

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 28/2012

Arvind Kumar Nagyan, S/o Dr. K.R. Nagyan, Assistant
Director of Factories & Boiler, Himgiri Vihar,
Ajabpurkhurd, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary,
Govt. of Uttarakhand, Training & Technical Education
Department, Dehradun

.....Respondent

&

CLAIM PETITION NO. 35/2012

Anil Singh Gusain, S/o Late Sri Raje Singh Gusain,
Principal, Govt. Industrial Training Institute, Barkot,
district Uttarkashi

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Govt.
of Uttarakhand, Training & Technical Education
Department, Dehradun

.....Respondent

&

CLAIM PETITION NO. 52/2012

Jitendra Mohan Negi, S/o Sri Harish Chandra Negi,
Principal Govt. I.T.I, Haldwani

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Govt. of Uttarakhand, Training & Technical Education Department, Dehradun

.....Respondent

&

CLAIM PETITION NO. 54/2012

Anil Kumar Tripathi, S/o Sri Triloki Nath Tripathi,
Principal, Govt. ITI, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Govt. of Uttarakhand, Training & Technical Education Department, Dehradun

.....Respondent

&

CLAIM PETITION NO. 55/2012

D.S.Negi, S/o Sri P.S.Negi, Principal, Govt. I.T.I.
Rudraparyag

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Govt. of Uttarakhand, Training & Technical Education Department, Dehradun

.....Respondent

&

CLAIM PETITION NO. 56/2012

J.S. Jalal, S/o Khim Singh Jalal, Principal, Govt. I.T.I.,
Kahsipur

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Govt. of Uttarakhand, Training & Technical Education Department, Dehradun

.....Respondent

&

CLAIM PETITION NO. 78/2012

Itendra Kumar, Assistant Director (Training) Training &
Employment Directorate, Uttarakhand, Haldwani

.....Petitioner

VERSUS

1. State of Uttarakhand through the Principal Secretary, Govt. of Uttarakhand, Training & Technical Education Department, Dehradun

.....Respondent

Present: Sri Jugal Tiwari, Advocate for the petitioners (in C.P. No. 28/2012, Arvind Kumar Nagyan and C.P.No.35/2013, Anil Kumar Gosain)

Sri V.P.Sharma, Advocate for the petitioners (C. P. No. 52/2012, Jitendra Mohan Negi, C.P. No. 54/2012, Anil Kumar Tripathi, C.P.No. 55/2012, D.S.Negi, C.P.No. 56/2012, J.S.Jalal and C. No. 78/2012, Itendra Kumar)

Sri U.C.Dhaundiyal, A.P.O. for the respondents in all the petitions.

JUDGMENT**DATE: FEBRUARY 28, 2014****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. All the abovementioned claim petitions have been preferred against a common order of punishment dated 13.12.2011 passed by the Principal Secretary, Training and Technical Education, Govt. of Uttarakhand, Dehradun and following punishments have been imposed against the petitioners:

i. The petitioner, Arvind Kumar Nagyan in C.P. No. 28/2012 has been awarded major penalty of permanently stoppage of two increments with cumulative effect for the year 2002-03 and 2003-04,

ii. The petitioner, Anil Kumar Gosain in C.P. No. 35/2012 has been awarded major penalty of permanently stoppage of one increment with cumulative effect for the year 2002-03 and 2003-04,

iii. The petitioner, Jitendra Mohan Negi in C.P. No. 52/2012 has been awarded major penalty of permanently stoppage of one increment with cumulative effect for the year 2002-03 and 2003-04,

iv. The petitioner, Anil Kumar Tripathi in C. P. No. 54/2012 has been awarded major penalty of

permanently stoppage of two increments with cumulative effect for the year 2002-03 and 2003-04,

v. The petitioner, D.S. Negi in C.P. No. 55/2012 has been awarded major penalty of permanently stoppage of two increments with cumulative effect for the year 2002-03 and 2003-04,

vi. The petitioner, J.S. Jalal in C.P. No. 56/2012 has been awarded major penalty of permanently stoppage of one increment with cumulative effect for the year 2002-03 and 2003-04, and

vii. The petitioner, Itendra Kumar in C.P. No. 78/2012 has been awarded major penalty of permanently stoppage of two increments with cumulative effect for the year 2002-03 and 2003-04.

2. As, all the petitioners have challenged the common order of punishment and the grounds are also same, therefore, it is appropriate to decide all these petitions by a common judgment. Consequently, all these petitions are being decided by the common judgment.

