



2026:UHC:474-DB

Reserved on 06.01.2026

Delivered on 08.01.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Bench No. 528 of 2022

Dr. Rakesh Sinha

.....Petitioner

Versus

State Of Uttarakhand and Others

.....Respondents

Presence:-

Mr. Shobhit Saharia, learned counsel for the petitioner.

Mr. K.N. Joshi, learned Deputy A.G. for the State.

Coram: Hon'ble Ravindra Maithani, J.

Hon'ble Alok Mahra, J.

Hon'ble Alok Mahra, J. (Per.)

It is stated that the petitioner was working on the post of Chief Medical Officer (C.M.O.), District Rudrapur, and superannuated from service on 31.03.2015. After his retirement, a preliminary enquiry relating to alleged fake taxi bills came to light on 03.05.2016. The then Joint Secretary, Medical Education Department was appointed as the Preliminary Enquiry Officer, who submitted his report on 09.08.2016, wherein it was alleged that an irregular payment amounting to ₹83,31,000/- had been made towards forged taxi bills. Pursuant thereto, a charge-sheet was issued to the petitioner calling upon him to submit his reply and also to indicate whether he desired a personal hearing and to disclose the names of witnesses whom he wished to examine or cross-examine. The petitioner submitted his explanation. Thereafter, a five-member enquiry committee was constituted to enquire into the alleged misappropriation and loss caused to the public exchequer on account of payments made against alleged forged taxi bills incurred during visits of the Hon'ble

Chief Minister. The enquiry committee, after considering the material on record, concluded that the petitioner had acted in violation of the Finance Rules, resulting in gross financial irregularities and consequential loss to the public exchequer.

2. It is further stated that respondent no.2, vide letter dated 20.11.2014, had written to the Principal Secretary, Medical, Health & Family Welfare, Government of Uttarakhand, seeking appointment of a competent enquiry officer. The enquiry report prepared by the previous committee was enclosed with the said letter. An F.I.R. dated 07.02.2015 was also registered alleging that a sum of ₹83,31,000/- had been misappropriated by M/s Kala Tours and Travels, Dehradun, by submitting forged and fabricated taxi bills. Subsequently, the Investigating Officer submitted a report allegedly establishing charges against the petitioner. A charge-sheet was thereafter served upon the petitioner alleging that the expenditure incurred under Budget Head No.3 (Council of Ministers) had been wrongly disbursed under Budget Head No.12 (Medical, Health and Family Welfare). The petitioner submitted his reply to the said charge-sheet. Vide letter dated 19.02.2018, the enquiry report was supplied to the petitioner. On the basis of the enquiry report, an order dated 21.12.2018 was passed imposing penalty upon the petitioner by directing recovery of ₹83,31,000/-; that, thereafter, respondent no. 3 issued an Office Order dated 19.08.2019 directing deduction of 50% of the provisional pension accruing to the petitioner.

3. Feeling aggrieved, the petitioner approached the Uttarakhand Public Service Tribunal under Section 4 of the U.P. Public Service Tribunal Act, 1976, seeking quashing of the order dated 21.12.2018 and 19.08.2019. The Tribunal, vide judgment and order dated 24.05.2022, dismissed the claim petition holding that there was no illegality in the punishment order and upheld the penalty imposed upon the petitioner. Hence, the present writ petition has been filed for the following reliefs:

- (i) A writ, order or direction in the nature of certiorari quashing the judgment and order dated 24.05.2022 passed by the Uttarakhand Public Service Tribunal, Bench at Nainital, in Claim Petition No.31/NB/DB/2020 (*Dr. Rakesh Sinha vs. State of Uttarakhand*);
- (ii) A writ of certiorari quashing the Office Order No.2045/XXVIII-2/2018-01(31)2014 dated 21.12.2018, whereby a penalty of recovery of ₹83,31,000/- by deduction of 50% of monthly pension was imposed, along with all consequential orders, and a writ of mandamus directing refund of the amount already recovered with interest;
- (iii) A writ of mandamus directing the respondents to release the regular pension, arrears thereof with effect from 01.03.2015, and all other retiral benefits including gratuity, provident fund, group insurance and other dues withheld by the respondents.

