

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Justice J.C.S.Rawat  
----- Chairman

Hon'ble Mr. U.D.Chaube  
-----Member (A)

**Claim Petition No. 31/N.B./2010**

Alok William, S/o Late J.S. William, Aged about 40 Years, R/o Indira Nagar,  
Nai Basti, Ward No. 5, Tanakpur, District Champawat, Uttarakhand.

.....Petitioner

**Versus.**

1. Uttarakhad Transport Corporation, through its Chairman, Dehradun  
(through Managing Director, U.T.C., Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, 117, Indira Nagar,  
Dehradun.
3. Regional Manager (now known as Divisional Manager), Uttarakhand  
Transport Corporation, Tanakpur.
4. State of Uttarakhand through its Principal Secretary (Transport) Dehradun.

.....Respondents.

Present: Sri A.N.Sharma, Ld. Counsel  
for the petitioner.

Sri V.P.Devrani, Ld. P.O.  
for the Respondent No. 4.

Smt. Seema Shah, Ld. Counsel  
for Respondent Nos. 1 to 3.

## JUDGMENT

**DATED: MAY 14 , 2013.**

**(Delivered by Hon'ble Mr. Justice J.C.S. Rawat, Chairman**

1. This claim petition has been filed by the petitioner for seeking following relief:-

“In view of the facts and circumstances mentioned in Paragraph No. 4 of the claim petition and in the grounds of this petition, the applicant most respectfully prayed that this Hon'ble Tribunal may graciously pleased to:-

- (i) Quash the order 19.10.2005 passed by Assistant Regional Manager, U.P.S.R.T.C., Tanakpur (Annexure No.1) removing the petitioner from service, order dated 30.6.2007 (Annexure-2) passed by Managing Director, Uttarakhand, Transport Corporation rejecting the appeal of the petitioner, confirming the order of the punishing authority dated 19.10.2005 and again confirmed by the Chairman, Uttarakhand Transport Corporation vide order 31.10.2007 (Annexure-3 to the petition).
  - (ii) To direct the respondents to reinstate the petitioner in service with all consequential benefits of pay and allowances w.e.f. the date he has been unlawfully removed from service i.e. from 19.10.2005.
  - (iii) Any other, further relief, which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”
2. The admitted facts to the parties are that the petitioner is a Driver in Uttarakhand Transport Corporation. It is alleged that he remained absent from his duties from 17.8.2001 to

27.11.2001 and from 24.4.2002 to 7.7.2002 and he did not get sanctioned leave for the above period. A charge sheet was prepared on 6.9.2002, thereafter several communications were sent either by the registered letter or through the department. Ultimately the enquiry proceeded exparte against the petitioner. Thereafter, the enquiry officer submitted his report to the departmental authority i.e. Divisional Manager on 23.4.2005 as is revealed from a letter from the original record. The Divisional Manager sent a communication along with the enquiry report to the petitioner on 24.5.2005 and reply thereof was sent by the petitioner on 18.9.2005. After due consideration of the report and the reply given by the petitioner, the petitioner was removed from the service by the Divisional Manager, Transport Corporation, Dehradun. Thereafter the petitioner preferred an appeal before the Managing Director, which was rejected. Thereafter petitioner preferred a revision petition before the revisional authority and the said revision was also dismissed vide order dated 31.10.2007. Feeling aggrieved by the said order, present claim petition has been filed.

3. Respondent in the Counter Affidavit has stated that the petitioner was absent from his duties and after giving full opportunity and considering the evidence on record, the punishment order was rightly passed by the Divisional Manager. The enquiry was conducted fairly and the enquiry officer had given full opportunity to the petitioner to submit his defence before him, but the petitioner did not participate in the enquiry.

