

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri U. D. Chaube

----- Member (A)

**CLAIM PETITION NO. 43/2012**

Swaraj Kumar Gupta (now dead) represented through Legal Representatives namely:

(1/1) Smt. Taresh Gupta, widow of Late Sri Swaraj Kumar Gupta, R/o 52, Maliyan Mohalla, Dehradun,

(1/2) Smt. Reena Agarwal, d/o Late Sri Swaraj Kumar Gupta and w/o Sri Vaibhav Agarwal, R/o Kiratpur, Nahtor, Bhattewala, District Bijnor,

(1/3) Smt. Pooja Agarwal, d/o Late Sri Swaraj Kumar Gupta, w/o Deepesh Agarwal, R/o 407, R.P. Apartment, Indore.

.....Petitioners

Versus

1. State of Uttarakhand through Principal Secretary, Urban Development Department, Secretariat, Govt of Uttarakhand, Dehradun
2. Director, Urban Development, Uttarakhand 43, Mata Mandir Marg, Dharampur, Dehradun
3. Mukhya Nagar Adhikari, Nagar Nigam, Dehradun

.....Respondents

Present: Sri V.P. Sharma, Counsel  
for the petitioners

Sri U.C.Dhaundiya, A.P.O.  
for the respondents.

**JUDGMENT****DATE: DECEMBER 11, 2015****DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioner has sought the relief for quashing the impugned order dated 12.03.2012 passed by the Principal Secretary, Govt. of Uttarakhand, Dehradun by which an amount of one third amount of the loss allegedly to be caused to the Nagar Nigam , Dehradun was ordered to be recovered from the retiral benefits of the petitioner. Consequently, an amount of Rs. 2,47,812/- has been recovered from the retiral dues of the petitioner.

2. The facts as stated in the petition are that petitioner had joined the Nagar Palika (Now Nagar Nigam), Dehradun as an Accounts Clerk on 05.08.1967 and was finally promoted to the post of Tax Superintendent on 30.05.1998. The petitioner was transferred from Nagar Nigam, Dehradun to Nagar Palika, Roorkee on 14.07.2006 and again was transferred to Dehradun on 24.05.2007. The petitioner retired after attaining the age of superannuation on 31.07.2008 after completing spotless service for about 41 years.

3. It is further stated that a charge sheet was issued to the petitioner on 26.07.2003 on the allegations that petitioner along with some other employees have made wrong assessment of tax of properties six in number, thereby causing a loss of Rs. 7,43,438/- to the Nagar Nigam, Dehradun. The charge sheet was properly responded to and replied by the petitioner on 15.09.2003. However, the charges were framed against the petitioner along with some other persons and

enquiry was ordered but that enquiry was deliberately kept pending for more than nine years and was finally concluded on 12.03.2012 after the retirement of the petitioner and an amount of one third of the alleged loss caused to Nagar Nigam was ordered to be recovered from the pension and other retiral benefits of the petitioner. Consequently an amount of Rs. 2,47,812/- has been recovered from the retiral benefits of the petitioner which is totally illegal, unwarranted and untenable. The petitioner has sought the quashing of the impugned order of punishment and has further prayed for granting of all the consequential benefits.

4. The petition has been opposed on behalf of the respondents and by a very casual counter affidavit, it has been stated that the petitioner was not promoted to the post of Tax Superintendent in accordance with the service rules. It has further been stated that a cognizance was taken by the then Administrator of the Nagar Nigam regarding the wrong assessment of six properties after a preliminary enquiry. It is further stated that the petitioner was found guilty of the charges on final enquiry and an amount of one third of the total loss have been recovered from the petitioner while the rest of the loss caused to the Nagar Nigam has been recovered from the other respondents. It is further stated that the rest of the retiral dues has already been paid to the petitioner. It is further stated that the enquiry has been conducted in accordance with the established procedure and there is no violation of the principles of natural justice. It is admitted that though Sri D.P.Juyal, Up- Nagar Adhikari who has made the proposal for assessment, but it was not possible for him to inspect all the properties. The petitioner was responsible for examining the

proposal of the assessment and further to take the Up Nagar Adhikari for inspection, but the petitioner failed in it. There is no illegality or irregularity in the impugned order of punishment and the petitioner is devoid of merit and is liable to be dismissed.

5. A rejoinder affidavit has also been filed on behalf of the petitioner and the facts stated in the main petition have been reiterated and it is further stated that the Nagar Nigam has not assessed the said properties again and the assessment made by the petitioner and other employees is continuing w.e.f. 01.04.2004 till 31.03.2013. As the assessment made by the petitioner has been maintained by the respondents so it is wrong to say that any loss is caused to the Nagar Nigam. It is further stated that the Principal Secretary has gone beyond the enquiry report without affording any opportunity to the petitioner. It is further stated that no opportunity of hearing was given to the petitioner and thus, the impugned order of punishment is wrong and illegal.