4. Learned counsel for the petitioner would submit that the charge-sheet was issued on 14.10.2016, more than one and a half years after the petitioner's retirement, and the petitioner submitted his reply on 30.01.2017. It is contended that the enquiry was conducted without supplying documentary evidence, without examining any witnesses, and without affording opportunity of cross-examination, and yet the Enquiry Officer submitted his report on 02.02.2018, in gross violation of principles of natural justice. It is further submitted that the only allegation against the petitioner was that verified taxi bills were cleared under Budget Head No.12 instead of Budget Head No.3, which, at best, amounted to a procedural lapse and not misconduct warranting recovery from pension.

5. Learned counsel contends that under Regulation 351-A of the Civil Service Regulations, once departmental proceedings are initiated after retirement, the procedure applicable to proceedings leading to dismissal from service must be strictly followed. Since dismissal is a major penalty,

the enquiry ought to have been conducted strictly in accordance with Rule, including oral enquiry, which admittedly was not done. Reliance is placed upon *Roop Singh Negi vs. Punjab National Bank*, (2009) 2 SCC 570, wherein the Hon'ble Supreme Court held that a departmental enquiry is quasi-judicial in nature and findings must be based on legally admissible evidence, and that documents cannot be relied upon without being proved by witnesses. Further reliance is placed upon *Managing Director U.P. Jal Nigam (Rural) Vs. Babban Singh and Another* 2023 SCC OnLine All. 774, *Deokinandan Prasad Vs State Of Bihar & Ors* (1971) 2 SCC 330 and *D.S. Nakara and Other vs. Union of India* (1183) 1 SCC 305, to contend that pension is a property right and cannot be curtailed except in strict compliance with law. It is also contended that payments were made strictly pursuant to directions issued from the Chief Minister's Office, after verification and budget clearance by the Financial Controller, and no audit objection was ever raised by the Treasury or Accountant General. The petitioner derived no personal benefit and has been made a scapegoat.

6. Per contra, learned State Counsel would submit that the petitioner retired from government service on 31.03.2015, and that an FIR was lodged against him alleging misappropriation of a sum of ₹83,31,000/- by raising fake taxi bills. It is contended that a charge-sheet was duly served upon the petitioner and that, in view of his retirement, the disciplinary authority, after due consideration, ordered recovery from his pension in exercise of powers under Regulation 351-A. It is further submitted that the payments in question were not made under the prescribed Head of Account but were released under different Heads, and that the petitioner had effected the payments without obtaining prior approval from his superior officers and without proper verification of the bills. It is lastly submitted that the petitioner expired on 10.02.2023, and thereafter his widow is being paid family pension.

7. On the other hand, learned counsel for the petitioner would submit that the State's contentions are misconceived, factually incorrect, and legally untenable; that, mere lodging of an FIR alleging misappropriation of ₹83,31,000/- does not establish misconduct, and no criminal trial ever found the petitioner guilty; that, recovery from pension, a vested right under Article 300-A, can only follow a full departmental enquiry under Regulation 351-A with a finding of grave misconduct and no such enquiry was conducted. The allegations regarding payment under an incorrect budget head or failure to verify bills are irrelevant, unsupported, and arbitrary; that, the petitioner retired on 31.03.2015 and passed away on 10.02.2023; upon death, disciplinary proceedings abate, and family pension cannot be subjected to recovery; that, withholding and recovery of pension is thus arbitrary, violative of Articles 14 and 300-A, and contrary to settled law.

8. Heard learned counsel for the parties and perused the record.

9. It is an admitted and undisputed fact that the petitioner retired from government service on 31.03.2015 on attaining the age of superannuation. It is also not in dispute that an amount of ₹83,31,000/- was released by the department in favour of M/s Kala Tours and Travels, Dehradun. The identity of the said firm, its bank account details, and the entire financial trail were at all times within the knowledge and control of the departmental authorities. If at all any amount was wrongly released, it was incumbent upon the respondents to initiate appropriate proceedings for recovery against M/s Kala Tours and Travels, Dehradun, the actual recipient of the funds. In the event the petitioner was found guilty of misconduct, punishment could have been imposed strictly in accordance with law. Admittedly, no disciplinary proceedings were ever initiated against the petitioner during his service tenure. The charge-sheet was issued for the first time on 14.10.2016, i.e., more than one

and a half years after his superannuation, in complete violation of the mandatory requirements of Regulation 351-A of the Civil Service Regulations.

