

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 19/12

Gulzlar Ali, Sahayak Jalagam Prabaandhak, Jalagam Prabandhan Ikaai, Vikasnagar, Samprati Sahayak Krishi Adhikari Varg-3, Office of Agriculture and soil Conservation Officer, Chakrata, Kalsi, Dehradun.

CLAIM PETITION NO. 06/12 With

Ravinder Singh Tomar, Sahayak Krishi Adhikari Varg-3, Office of Agriculture and soil Conservation Officer, Barkot, Uttarkashi.

CLAIM PETITION NO. 83/11 With

Rambeer Singh S/o Late Shri Beg Raj Singh R/o Shiv Enclave chandrabani Road, Sewla Kala, Majra, Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Agriculture, Secretariat, Dehradun.
2. Director Agriculture, Agriculture Directorate, Nanda Ki Chowki, Dehradun..
3. Joint Director Agriculture, Kumaun Mandal, Haldlwani, Nainital.

.....Respondents.

Present: Smt. Anupama Gautam, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: JULY 8, 2014.

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

1. There are three claim petitions which have arisen out of the same audit report and all the three petitioners, in Claim petition No. 1, 19/2012

Gulzar Ali Vs. State & others, Claim petition No.2, 06/2012 R.S.Tomar Vs. State & others and claim petition No.3, 83/2011 Rambeer Vs. State & others Singh, have been awarded punishments vide impugned orders dated 23.9.2011 (Annexure A-1) & order dated 24.12.2010 (Annexure-A-2), 23.9.2011, (Annexure-A-1) and 22.9.2011 (Annexure-A-1) respectively.

2. Following relief have been claimed in all the three claim petitions:-

“C.P. No. 19/2012:-

That in view of the above the petitioner seeks following relief:-

- a. That the order dated 23.9.11 be kindly quashed which is based on punishment order dated 24.12.2010 consequentially quashing the punishment order.
- b. Full cost of the petition.
- c. Any other relief to which the petitioner is found entitled may very kindly be granted.

C.P. No. 06/2012:-

That in view of the above the petitioner seeks following relief:-

- a. That the order dated 23.9.11 be kindly quashed which is based on punishment order dated 24.12.2010.
- b. Full cost of the petition.
- c. Any other relief to which the petitioner is found entitled may very kindly be granted.

C.P. No. 83/2011:-

That in view of the above the petitioner seeks following relief:-

- a. That the order dated 22.9.11 be kindly modified scrapping punishment No. 3 passed by punishment order dated 24.12..
- b. Full cost of the petition.
- c. Any other relief to which the petitioner is found entitled may very kindly be granted.”

3. In all the three claim petitions the facts and points of law involved in the case are same and similar, hence all these three petitions can be disposed of by a common judgment.

4. It is alleged that the audit conducted by the audit agency reported certain irregularities committed during the course of the official duty by the claim petitioners. On the basis of the said irregularities, an enquiry was preferred against all the claim petitioners separately. The claim petitioners were served the charge sheets by the Joint Agriculture Director, Uttarakhand in the capacity of enquiry officer. The said charge sheets were approved by the Director, Agriculture, who is said to be the

appointing authority of the claim petitioners. The charge sheet was served upon the petitioners and they submitted their replies and the enquiry officer conducted the enquiries and submitted his report to the punishing authority. The punishing authority issued show cause notices proposing the punishment to all the three claim petitioners and thereafter the claim petitioners submitted their reply before the punishing authority and the punishing authority awarded the punishment. Feeling aggrieved by the said punishment orders, preferred appeals before the appellate authority which were dismissed and thereafter they preferred the claim petition.