6. We have heard both the parties and perused the evidence available on record carefully.

7. The petitioner has challenged the impugned order on the following grounds:

- i. That Up -Nagar Adhikari was deputed to conduct the preliminary enquiry who had submitted his report on 07.07.2002 (Annexure: A-7). The appointment of Up-Nagar Adhikari for conducting the preliminary enquiry is illegal as he himself was involved in the process of the

assessment with the petitioner and enquiry made by him cannot be held fair and justified ,

- ii. That the enquiry was initiated in the year 2002 and was deliberately kept pending for about nine years which is unfair, unjust and against the principles of natural justice,
- iii. That the charges have been framed by the Mukhya Nagar Adhikari and have been approved by the Secretary, Govt. of Uttarakhand which is patently illegal. The charges should have been framed by the appointing authority himself.
- iv. That no loss has been caused to the Nagar Nigam as the assessment done by the petitioner has further been maintained by the Nagar Nigam,
- v. That the charges are said to have been proved partly whereas, the total amount of alleged loss has been recovered from the petitioner,
- vi. That the disciplinary authority has travelled beyond the enquiry report without affording any opportunity of hearing and making defense to the petitioner,
- vii. That only the petitioner has been punished whereas the other persons involved in the process of assessment have been exonerated.

8. The first ground of attack of the impugned order is that the Up- Nagar Adhikari was entrusted to conduct the preliminary enquiry on the basis of which the total proceedings are based. In fact, the same Up Nagar Adhikari was involved in the process of assessment with the petitioner and his appointment as an enquiry officer is totally illegal, unfair and against the principles of natural justice. On the other hand, it is said that the final enquiry has been conducted by the Mukhya Nagar Adhikari so no prejudice is caused by the preliminary

enquiry conducted by the Up Nagar Adhikari. From the perusal of the record, it becomes clear that Sri D.P. Juyal was involved in the process of the assessment of the properties with the petitioner. Thereafter, he was deputed to conduct the preliminary enquiry and he had submitted a preliminary report (copy Annexure: A-7). The appointment of an officer who himself was involved in the process of assessment which is said to have been wrongly made cannot be held justified. It is against the principles of natural justice and it cannot be said that a person who himself involved in a process can give a fair finding against the other persons who had worked with them. It is also revealed from the record that the further proceedings of the enquiry are entirely based on the report of the Up Nagar Adhikari. Even the loss alleged to have been caused to the Nagar Nigam has been calculated by the Up Nagar Adhikari, which cannot be treated as just and fair. This is totally against the principles of natural justice.

Therefore, we are of the view that the appointment of Up Nagar Adhikari as preliminary enquiry officer goes to the root of the matter and vitiates the further proceedings of the enquiry.

9. The next contention on behalf of the petitioner is that the enquiry was initiated in the year 2002 and charges were framed in the year 2003 and has been concluded in the year 2012. Thus, the enquiry was kept pending for about nine years and there is no justification for this delay which is inordinate. The delay is not only inordinate but vitiates the total proceedings. From the perusal of the record, it is revealed that the charges against the petitioner were framed on 26.07.2003 and copy of the charge sheet was served on the petitioner on

04.08.2003 whereas, the impugned order of punishment has been passed on 12.03.2012. There is no explanation for this delay. The petitioner had retired attaining the age of superannuation in the year 2008 and keeping the enquiry pending for such a long period particularly even after the retirement of the petitioner, casts doubt about findings of the enquiry. It was obligatory upon the respondents to submit any explanation of delay but no plausible explanation for the delay has been given on behalf of the respondents. Therefore, we are of the view that delay in holding the enquiry casts a doubt on the findings of the enquiry.

10. It is further contended on behalf of the petitioner that charges have been framed by the Mukhya Nagar Adhikari and have been approved by the concerned Secretary to the Govt. of Uttarakhand, which is not proper as the petitioner is an employee of Centralized Palika Services. In such a case, the charges should have been framed by the appointing authority himself. Though, it has been denied on behalf of the respondents and it is said that the petitioner was not promoted in accordance with the provisions contained in Centralized Palika Services Rules, 1966 and the petitioner continued to be employee of Nagar Palika only, but no substantial or reliable evidence has been adduced on behalf of the respondents to substantiate this contention. On the other hand, a copy of an order dated 08.08.1996 passed by Additional Director, Directorate of Local Bodies, Govt. of Uttar Pradesh has been filed on behalf of the petitioner as Annexure: A-2, which reveals that petitioner has been treated as an employee of the Centralized Palika Services and thereby the time scale was granted to him. From this order, it becomes clear that the

petitioner was an employee of the Centralized Palika Services. Apart from it, as the charge sheet has been approved by the Secretary, Govt. of Uttarakhand, which also supports the contention of the petitioner that he has been treated to be an employee of Centralized Services. The Rule 2(1) of Uttar Pradesh Palika (Centralized Service) Rules, 1966 makes it that the appointing authority of the members of the service is State Govt. The relevant Rule 2(1) of the said rules reads as under:

“2- परिभाषायें- यदि विषय या प्रसंग से कोई बात प्रतिकूल न तो इस नियमावली में-  
(एक) 'नियुक्ति प्राधिकारी' का तात्पर्य राज्य सरकार से है।”

