

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.87/2011.**

Chandan singh S/o Late Moti Singh aged about 54 years presently posted as District Entertainment Tax Officer, Haridwar.

.....Petitioner.

**VERSUS**

1. State of Uttarakhand through Principal Secretary (Finance), Uttarakhand, Civil Secretariat, Dehradun.
2. Secretary (Finance), Uttarakhand, Civil Secretariat Dehradun.
3. Commissioner Taxes,(Entertainment)Uttarakhand, Natthanpur, Pulia No. 6, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiya, Ld. P.O.  
for the respondents.

**JUDGMENT**

**DATED: FEBRUARY 27,2015.**

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

1. This claim petition has been filed by the petitioner for seeking following relief:-

“The petitioner thus prays the Hon'ble Tribunal:-

- a. To quash the order No. 134/XXVII(9) /Ent. Tax-25 T.C./2008 dated 23<sup>rd</sup> April 2010 by which the petitioner has been punished.
- b. To quash order No. 275/XXVII(9)/Ent.Tax-19/2010 dated 20<sup>th</sup> June 2011 by which the petitioner's appeal was decided against the petitioner.

c. To provide the petitioner all the consequential benefits including promotion if any withheld because of this punishment order.

d. To provide the cost of the claim to the petitioner.”

2. In brief it is admitted case of the parties that the petitioner was posted as District Entertainment Tax Officer, Dehradun in the year 2007-08. He had one Entertainment Tax Inspector, Sri Sushil Kumar Tyagi, who was working under him along with other Inspectors. Performance of Sri Tyagi was not coming up to the mark and to the satisfaction of the petitioner. The petitioner recommended his transfer to the District Magistrate. The District Magistrate vide letter dated 30.04.2008, recommended the transfer of Sri Tyagi to a far off area. Out of the said anguish, Sri Tyagi sent complaint directly to the Principal Secretary, Finance and the Deputy Secretary ordered a preliminary inquiry into the said allegation made against the petitioner. On the said preliminary inquiry, the petitioner was found prima-facie guilty of the misconduct and a full-fledged departmental inquiry was ordered by the Government and the Additional Commissioner (Administration) Tax was appointed the inquiry officer. The Additional Commissioner (Administration), Tax, who was appointed the inquiry officer, issued the charge sheet to the petitioner under his signature on 13.08.2008. In his letter dated 14.08.2008 written to the petitioner intimating institution of the departmental inquiry against him, the Additional Commissioner (Administration), Tax also enclosed the charge sheet and mentioned that the charge sheet has been approved by the Government. The charge sheet also stipulates the reply of the petitioner within 15 days from the date of the service of the charge sheet. By perusing the letter of the Additional Commissioner (Administration), Tax dated 14.08.2008 and the charge sheet dated 13.08.2008, it is clear that the charge sheet was signed by the inquiry officer and the inquiry officer was appointed before the reply of the charge sheet was received.
3. The petitioner has further alleged that the Commissioner, Tax is the appointing authority of the petitioner in view of Rule 3 of the U.P.

Entertainment and Betting Tax (Gazetted) Service Rules 1992(hereinafter referred to as Rules 1992). The petitioner has further alleged that the proper procedure has not been adhered to while conducting the inquiry. No witness was examined and as such the principle of natural justice has not been adhered to in this matter. The petitioner has further alleged that the petitioner was never called for any inquiry being conducted against him and his reply to the charge sheet was considered as his statement for the purposes of the inquiry, whereas the petitioner had specifically asked in the reply to be heard personally in the matter. He has further alleged that the order of the disciplinary authority is bad in the eyes of law and the subsequent proceeding thereof is also liable to be quashed.

4. Respondents have filed W.S./C.A. in which it is contended that the Deputy Secretary had ordered the inquiry only at the behest of higher authorities of the Government. The proper procedure, while awarding the punishment, was adhered to and there is no illegality in conducting the inquiry. Respondents have supported the punishment order and the appellate order as well. At the last the respondents have prayed that the petition is liable to be dismissed.
5. We have heard learned counsel for the parties and perused the record.
6. It is not in dispute that the petitioner is an officer of the State of Uttarakhand. He also holds a post in the Entertainment Department and the Rules 1992 are applicable in the case of the petitioner. Petitioner's appointing authority is the Commissioner, Tax in view of of the 1992 Rules. First and the foremost question which comes for consideration is that whether the charge sheet has been signed by the competent authority or not and the inquiry officer has been appointed in a legal manner. Ld. A.P.O. contended that the Additional Commissioner (Admin) Tax was competent to sign the charge sheet in view of the provisions contained in the Uttaranchal Government Servant(Discipline & Appeal) Rules, 2003 (hereinafter referred to as Rules, 2003). Ld. Counsel for the petitioner contended that the Additional Commissioner, Tax, who is subordinate to the Commissioner,

was not competent to initiate the inquiry against the petitioner and also was not competent to sign the charge sheet. In the case of R.C. Chauhan Vs. State & others in claim petition No. 22/11 decided on 17.04.2014 similar controversy arose before the Division Bench of this Court comprising of myself and Hon'ble Sri D.K.Kotia, Vice Chairamn (A). The relevant part of the said judgment is reproduced below:-

“5. The first question which comes for consideration is 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 said charge sheet. The appointing authority has given approval of the said charge sheet. Ld. Counsel for the petitioner contended that the Deputy Agriculture Director, who was the enquiry officer was not competent to sign or was not competent to initiate the enquiry against the petitioner. Ld. Counsel for the State tried to emphasize that it is the settled proposition of law that Article 311 of the Constitution in terms provides no person, who is a member of the civil services of a State, holding civil post under the State Government, shall be dismissed or 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 rules which expressly empower the authorization to initiate the enquiry to any subordinate officer.....