4. The Ld. counsel appearing on behalf of petitioner Sri A.N. Sharma contended that the petitioner has been charged for absence from duty without leave from 17.8.2001 to 27.11.2001 but the petitioner submitted joining report on 21.11.2001 (Annexure-5 to the claim petition) and he also annexed a medical certificate along with the said joining report as well as he submitted the leave application to the respondents. The Assistant Regional Manager vide order dated 22.11.2001 sent a communication to the C.M.O., Nainital that medical examination of the petitioner may be conducted by the Medical Board and also ordered that joining of the petitioner would be done after the receipt of the report of the C.M.O. Thereafter he appeared before the C.M.O. and the C.M.O., Nainital sent a communication to the Assistant Regional Manager, Tanakpur recommending medical leave of the petitioner from 17.8.2001 to 20.11.2001 and he found that the Incharge Doctor of Tanakpur Hospital has correctly opined about his fitness as such petitioner was not absent from his duties from the Transport Corporation. The Ld. counsel for the petitioner further contended that the original record, which has been submitted by the Transport Corporation before the Court clearly reveals the medical certificate, the certificate of the C.M.O. and the application for leave are on record and it was also stressed that the Assistant Regional Manager has allowed him to work from November 28 onwards, as such the petitioner's leave was granted and he was allowed to work. He further contended that the said aspect, though it was available in the enquiry file, has not been considered by the enquiry officer as well as

by the Divisional Manager while dismissing the petitioner from service and holding him guilty of not taking leave from 17.8.2001 to 27.11.2001.

5. Ld. counsel for the petitioner has further contended that the so called enquiry, caused to be held without appreciating the facts and evidence on record without giving any opportunity of defence to the applicant inasmuch as the said enquiry was an exparte enquiry during the course of ailment of the applicant/petitioner. Ld. counsel for the petitioner further contended that he never received the charge sheet or never received any communication regarding participation in the enquiry. Thus, the entire proceedings are liable to be vitiated. He further contended that the departmental authority i.e. Divisional Manager had not applied his mind while dismissing the petitioner from service.
6. Ld. counsel for the respondents Smt. Seema Shah contended that the petitioner was given full opportunity and the punishment order was rightly passed by the competent authority against the petitioner. The petitioner was absent from his duties without taking leave, so it was well within the jurisdiction of the Divisional Manager to award the punishment. The punishment awarded by the Divisional Manager is correct and within four corners of the law.
7. The Ld. counsel for the petitioner further contended that the punishment of removal from the service inflicted upon the petitioner is quite harsh and disproportionate and does not commensurate with the gravity of the alleged misconduct, which is not at all proved against the petitioner, therefore the impugned order is liable to be set aside.

8. At the outset we have to see whether the charge sheet was served upon the petitioner or he was given proper opportunity to defend his case or not. After due consideration of the submissions made by both the parties and perusal of the original file as well as claim petition, it is revealed that the charge sheet was prepared and signed by the Divisional Manager, Tanakpur. It is mandatory on the part of the Divisional Manager, Tanakpur that the said charge sheet along with the documents should have been communicated to the petitioner. After signing the charge sheet the copy was sent to the Senior Station Incharge, Tanakpur with a direction, the said charge sheet should be served upon the petitioner, but the said receipt of the charge sheet from the petitioner is not on record. Ld. counsel for the respondents could not demonstrate us the said delivery of the charge sheet to the petitioner by any document on record. Thereafter, the Assistant Regional Manager was also appointed enquiry officer by the Divisional Manager vide letter dated 6.9.2002 on the date when the charge sheet was framed. Thereafter, the enquiry officer issued a communication through the Senior Station Incharge, Tanakpur for communication to the petitioner to appear before the enquiry officer on 22.11.2004. It is also revealed from the original record that the said communication was never communicated and there is no correspondence on the record that the said notice was served upon the petitioner. The enquiry officer, during the course of the enquiry had taken evidence of Sri Ganda Lal, the Senior Station Incharge, Tanakpur and he has stated in his evidence that he submitted his report to the Assistant Regional Manager

on 24.4.2002 regarding the absence of the petitioner and he supported his report which was submitted by him about the absence of the petitioner from his duty. It is also revealed from the record that on the said date no cross-examination has been conducted by the petitioner. There is no endorsement on record that the petitioner was present before the enquiry officer. It seems that the petitioner was not present before the enquiry officer and the statement of Sri Ganda Lal was recorded in the absence of the petitioner. Thereafter a communication by the registered post on 2.12.2004 was sent to the petitioner by the enquiry officer. It is written in the said notice that 14.12.2004 has been fixed for the hearing of the enquiry and Sri Ganda Lal was also asked to appear before the enquiry officer on the said date. The petitioner was directed to appear personally on the said date at 11 A.m. in the office of the enquiry officer and he was further directed that he should bring the reply to the charge sheet on the said date. He was also directed to bring witnesses in support of his case, if any. This notice also reveals that there is no receipt of the said communication and the said communication was sent by the registered post and it was received back in which it has been stated that the petitioner is not available at the given address and the Postman has visited his place several times, so the letter was returned. The original record further reveals that on 2.4.2005 again a similar communication identical to the earlier one was sent to the petitioner and copy thereof was sent to Sri Ganda Lal also. The said communication also made the same fate and it was returned with the endorsement that the petitioner is not available at the

