

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. U.D.Chaube

-----Member (A)

CLAIM PETITION NO. 30/2012

Rakesh Mohan, Ex-Senior Medical Officer, Distt. Hospital Haridwar, 214,
Adarsh Gram Rishikesh, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Medical, Uttarakhand Sachivalaya, Subhash Road, Dehradun.
2. Secretary Medical of States of Uttarakhand, Uttarakhand Sachivalaya, Subhash Road, Dehradun.
3. Additional Director Medical Health and Family Welfare Garhwal Mandal Pauri.,
4. Director General, Medical Health and Family Welfare, Uttarakhand, Sahastradhara Road, Dehradun.
5. Chief Medical Superintendent, District Hospital, Haridwar, Uttarakhand.
6. Secretary, Uttarakhand Public Service Commission, Kankhal, Haridwar.

.....Respondents.

Present: Sri B.B.Naithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: APRIL 16, 2014.

(Justice J.C.S. Rawat, (Oral)

1. This petition has been filed for seeking following relief:----

“In view of the facts narrated here in above paragraphs the petitioner most respectfully prays for the following relief:-

- (a) That the order No.552/XXVIII-2-2011-49/2007 dated 12.07.2011 (Annexure No. A-1) by which the services of the petitioner have been terminated may be quashed and Hon'ble Tribunal may be pleased to grant all consequential benefits thereafter to treat the petitioner deemed to be continuing in service as if he was never suspended nor his services were ever terminated.
- (b) That the Order No.388/XXVIII-2-49/2007 dated 27.07.2007 (Annexure-A-12) may kindly be declared illegally passed on non-est .
- (c) That the letter No. 97/Adhi./A.D.C./1/2011 dated 8.4.2011 (Annexure-A-25) passed by respondent No. 6, Secretary Uttarakhand, Public Service Commission may be declared illegally passed and non-est.
- (d) That a direction may kindly be issued to the Respondent No.1 to treat the petitioner as on duty after the petitioner had placed his joining vide his letter dated 28.6.2007 and 29.6.2007 (Annexure-A-10 & A-11) as per provision of subsidiary Rule 110 of F.H.B. Vol II and to grant all consequential benefits after the petitioner had placed his joining on duty before the respondent Nos. 4 & 5.
- (e) That a further direction may also be issued to the respondent No. 1 to sanction leave as per rule on the basis of Medical certificates countersigned by the respondent No.3 as Chairman of Divisional Medical Board for the period during which the petitioner could not attend to his duties because of illness.”
2. The admitted facts of the case are that the petitioner was appointed on the post of Medical Officer by the State Government on 30.9.1992 and thereafter he was promoted on the post of Medical Officer, Senior Scale by the State Government on 21.5.2004. The petitioner remained on leave from 9.5.2006 to 28.5.2006 while he was posted in Haridwar. The said leave was taken on the ground of the illness of his mother. Thereafter, he again wanted to take leave due to his own illness and submitted his leave application but he was asked to appear before the Medical Board about his illness so that his leave may be granted. Immediately thereafter he appeared before the Medical Board and the Medical Board gave him a certificate that he was ill and his medical leave was countersigned by the authority. When he went to Haridwar to join on his post, the C.M.S.,

Haridwar did not allow him to join, so he gave his joining in the Medical Directorate, Dehradun. Thereafter, instead of giving him any posting, he was suspended by the respondents and a charge sheet was submitted to him.

