

**U.P. STATE PUBLIC SERVICES TRIBUNAL INDIRA
BHAWAN, LUCKNOW**

Court No.-07

PRESENT: HON'BLE SRI ANAND KUMAR SINGH MEMBER (ADMN.)

Claim Petition No. 846 of 2003

- 1. Krishna Mohan Srivastava**, aged about 56 years, S/0 Sri Ramayan Ji Srivastava, Presently Posted as Junior Engineer (Mechanical), Nalkoop Khand, Kaiserganj, Bahraich.

(Now Deceased)

1/1- Smt. Abha Srivastava, aged about 58 years, wife of Late Krishna Mohan Srivastava.

1/2-Km. Priyanka Srivastava, aged about 37 years, Daughter of Late Krishna Mohan Srivastava.

1/3- Nitin Kumar Srivastava, aged about 33 years, Son of Late Krishna Mohan Srivastava.

All Resident of H. No. 127/Z, New Dharampur, Pragati Vihar Colony, Lane No.-1, Shahpur, Gorakhpur, U.P., Pin-273006.

Petitioners.

Versus

1. State of U.P. through the Principal Secretary Irrigation Department, Civil Secretariat, Vidhan Bhawan, Lucknow.
2. Engineer –in Chief, (Mechanical) Irrigation Department, U.P., Sinchai Bhawan, Lucknow.
3. Superintending Engineer (Mechanical), Ban Sagar Nagar Nirman Mandal- Pratham, Mirzapur.

4. Executive Engineer (Mechanical), Ban Sagar Canal Construction Division, Merzapur (Mechanical).
5. Executive Engineer (Mechanical), Nalkoop Khand, Baharaich.

...Opposite Parties

Sri D.N. Pandey, Adv. Ld. Counsel for petitioner.
Sri S.P. Singh, Ld. Presenting Officer, for O.Ps.

JUDGMENT

(DELIVERED BY HON'BLE SRI ANAND KUMAR SINGH MEMBER (ADMN.))

1. The present claim petition has been instituted under Section 4 of the U.P. Public Services Tribunal Act, 1976 for quashing the recovery order contained in Order dated 03.02.2003, the amended recovery order dated 28.03.2003 and the further amended recovery order dated 05.09.2003, issued by Opposite Party No. 3. The petitioner has sought the following reliefs:

"(i) This Hon'ble Tribunal may graciously be pleased to quash the impugned orders dated 3.2.2003 and 28.03.2003 and 5.9.2003 as Annexure No. A-1, A-2 & A-3 being bad, illegal and passed without jurisdiction in the interest of justice.

(ii) To pass any other order or direction as may be considered appropriate in the circumstances of the case and deemed just and proper by this Hon'ble Tribunal along with the cost of the petition."

2. The aforesaid reliefs have been sought principally on the grounds that the impugned recovery orders are non-speaking, arbitrary, illegal and without jurisdiction. The petitioner has contended that the recovery proceedings were initiated after an inordinate delay of 13 to 17 years from his transfer from Mirzapur and that the alleged discrepancies were detected in September, 1995, when he was no longer posted there. It has further been pleaded that the relevant records and evidence were not supplied to him despite repeated requests, thereby denying him a reasonable opportunity of defence. The petitioner has also challenged the competence of the authority passing the impugned orders and has alleged violations of the Financial Handbook, the applicable service rules, the principles of natural justice and Articles 14 and 16 of the Constitution of India.

3. In substance, the case of the petitioner is that he was appointed as a Surveyor on 17.03.1972 and was redesignated as Junior Engineer (Mechanical) with effect from 01.03.1977. He remained posted at the Mechanical Division, Mirzapur, from August, 1981 to July, 1986. According to him, the stores under his charge were sealed in 1984, and the materials kept therein were subsequently misused, which he reported to the police and departmental authorities in 1984 and 1985. After his transfer from Mirzapur in July, 1986, he was issued a Last Pay Certificate, which, according to him, established that no liability was outstanding against him. However, on 04.10.1999, he was informed of stock discrepancies amounting to Rs. 26,50,294/-. Despite submitting several representations denying liability, a show-cause notice dated 24.06.2002 proposing the recovery of Rs. 15,03,087/- was issued. The petitioner alleges that the relevant records were never supplied to him and that his

representation dated 18.11.2002 was rejected without proper consideration. Ultimately, the recovery order dated 03.02.2003, subsequently amended on 28.03.2003 and 05.09.2003, was passed, directing the recovery of Rs. 15,03,087/- from his salary and other dues, which has led to the institution of the present claim petition.

