

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 32/NB/DB/2016**

Nishikant Singh Son of Sri Dharampal Singh, Resident of House No. B-81 Rajnagar Colony near Gol Gurudwara Jwalapur, Haridwar, at present posted as Deputy Commissioner, Commercial Tax, Almora, District Almora.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Finance, Uttarakhand, Dehradun.
2. Additional Secretary, Finance, Uttarakhand, Dehradun.
3. Commissioner, Tax, Uttarakhand, Dehradun.
4. Additional Commissioner, Commercial Tax, Kumaon/Garhwal Zone, Head Quarter Commercial Tax, Dehradun.
5. Joint Commissioner, Commercial Tax, Kashipur.
6. Deputy Commissioner, Special Investigation Branch, now Special Task Force Commercial Tax, Kashipur.

.....Respondents

Present: Sri Harimohan Bhatiya &  
Sri Kishore Rai, Ld. Counsels for the petitioner.  
Sri V.P.Devrani, Ld. A.P.O. for the respondents

**JUDGMENT**

**DATED: JUNE 20, 2018**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. The petitioner has filed this claim petition for the following reliefs:

*“(i) Call for record and set-aside the order dated 17.10.2015 passed by respondent no. 1 and the order dated 27.06.2016 passed by the Respondent No. 1.*

*(ii) Grant any other relief, order or direction, which this Hon’ble Tribunal deem fit and proper in the facts and circumstances of the case.*

*(iii) Award the cost of the petition to the petitioner.”*

2. As per contention of the petitioner, after his promotion, he was working as Deputy Commissioner, Commercial Tax since 26.04.2011. According to petition, on 16.08.2014, petitioner was suspended and was charge sheeted, containing four charges with the allegation that when he was posted as Assistant Commissioner in Kashipur in the year 2010-11 and 2011-12, he committed negligence in registering the firm M/s Shama Enterprises and by issuing Form-16 and Form-C and O.C. Ticket, revenue loss was caused to the government. He was also charged on two other counts. The charges were denied by the petitioner vide his reply dated 01.09.2014 (Annexure-12). After reply to the charge sheet, the inquiry officer was appointed on 13.10.2014.

3. The inquiry officer, conducted an inquiry and without summoning the witnesses mentioned by the petitioner, inquiry was concluded and submitted the inquiry report (Annexure: A3) to the Disciplinary Authority. The Disciplinary Authority after agreeing with the inquiry report, issued a show cause notice (Annexure: A 22) to the petitioner along with inquiry report. The show cause notice was replied by the petitioner vide Annexure: A-23, in which, he had raised the points that he was not given opportunity to cross-examine the witnesses. Thereafter, considering the reply to the show cause notice, the Disciplinary Authority found it unsatisfactory hence, impugned punishment order (Annexure: A-1) was passed, whereby five

increments with cumulative effect were withheld and an adverse entry was also entered in the service record of the petitioner. The review petition filed by the petitioner was also dismissed. Hence, this petition was filed by the petitioner for the reliefs mentioned above.

4. The petition was opposed by the respondents with the contention that the specific charges levelled against the petitioner, were tested by a just, fair and impartial inquiry, and the punishment order passed by the disciplinary authority, needs no interference. The representation of the petitioner was rightly rejected. The review order is valid in the eyes of law. The four specific charges were levelled against the petitioner and he was found guilty of the charges, causing revenue loss to the government; due procedure was followed; every opportunity to defend himself was afforded to the petitioner; the order passed by the disciplinary authority as well as appellate authority is based on record and needs no interference and the petition deserves to be dismissed.