5. The petitioners have challenged the punishment order on the ground that the charge sheets have been signed by the enquiry officer and the enquiries have been conducted on the basis of the said charge sheet and the punishment has been awarded by the punishing authority on the said reports and the said orders of punishment are void ab-initio. The next question is that the audit report, on the basis of which the enquiries had been initiated against the claim petitioners, is unsigned and it cannot be made the basis of the enquiry and the punishment. The third ground was raised that the enquiry officer was also a party to one of the technical audit report, hence he cannot make an independent enquiry in the case. It is alleged in the petition that the punishment awarded is totally against the law and it violates the principles of natural justice.
6. On the other hand respondents refuted the allegations and alleged that the enquiry has been conducted properly in accordance with Uttaranchal Government Servant (Discipline & Appeal)Rules, 2003 and the punishment awarded by the punishing authority was in consonance to the misconduct committed by the claim petitioners. The enquiry officer was competent to sign the charge sheets and the enquiry officer has conducted the enquiries in accordance with law and there is no illegality in conducting the enquiries. Ld. A.P.O. further alleged that the audit report was made the basis of the enquiry as it was a preliminary finding submitted by the technical report, so it can be held to be a preliminary enquiry. He further alleged that the enquiry officer was competent to inquire the matter.
7. We have heard learned counsel for the parties and perused the record.

8. The main thrust of the arguments was on the point that the charge sheet has not been signed by the competent authority. In support of her contention, Ld. Counsel for the petitioner contended that the charge sheet has been signed by the enquiry officer and as a matter of fact the charge sheet should have been signed by the departmental authority and after signing the charge sheet the departmental authority should have served the charge sheet upon the petitioners and thereafter reply would have been called for from the petitioners within the stipulated period, if they fail to submit the reply within the stipulated time, the appointing authority was competent to pass any order either to inquire himself or to delegate the power of inquiry to the enquiry officer. Ld. Counsel for the petitioner further contended that if the claim petitioners would have preferred the reply, then after considering the reply, the appointing authority has the power either to exonerate the petitioners or drop the enquiry; after applying the mind it was obligatory on the part of the appointing authority that the appointing authority would have had his own discretion either to proceed himself to inquire the matter or to depute someone for the enquiries. It was further contended that the procedure adopted during the enquiries, was not in consonance with the law. 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 the approval of the said charge sheet. Ld. A.P.O. further contended that Article 311 of the Constitution provides that no person, who is a member of civil services of the State, holding a civil post under the State Government, shall be dismissed, removed by any authority subordinate to that by which he was appointed. Admittedly the provisions contained in the Constitution does not prescribe that even initiation and conduct of the enquiry proceedings should be by that authority itself who is empowered to dismiss or remove an official under the said provision, unless there is an express rule governing the official requiring to be so. Different departments have framed different rules in respect of the discipline and punishment rules to award punishment to their employees. In some rules it is specifically provided that the departmental proceedings would be initiated by the departmental authority/ appointing authority. And the charges shall be

framed by him and it will be served upon the delinquent by the departmental authority/appointing authority. There are certain rules which are silent on the subject and there are other set of rules which expressly empower the authorization to initiate the enquiry to any subordinate officer. The Ld. A.P.O. further contended that this controversy has been set at rest by the Hon'ble Apex Court in particularly in Para 4,5, 6 & 7 in the case of **Secretary Ministry of Defence and others Vs. Prabhu Chand Mirdha 2013(1) SCC (L&S) 121**. For the convenience and appreciation of the arguments following paragraphs have been quoted below:-

“4. The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and Dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.

5. It is permissible for an authority, higher than the appointing authority to initiate the proceedings and impose punishment, in case he is not the appellate authority so that the delinquent may not lose the right of appeal. In other case, the delinquent has to prove as to what prejudice has been caused to him.

6. In **Inspector General of Police Vs. Thavasiappal** this court reconsidered its earlier judgment on the issue and came to the conclusion that there is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority.

7. In **Transport Commr. Vs. A Radha Krishna Moorthy**, this Court held:

‘8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal’”

9. Ld. A.P.O. further contended that view taken by the Hon'ble Apex Court is completely in consonance with the constitutional scheme Article 311 of

the Constitution of India. Ld. A.P.O. supported the signing of the charge sheet by the enquiry officer on the basis of the aforesaid judgments.