3. The facts, which are material for the disposal of these petitions are also common and are stated in brief that all these petitioners while posted as Principals in different Industrial Training Institutes (ITIs) in the State of Uttarakhand made purchase different articles for their

respective Institutes out of the Govt. funds allotted for their purposes. On evaluation of illegalities in the purchase, the charge sheet was issued on different dates against the petitioners and after conducting the enquiry, the abovementioned punishment was imposed against these petitioners. As the impugned order has been passed in the name of His Excellency the Governor, therefore no other departmental remedy was available to the petitioners. Hence all these petitioners have knocked the door of this Tribunal by way of separate claim petitions.

4. The impugned order of penalties has been assailed on the following grounds:

- i. That the disciplinary authority had appointed the enquiry officer prior to the consideration of the representation submitted by the petitioners, which should have been after the consideration of the representation as has been provided in rule 7 (8) of Uttarakhand Govt. Servants, (Discipline and Appeal) Rules,
- ii. That the enquiry officer did not record any evidence during the enquiry,
- iii. That the impugned order has been passed after a period of 7 years,
- iv. That the charges levelled against the petitioners are not proved,
- v. That the impugned order is not valid as no separate order has been passed,

5. All these petitions have been opposed on behalf of the respondents by way of separate written statements in each of the petitions and it has been stated that the petitioners had committed illegalities in purchase of different articles for their respective Industrial Training Institutes for the year 2002-03 while being posted on the post of Principal. The petitioners have been penalized after holding the proper departmental enquiry and after affording sufficient opportunity of making defence to the petitioners. There is no illegality or irregularity in the impugned order of punishment. All these petitions lack merits and thus are liable to be dismissed with cost.

6. Rejoinder affidavits have also been filed on behalf of the petitioners reiterating the facts as have been stated in the main petitions.

7. We have heard the learned counsel for the parties and perused the material available on record carefully.

8. The impugned order of punishment has been challenged vehemently on the grounds that the charge sheet has not been issued by the competent authority i.e. Disciplinary Authority or the Appointing Authority rather the charge sheet has been issued by a different person other than Disciplinary Authority or the Appointing Authority, cannot be said to be a competent person. Therefore, the whole proceedings of enquiry get vitiated and petitions

deserve to be allowed on this ground alone. In support of this contention, the judgment passed by the Hon'ble High Court of Uttarakhand in writ petition no. 118(SB) of 2008, Smt. Lalita Verma vs State & others dated 30.6.2008 has been cited. The judgment passed by this Tribunal in C.P. 25/2011, Pratima Uppal vs. State & others dated 19.9.2012 has also been cited. On the other hand, it has been argued that the proceedings of enquiry have been conducted properly and there is no irregularity in the enquiry proceedings, therefore, the contention does not bear any force. It has also been contended that the provisions of issuing the charge sheet by the disciplinary authority have been incorporated after the enquiry proceedings.

9. We have carefully gone through the material available on record and from the fact it is revealed that the charge sheet have been issued by the enquiry officer and not by the disciplinary authority. It is also evident from the provisions of Uttarkahand Govt. Servants (Discipline and Appeal) Rules that for imposing the major penalty, the charge sheet should have been issued under the signature of the dissiliency authority himself and in case the appointing authority is His Excellency the Government, the charge sheet shall be singed by the Principal Secretary/ Secretaries of the concerned department. The relevant provisions, which have been incorporated by way of amendment on 28.5.2010 is quoted below:

"7- दीर्घ शास्तियों अधिरोपित करने के लिए प्रक्रिया-

किसी सरकारी सेवक पर कोई दीर्घ शास्ति अधिरोपित करने के पूर्व निम्नलिखित रीति से जाँच की जायेगी:-

(1) जब कभी आनुशासनिक प्राधिकारी की यह राय हो कि किसी सरकारी सेवक के विरुद्ध अवचार या कदाचार के किसी लान्छन की सत्यता के बारे में जाँच करने के लिए आधार हो तो वह जाँच कर सकेगा।

(2) अवचार क ऐसे तथ्यों को जिन पर कार्यवाही का किया जाना प्रस्तावित हो, निश्चित आरोपों के रूप में रूपान्तरित किया जायेगा जिसे आरोप-पत्र कहा जायेगा। आरोप-पत्र आनुशासनिक प्राधिकारी द्वारा हस्ताक्षरित किया जायेगा।

परन्तु जहां नियुक्ति प्राधिकारी राज्यपाल हों वहां आरोप-पत्र संबंधित विभाग के यथास्थिति, प्रमुख सचिव द्वारा हस्ताक्षरित किया जा सकेगा।

(2) विरचित आरोप इतने संक्षिप्त और स्पष्ट होंगे जिससे आरोपित सरकारी सेवक के विरुद्ध तथ्यों और परिस्थितियों के पर्याप्त उपदर्शन हो सकें। आरोप-पत्र में प्रस्तावित दस्तावेजी साक्ष्यों और उसे सिद्ध करने के लिए प्रस्तावित गवाहों के नाम मौखिक साक्ष्यों के साथ, यदि कोई हो, उल्लिखित किये जायेंगे।