3. The petitioner has alleged in his claim petition a number of grounds for assailing the order of the termination which has been passed after departmental enquiry. The petitioner has said the suspension order was bad in law; the charge sheet, which was prepared at the time of service of the suspension order, has not been served to the petitioner; the charge sheet, which has been served or later on prepared by the enquiry officer, was served upon the petitioner. He also alleged in his petition that the charge sheet has not been signed by the disciplinary authority and it has been signed by the enquiry officer, hence the charge sheet is void-ab-initio and it is not a charge sheet in the eyes of law.
4. The State has contested the petition and filed the C.A./W.S. on behalf of respondents. The respondents have stated that the charge sheet has been submitted with the prior approval of the disciplinary authority and Rule-7 of the Uttaranchal Government Servant (Discipline & Appeal) Rules 2003 provides that the disciplinary authority may himself or delegate the power to initiate the enquiry to any other person. Hence, the charge sheet, which has been submitted to the petitioner, is in accordance with law and there is no illegality in the charge sheet which has been signed by the enquiry officer.
5. We have heard the learned counsel for the parties and perused the record.
6. The first question comes for consideration whether the charge sheet has been signed by the competent person or not. In support of this contention Ld. A.P.O. contended that the enquiry officer was competent to sign the charge sheet and there is no illegality in signing of the charge sheet. The appointing authority has given approval of said charge sheet. Ld. Counsel for the petitioner contended that the Additional Director, Medical Health, who was the enquiry officer, was not competent to sign the charge sheet or to initiate the enquiry against him. The appointing authority of the petitioner was the Governor of the State and it should have been signed by the Principal Secretary, Medical Health. Ld.

Counsel for the State tried to emphasize that it is the settled proposition of law, Article 311 of the Constitution in terms provides no person who is a member of the civil services of the State holding the civil post under the State Government, shall be dismissed, removed by any authority subordinate to that by which he was appointed. Admittedly the provision contained in the Constitution does not prescribe that even the initiation of the conduct of the enquiry proceedings should be by the disciplinary authority itself who is empowered to dismiss; the rule governing the official if requires to do so. Different department and different wings of the Government have framed the different set of rules in respect of the disciplinary proceedings and to award the punishment to their employees. In some rules it is provided that the departmental proceedings would be initiated by the disciplinary authority/ appointing authority and the charges shall be framed by him and it will be served upon the delinquent by the departmental authority. There are certain rules which are silent on the subject and there are rules which expressly provide to initiate the enquiry by a subordinate officer. It is also a settled principle of law that the charge sheet is not bad in law, if the charge sheet has been submitted by any other officer other than the appointing authority, if rule so permits. Rule 7 of the Uttaranchal Government Servant (Discipline & Appeal) Rules 2003 provides as under:-

“7. Procedure for imposing major penalties.-Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:-

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) 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.”

7. This rule came up for interpretation before the Division Bench of Hon'ble Uttarakhand High Court in **Writ petition No. 118(SB) 2008 Lalita Verma Vs. State of U.K.** in which the interim order was passed giving a detailed reasoning as to why the enquiry officer should not sign

the charge sheet. Subsequently, the State Government amended the Rules of 2003 known as 'the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010'. Original Rule 7 was substituted by amended Rule 4 as follows:-

“ 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 be 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:

8. It is admitted to the Ld. A.P.O. that the charge sheet has been submitted in the year 2008 and it is apparent from the perusal of the charge sheet also. The old Rules Uttaranchal Government Servant (Discipline & Appeal) Rules 2003 were applicable in the case of the petitioner. The interpretation, which has been made in the interim relief order by the division bench of the Hon'ble Uttarakhand High Court, has been made absolute by subsequent judgment of the Division Bench in Writ petition

No. 118(SB)/2008 Lalita Verma Vs. State of Uttarakhand dated 17th May, 2013. The Hon'ble Court while dealing with the matter under which the charge sheet has been submitted, was under challenge and the Hon'ble Division Bench of this Court in Para 7,8 & 9 of the judgment of **Smt. Lalita Verma Vs. State of Uttarakhand & others Writ petition No. (S/B)118 of 2008** has held as under:-

