

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

Present: Hon'ble Mr. Rajendra Chauhan ,

----- Acting Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO. 71/DB/2019

Suresh Chandra S/o Shri Raja Ram aged about 53 years, Executive Engineer,
Minor Irrigation Department Uttarakhand, Rudraprayag, R/o 292, Vasundhra
Enclave, Shimla Bypass Road, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through its Secretary, Minor Irrigation Department
Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Secretary to the Govt. of Uttarakhand, Minor Irrigation Department, Secretariat,
Subhash Road, Dehradun.

....Respondents

Present: Sri LK Maithani , Advocate, for the petitioner.

Sri V.P.Devrani, Ld. A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 21, 2026

This claim petition was filed before the Tribunal on 17.06.2019. This petition was decided by this Tribunal vide judgment/order dated 29.05.2020. The respondent department appealed against the order of the Tribunal in the Hon'ble High Court of Uttarakhand at Nainital by way of writ petition being WPSB No. 337/2021, which was decided by the Hon'ble High Court vide judgment/order dated 05.03.2025, by setting aside the aforesaid Tribunal's order dated 29.05.2020 and restored the claim petition with the order to decide the claim petition on merits.

2. Relevant paragraphs of the judgement of the Hon'ble High Court dated 05.03.2025 are being reproduced herein below for convenience:

"14. In the present case there is no finding by learned Tribunal that the punishment imposed upon the respondent is shockingly disproportionate to the gravity of charge.

15. -----

16. -----

17. -----

18. Be that as it may, while exercising power of judicial review in such matters, this Court does not sit in appeal over the punishment order by reassessing evidence and this Court has to examine as to whether disciplinary inquiry was held, as per the applicable rules, or the charge-sheeted employee was given reasonable opportunity of defending himself. This Court will not examine evidence so as to ascertain the extent of culpability of the petitioners, in its writ jurisdiction.

19. As discussed above, impugned judgment nowhere indicates that the punishment of withholding of increments with cumulative effect is shockingly disproportionate to nature and gravity of charges. No reason has also been indicated for interfering with the quantum of punishment except that it is excessive. For the reasons indicated above, impugned judgment dated 29.05.2020 deserves to be set aside and the same is accordingly set aside.

20. Claim Petition No.71/DB/2019 is restored to the file of learned Tribunal. Learned Tribunal shall decide the claim petition filed by respondent, on merits afresh."

3. By way of this claim petition, the petitioner has sought the following reliefs:

"(a) The impugned order (ANNEXURE-A1) be kindly held illegal, against rules, orders and principles of natural justice, wrong and be kindly quashed and set aside;

(b) The petitioner be kindly allowed against the respondents any other relief in addition to or in substitution or modification of the above

reliefs as this Hon'ble Tribunal deems fit and proper in the context of the facts and law; and

(c) Rs.20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."

4. Facts, in brief, of the present claim petition, are as follows:

4.1 The petitioner was initially appointed as Assistant Engineer on the basis of selection and recommendations of the U.P. Public Service Commission. In the year 2009-10, the petitioner was posted as Executive Engineer in Minor Irrigation Division, Udham Singh Nagar. He was also given additional charge of Executive Engineer, Minor Irrigation Division, Nainital and Almora divisions. He was also discharging the duties of Superintending Engineer In-charge, for Udham Singh Nagar. At that time, in these three divisions, about 1240 projects were under progress.

4.2 Respondents served a charge sheet dated 29.08.2017 upon the petitioner (charge sheet along with reports- Annexure: A3, A4 and A5). The allegations of irregularities committed in the construction of a tank and protection wall, constructed during the year 2009-10 in *Tok Kuvali*, under Nainital *Vikas Khand*, *Okhla Kanda Samuhik Sinchai* Project, were levelled against the petitioner and his subordinates. This charge sheet was based on preliminary inquiries conducted by the District Magistrate, Nainital and Superintending Engineer, Pithoragarh. The petitioner submitted replies to the charge sheet, denying allegations *vide* reply dated 12.09.2017 and Supplementary reply dated 09.10.2017 (copies Annexure-A6 and A7). Disciplinary inquiry was conducted against the petitioner. The punishment was imposed upon him on the basis of the inquiry report. *Vide* Office Memorandum dated 07.05.2019 (Copy Annexure: A1), the petitioner was awarded the following punishments:

- (i) Recovery of Rs. 3478.89, which was 7.5% of the government loss Rs. 46385.24;
- (ii) Stoppage of two increments with cumulative effect.