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9. 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.

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11. 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 17<sup>th</sup> 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 and 8 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 now 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.....”

7. 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 17<sup>th</sup> 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 case in hand the Additional Commissioner (Admin) Tax, who is not the appointing authority, had signed the charge sheet. Ld. Counsel for the parties could not demonstrate that the appointing authority had authorized the Additional Commissioner to sign the charge sheet. In the instant case the appointing authority had already appointed the enquiry officer on 14.8.2008 and the charge sheet had been signed by the Additional Commissioner (Admin) Tax, not being the appointing authority on 13.08.2008. Based on above analogy as laid down in Lalita Verma case (supra), the charge sheet signed by the enquiry officer or by any subordinate without authority, is totally unconstitutional and patently illegal. In the instant case the Additional Commissioner (Admin) Tax framed the charges and signed the charge sheet on 13.8.2008. The reply of charges was sought from the petitioner within 15 days. Meanwhile, Additional Commissioner (Admin) Tax was appointed the inquiry officer on 14.8.2008 admittedly before 15 days, i.e. before the reply of the petitioner. The reply of the petitioner became immaterial as the Additional Commissioner (Admin) Tax was directed prior to the reply,

to proceed with the inquiry. The enquiry officer or other officer without authority 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 allowed to adjudicate the objection in reply of the delinquent against the charge sheet. In the instant case the unauthorized person signed the charge sheet and he did not wait the reply of the petitioner for the charges leveled against him. It is also settled law that the reply of the delinquent should be considered by the appointing authority. If the appointing authority feels that the delinquent has not admitted the charges; or he is not satisfied with the reply of the delinquent, he can proceed with the inquiry himself or appoint the inquiry officer. Thus, the respondent has taken a wrong path to proceed the departmental inquiry. Therefore, we hold that the signing of charge sheet by the inquiry officer and to appoint the inquiry officer prior to the reply of the petitioner, 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.

8. Ld. Counsel for the petitioner further contended that the inquiry in this matter has not been properly conducted. It is admitted to the parties that no oral evidence has been recorded in the matter. Only some record has been filed. To appreciate the argument of the petitioner, we would like to see the evidence, which has been relied upon in the charge sheet against each charge. Against charge Nos. 1, 2, 3, 4 & 5, only preliminary report of the Assistant Commissioner dated 10.6.2008 has been relied upon, no statement recorded therein has been cited. Against Charge Nos. 6,7 & 8 certain letters have been referred. No oral evidence to prove the said documents; name of persons has not been assigned as evidence in the charge sheet. The preliminary report is a finding recorded by the Assistant Commissioner, Entertainment. Hon'ble Apex Court had an occasion to deal the similar matter in which the petitioner was involved in a corruption case and punishment of compulsory



retirement was imposed on her. The charge sheet was not accompanied by the preliminary inquiry report and the statements recorded of the witnesses therein supporting the preliminary report and also it was not exhibited before the inquiry officer. In such situation the Hon'ble Apex Court in paragraphs 47,48, 49& 51 Nrimala J Jhala Vs. State of Gujrat 2013(4) SCC 301 has held as under:-

“47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

48 A prima facie case, does not mean a case proved to the hilt, but a case which can be said to be established, if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. (Vide Martin Burn Ltd. v. R.N. Banerjee, AIR 1958 SC 79 Pg. 85 para 27 ) (See also, The Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa, AIR 1960 SC 1352; V.C. Shukla Vs. State (Delhi Admin), AIR 1980 SC 1382; Dalpat Kumar v. Prahlad Singh, AIR 1993 SC 276; and Cholan Roadways Ltd. v. G. Thirugnanasambandam, AIR 2005 SC 570).

49 . The issue, as to whether in the instant case the material collected in preliminary enquiry could be used against the appellant, has to be considered by taking into account the facts and circumstances of the case. In the preliminary enquiry, the department placed reliance upon the statements made by the accused/complainant and Shri C.B. Gajjar, advocate. Shri C.B. Gajjar in his statement has given the same version as he has deposed in regular enquiry. Shri Gajjar did not utter a single word about the meeting with the appellant on 17.8.1993, as he had stated that he had asked the accused/complainant to pay Rs. 20,000/- as was agreed with by Shri P.K. Pancholi, advocate. Of course, Shri C.B. Gajjar , complainant, has definitely reiterated the stand he had taken in his complaint. The chargesheet served upon the appellant contained 12 charges. Only first charge related to the incident dated 17.8.1993 was in respect of the case of the complainant. The other charges related to various other civil and criminal cases. The same were for not deciding the application for interim reliefs etc.

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51 . There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant/accused or Shri C.B. Gajjar, advocate, had been exhibited in regular inquiry. In absence of information in the chargesheet that such report/statements would be relied upon against the appellant, it was not

permissible for the Enquiry Officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide S.L. Kapoor v. Jagmohan, AIR 1981 SC 136; D.K. Yadav v. JMA Industries Ltd., (1983) 3 SCC 259; and Mohd. Yunus Khan v. State of U.P. (2010) 10 SCC 539).”

Thus, the judgment of the Hon’ble Apex Court Nirmala J Jhala (supra) squarely covers this case.

9. In view of the above and for the reasons stated above, the claim petition is liable to be succeeded and is hereby allowed. The impugned order dated 23.04.2010 (Annexure-A-1), passed by the Secretary, Finance, the punishing authority, and appellate order dated 20.06.2011(Annexure-A-2) passed by Principal Secretary, Finance, the appellate authority 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, if he so desires. 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 afresh if he desires to proceed the inquiry. No order as to costs.

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

(JUSTICE J.C.S.RAWAT)  
CHAIRMAN

DATED: FEBRUARY 27, 2015  
DEHRADUN