

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 41/ DB/2016

Anupam Saxena S/o Late Shri Brijendra Verma aged about 46 years presently posted as Executive Engineer Construction Division P.W.D., Pauri Garhwal R/o 1031/22, Indra Nagar Colony, District Dehradun, Uttarakhand.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary P.W.D., Government of Uttarakhand, Subhash Road, Dehradun.
2. Chief Engineer and Head of the Department, P.W.D., Yamuna Colony, Dehradun.

.....Respondents.

Present: Sri M.C.Pant & Sri L.K.Maithani, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: FEBRUARY 07, 2017

(Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

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

“(i) To set aside the impugned punishment order dated 31.05.2016, Annexure: A-1 passed by the Respondent NO.1, with its effects and operation declaring the same as illegal and non-est in the eyes of law.

- (ii) Issue any other order or direction which this Court deems fit and proper in the circumstances of the case.
- (iii) To award the cost of petition.”

- 2.1 The petitioner is an Executive Engineer in Public Works Department (PWD), Government of Uttarakhand.
- 2.2 In the year 2014 when the petitioner was posted as Executive Engineer Division-2, P.W.D., Almora, for some irregularities in the project of Bageshwar-Almora road under the Asian Development Bank (ADB) Scheme, a departmental inquiry was instituted by the Principal Secretary, P.W.D., Government of Uttarakhand (the disciplinary authority) against the petitioner on 30.06.2014 vide Office Memorandum No. 1154/III(1)/14-02(34)/14. The Principal Secretary, P.W.D., Government of Uttarakhand in this O.M., appointed Chief Engineer, Level-2, Kumaun Region, P.W.D. as the inquiry officer. By this Office Memorandum, the Chief Engineer (inquiry officer) was also directed to serve the charge sheet upon the petitioner.
- 2.3 The inquiry officer issued the charge sheet to the petitioner on 10.07.2014 under his own signature. The charge sheet also had the approval of the Principal Secretary, P.W.D. on the charge sheet itself (Annexure: A2)
- 2.4 The petitioner submitted his reply to the charge sheet on 23.07.2014 (Annexure: A 3) and denied the charges. Thereafter, the inquiry officer conducted the inquiry and submitted the inquiry report on 07.01.2015 (Annexure: A5).
- 2.5 The P.W.D. also got the same matter inquired into by the Chief Engineer, Garhwal Region, P.W.D., Pauri separately as an internal inquiry (without involving the petitioner) in order to reply to the para of the PAC (Public Accounts Committee). The Chief Engineer, Garhwal Region submitted his report on 24.12.2014 (Annexure: A 5).
- 2.6 Thereafter, a show cause notice was issued to the petitioner along with copies of both the inquiry reports on 25.06.2015 (Annexure: A 5).

- 2.7 The petitioner has contended in the claim petition that the reply to the show cause notice was submitted to the Respondent No.1.
- 2.8 The Respondent No.1 thereafter, passed the punishment order on 31.05.2016 (Annexure: A 1). It has been contended by the petitioner that the punishment order has been passed without considering the reply to the show cause notice submitted by the petitioner.
- 2.9 Following punishments were imposed upon the petitioner by the disciplinary authority in the punishment order dated 31.05.2016 (Annexure: A 1):-
- (i) Censure entry; and
 - (ii) withholding of two increments with cumulative effect.
3. 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, whole proceedings of inquiry from the beginning are ab initio void.
4. 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 .
5. No rejoinder affidavit was filed on behalf of the petitioner .
6. We have heard both the parties and perused the record carefully including enquiry file.
7. The question which comes for consideration before us 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 proceedings of inquiry are 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.

8. 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 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 and why inquiry officer cannot be appointed before the reply to the charge sheet.

9. 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?"

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.

10. In case of **Dr. Harendra Singh Vs. State Public Services Tribunal & others in writ petition No. 80 of 2009 (S/B)**, the Division Bench of Hon'ble High Court at Nainital has also held as under:-

"In the judgment dated 30th June, 2008 passed by a Division Bench of this Court in writ petition No. 118(S/B) of 2008; Smt. Lalital Verma Vs. State and another, inter alia, this court had laid down the following three propositions of law:

- i. With reference to the first proviso to sub-rule (1) of Rule 4 of Uttaranchal Government Servants (Discipline, Appeal) Rules, 2003 the suspension order must say, record and mention, that the charge against the concerned Government Servant are so serious that in the event of these being established, ordinarily major penalty would be inflicted. (refer to para 4 of the aforesaid judgment)
- ii. By referring to Rule 7 of the aforesaid 2003 Rules in comparison to Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, 1965, the Inquiry Officer should be appointed only after the charge sheet is served upon the delinquent and he pleads "not guilty" to the charges. There is no reason or occasion to appoint an

Inquiry Officer before the delinquent officer pleads “guilty” or “not guilty” to the charge sheet (refer to para 7 of the aforesaid judgment.)

- iii. The charge sheet should not be signed by the Inquiry Officer, (refer to para 8 of the aforesaid judgment.)

The impugned Suspension Order bearing No. 250/XXIV/11/2-2009-89/2008 dated 8th April, 2009, in the present case, suffers from all the aforesaid three legal defects. It does not mention as to whether the charges are so serious against the petitioner that ordinarily he will be inflicted a major penalty. The Inquiry Officer, in the present case, has been appointed even before the petitioner was served the charge sheet. And lastly, but not the least, the charge sheet has been signed by the Inquiry Officer.

The aforesaid actions of the respondents, being in clear violation of the aforesaid Division Bench judgment of this court, this Court has no hesitation in holding that prima facie the suspension order as well as the proceedings initiated against the petitioner suffers from lack of constitutionality.”

11. Subsequently, the State Government has also amended the Rules of 2003 known as ‘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) 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 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) 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.....”

13. **The Division Bench of the Hon’ble High Court at Nainital in the case of Ram Lal Vs. State of Uttarakhand and others Special Appeal No. 300 of 2015 decided on 03.07.2015 [2015(2) U.D., 25] has also held as under:---**

“As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that an Inquiry Officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the delinquent officer to submit his explanation and, if, after considering the explanation of the delinquent officer, it is found necessary to hold an inquiry, only at that stage, an Inquiry Officer can be appointed. As far as the charge sheet is concerned, after the amendment to the Rules in 2010, it is not disputed that the charge sheet is to be signed by the disciplinary authority. The power of issuing the charge sheet cannot be delegated to the Inquiry Officer. Therefore, in the light of these settled principles, if we examine the impugned order; it is clear that it is afflicted by two vices. Firstly, even without issuing a charge sheet and calling for an explanation, an Inquiry Officer has been appointed. This part of the order cannot be sustained. Equally without legal foundation and contrary to law is the direction to the Inquiry Officer to serve the charge sheet upon the appellant. These portions are clearly unsustainable and, therefore, they deserve to be quashed.”

14. 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 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 be sustained.
15. In view of description in paragraph 7 to 14 above, 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. In the case in hand, the inquiry officer was appointed before the charge sheet was served upon the petitioner and before the

reply of the charge sheet was submitted by the petitioner. 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 by 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 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.

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

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 31.05.2016 (Annexure:A-1) is hereby set aside with its effect and operation. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law. Before parting with the matter, it is clarified that no opinion has been expressed on the merits of the case. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 07, 2017
DEHRADUN

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