5. By filing rejoinder affidavit, the petitioner has contended that in the charge sheet, he was specially asked whether he wants to cross-examine any witnesses or not and full details and address of the witnesses with the contents, were required. The petitioner in his reply to the charge sheet dated 16.08.2014, specially requested to the respondents that he want to cross-examine Mr. N.C. Sharma (the then Additional Commissioner Commercial Tax, Kumaon Division) and Smt. Hema Bisht, Deputy Commissioner, Commercial Tax, SIB, Rudrapur. He had also given full description of the points of cross-examination, but respondent did not afford this opportunity to the petitioner for cross examination of these two witnesses, mentioned by the petitioner in his reply to the charge sheet. He has also contended that the inquiry officer was appointed before serving the charge sheet to the petitioner and major and minor penalties, both were given simultaneously. The

disciplinary authority has discriminated between two officers of the department by giving different treatment/ punishment. Filing the copy of the charge sheet, regarding appointment of the inquiry officer, the petitioner further contended that the proposal to appoint the inquiry officer was finalized by an order passed on 13.08.2014. Hence, whole proceeding is vitiated and deserves to be set aside.

6. We have heard both the parties and perused the record.

7. Some facts are clear from the record that the charge sheet was issued to the petitioner on 16.08.2014, which was received by him on 20.08.2014; reply to the charge sheet was submitted by him vide his letter dated 01.10.2014; after considering the reply of the petitioner, respondents appointed the inquiry officer vide order dated 13.10.2014. The inquiry officer submitted his report on 20.10.2014. Thereafter, show cause notice dated 23.10.2014 was issued, which was replied by the petitioner on 7/09.1.2015; personal hearing was also afforded to the petitioner on 05.05.2015 and his written submission was made on 6.05.2015. After considering the reply of the petitioner, the impugned punishment order dated 17.10.2015 was passed by the respondents. Hence, as per the stages of inquiry, proper steps have been taken as per the rules.

8. The petitioner has challenged the inquiry and its proceedings on the ground that when show cause notice was issued to him and in his reply to the show cause notice, the petitioner specifically mentioned that he wants to cross-examine the witnesses Mr. N.C. Sharma (the then Additional Commissioner Commercial Tax, Kumoun Division) and Smt. Hema Bisht, Deputy Commissioner, Commercial Tax, SIB, Rudrapur, he was not given this opportunity. In his reply, he has specifically mentioned the points, upon which he wants to cross examine all these witnesses. With such reply, the charge

sheet was handed over to the inquiry officer for conducting the inquiry as per rules.

9. As per the prescribed procedure of the rules of inquiry, the inquiry officer was duty bound to give an opportunity to cross-examine the witnesses, Mr. N.C.Sharma (the then Additional Commissioner Commercial Tax, Kumoun Division) and Smt. Hema Bisht, Deputy Commissioner, Commercial Tax, SIB, Rudrapur, but such witnesses were never called for cross-examination by the inquiry officer nor any opportunity to cross-examine them was given to the petitioner. This is a clear violation of the principles of natural justice, as specific rules of conducting the inquiry and as per the settled law, as pronounced by the various judgments of the Hon'ble High Court and Apex Court. The delinquent officer should be given every opportunity to defend himself and he should be given full opportunity to cross-examine the witnesses to which he mentioned in his reply to the charge sheet, but in this case, the inquiry officer had deviated from this rule and petitioner was debarred from the opportunity to defend himself as per rules.

10. This court finds that the inquiry is vitiated on this point. The petitioner also raised this point in his reply to the show cause notice but this objection was not considered even by the disciplinary authority anywhere in his order hence, this court finds that the disciplinary proceedings is vitiated after stages of charge sheet, hence, the impugned punishment as well as order passed on review application need to be set aside. The petitioner's case finds support from the laws laid down by the Hon'ble Apex Court in the case of **State of Uttaranchal vs. Kharag Singh, 2008 (8) SCC 236** and **State of U.P. vs. C.S. Sharma, 1968 AIR (SC) 158**.

11. This court finds that the petitioner was not afforded a reasonable opportunity of hearing in the inquiry and inquiry is vitiated

hence, on the basis of such inquiry, order of punishment passed deserves to be set aside and the claim petition deserves to be allowed.

**ORDER**

The claim petition is hereby allowed. The impugned punishment order is hereby set aside. The respondents are at liberty to conduct the inquiry afresh after the stage of charge sheet and receipt of reply of the petitioner, if they so desire. No order as to costs.

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

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: JUNE 20, 2018*

*NAINITAL*

*KNP*