given address so the letter has been returned. Thereafter the communication was sent for seeking service upon the petitioner on 24.5.2005 through the Police, but the Police returned the envelop with an endorsement that the matter does not relate to the Police Department so it cannot be served upon the petitioner. Thereafter the enquiry report was submitted to the Divisional Manager. The enquiry officer has himself recorded in his finding,

जांच अधिकारी द्वारा प्रकरण का निस्तरण करने के उद्देश्य व आरोपी को बचाव का समुचित अवसर प्रदान करते हुए आरोपी के प्रकरण में दिनांक 22.11.84 की तिथि निर्धारित की गई, तथा प्रति-परीक्षण तिथि से सम्बन्धित पत्र आरोपी को वरिष्ठ स्टेशन प्रभारी (संचालन) के माध्यम से उसे प्राप्त कराने भेजा गया, किन्तु आरोपी उपस्थित नहीं हुआ रिपोर्ट कर्ता श्री गेन्दालाल, वरिष्ठ केन्द्र प्रभारी, जांच अधिकारी के समक्ष दिनांक 22.11.04 को जांच अधिकारी के समक्ष उपस्थित हुए तथा अपनी रिपोर्ट को पुष्टि की गई जो पत्रावली के पृष्ठ क्रमांक 14 पर अंकित है। आरोपी के उपस्थित न होने की दशा में पुनः दिनांक 14.12.04 की तिथि लगाते हुए पंजीकृत डाक के माध्यम से पत्र आरोपी के घर के पते पर पंजीकृत के माध्यम से भेजा गया किन्तु आरोपी उपस्थित नहीं हुआ। जबकि रिपोर्टकर्ता जांच अधिकारी के समक्ष उपस्थित हुए। आरोपी के उपस्थित न होने की दशा में दिनांक 20.02.05 तिथि निर्धारित करते हुए.....रजिस्टर्ड डाक सं० 4009 दिनांक 15.02.05 के द्वारा आरोपी के घर के पते पर भेजा गया। किन्तु डाक विभाग द्वारा निम्न टिप्पणी के साथ पत्र वापस किया गया।

“ बार बार जाने पर प्राप्तकर्ता घर पर नहीं मिलते हैं, लिहाजा समय समाप्त होने के कारण प्रेषक को वापस की जाती है”।

डाक विभाग द्वारा परीक्षण से संबन्धित रजिस्टर्ड पत्र जांच अधिकारी को वापस प्रेषित किये जाने के कारण जांच अधिकारी ने अपने कार्यालय पत्रांक 48 दिनांक 03.03.05 के द्वारा आरोपी के संबंध में उचित दिश निर्देश क्षेत्रीय प्रबन्धक टनकपुर से मागे गये



जिसके उत्तर में श्रेत्रीय प्रबन्धक ,टनकपुर ने अपने पत्रांक 5934 दिनांक 30.03.05 के द्वारा जांच अधिकारी को सूचित किया कि परिचालक अनाधिकृत रूप से अनुपस्थित है जिसकी कोई सूचना उसने विभाग को नहीं दी है। प्रकरण में पुनः अंतिम तिथि दिनांक 20.4.05 निर्धारित करते हुए प्रति-परीक्षण तिथि से संबन्धित पत्र रजिस्ट्री सं0-411 दिनांक 07.04.05 के द्वारा आरोपी के घर के पते पर भेजा गया किन्तु आरोपी उपस्थित नहीं हुआ एवं न ही उसके द्वारा आरोप पत्र का उत्तर प्रेषित किया गया जो उसके बचाव में सहायक सिद्ध होता।