“7. Under Rule 7 of the aforesaid 2003 Rules, a procedure has been prescribed for imposing major penalties. In practical terms, Rule 7 (supra) is in para material to Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules 1965 and most of the other such Rules of various State Governments except that in the aforesaid 2003 Rules, the prescription is that the Inquiry Officer may be appointed by the Disciplinary Authority at the very intimation of the inquiry, even before the charge sheet is served upon the delinquent officer. In the aforesaid Rule 14 (Sub Rule 5) of C.C.A. of 1965 Central Rules, there is a clear indication that the Disciplinary Authority appoints an Inquiry Officer only if the charged officer pleads “not guilty” to the charges, whereas in 2003 Rules the clear indication is that even before framing and service of the charge sheet and before the charged officer pleads “guilty” or “not guilty”, an Inquiry Officer is appointed. This, in our prima facie opinion, is a contradiction in terms because the question of appointment of an Inquiry Officer would arise only if the charged officer pleads “not guilty” to the charges. If the charged officer pleads guilty to the charges there may not be any need for appointment of any Inquiry Officer. This is one aspect of the matter. We are making a passing reference to this aspect because we found that in the present case the Inquiry Officer stood appointed even before the stage of framing the charges, the service of the charge sheet and the offering of any plea of “guilty” or “not guilty” by the petitioner. There is much more vital aspects in this case, which we shall not notice.

8. The charge sheet has been signed by the Inquiry Officer. It is totally unconstitutional and patently illegal for the Inquiry Officer to sign the charge sheet. The Inquiry Officer in the very nature of things is supposed to be an independent, impartial and non-partisan person. How can he assume the role and wear the mantle of the accuser by signing the charge sheet? This apart, Rule (supra) itself

clearly stipulates that the charge sheet has to be signed by the disciplinary authority.

9. Rule 7 also stipulates that the charge sheet shall be approved by the Disciplinary Authority. Disciplinary Authority has been defined in Rule 6 as the Appointing Authority of the Government servant concerned. In the counter affidavit, it has not been stated as to who is the Appointing Authority of the petitioner. Therefore, this Court cannot find out as to whether the charge sheet has been approved by a competent Disciplinary Authority or not.”

8.. The Court further held that the disciplinary proceedings against the delinquent in that prima facie was violative of Rule 7. Subsequently this matter came for consideration before the Single Judge of the Uttarakhand High in writ petition **Uday Pratap Singh Vs.State of Uttarakhand and Others 2012 (1) U.D. 365**. The said proceedings of suspension were initiated under new rules then the Hon’ble High Court while disposing of the mater, has held as under :-

“12.Rule 7(ii) indicates that the charge sheet shall be signed by the disciplinary authority. Prior to the amended Rules, it was open to the disciplinary authority to sign the charge sheet himself or direct any subordinate officer or the Enquiry Officer to sign the charge sheet. This Rule has been specifically amended by the Amendment Rules, 2010 pursuant to the interim order of the High Court and the reason is not far to see. An Enquiry Officer should not be allowed to sign the charge sheet. An Enquiry Officer is required to be an independent person, who is required to proceed and analyze the evidence that comes before him and should not be a signatory to the charges that are being levelled against the charged officer. It is on account of this salutary principle that the Rules have been amended specifically for a solitary purpose, namely, that the disciplinary authority alone is required to sign the charge sheet. Consequently, the direction of the disciplinary authority to the Enquiry Officer to sign the charge sheet was patently erroneous and was in gross violation of the amended Rules 7(ii) of the Rules.

13. Rule 7(6) and (8) of the Rules contemplates that after submission of the reply to the charge sheet, it would be open to the disciplinary authority to inquire into the charges himself or may appoint an Enquiry Officer for the purpose of sub-rule (8). Sub-rule (8) provides that the disciplinary authority or the Enquiry Officer would inquire into the charges. The reason for the appointment of an Enquiry Officer after the service of the charge sheet and the reply of the

charged officer has a purpose, namely, that in the event the charged officer pleads guilty to the charges, in that event, it would not be necessary for the disciplinary authority to appoint an Enquiry Officer and it would be open to the disciplinary authority to proceed and impose a penalty contemplated under the Rules. Consequently, the earlier Rules, which contemplated that an Enquiry Officer could be appointed even before the submission of the charge sheet, was done away under the amended Rules. The amended Rules clearly indicate that an Enquiry Officer can only be appointed after the charge sheet is served upon the charged officer and after a reply is given by the charged officer. In the present case, the Court finds that the Enquiry Officer was appointed on 21st April, 2011. The charge sheet under the signature of the Enquiry Officer was served upon the petitioner after he was suspended by an order dated 20th July, 2011.

