

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 69/DB/2022**

Jayalal Sharma, aged about 52 years, s/o Sri Ganga Ram, Rajasv Up-Neerikshak,  
Tehsil Chakrata, District Dehradun..

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Revenue, Secretariat, Subhash Road, Dehradun.
2. Commissioner Garhwal mandal, Pauri, Uttarakhand. The Appellate Authority.
3. District Magistrate, Dehradun. The Appointing Authority and the Punishing Authority.
4. S.D.M., Mussoorie, District Dehradun. The Enquiry Officer.

.....Respondents.

Present: Ms. Anupama Gautam & Sri A.S.Bisht, Advocates,  
for the petitioner.  
Sri V.P.Devrani, A.P.Os., for the Respondents

**JUDGMENT**

**DATED: JUNE 23, 2023**

**Justice U.C.Dhyani (Oral)**

Present claim petition has been filed by the petitioner for the following reliefs:

“i. That order No.527/Sa.bhu.a.-vi.karya-2021 dated 23.6.2021 passed by respondent no.3, holding the violation of the Service Conduct Rules leading to punishment of stoppage of increment permanently, be quashed, consequentially quashing the Order No.780/7-3(14)(2021-22) dated 28.2.2022 passed by respondent no.2.

ii. That the Enquiry report dated 10.5.2021 is non-est being non-speaking.

iii. That the petitioner be allowed damages for his harassment on account of unwarranted suspension.

iv. Full cost of the petition

v. Any other relief to which the petitioner is found entitled may very kindly be granted.”

2. About an incident, which occurred on 13.03.2021, near Sahiya, the complaint of one Sri Deepak Chauhan was enquired into. Preliminary enquiry was conducted by the Sub Divisional Magistrate, Kalsi, who submitted his report on 18.03.2021. On the report of S.D.M., Kalsi, regular enquiry was conducted and S.D.M., Mussoorie was appointed as enquiry officer, who, in his report, found the petitioner guilty of the charges levelled against him. The charges, in short, related to the carelessness of the petitioner and dereliction of duty, which were in violation of Rule 3 of the Uttarakhand Government Servant's Conduct Rules, 2002. The disciplinary authority punished the delinquent petitioner with permanent stoppage of one increment. He was suspended during the enquiry. When the enquiry was concluded, his suspension was revoked with full salary. Such an order was passed by D.M., Dehradun on 17.06.2021, which (order) was issued on 23.06.2021 (Annexure: A-2).

2.1 The petitioner filed departmental appeal against the same. The departmental appeal was rejected by Commissioner, Garhwal Division, Pauri on 28.02.2022 (Annexure: A-1).

2.2 Aggrieved with the same, petitioner has filed present petition.

3. Counter Affidavit has been filed on behalf of Respondents. All the material facts, which govern the merits of the claim petition, have been denied in the C.A. filed by Sri Keshav Dutt Joshi, Naib Tehsildar, Chakrata, Dehradun.

4. Ld. Counsel for the petitioner submitted that there is one basic flaw in the enquiry that the charge sheet, against the petitioner, has been signed and issued by the enquiry officer and not by the appointing authority. Ld. Counsel for the petitioner submitted that the question whether inquiry officer can sign the charge sheet or not and whether the inquiry officer can be appointed before reply to the charge sheet is received 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 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 and why inquiry officer cannot be appointed before the reply to the charge sheet. 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? .....

5. Subsequently, Rule 7 was amended and new sub-rule *i.e.* Rule 7(10) was introduced in the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010. Amended Rule 7 is extracted hereunder:

“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 charge sheet. The charge sheet shall be signed 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) .....

(5) .....

(6) .....

(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 charge sheet 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 charge sheet to the government servant;

(d) A copy of statements of evidence referred to in the charge sheet.

(10) .....

(11) .....

(12) .....

(13) .....

(14) .....

(15) .....

(16) .....

(17) .....

6. Ld. A.P.O. made all out efforts to defend the departmental action and submitted that the claim petition should be dismissed on merits. In reply

to the submissions of Ld. counsel for the petitioner, Ld. A.P.O. submitted that although the charge sheet was issued by the enquiry officer, but the charge sheet was approved by the punishing authority.

7. In the light of the Amended Rules, 2010 and the judgment of Hon'ble High Court of Uttarakhand, which has been noted in the 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 even before the charge sheet was issued and he served the charge sheet 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 sustain.

8. It is settled position of law that the inquiry officer can be appointed only after the reply of the charge sheet is received ( and the delinquent official pleads not guilty to the charges) and further, the charge sheet should not be signed by the inquiry officer. Legal position is that the reply of the charge sheet should be considered by the disciplinary authority. If after considering the reply of the charge sheet, the disciplinary authority finds that the delinquent official has not admitted the charges or the disciplinary authority is not satisfied with the reply of the delinquent, he can proceed and can either conduct inquiry himself or appoint an officer to conduct the inquiry. In the instant case, the reply of the charge sheet submitted by the petitioner became immaterial as the inquiry officer was directed to proceed with the inquiry prior to the reply of the charge sheet was received and considered by the disciplinary authority. Thus, the respondents have taken a wrong path to conduct the inquiry. As far as signing of the charge sheet is concerned, the legal position is that the charge sheet should not be issued and signed by the inquiry officer. In the case in hand, the charge sheet has although been approved by the Appointing Authority but the charge sheet has been signed and issued by the inquiry officer who was appointed as inquiry officer prior to even service of the charge sheet. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

8.1 On this short legal ground alone, the orders under challenge cannot sustain and are liable to be set aside.

9. The claim petition is allowed. The impugned punishment order dated 23.06.2021 (Annexure:A-2) and appellate order dated 28.02.2022 (Annexure: A-1) are hereby set aside, leaving it open to the competent authority to proceed afresh against the petitioner in accordance with law.

10. This will, however, not affect the revocation of suspension order of the petitioner.

11. It is made clear that the Tribunal has not expressed any opinion on the merits of the case. No order as to costs.

**( RAJEEV GUPTA )**  
VICE CHAIRMAN (A)  
(virtually)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: JUNE 23, 2023*  
*DEHRADUN*

VM