निष्कर्ष –

मेरे द्वारा प्रकरण पत्रावली का अध्ययन करते हुए रिपोर्टकर्ता की रिपोर्ट तथा पत्रावली में संलग्न साक्ष्यों का अवलोकन किया गया जिसके अनुसार में इस निष्कर्ष पर पहुंचता हूं कि आरोपी को प्रति परीक्षण से संबन्धित पत्र प्रकरण में विभिन्न तिथि लगाते हुए डाक विभाग के माध्यम से उसके घर के पते पर भेजे गये जो डाक विभाग द्वारा टिप्पणी के साथ वापस प्रेषित किये गये । किन्तु व पत्र लेने हेतु उपस्थित नहीं हुआ एवं न ही उसके द्वारा आरोप पत्र का उत्तर प्रेषित किया गया जिससे स्पष्ट है उसे अपने बचाव में कुछ नहीं कहना है, तथा वह विभाग में कार्य करने का इच्छुक नहीं है

अतः उपरोक्त परिस्थितियों के आधार पर में आरोपी को उसे प्रति लगाए गये आरोपों के लिये पूर्णरूप से दोषी पाता हूं।

(भुवनेश्वर कुमार)  
जांच अधिकारी  
सहायक श्रेत्रीय प्रबन्धक,टनकपुर

9. The above position, as revealed from the record clearly indicates that there was no service of the charge sheet as well as of the enquiry proceedings and the report was submitted exparte without service upon the petitioner, as such the whole proceedings are vitiated on this ground alone. The Honble High Court of Uttarakhand at Nainital in Special appeal

Petition No. 183/07 in Suresh Pal Singh Va. State of Uttarakhand and others, the Division Bench comprising of Hon'ble Mr. Justice Barin Ghosh, C.J. and Hon'ble Mr. Justice Sudhanshu Dhulia has held as under:-

*“Inasmuch as, the said state of affair clearly depicts that the petitioner was never informed of the charges, the petitioner could not be dismissed from service inasmuch as such Article (2) of the Article 311 of the Constitution of India mandates the State to inform its employee the charges against him before dismissing such an employees*

*We accordingly, allow the writ petition, set aside the order of dismissal dated 20.8.2004. We direct the learned counsel for the State to handover a copy of the chargesheet to the learned counsel for the petitioner in Court today. Copy of the chargesheet has been handed over in the Court. The petitioner will be permitted to reply to the charge sheet within one month from today. The State is directed to dispose of the matter as quickly as possible. The order staying the suspension is vacated and accordingly the petitioner shall be deemed to be on suspension with effect from 20.8.2004, on which date the petitioner was purportedly dismissed from service.”*

10. Hon'ble Apex Court in the similar circumstances in the case of Dr. Ramesh Chandra Tyagi Vs. Union of India and others 1996(1) SLR 703 has also held that

*“But that is writ large on the face of it. No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement “left without address” and on other occasion, “on repeated visits people in the house said that he has gone out and they do not disclose where he has gone. Therefore, it is being returned.” May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry officer to proceed ex-parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement, it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer*

*from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and non-est the order of dismissal falls automatically.”*

12. Hon’ble Apex Court in the case of Union of India Vs. Dinanath Shantaram Karekar 1998 AIR SC 2722 has also held that,

*“Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated”*

13. We accordingly allow the petition and set aside the order of dismissal dated 19.10.2005, appellate order dated 30.6.2007 and revisional order dated 31.10.2007. We direct the Ld. counsel appearing for UPSRTC to hand over a copy of the

charge sheet to the Ld. counsel for the petitioner in the Court today. We have already given finding that the proceedings are vitiated due to the fact that reasonable opportunity has not been given to the petitioner so it is not required to give further finding on other issues raised or contentions by the Ld. counsel for the petitioner

14. Copy of the charge sheet has been handed over in the Court. The petitioner will be permitted to reply to the charge sheet within a period of one month from today. The UPSRTC is directed to dispose of the matter as expeditiously as possible.

Sd/-

(U.D.CHAUBE)  
MEMBER (A)

Sd/-

(JUSTICE J.C.S.RAWAT)  
CHAIRMAN

DATE: MAY 14 , 2013  
NAINITAL