4.3 The petitioner has filed copies of relevant documents in support of his claim petition. The reference of these documents shall be given during the course of discussion, as and when required.

5. Counter Affidavit has been filed on behalf of the respondent State, justifying departmental action, along with relevant documents.

5.1 It has been stated in the C.A. filed on behalf of respondents that the matter arose from a complaint regarding irregularities in the measurement and payment of work relating to the construction of an irrigation tank and protection wall under the Community Irrigation Scheme at village Tok Kuvali, Nainital. An inquiry conducted by the C.D.O., Nainital, and subsequently an independent inquiry by the District Magistrate confirmed serious irregularities, including false measurements and payments, causing a financial loss of Rs. 46,385.42 to the Government. The District Magistrate also found the role of the Gram Pradhan doubtful and recommended action against the concerned Additional Assistant Engineer.

5.2 On the basis of the inquiry, the Additional Assistant Engineer was suspended and a departmental inquiry was initiated. During the subsequent inquiry, the petitioner, who was the then Executive Engineer, along with the concerned Assistant Engineer, was also held responsible for the loss caused to the Government. A charge-sheet was issued to the petitioner, who submitted his replies and participated in the inquiry. It was found in the inquiry that the petitioner had made payment for certain works without personally inspecting the work at the site and had relied only on the recommendation of the Assistant Engineer, while the Junior Engineer and Assistant Engineer were held responsible for wrong measurements and entries in the Measurement Books.

5.3 Based on the inquiry report and the guidelines contained in G.O. dated 05.09.2008, the competent authority passed the punishment order dated 07.05.2019, after consultation with the Uttarakhand Public

Service Commission. It was also stated that approval of the Governor was not required under the applicable rules. No action was taken against the then Assistant Engineer, as he had already retired long before.

6. Rejoinder affidavit has been filed by the petitioner. It has been stated in the R.A. that preliminary enquiry conducted by the C.D.O., Nainital was conducted behind the back of the petitioner or without giving him an opportunity of defense, and neither the complainant nor the C.D.O. was examined by the Inquiry Officer. It was also submitted that he was denied an opportunity to make submissions against the U.K.P.S.C. report and that his defense was not properly considered. The petitioner further relied upon the Government Order dated 05.09.2008, contending that only recovery of loss was contemplated and not disciplinary proceedings, and asserted that no misconduct or negligence was committed by him and that the alleged loss was not attributable to him.

7. We have heard Learned Counsel for the petitioner, Learned A.P.O. as well and have gone through the documents submitted by the parties.

8. Learned counsel for the petitioner argued that the regular inquiry has been conducted as per Rule -7 of Uttarakhand Government Servants (Discipline and Appeal) Rules 2003 as amended Rules 2010. No witnesses were examined by the inquiry officer in the inquiry and the petitioner also could not cross- examine the witnesses. The documents based on which the charges were framed were not verified during the inquiry. The charge sheet dated 29.08.2017 is based on preliminary inquiries conducted by the District Magistrate, Nainital and Superintending Engineer, Pithoragarh, in the absence of the petitioner. He had no opportunity to place his case before these officers. The reports of District Magistrate, Nainital and Superintending Engineer, Pithoragarh could not have been taken as evidence, therefore, the

charge sheet is wholly illegal. There is clear cut violation of the Rule 7(3) and 7(11) of the aforesaid rules of 2003 amended in 2010 . This is against law laid down by the Hon'ble Apex Court in WP -197578 of 2025 in the matter of *Rajesh Kumar Vs State of Uttar Pradesh and others* and the decision rendered in *State of Uttaranchal and others v. Kharak Singh, (2008) 8 SCC 236* .