(4) आरोप-पत्र, उसमें उल्लिखित दस्तावेजी साक्ष्यों की प्रति और साक्षियों की सूची और उनके कथन, यदि हो, के साथ आरोपित सरकारी सेवक का व्यक्तिगत रूप से या रजिस्ट्रीकृत डाक द्वारा कार्यालय अभिलेखों में उल्लिखित पते पर तामील की जायेगी, उपर्युक्त रीति से आरोप-पत्र तामील न कराये जा सकने की दशा में आरोप-पत्र को व्यापक परिचालन वाले किसी दैनिक समाचार-पत्र में प्रकाशन द्वारा तामील कराया जायेगा;

परन्तु जहां दस्तावेजो साक्ष्य विशाल हो वहां इसकी प्रति आरोप-पत्र के साथ प्रेषित करने के बजाय, आरोपित सरकारी सेवक को निरीक्षण करने की अनुज्ञा दी जायेगी।

(5) आरोपित सरकारी सेवक से यह अपेक्षा की जायेगी कि वह किसी विनिर्दिष्ट दिनांक को जो आरोप-पत्र के जारी होने के दिनांक से 15 दिन से कम नहीं होगा,

व्यक्तिगत रूप से अपनी प्रतिरक्षा में एक लिखित कथन प्रस्तुत करे जिसमें वह स्पष्ट रूप से सूचित करे कि वह आरोप पत्र में उल्लिखित सभी या किन्हीं आरोपों को स्वीकार करता है अथवा नहीं। आरोपित सरकारी सेवक से यह भी अपेक्षा की जायेगी कि वह यह कथन करे कि आरोप पत्र में उल्लिखित किसी साक्षी का प्रतिपरीक्षा करना चाहता है और क्या वह अपनी प्रतिरक्षा में लिखित तथा मौखिक साक्ष्य देना या प्रस्तुत करने चाहता है। उसको यह भी सूचित किया जायेगा कि विनिर्दिष्ट दिनांक को उसके उपस्थित न होने या लिखित कथन दाखिल न करने की दशा में यह उपधारणा की जायेगी कि उसके पास प्रस्तुत करने के लिए कुछ नहीं है और उसके विरुद्ध एक पक्षीय रूप से जाँच कार्यवाही प्रचलित की जायेगी।

(6) प्रतिरक्षा के लिखित कथन की प्राप्ति पर जहाँ सरकारी सेवक ने अपने लिखित कथन में आरोप-पत्र में उल्लिखित सभी आरोपों को स्वीकार कर लिया है, वहाँ अनुशासनिक प्राधिकारी ऐसी अभिस्वीकृति के दृष्टिगत यदि साक्ष्य की आवश्यकता समझे, तो ऐसा साक्ष्य जो वह ठीक समझे, लेने के पश्चात् प्रत्येक आरोप के सम्बन्ध में अपने निष्कर्ष अभिलिखित करेगा और निष्कर्षों को ध्यान में रखते हुए यदि अनुशासनिक प्राधिकारी की यह राय हो कि नियम 3 में विनिर्दिष्ट कोई शारित आरोपित सरकारी सेवक पर अधिरोपित होनी चाहिए, तो वह अभिलिखित निष्कर्षों की एक प्रति आरोपित सरकारी सेवक को देगा और उससे उसका अभ्यावेदन, यदि वह ऐसा चाहता हो, एक युक्तियुक्त विनिर्दिष्ट समय के भीतर प्रस्तुत करने की अपेक्षा करेगा। अनुशासनिक प्राधिकारी, प्रत्येक आरोप के सम्बन्ध में अभिलिखित निष्कर्ष और आरोपित सरकारी सेवक के अभ्यावेदन से संबंधित समस्त सुसंगत अभिलेखों को ध्यान में रखते हुए, यदि कोई हो, और इस नियमावली के नियम 3 में उल्लिखित एक या अधिक शास्तियाँ अधिरोपित करते हुए एक युक्तिसंगत आदेश पारित करेगा और उसे आरोपित सरकारी सेवक को संसूचित करेगा।

(7) यदि सरकारी सेवक ने प्रतिरक्षा का कार्ड लिखित कथन पेश किया नहीं किया हो तो अनुशासनिक प्राधिकारी आरोपों की जाँच स्यवं कर सकेगा या यदि वह आवश्यक समझे तो उपनियम (8) के अधीन इस प्रयोजन के लिए जाँच अधिकारी नियुक्त कर सकेगा।