It makes clear that in the case of the petitioner, the appointing authority was State Govt. but in the present case, from the copy of the charge sheet filed on behalf of the petitioner as Annexure: A-3, it reveals that the charges were framed by Mukhya Nagar Adhikari/Enquiry Officer on behalf of the disciplinary authority. It further reveals that the charge sheet was approved by the Secretary, Nagar Vikas, Govt. of Uttarakhand. The relevant entries in the charge sheet are reproduced below:

“ह०.....  
(डा० एस०एस०संघ)  
मुख्य नगर अधिकारी/जांच अधिकारी  
कृते दण्डाधिकारी

अनुमोदित  
ह०....  
सचिव, नगर विकास,  
उत्तरांचल, शासन”

Thus, it becomes clear that the charges have been framed by the Mukhya Nagar Adhikari, who had conducted the enquiry. The charges have been framed on behalf of the disciplinary authority,



but approved by the disciplinary authority. Now the question is as to whether framing of charge by any other officer than the disciplinary authority is justified or not. In this respect, the Hon'ble High Court of Uttarakhand in Lalita Verma's case has clearly held that the framing of the charge by any other officer than the appointing authority is not legal and justified.

11. The Division Bench of Hon'ble High Court in **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.”*

This Tribunal also in ***Claim Petition No. 11/N.B./2013 Sant Ram V. State Of Uttarakhand and others*** has held that the framing of the charge by an officer who is not a disciplinary authority is not proper and justified. Therefore, in view of the above judgments and rules, we reach to the conclusion that in the present case, framing of the charges by the Mukhya Nagar Adhikari is not justified. Therefore, the proceedings of the enquiry are not legal and justified.

12. It has been further contended on behalf of the petitioner that in fact no loss has been caused to the Nagar Nigam as the assessment done by the petitioner, has been

maintained by the Nagar Nigam, even after this enquiry. Had there been any malafide action on the part of the petitioner, the assessment should have been cancelled or modified by the respondents, which is not done in the present case. Therefore, it cannot be said that any loss was caused to the respondents. From the material available on record, it becomes clear that the assessment done by the petitioner and other officers in the year 2002 has been maintained till 2014. Had there been any mistake or shortcoming in the assessment done by the petitioner, it should have been changed. As the assessment done by the petitioner has not been changed, so, it is not clear as to whether any actual loss was caused to the Nagar Nigam or not. This fact also supports the version of the petitioner.

13. From the perusal of the enquiry report (Copy AnnexureR-4) it is revealed that out of six charges, one was not proved against the petitioner. Whereas, the charge no. 1, 3, 4 and 5 are said to have proved partly. Whereas, the charge no. 2 was found proved fully. But the total proportion of the loss relating to the petitioner has been recovered from him, which cannot be held justified under the above circumstances and respondents failed to submit any reliable explanation of it.

14. It is further contended that the disciplinary authority had travelled beyond the enquiry report. We have clearly gone through the impugned order passed by the Principal Secretary. Govt. of Uttarakhand on 12.03.2012 (Annexure:A-1), but we do not find any fact by which it can be said that the disciplinary authority had travelled beyond the enquiry report. Therefore, the contention of the petitioner has no force. It is further contended on behalf of the petitioner

that only the petitioner has been punished and the loss of the amount has been recovered from him, whereas, no action has been taken against the other persons who were involved in the process of assessment. In this regard, in the reply submitted on behalf of the respondents, it is said that action has been taken against the other persons also and paragraph no. 16 of the reply/counter affidavit is reproduced below:

“याचिका के प्रस्तर 4.22 अस्वीकार है। याची को समस्त अवसर प्रदान किये गये एवं आरोप सिद्ध होने के कारण याची से शासकीय क्षति का 1/3 की वसूली की गई शेष भाग अन्य आरोपियों से वसूला गया।”

But no material has been produced in support of this contention. On the other hand, a copy of the information received under RTI Act has been filed on behalf of the petitioner as Annexure: A-22, which reveals that no action has been taken against the other persons. Under the above circumstances, we reach to the conclusion that respondents did not take any action against the other employees involved in the process of assessment. Whereas, it was mentioned in the impugned order of punishment that action shall be taken against all the employees who were involved in the process of assessment. As no action has been taken against the other employees, so action against the petitioner only, cannot be held justified.

15. On the basis of the above discussion, we reach to the conclusion that the proceedings of the enquiry are not just, fair and legal, therefore, the impugned order of punishment as against the petitioner is concerned is liable to set aside. As the amount of alleged loss has been recovered from the retiral dues of the petitioner, it is to be refunded to the present Legal Representatives of the petitioner. The petitioner has also

claimed interest, but we do not find any justified ground for awarding any interest. The petition deserves to be allowed accordingly.

**ORDER**

The petition is allowed. The impugned order of punishment (Annexure: A-1) is set aside to the extent of petitioner only. The respondents are directed to refund the amount Rs. 2,47,812/- (deducted from the retiral dues of the petitioner) to the present Legal Representatives of the petitioner i.e. No. 1/1 to 1/3. No order as to costs.

**U.D.CHAUBE**  
MEMBER (A)

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: DECEMBER 11, 2015

DEHRADUN

KNP