8.1 Ld. Counsel for the petitioner further argued that the inquiry officer was also not from the department but from the other department, which is also violation of the Rules of 2010. The inquiry nowhere establishes the involvement of the petitioner in the said matter. As the verification of the work was done by the Additional Assistant Engineer and the petitioner is not liable for any loss incurred, but minor punishment has been given to the Addl. Assistant Engineer and the petitioner has been given major punishment which is against doctrine of parity. This is contrary to the decision of the Hon'ble Apex Court rendered in the SLP No 20130 SC (153) *Rajendra Yadav Vs State of MP and others* . The petitioner was discharging the duties of the post of the Executive engineer Almora and Nainital as well as In charge Superintending Engineer along with his duties in Udham Singh Nagar.

8.2 It is further argued by the Ld. Counsel for the petitioner that a copy of the report of the Uttarakhand Public Service Commission (UKPSC) was not given to the petitioner and no opportunity to represent against the report was given to him. Which is against the decision of the Hon'ble Apex Court in the WP No. 2011 (2) *UOI Vs SK Kapoor* , in which it has been ordered that if any material and others is relied upon in the departmental inquiry, a copy of the same must be supplied in advance to the charge sheeted employees to give them the chance to rebut the same. In view of the above the impugned order dated 07.5.2019 is liable to be set aside and the claim petition is liable to be allowed.

9. Learned A.P.O argued that the complaint regarding irregularities, measurement and payment of the Tank/Protection wall of Community Irrigation Scheme at village *Tok Kuvali, Mahtoli Block Okhalkanda*, District Nainital, was enquired into by C.D.O., Nainital and the inquiry report was sent to the Government *vide* letter dated 17.05.2014. The Secretary, Minor Irrigation, Government of Uttarakhand, forwarded the inquiry report dated 17.05.2014 to the Chief Engineer, Minor Irrigation Department *vide* letter dated 15.07.2014. The Chief Engineer is the appointing authority of the Junior Engineer/(Addl. Assistant Engineer). A report was called from Executive Engineer. Relying upon the report of the Executive Engineer, Minor Irrigation, Nainital, a report *vide* letter dated 01.11.2014 was sent to the Secretary, Minor Irrigation Department, considering that the role of the *Gram Pradhan* is dubious and recommending that an *independent inquiry* should be conducted.

9.1 Ld. A.P.O. has further argued that the District Magistrate, Nainital and Superintending Engineer Pithoragarh conducted independent inquiries and submitted their reports, which confirmed the irregularities and false measurement/ payment. Based on the inquiry reports of the District Magistrate, Nainital, and Superintending Engineer Minor Irrigation Pithoragarh, a charge sheet was issued against Sri Suresh Chandra (petitioner), the then Executive Engineer, Minor Irrigation Department and Sri Shiv Mangal Singh, the then A.E.(since retired), The petitioner was asked to submit his reply and on receiving the reply , the Chief Engineer, Irrigation Department, was appointed the inquiry officer *vide* O.M. dated 19.12.2017.

9.2 The inquiry officer (Chief Engineer, Irrigation Department) conducted the inquiry and inspected the site. At the time of inspection, both the petitioner and Sri D.R. Arya, Addl. A.E. were present at the working site, but they did not submit any document or furnish explanation except the one which was submitted by him earlier. The

inquiry officer found that the petitioner made wrong payment of certain works, which caused financial loss of Rs. 46385.42 to the government. The petitioner, in his written reply, had submitted that in addition to his substantive post he was also in charge of two divisions and one circle, therefore he made payment on the recommendation of the Assistant Engineer. Learned A.P.O. argued that the petitioner made the payment of the works done on the recommendations of the Assistant Engineer without visiting the site. So the petitioner is also responsible for the irregularities, besides Junior Engineer and Assistant Engineer, who were held guilty of wrong measurements and wrong entries in the Measurement Books, along with other irregularities.

9.3 The punishment order was passed by the competent authority *vide* letter dated 07.05.2019, based on the findings in the inquiry and in consultation with the Uttarakhand Public Service Commission *vide* letter No.2 dated 01.04.2019.. The approval of the governor was not required under the rules. Sri Shiv Mangal Singh, the then Assistant Engineer was also involved in the matter, but since he had retired long ago, therefore, no action was taken against him. In view of the above the claim petition is liable to be dismissed.

10. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the petitioner has been awarded one major and another minor penalty, viz. (i) withholding two increments with cumulative effect and (ii) the recovery of money for the loss caused to the government.