10. It is very apparent from the perusal of the judgment which has been referred in the aforesaid judgment; it has very specifically been held in Para 8 in the case of **Inspector General of Police and another Vs. Thavasiappan 1996(2) SCC 145** as under:-

“The learned counsel also drew our attention to P.V. (1) SCC 419, wherein this Court in the context of Article 311(1) has held that in absence of a rule any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. Transport SCC 332 was next relied upon. Therein also this Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. These decisions fully support the contention to the learned counsel for the appellants that initiation of a departmental proceeding and conducting of enquiry can be by an authority other than the authority competent to impose the proposed penalty.”

In the aforesaid judgment, the D.S.P. was appointed enquiry officer. He framed the charges and serve the same upon the petitioner and he was held guilty and submitted his report. The D.I.G. imposed penalty upon the delinquent of compulsory retirement. The State Administrative Tribunal set aside the penalty imposed upon the delinquent on the ground that the charge memo under Rule 3(b) should have been issued by the disciplinary authority empowered to impose the penalty specified therein. Rule 3(b) does not prescribe who will initiate and conduct an enquiry of the delinquent; the rule was silent on that point. The Hon’ble Apex Court setting aside the order of the Tribunal held that the rule is completely silent as regard the person who should perform those acts except that the enquiry report has to be prepared by the authority holding the enquiry. The rule further contemplates that the enquiry officer may not be the authority competent to impose the penalty referred to therein and that becomes apparent from the rule. Thus, the rules were silent, hence the order of the Tribunal was set aside and the matter was sent back for reconsideration. It is apparent from the aforesaid judgment of the Hon’ble Apex Court the law laid down by the Court depends upon the interpretation of the rules and the language used in the said rules.

11. 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.”

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.

12. Subsequently, the State Government amended the Rules of 2003 known as 'the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010'. Original Rule 4(1) and Rule 7 were substituted. The amended Rule 4(1) and Rule 7, as substituted by the Amendment Rules, 2010, is extracted hereunder:

“ 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 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:"

13. It is admitted to the Ld. A.P.O. that the charge sheets had been submitted prior to 2010 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.”

14. 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 Nos. **999 (S/S), 1364 (S/S) and 1365 (S/S) of 2011 in Uday Pratap Singh Vs.State of Uttarakhand and Others**. 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.”

15. 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 and the said charges had been approved by the appointing authority on 6.9.2008. 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 replaced 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 as such he should not be the signatory to the charge sheet. Thus, we hold that the direction of the disciplinary authority to the enquiry officer to sign the charge sheet was patently illegal and in

violation to the constitutional scheme. Thus, we further conclude that the entire procedure adopted by the respondents was in gross violation of the fundamental rules of the law, therefore, the procedure adopted cannot be sustained and is liable to be set aside. For the reasons stated above, the claim petitions are liable to be succeeded.

ORDER

The claim petitions are hereby allowed. The impugned orders passed in claim petition No.19/2012 dated 24.12.2010 passed by the Director, Agriculture, (Annexure-A-1) and order dated 23.9.2011 passed by the Secretary, Agriculture (Annexure-A-1), in claim petition No. 06/2012 dated 23.9.2011 passed by the Secretary, Agriculture (Annexure-A-1) and in claim petition No. 83/2011 dated 22.9.2011 passed by the Secretary, Agriculture (Annexure-A-1) are hereby quashed. The charges framed by the enquiry officer are being void-ab-initio, are hereby quashed. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law after initiating a proper enquiry and framing of the proper charges. We hope and trust that the enquiry would be concluded 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 a fresh, if the respondents desire so. The claim petition Nos. 19/12, 06/12 & 83/11 are disposed of accordingly. The parties shall bear their own costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: JULY 8, 2014
DEHRADUN

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