(8) अनुशासनिक प्राधिकारी, उन आरोपों की, जो सरकारी सेवक ने स्वीकार नहीं किये हैं जाँच स्यवं कर सकेगा या यदि वह उचित समझे तो अपने अधीनस्थ किसी प्राधिकारी को इस प्रयोजन के लिए जाँच अधिकारी नियुक्त कर सकेगा जा कि यथा संभव आरोपित सरकारी सेवक के स्तर से कम से कम दो स्तर ऊपर का हो।

(9) जहाँ अनुशासनिक प्राधिकारी ने उपनियम

(8) के अधीन जाँच अधिकारी नियुक्त किया है वहाँ जाँच अधिकारी को निम्नलिखित भेजेगा अर्थातः—

(क) आरोप-पत्र और अवचार या कदाचार के विवरण की एक प्रति,

(ख) सरकारी सेवक द्वारा पेश किये प्रतिरक्षा के लिखित कथन की, यदि कोई हो, एक प्रति,

(ग) आरोप पत्र में निर्दिष्ट अभिलेखों का सरकारी सेवक को परिदान दिद्ध करने वाला साक्ष्य।

(घ) आरोप पत्र निर्दिष्ट साक्ष्य के कथनों की, यदि कोई हो एक प्रति।

(10) अनुशासनिक प्राधिकारी अथवा जाँच अधिकारी, जिसके द्वारा भी जाँच की जा रही हो, आरोप पत्र में प्रस्तावित साक्षी को बुलाने की कार्यवाही करेगा और आरोपित सरकारी सेवक की उपस्थिति, में जिसे ऐसे साक्षियों की प्रतिपरीक्षा का असवसर दिया जायेगा, उनके मौखिक साक्ष्य को अधिलिखित करेगा। उपर्युक्त साक्ष्य को अधिलिखित करने के पश्चात् जाँच अधिकारी उस मौखिक साक्ष्य को मांगेगा और उसे अधिलिखित करेगा.....
.....प्रस्तुत करना चाहा था।,

परन्तु ऐसे.....उपबंधित रीति से जाँच किया जाना समीचीन नहीं है।”

10. Thus, it becomes clear that since 2010, it has become mandatory to issue the charge sheet against any delinquent employee under the signature of disciplinary authority itself. The impugned order of punishment has been passed in 2011, thus the provisions of the amendment are applicable in the present cases also. It is undisputed in the present cases that the charge sheet has not been issued under the signature of the appointing or disciplinary authority rather the charge sheet has been issued by the enquiry officer and this procedure cannot be held justified and we are compelled to hold that in all the above-mentioned cases, the procedure adopted for issuance of the charge sheet is not justified, legal and valid, therefore, the proceedings get vitiated. The cases cited on behalf of the petitioners (Supra) are also helpful to the petitioners and in these cases, it has been held that issuance of the charge sheet by any authority other than the disciplinary authority is not valid, which supports the contention of the petitioners.

11. It has further been contended on behalf of the petitioners that penalty has been imposed on several employees including all the petitioners by a common order which is not proper. It was incumbent upon the disciplinary authority to consider each case separately and then pass separate order of penalty, which has not been done and the disciplinary authority has passed the impugned order of punishment in a mechanical manner. The contention raised

on behalf of the petitioners bears force and it was not proper on the part of the disciplinary authority to impose penalty on several persons by a common order as has been done in the present cases and therefore, the impugned order of penalty gets vitiated.

12. It is further contended on behalf of the petitioners that different penalty has been imposed on the petitioners but no reasons have been assigned for imposing the penalty. Moreover, the impugned order seems to have been passed in a mechanical way and there does not appear that the disciplinary authority had applied his mind before passing the impugned order. This contention of the petitioner also seems proper. Perusal of the impugned order reveals that the different employees have been penalized by a common order and different penalties have been imposed, but no reasons have been assigned for awarding different penalties to different employees and it seems that the impugned order has been passed in a mechanical way without application of mind in proper perspective and it makes the impugned order bad in the eye of law and we are not ready to uphold this type of order.

13. On the basis of the above discussion, we are of the considered view that impugned order cannot be upheld and is therefore, liable to be set aside and all these petition deserve to be allowed. The petitioners are entitled for adding the increments in the pay from the dates of its

approval as well as arrears of the pay, if any, with all other consequential benefits.

ORDER

The petitions are allowed and the impugned order dated 13.12.2011 is hereby set aside in its totality. The petitioners are entitled for addition of increments in their pay as well as the arrears, if any. The petitioners are further entitled for any other consequential benefits, if accrued to them. All these benefits must be extended to the petitioners within a period of three months from today. No order as to costs.

The original copy of the judgment shall be kept at the record of Claim petition No. 28/2012, Arvind Kumar Nagyan Vs. State of Uttarakhand & others. The copy of the judgment shall be placed on the record of each petition.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: FEBRUARY 28, 2014
DEHRADUN

KNP