10.1 The procedure to be followed in cases of minor punishment, as per Uttarakhand Government Servant (Discipline and Appeal) Rules 2003 and amendment Rules, 2010 is as follows:-

“Procedure for imposing minor penalties.—(1) where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule-3

(2) The Government Servant shall be informed of the substance of the imputations within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated the concerned Government Servant."

Rule -7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules 2003 and amendment Rules, 2010 reads as below:

"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 defense 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 defense. 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 defense 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 "Presiding 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 Presiding 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 is 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 the following case i.e. there is no necessity to conduct an inquiry in such cases-

(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 enquiry in the manner provided in these rules.”

10.2 It is settled principle of law that the procedure prescribed for major penalty may be adopted while awarding minor penalty, but the converse is not true. In the instant case, procedure meant for major penalty was adopted and both types of punishments were given to the delinquent petitioner.

10.3 The charges against the petitioner in the Charge Sheet are that the work relating to stone masonry and cement pointing, as mentioned in the Measurement Book and shown to have been constructed, was not, at all, available on the site. The second imputation is that the measurements of irrigation tank and protection wall were wrongly depicted in the Measurement Book. There was no coherence between the actual measurement of irrigation tank and retainer wall, as on the spot, and the recorded measurement of the same in the Measurement Book.

10.4 The inquiry was conducted by Sri Mukesh Mohan, Chief Engineer, Irrigation Department. The petitioner has denied the charges levelled against him. No oral evidence was offered against the delinquent petitioner. Three documents were enclosed with the charge sheet. These documents are- (i) the inquiry conducted by the District Magistrate (ii) the inquiry conducted by Superintending Engineer, Minor Irrigation, Circle, Pithoragarh and (iii) copy of the Conduct Rules of 2002. So far as the inquiries conducted by the District Magistrate and Superintending Engineer are concerned, they were in the form of preliminary inquiries as far as the petitioner is concerned. There was no occasion for the petitioner to have participated in the same. A perusal of

the preliminary inquiry report of S.E., Minor Irrigation, would indicate that the same dealt, not only with the role and involvement of *Gram Pradhan, Up Gram Pradhan, Addl. Assistant Engineer and Junior Engineer*, but also of the Executive Engineer in the light of G.O. of 2008. This preliminary inquiry report of S.E. was filed as documentary evidence in support of charge sheet. The preliminary inquiries indicated that the officers of the *Gram Sabha*, Assistant Engineer and Junior Engineer admitted their mistakes and agreed to make good the loss to the government. The preliminary inquiries are fact finding inquiries, in which, normally, there is no participation of the delinquent employee. The petitioner did not participate in the inquiry but others who participated were mentioned in the report. The role of Executive Engineer was highlighted in the report of S.E. Minor Irrigation, in the light of G.O. of 2008, which was one of the documentary evidence in support of charge sheet. The preliminary inquiry reports indicated irregularities in the project, for which, the officers of *Gram Sabha* and subordinates of the petitioner were held guilty. There was carelessness or negligence on the part of the petitioner, who was partly responsible, as supervisory officer, for release of money, without verification of the constructions on the site *vis-à-vis* entries in the Measurement Book.

10.5 Three documents were enclosed with the charge sheet , two preliminary reports by District Magistrate Nainital, Superintending engineer Minor irrigation Pithoragarh out of which, one was copy of the Rules of 2003. There are no witnesses mentioned in the charge sheet, the inquiry report consists of the submission of the charged officer against each charge and the conclusion of the Inquiry officer. During the course of inquiry the charged officer did not submit any document/information in his defense. The site inspection was done by the inquiry officer in the presence of the petitioner.

10.6 Second show cause notice was given to the petitioner on 03.10.2018 by the Principal Secretary, Minor Irrigation Department,

Govt. of Uttarakhand. In his reply to such a second show cause notice, petitioner quoted an observation of Hon'ble High Court of Uttarakhand in WPSB No. 171/2005, Paramjeet Singh vs State of Uttarakhand, as below:-

“Shri Paramjeet Singh, Executive Engineer (petitioner herein) was held responsible only for supervision, verification, drawing and disbursing. Even in the charge sheet issued to the petitioner on 27.07.2005, the only charge is that he had not physically verified the work as per the standard and failed to discharge his supervisory duties as Drawing and Disbursing Officer as a result of which illegal payment were made. The Executive Engineer has to conduct verification of only 1 to 2% of the measurement. Therefore, the petitioner cannot be expected to verify the entire work. Even though the petitioner was the Drawing and Disbursing officer, he passed the bills on the basis of the verification reports of the Junior Engineer and Assistant Engineer. Hence, if at all there was any lapse on the part of the petitioner, it was only supervisory lapse.”

