on 20.02.2017, 21.04.2017 and 21.08.2017 to respondent No. 1. Respondent No.1, vide office order dated 03.04.2018, rejected his representation.

According to the petitioner, charge sheet was issued to him by inquiry officer and not by the disciplinary authority and as such, the inquiry officer was appointed even before issuing the charge sheet, which is against rules. The petitioner was never called in the inquiry. No show-cause notice was given to him before passing impugned punishment-order. The whole proceedings have been conducted in violation of principles of natural justice. Special adverse entry has not been mentioned, as penalty, in Rule 3 of the Discipline and Appeal Rules, 2003. Even on merits, the impugned punishment-order is liable to be set aside, for the reason that the petitioner was not guilty of misconduct levelled against him. According to the petitioner, he is entitled to the reliefs claimed.

3. Counter affidavit has been filed on behalf of respondents No. 1 & 2 denying material averments mentioned in the claim petition.

4. Rejoinder affidavit has been filed against the counter-affidavit filed on behalf of respondent No. 1 & 2. In the rejoinder affidavit, the facts mentioned in the claim petition have been reiterated.”

9. Issue of limitation was discussed by the Tribunal in the judgment dated 27.12.2021. But the delay has been condoned by the Hon’ble Court, therefore, no useful purpose would be served by reproducing those paragraphs of the judgment. The claim petition was discussed on merits. It will be appropriate to reproduce those paragraphs of the judgment dated 27.12.2021, which relate to the merits of the claim petition, as under:

“ DISCUSSION ON MERITS

22. Amended Rule 7, as substituted by the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010, which govern the field, are excerpted hereunder:

“ 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

7. Procedure for imposing major punishment.-Before imposing any major punishment on a government servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge sheet. (4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet, whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings 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 recorded findings 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 findings recorded related to every charge and representation of 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.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub-rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub-rule (8), he will forward the following to the Inquiry Officer, namely:

(a) A copy of the charge sheet and details of misconduct or misbehavior;

(b) A copy of written defence statement, if any submitted by the government servant;

(c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;

(d) A copy of statements of evidence referred to in the charge sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to the produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses

mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any of such evidence, as provided earlier, and may examine, cross examine and re-examine him.

(17) This rule shall not apply in following case; *i.e.* there is no necessity to conduct an inquiry in such case:-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an inquiry in the manner provided in these rules."

23. In the instant case, there has been breach of such rule, as has been stated by the petitioner in this claim petition.

24. Although Id. A.P.O. argued that the impugned order has not been given as punishment, this Tribunal is of the view that impugned order has been passed as punishment and such punishment has not been prescribed in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003.

25. The punishments which has been provided in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, are as follows:

“(a) Minor Penalties:

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;

- (iv) Fine in case of persons holding Group “D” posts

Provided that the amount of such fine shall in no case exceed twenty five percent of the month's pay in which the fine is imposed.

(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.”

26. It is evident from the record that the impugned order has been passed as punishment, which has not been prescribed as such under the Discipline and Appeal Rules, 2003 (*supra*). Therefore, the same is not sustainable in law.

27. Impugned order dated 13.01.2016 was passed by the disciplinary authority. When the petitioner moved statutory representation against the same, it was not placed before the Hon'ble Chief Minister (Hon'ble Departmental Minister). While the disciplinary authority took the approval of Hon'ble Chief Minister, while awarding impugned punishment, no such approval was taken from the Hon'ble Chief Minister while deciding statutory representation, communicated through office order dated 03.04.2018, which is a big lacuna in the present case.

28. While learned A.P.O. submitted that the delinquent Petitioner should not have opened the tender without obtaining technical sanction, Learned Counsel for the petitioner submitted that the petitioner was transferred from Berinag to Provincial Division, P.W.D., Karanprayag, in October, 2007 and after joining in Provincial Division, P.W.D., Karanprayag, the tender was opened by him on 20.12.2007. The work was started. At the level of Superintending Engineer, the estimate was kept pending for two months. The Chief Engineer, Garhwal, after 23 days, made objections in the estimate and returned the same to Superintending Engineer on 17.05.2008. The petitioner removed the objections and thereafter sent the same to the Chief Engineer *vide* letter dated 23.05.2008, on which the Chief Engineer, Pauri, gave his technical approval *vide* letter dated 03.06.2008. There was no delay on his part in seeking technical approval. The delay was on the part of higher authority, due to which the first tender holder denied to extend the validity of tender beyond 20.03.2008. There was no fault or negligence on the part of the petitioner, but the respondents initiated departmental proceedings against the petitioner.