4. The opposite parties, on the other hand, in their written statement and counter affidavit, have stated that the petitioner, while posted as Junior Engineer (Mechanical) in the Mechanical Division, Mirzapur, remained in charge of the departmental stores and was responsible for the custody, maintenance and accounting of the materials entrusted to him. During the process of verification and reconciliation of the stock accounts, serious discrepancies and shortages in the store materials were detected by the departmental authorities. Thereupon, the petitioner was repeatedly directed to remove the discrepancies and reconcile the stock position. The departmental records revealed that the discrepancies pertained to the stores that had remained under the petitioner's charge and, therefore, the competent authorities initiated proceedings for the determination of liability. The opposite parties have further contended that the issuance of the Last Pay Certificate at the time of the petitioner's transfer in July, 1986, did not absolve him of his liability, as the said certificate was issued merely for administrative purposes and did not preclude the department from examining subsequently detected irregularities and fixing responsibility in accordance with the applicable rules.

5. The opposite parties have further stated that the allegations regarding arbitrariness, mala fides, lack of jurisdiction and violation of the principles of natural justice are wholly misconceived and devoid of merit. According to them, the petitioner was afforded repeated and adequate opportunities to explain his position through a series of communications issued from time to time, including the letters dated 04.10.1999, 26.02.2000, 21.11.2000, 13.12.2000, 26.12.2000, 11.05.2001, the show-cause notice dated 24.06.2002 and the subsequent communications dated 23.07.2002 and 08.11.2002. The petitioner submitted replies and representations on several occasions, which clearly establish that he was fully aware of the proceedings and had actively participated therein. He was also given an opportunity to inspect the relevant records before submitting his representation. However, despite being afforded sufficient opportunities extending over a considerable period, he failed to reconcile the discrepancies or furnish any satisfactory explanation. Consequently, after considering the petitioner's representations, the departmental records and the material available on record, the competent authority passed the recovery order dated 03.02.2003, which was subsequently amended by the orders dated 28.03.2003 and 05.09.2003. Accordingly, the opposite parties have prayed for the dismissal of the claim petition.

6. The petitioner has filed a Rejoinder Affidavit reiterating the averments made in the claim petition and denying the assertions contained in the Written Statement.

7. Heard the learned counsel for the petitioner and the learned Presenting Officer for the opposite parties, considered their rival submissions and perused the record.

8. The learned counsel for the petitioner has argued that the petitioner cannot be held liable for the alleged stock discrepancies detected in September 1995, as he had already been transferred from the Mechanical Division, Mirzapur, in July 1986. It has been contended that the stores under his charge had been sealed in 1984 and that he had reported the alleged misuse of the stored materials to the police and the departmental authorities in 1984 and 1985. It has further been submitted that the Last Pay Certificate issued at the time of his transfer did not disclose any outstanding liability against him.

During the course of final hearing, the learned counsel for the petitioner also relied upon Paragraph 691 of the Financial Handbook, Volume VI, which provides that if the relieving government servant fails to bring to notice any deficiency in stores within a reasonable period, he shall be held responsible for the same.

The learned Presenting Officer has submitted that the petitioner was responsible for the custody and maintenance of the stores during his tenure at Mirzapur and that the discrepancies detected during the stock reconciliation related to the period when the stores remained under his charge. It has also been argued that the issuance of the Last Pay Certificate did not extinguish the petitioner's liability.

This Tribunal has considered the rival submissions and examined the material available on record. It is undisputed that the petitioner was transferred from Mirzapur in July 1986, whereas the alleged discrepancies were detected during the half-yearly reconciliation conducted in September 1995. No contemporaneous

document indicating any shortage during the petitioner's tenure or at the time of handing over charge has been placed on record. The considerable delay in detecting the discrepancies and initiating the recovery proceedings is also a relevant circumstance. In the overall factual background, the material available on record does not satisfactorily establish the petitioner's liability for the alleged discrepancies that subsequently formed the basis of the impugned recovery proceedings.

9. The learned counsel for the petitioner has argued that the recovery proceedings were conducted in violation of the principles of natural justice. It has been contended that, although the show-cause notice dated 24.06.2002 proposed the recovery of Rs. 15,03,087/-, the documents and evidence forming the basis of the proposed recovery were never supplied despite repeated requests. Consequently, the petitioner was compelled to submit his representation dated 18.11.2002 without an effective opportunity to defend himself.

The learned Presenting Officer has submitted that the petitioner was afforded sufficient opportunities through various communications issued between 1999 and 2002 and that he actively participated in the proceedings by submitting replies and representations. It has also been contended that the petitioner was permitted to inspect the relevant records.

This Tribunal has considered the rival submissions and examined the material available on record. The correspondence exchanged between the parties indicates that the petitioner repeatedly sought the records and evidence relied upon by the department.

During the course of final hearing, the learned counsel for the petitioner placed reliance upon ***Bhaskar Upadhyaya v. State of U.P. and others (1990 LCD 753)***, wherein the Hon'ble Allahabad High Court observed that :

"a decision based on the material collected at the back of the affected person without giving any reasonable opportunity to him to rebut or contradict that material, is highly unfair and violative of the principle of natural justice."

