

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 10/SB/2013

Matloob Ahmed, S/o Late Md. Yakub, presently posted as
Survey Nayab Tehsildar, Rishikesh, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary(Revenue)
Civil Secretariat, Dehradun,
2. Chairman, Revenue Board, Uttarakhand, Dehradun,
3. Chief Revenue Commissioner, Uttarakhand, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O
for the respondents

JUDGMENT

DATE: MAY 29, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed this petition for seeking
following relief:

“a. To direct the Respondents to set aside the order dated 23rd February, 2013 passed by the Respondent no. 2 along with consequential benefits.

b. Any other relief that the Hon’ble Tribunal may deem fit and proper.”

c. Cost of petition to the petitioner.”

2. The brief facts are that due to some irregularities, the petitioner while working as a Survey Nayab Tehsildar, Vikas Nagar, Dehradun was suspended on 3rd May, 2011 by the Chief Revenue Commissioner, Uttarakhand (Annexure: A3). The Deputy Collector, Sadar, Dehradun was appointed the inquiry officer in the suspension order itself. The inquiry officer issued the charge sheet to the petitioner on 16.06.2011 under his own signature. The charge sheet had the approval of the Chief Revenue Commissioner, Uttarakhand on the charge sheet itself (Annexure: A6). The petitioner submitted his reply to this charge sheet on 29.06.2011 (Annexure: A7). While the inquiry continued, the petitioner was reinstated pursuant to the stay granted by the Hon’ble Uttarakhand High Court by its order dated 5.6.2012 against the suspension. The inquiry officer submitted the inquiry report on 11.09.2012 (Annexure: A10). Thereafter, a show cause notice alongwith a copy of the inquiry report was issued to the petitioner on 12.10.2012. After considering the inquiry report and reply to the show cause notice (Annexure: A11), the Chairman Board of revenue (earlier the Chief Revenue Officer) passed the punishment order on

23.2.2013 (Annexure: A1) imposing the following punishments upon the petitioner:

- (i) Censure Entry
- (ii) Stoppage of increments for the years 2013 and 2014 with non-cumulative effect.

3. At the time of filing the claim petition, it was found that the statutory appeal against the impugned order had not been made by the petitioner. Therefore, the Tribunal directed to the petitioner to file the appeal before the State Government. The petitioner filed the appeal against the punishment order on 22.4.2013. The Tribunal directed to the appellate authority on 9.5.2013 to dispose of the appeal as expeditiously as possible, preferably within a period of one month. The appeal was not decided even after the long time and therefore, the petition was admitted on 30.1.2014.

4. The petitioner in his claim petition has challenged the punishment order mainly on the ground that the inquiry officer was appointed before the charge sheet was issued and the charge sheet was signed by the inquiry officer and therefore, the whole proceedings from the beginning are in gross violation of the Rules. It has also been alleged by the petitioner that in his reply to the charge sheet, he had specifically requested to summon 4 witnesses for cross-examination but one important witness namely Dillep Singh Negi, Revenue Inspector was not called and thus petitioner did not get opportunity to cross-examine him.

The petitioner has therefore, prayed to quash the impugned order.

5. The respondents in their written statement have opposed the petition on the ground that the inquiry has been conducted as per rules and sufficient opportunity was provided to the petitioner to defend himself. There was sufficient evidence against the petitioner and has rightly been found guilty. The charge sheet which was issued to the petitioner was approved by the disciplinary authority. Therefore, the petition is liable to be dismissed.

6. No rejoinder affidavit was filed on behalf of the petitioner.

7. We have heard both the parties and perused the record carefully including original enquiry file.

8. The first question which comes for consideration is whether the charge sheet has been signed by the competent authority or not. It has been contended on behalf of the petitioner that the inquiry officer was appointed even before the charge sheet was issued and the charge sheet has been signed by the inquiry officer and therefore, the whole proceeding of inquiry is vitiated. On the other hand, learned A.P.O. contended that the inquiry officer was competent to sign the charge sheet and the appointing authority has given approval on the said charge sheet and therefore, there is no illegality in signing of the charge sheet.

9. The question whether inquiry officer can sign the charge sheet or not had come up for consideration before the Division Bench of Hon'ble High Court of Uttarakhand in Writ Petition No. 118(SB) 2008, Lalita Verma Vs. State of Uttarakhand in which the interim order was passed on 30.06.2008 interpreting the Rule 7 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 giving a detailed reasoning as to why the enquiry officer cannot sign the charge sheet.

10. Hon'ble High Court in para 7 and 8 of the judgment 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 materia 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 initiation 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.”

The interpretation, which has been made in the interim relief order by the Division Bench of the Hon’ble High Court has been made absolute by subsequent judgment of the Division Bench in writ petition No. 118(SB) of 2008, Lalita Verma Vs. State of Uttarakhand on 17.05.2013.

11. Subsequently, the State Government has also amended the Rules of 2003 known as ‘The Uttarakhand Government Servant (Discipline and Appeal) Amendment

Rules, 2010. Original 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 any 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 misbehaviour 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 chargesheet. The chargesheet shall be signed by the Disciplinary Authority:** Provided that where the appointing authority is Governor, the chargesheet 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 chargesheet.*
- (4).....*
- (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).....

(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 chargesheet and details of misconduct or misbehaviour,*

(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 chargesheet to the government servant;*

(d) *A copy of statements of evidence referred to in the chargesheet.*

(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)

(12)

(13)

(14)

(15)

(16)

(17) ”

12. Subsequently, this matter came for consideration before the Single Judge of the Uttarakhand High Court 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 Hon'ble High Court while disposing of the matter, has held as under :-

“12. Rule 7(2) 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(2) of the Rules.

13. Rule 7(6) and (8) of the Rules contemplate 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.”

13. In the light of the Amendment Rules, 2010 and the judgments of Hon’ble High Court of Uttarakhand in above paragraphs, it is clear that the inquiry officer should be

appointed only after the charge sheet is served upon the delinquent official and he pleads not guilty to the charges. It is also further clear that the charge sheet should not be signed by the inquiry officer. In the instant case, the inquiry officer was appointed before the charge sheet was issued and served upon the petitioner. Moreover, the charge sheet was signed by the inquiry officer himself, therefore, the inquiry proceedings are patently illegal and in gross violation of rules and cannot be sustained.

14. For the reasons stated above, the petition deserves to be allowed.

ORDER

The claim petition is allowed. The impugned order dated 23.2.2013(Annexure: A-1) is hereby quashed. If any adverse remark is entered in the character roll of the petitioner, that shall be expunged. Moreover, if increments of the petitioner have been stopped, the same shall be released and paid to the petitioner. However, it would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law. No order as to costs.

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: MAY 29, 2015
DEHRADUN

KNP