29. The Tribunal would have dealt with the merits of the claim petition further, but no useful purpose will be served by increasing the volume of the judgment by expanding the pages. The same is not going to add to the weight of the judgement.”

10. Besides the above, it has been argued on behalf of petitioner that-

(i) As per provision of Para 318 of the Financial Hand Book Vol VI and Para 2 (ch) and (chh) of G.O. No. 189 dated 12.05.1999, the preparation of estimate and obtaining of technical sanction should be completed prior to the commencement of work and no tender can be invited without preparation of bill of quantity which is part of estimate/ technical sanction. Thus technical sanction was to be obtained/ made prior to inviting tender. The tender was invited on 25.09.2007, on which date the petitioner was not in the division and transferred to the division only on 05.10.2007, thus charge of delay in preparation of estimate and technical sanction was not made out against the petitioner. (*already discussed earlier*)

(ii) Validity of tender was up to 20.03.2008. After joining in the division, the tender was opened by the S.E., Gopeshwar on 20.12.2007 and thereafter developed the design and drawing of the bridge and completed all the proceedings within a short period of two months. Detailed estimate was sent to the Superintending Engineer for approval *vide* letter No. 449/IC dated 23.02.2008, prior to expiry of the validity, but at the level of S.E., the estimate was sent to Chief Engineer, Garhwal, for technical sanction after a delay of two months on 24.04,2008. Thus, there was no delay on the part of the petitioner. From the noting of the Government, received under RTI, (Annexure: A-30), it is revealed that respondents admitted that delay in the matter of estimate was on the part of the then Superintending Engineer Sri K.P.Joshi, who was appointed as inquiry officer in the matter and disciplinary action should have been taken against all other officers responsible for inviting tender. There was no justification for maintaining the special adverse entry awarded to Sri S.S.Yadav only. (*already discussed earlier*)

(iii) In the similar matter, Sri Mahendra Kumar, the then Assistant Engineer, whose liability under the para 2(z) of G.O. dated 12.05.1999 is 70%,

has been exonerated and charge-sheet was quashed by the Additional Chief Secretary, P.W.D. on 07.01.2019, thus, punishment for the petitioner, whose liability is only 30% is wrong and illegal.

11. In reply, Ld. A.P.O. submitted that the department has duly followed the relevant procedure of Para 318 of the Financial Hand Book Vol. (VI) and its para 2 (ch) and (chh) of G.O. No. 189 dated 12.05.1999 in preparation of estimate and obtaining technical sanction before commencement of work. The petitioner committed delay in preparation of estimate and technical sanction. The said allegation /charge was found proved against the petitioner. Hence, he has rightly been punished by awarding special adverse entry for dereliction of duty.

12. The Tribunal, while deciding the claim petition on 27.12.2021, had already discussed the merits of the case and it had found that the claim petition has substance on merits. No direction was given to the respondent authority, simply because the Tribunal found that the claim petition is barred by limitation in view of in view of Section 5(1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976, which delay has now been condoned by the Hon'ble High Court *vide* order dated 03.09.2025. **Nothing remains to be added further, except to reiterate that there has been breach of amended Rule 7, as substituted by the Uttarakhand Government Servant (Discipline & Appeal) Amendment Rules, 2010; the impugned order was given to the petitioner as punishment, which (punishment) has not been prescribed in the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003; whereas impugned order dated 13.01.2016 was passed by the disciplinary authority after approval of the Hon'ble Chief Minister (as Hon'ble Departmental Minister), no such approval was taken from the Hon'ble Chief Minister while deciding the statutory representation, communicated through office order dated 03.04.2018, therefore, the order impugned is not sustainable in law.**

It has been informed to the Bench that the petitioner has retired on 28.02.2025.

13. For the reasons indicated herein above, the impugned order is hereby set aside, leaving it open to Respondent No.1, to initiate departmental enquiry afresh, if he is so advised, but only in accordance with law. The claim petition is, accordingly, disposed of.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)
(virtual)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 17, 2025
DEHRADUN

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