[Emphasis supplied]

Supervisory lapse, admittedly, amounts to negligence and is, therefore, a 'misconduct'. [Read with Rule 3(a) of the Rules of 2003. The petitioner has admitted while submitting the reply to the charge sheet.

10.7 The Uttarakhand Public Service Commission was consulted before imposing penalty but the copy of the advice on punishment has not been supplied to the petitioner, due to which he could not get the opportunity to make a representation against it. The Hon'ble Supreme Court in the matter of S.N. Narula vs. Union of India, 2011 4 SCC 591, decided that where advice of UPSC is relied upon for punishment, it should be communicated to the employee, so that he can represent against it. Similar decision has been given by the Hon'ble Apex Court in Union of India vs. S.K. Kapoor 2011 (4) SCC 589, that once authority consults UPSC and relied upon its advice, natural justice requires that the advice to be supplied in advance.

10.8 Not every file has to go to Hon'ble H.E. the Governor, though the entire government's machinery functions in his or her name. Article 162 and 166 of the Constitution read as below:

"Art. 162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make law, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

"Art.166. Conduct of business of the Government of a State.

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

....."

10.9 The Rules framed by the Uttar Pradesh Government for conducting business are also applicable in State of Uttarakhand as per Uttar Pradesh Reorganization Act, 2000. Learned APO submitted that in the instant case, the file was not placed before H.E. but the approval of the Hon'ble Departmental Minister was taken on the file before issuing a punishment order against the petitioner. Based on the submission of the Learned A.P.O. the Tribunal therefore considers the compliance of Article 166 read with rules, in the instant case.

10.10 The petitioner was responsible only to the extent of not performing his supervisory role properly. It was his duty to have ascertained the facts, on the site, before the release of payment. He was negligent in performing his duties to that extent only. Even if he was overburdened with work and had many additional charges, the

same would not make any difference. He has already submitted an explanation to this effect in his replies to the show cause notice and second show cause notice.

10.11 On perusal of the record related to the matter, it has been found that the Addl. Assistant Engineer Mr. Dhani Ram Arya has been found guilty of making wrong entries in the Measurement Book which led to the release of the amount in respect of the same works. He was awarded minor penalty viz. (i) censure (ii) withholding two increments for three years (iii) Recovery of Rs. 11,596.31/- vide order dated 21.09.2017 by the disciplinary authority, Chief Engineer and the Head of the Department, Minor Irrigation. Since Mr. Shiv Mangal Singh, the then Assistant Engineer retired long back, no penalty could be awarded on him. But the petitioner has been awarded major penalty vide order dated 07.05.2019 of withholding two increments permanently along with the minor punishment of recovery of Rs. 3,478.89/-. The Disciplinary authority while imposing penalty on the petitioner should have verified from the department about the quantum of the punishment awarded to subordinate officers in this case. The punishment awarded to petitioner is disproportionate to the responsibility in comparison to the subordinate officers. There is an order dated 05.09.2008 of the Govt., which has fixed the amount of the recovery to be made from the departmental officers which is based on the responsibility of each officer related to the execution of work. There is no evidence to show that the financial loss to government has been caused majorly at the behest of the Petitioner. The penalty awarded to the petitioner in this case should have been commensurate with the responsibility.

As discussed in the preceding paragraph (10.7), the copy of the report of the Uttarakhand Public Service Commission has not been given to the petitioner for making representation against it. There is a procedural lacuna in conducting the disciplinary proceeding, based on

which the punishment order dated 07.05.2019 is liable to be quashed and the claim petition is liable to be allowed .

ORDER

Claim petition is allowed. The impugned order dated 07.05.2019 is set aside. However the respondents are given opportunity to reinitiate the proceeding from the stage of giving the copy of the report of the Uttarakhand Public Service Commission to petitioner by giving him 15 days' time to represent against it, if he wants . No order as to cost.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: SEPTEMBER 21, 2026
DEHRADUN