14. From the aforesaid, it is clear that the entire procedure adopted by the respondents was in gross violation of the amended Rules of 2010 and therefore, the procedure adopted cannot be sustained and are liable to be set aside. For the reasons stated above, the writ petitions succeed and are allowed. The impugned order dated 21st April, 2011 appointing the Enquiry Officer is quashed. Since the direction contained in the suspension order dated 20th July, 2011 directing the Enquiry Officer to sign the charge sheet under his signature, being patently erroneous and against the amended Rules of 2010, the entire suspension order is accordingly quashed. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law.”

9. The Hon’ble High Court vide its interim order dated 30.6.2008, which was affirmed and adopted in the writ petition No. 118(SB)/2008 Lalita Verma Vs. State of Uttarakhand dated 17th May, 2013, has held that in that case the charge sheet had been signed by the enquiry officer and that is totally unconstitutional and patently illegal. The charge sheet should not have been signed by the enquiry officer. The Hon’ble High Court by referring to Rule 7 of the aforesaid 2003 Rules in comparison Rule 14 of the CCS, Rules 1965 has held that the enquiry officer should be appointed only after the charge sheet is served upon the delinquent official and he pleads not guilty to the charges. There is no reason or occasion to appoint enquiry officer before the delinquent officer pleads guilty or not guilty to the charges. In the instant case the appointing authority had already appointed the enquiry officer who framed the charges before the signing the charge sheet. Though the charges had

been approved by the appointing authority it hardly makes any difference. Based on this analogy as laid down in Lalita Verma case (supra), the charge sheet signed by the enquiry officer is totally unconstitutional and patently illegal. Based on the said finding, the State Government amended the said rules and substituted the Rule 7 as indicated above. The enquiry officer should not be allowed to sign the charge sheet because an enquiry officer is required to be an independent person who is required to analyze and appreciate the evidence produced by both the parties and the direction of the disciplinary authority to the enquiry officer to sign the charge sheet was patently illegal and in violation of the Constitutional scheme.

10. The petitioner has further alleged in his prayer that the petitioner was suspended prior to his termination and the suspension order is bad in law. He has further prayed that the said order may also be quashed. The petitioner has further prayed that the petitioner should be allowed the salary for the period for which he has not been granted leave inspite of his submission of the application and the medical certificate. It is settled position of law if the petitioner's services have been terminated after the conclusion of the enquiry, the suspension order merges into the dismissal order and there is no need to quash the said order. Whereas the question of salary and to grant leave is concerned, the matter would be considered by the appropriate authority in accordance with rules at the time of the conclusion or after the enquiry.

11. For the reasons stated above, the claim petition is liable to be succeeded and is hereby allowed. The impugned order dated 12.07.2011 (Annexure No. A-1) by which the services of the petitioner have been terminated, order dated 27.07.2007 (Annexure-A-12) and order dated 8.4.2011 (Annexure-A-25) passed by respondent No. 6, Secretary Uttarakhand, Public Service Commission are hereby quashed. The charge sheet framed are void-ab-initio, are hereby quashed. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law, if the disciplinary authority desires so, after initiating a proper enquiry and framing of the charges against the petitioner. The enquiry would be disposed of expeditiously preferably within a period of eight months from the date of filing of the copy of this

order. We will also like to observe at the time of the framing of the charges, the departmental authority will go through the entire record and the relevant matters related to the enquiry and will frame charges afresh, if the respondents desire so. The petitioner would be reinstated and the respondents would be at liberty, if they feel that the petitioner is liable to be suspended in accordance with law, they may suspend him immediately after joining of services. The question regarding the payment of salary from the period of termination to the period of reinstatement would be decided by the competent authority at the appropriate time during the enquiry or after the enquiry as the law permits them. Whereas the question of salary and to grant leave is concerned, the matter would be considered by the appropriate authority in accordance with rules at the time of the conclusion or after the enquiry
No order as to costs.

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: APRIL 16, 2014
DEHRADUN

VM