10. The power of the State to withhold pension or to direct recovery from a retired government servant is governed exclusively by Regulation 351-A of the Civil Service Regulations. For a proper appreciation of the controversy at hand, it is pertinent to reproduce Regulation 351-A, which alone prescribes the conditions and procedures under which the State may exercise such power.

“351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering recovery from pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence during his service, including service rendered on re-employment after retirement.

Provided that—

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment—

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted in accordance with the procedure applicable to proceedings in which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with law;

(c) the Public Service Commission shall be consulted before final orders are passed.

Explanation—For the purposes of this article—

(a) departmental proceedings shall be deemed to have been instituted on the date on which the charges framed against the pensioner are issued to him;

(b) judicial proceedings shall be deemed to have been instituted—

(i) in criminal cases, on the date of filing of complaint or charge-sheet; and

(ii) in civil cases, on the date of presentation of the plaint.”

11. A plain reading of Regulation 351-A makes it clear

that no recovery from pension or retiral dues can be ordered in the absence of a valid and lawful departmental or judicial proceeding culminating in a finding of guilt. The said regulation permits recovery from pension only where the pensioner is found guilty of grave misconduct or negligence in duly instituted departmental or judicial proceedings. Where departmental proceedings are initiated after retirement, they must be sanctioned by the Governor, relate to an event not more than four years old, and be conducted strictly in accordance with the procedure applicable to dismissal from service. Departmental proceedings are deemed to be instituted only upon issuance of a formal charge-sheet. Any enquiry conducted without following the prescribed procedure is void and unenforceable.

12. In the present case, admittedly, no disciplinary proceedings were pending against the petitioner on the date of his retirement. The charge-sheet was issued after a lapse of more than one and a half years from the date of retirement, without obtaining the mandatory sanction of the Governor, and in patent violation of Regulation 351-A of the Civil Service Regulations. The Explanation appended to Regulation 351-A itself clarifies that departmental proceedings shall be deemed to have been instituted only on the date on which the charges framed against the pensioner are issued to him. Since the charge-sheet was issued post-retirement, without prior sanction of the Governor, the initiation of proceedings was impermissible in law. Furthermore, no regular departmental enquiry, as contemplated under the applicable service rules, was ever conducted. No witnesses were examined, no evidence was led, and the petitioner was not afforded any opportunity of cross-examination or effective hearing. The impugned action, therefore, stands vitiated on account of gross non-compliance with the mandatory statutory provisions as well as flagrant violation of the principles of natural justice, rendering the recovery from pension wholly illegal and unsustainable.

13. The law regarding pension is clear and well settled. Pension is a vested legal right, not a bounty, and can be withheld or recovered only under law after proven misconduct in a valid disciplinary proceeding. In *D.V. Kapoor v. Union of India* (1990) 4 SCC 314, the Supreme Court held that reduction or recovery of pension requires a finding of grave misconduct in a lawful enquiry. Similarly, in *State of Jharkhand v. Jitendra Kumar Srivastava* (2013) 12 SCC 210, pension and gratuity were recognized as “property” under Article 300-A, which cannot be withheld or recovered without statutory authority. In *State of Punjab v. Rafiq Masih* (2015) 4 SCC 334, the Court held that recovery from retired employees without adjudication of misconduct is illegal and oppressive. The State’s claim that payments were made under an incorrect budget head or without verification is legally irrelevant, as administrative lapses, absent fraudulent intent or personal gain, do not constitute grave misconduct. The petitioner retired on 31.03.2015 and passed away on 10.02.2023.

14. Since the so-called disciplinary proceedings were initiated and conducted in clear violation of Regulation 351-A of the Civil Service Regulations, inasmuch as no prior sanction of the Governor was obtained before instituting such proceedings after the petitioner’s retirement, the entire disciplinary inquiry is non-est in the eyes of law. Consequently, any order directing recovery from the petitioner’s pension, founded upon such void proceedings, is wholly illegal, without jurisdiction, and liable to be quashed.

15. Consequently, the writ petition is allowed. The order dated 24.05.2022 passed by the Uttarakhand Public Service Tribunal and the Office Order dated 21.12.2018 directing recovery of ₹83,31,000/- from the petitioner’s pension are hereby quashed. The respondents are directed to refund the amount already recovered along with interest and to release all admissible retiral dues, including pension, arrears, gratuity, and other consequential benefits, in

accordance with law, within the stipulated period.

(Alok Mahra, J.)
08.01.2026

(Ravindra Maithani, J.)
08.01.2026

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