Although an opportunity to inspect the records was admittedly extended, the material available on record does not establish that copies of the documents forming the basis of the proposed recovery were supplied. In the facts and circumstances of the case, the procedural safeguards available to the petitioner do not appear to have been fully observed before the impugned recovery orders were passed.

10. The learned counsel for the petitioner has argued that the impugned orders have been passed by an authority having no jurisdiction to impose such recovery. It has been contended that the petitioner was holding the post of Junior Engineer (Mechanical), whereas the appointing and punishing authority for the said post was the Engineer-in-Chief (Mechanical). According to the petitioner, the impugned orders were issued by the Superintending Engineer, who was not competent to impose the penalty of recovery from pay, retiral benefits and other dues. It has further been submitted that the impugned orders are contrary to the applicable provisions of the Financial Handbook and the relevant service rules.

The learned Presenting Officer has submitted that the impugned orders were passed in the exercise of

administrative and financial powers vested in the competent authority. It has been argued that the proceedings were initiated on the basis of stock discrepancies communicated by the Executive Engineer and that the orders were issued after considering the petitioner's representations, the recommendations of the Executive Engineer and the opinion of the District Government Counsel (Civil).

This Tribunal has considered the rival submissions and examined the impugned orders dated 03.02.2003, 28.03.2003 and 05.09.2003. The orders themselves indicate that they were passed by the Superintending Engineer by treating the disputed amount as a miscellaneous advance and directing its recovery from the petitioner's salary, retiral benefits and movable and immovable property. However, the record does not disclose any specific provision authorizing the concerned authority to adopt such a course. In the absence of any material clearly establishing the source of such power, the question of jurisdiction remains insufficiently explained in the impugned proceedings.

11. The learned counsel for the petitioner has argued that the impugned orders directing recovery from his salary at the rate of Rs. 8,000/- per month, from his retiral benefits and, thereafter, from his movable and immovable properties are contrary to the provisions of the Financial Handbooks and the applicable service rules. It has been contended that the amount treated as a miscellaneous advance could not be recovered in the manner directed by the opposite parties. It has further been submitted that the prescribed limitations governing recoveries from the salary and pension of a government servant have been completely overlooked.

The learned Presenting Officer has submitted that the impugned orders were passed after the petitioner's liability had been determined and that the mode of recovery was fixed keeping in view the petitioner's remaining period of service and the magnitude of the outstanding amount. It has been argued that the directions regarding recovery from the petitioner's salary and other dues were issued to safeguard government revenue.

This Tribunal has considered the rival submissions and examined the impugned orders. The order dated 05.09.2003 specifically directs recovery at the rate of Rs. 8,000/- per month from the petitioner's salary, with the balance amount to be recovered from his retiral benefits and, thereafter, from his movable and immovable properties. However, the impugned orders do not disclose any detailed examination of the specific provisions authorizing recovery through all the aforesaid modes. In the absence of any reasoned consideration of the relevant statutory provisions and financial rules, the legality of the manner of recovery adopted by the department remains insufficiently supported by the record.

12. In view of the findings recorded hereinabove, the impugned orders dated 03.02.2003, 28.03.2003 and 05.09.2003 cannot be sustained in the eyes of law. The material available on record does not satisfactorily establish the petitioner's liability for the alleged stock discrepancies detected long after his transfer from Mirzapur. The procedural safeguards necessary for an effective defence also do not appear to have been fully observed. Furthermore, the questions relating to the authority competent to direct recovery and the legality of the manner in which such recovery was ordered have

remained insufficiently addressed in the impugned proceedings. Consequently, the claim petition deserves to be allowed.

ORDER

13. Accordingly, the claim petition No.846/2003 is allowed on the following terms:

(i) The recovery order dated 03.02.2003 (Annexure A-1), the amended recovery order dated 28.03.2003 (Annexure A-2) and the further amended recovery order dated 05.09.2003 (Annexure A-3) are hereby quashed and set aside.

(ii) The competent authority shall examine the consequences arising from the quashing of the aforesaid orders and shall pass an appropriate, reasoned and speaking order in accordance with law.

(iii) The aforesaid exercise shall be completed within a period of four months from the date of production of a certified copy of this order.

14. There shall be no order as to costs..

Sd/-

(ANAND KUMAR SINGH)
MEMBER (ADMN.)

U.P. State Public Services Tribunal
 Indira Bhawan Lucknow

The judgment is signed, dated, and pronounced in open court today.

Sd/-

(ANAND KUMAR SINGH)
MEMBER (ADMN.)

U.P. State Public Services Tribunal
 Indira Bhawan Lucknow

Dated- 18 .08.2026
 Virendra/Steno(o).