

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 85/2011**

Mohan Lal Bijalwan, S/o Sri Sundermani Bijalwan,  
Conductor, Project Section, Garhwal Mandal Vikas Nigam  
Ltd., 74/1, Rajpur Road, Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary (Tourism),  
Secretariat, Subhash Road, Dehradun, Uttarakhand,
2. Regional Director, Garhwal Mandal Vikas Nigam Ltd.,  
74/1, Rajpur Road, Dehradun,
3. Managing Director, Garhwal Mandal Vikas Nigam Ltd.,  
74/1, Rajpur Road, Dehradun,
4. Chief Manager (Administration/Mining), Garhwal  
Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dehradun.

.....Respondents

Present: Sri L.K.Maithani, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondent no.1

Sri V.D.Joshi, & Sri V.K.Sharma, Counsel  
for the respondents no. 2, 3 and 4

**JUDGMENT****DATE: JANUARY 13, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. In this petition, order of punishment dated 05.09.2002 (Annexure: A-1) passed by respondent No.1 and the order dated 04.08.2009 (Annexure:A-2) passed by the Appellate Authority (respondent no.2) rejecting the appeal have been challenged by the petitioner.

2. The facts in brief are that the petitioner was appointed as Class IV employee in Garhwal Mandal Vikas Nigam (shortly known as GMVN) and had been working in the regular pay scale since 01.05.1981. In December, 2001 when he was posted in Mining Section, as per the report of the Regional Manager, Minor Minerals Project, the petitioner committed an irregularity and was placed under suspension with effect from 21.12.2001 and departmental inquiry was initiated. Shri M.C.Raturi, Coordinator was appointed inquiry officer for conducting the inquiry.

3. The petitioner was issued a charge sheet on 25.02.2002 which was signed by the inquiry officer. The Managing Director, GMVN approved it on the charge sheet itself. The only charge mentioned in the charge sheet was that the petitioner while posted in Adhoiwala mining area, issued a ravanna to a truck for taking out the mineral on

29.11.2001 in which quantity of mineral (Bazri) was shown as 6 Cubic meters where as in the original copy of ravanna, it was shown only one cubic meter that too by a Buggi (Bullock Cart) in the counter copy of ravanna kept in the official record. Therefore, the petitioner was alleged to have committed an misconduct by causing financial loss to GMVN.

4. The petitioner had submitted his response to the charge sheet on 14.03.2002 and 26.03.2002. The inquiry officer after conducting the enquiry submitted the report on 03.04.2002. The inquiry officer had concluded that the charge against the petitioner was not proved. The Managing Director disagreeing with the findings of the inquiry officer, passed an order dated 25.09.2002 and imposed the following penalties:-

- (i) Non-payment of salary for the suspension period except the subsistence allowance
- (ii) Stoppage of 4 annual increments with cumulative effect
- (iii) Censure Entry

5. The petitioner filed departmental appeal against the punishment order on 01.10.2002 which was decided on 04.08.2009. The appellate authority uphold the punishment (i) and (iii) mentioned above but amended the punishment (ii) to the extent of stopping of only 2

increments instead of 4. Aggrieved by the punishment, the petitioner has filed this claim petition before the Tribunal.

6. The petitioner has challenged the impugned orders mainly on the grounds that the suspension order and the charge sheet have not been issued by the competent authority and the inquiry has not been conducted as per Rules; the petitioner has not been given due opportunity in the inquiry to defend him; the appellate authority did not decide the appeal within the time period prescribed under the rules; for non-payment of salary of suspension period, no show cause notice was issued to him; and the punishment authority has also considered the adverse remark against him in a letter of the Regional Manager dated 20.12.2001 without framing a charge and providing an opportunity to defend him in this regard.

7. The respondents have opposed the claim petition and mainly stated in their counter affidavit that the petitioner has committed gross misconduct and after providing due opportunity, punishment has been awarded according to Rules. The disposal of appeal got delayed due to non-constitution of the Board of the GMVN. The suspension order and the charge sheet have been issued by the competent authority. The inquiry which has been conducted against the petitioner is only a preliminary inquiry and not a regular departmental enquiry. The office of the petitioner was communicated the order of the appellate authority on 04.08.2009 and therefore, his plea

that he received the order only on 06.07.2010 under the Right to Information Act is untenable. The claim petition of the petitioner is therefore, time barred.

8. The petitioner has also filed the rejoinder affidavit and mainly the facts stated in the claim petition have been reiterated. Additionally, it has been stated that the stoppage of two increments with cumulative effect is to be treated as a major punishment and therefore, to impose both minor as well as major punishment is not legal.

9. We have heard learned counsel for the parties and perused the record carefully.

10. Learned counsel for the respondents raised a preliminary objection that the petition is barred by time and in this context it is said that the appeal of the petitioner was decided on 04.08.2009 and the order was communicated to the office of the petitioner on 04.08.2009. The extract of the dispatch register has also been filed on behalf of the respondents. Learned counsel for the petitioner contended that the appellate order was never received by the petitioner and the same was procured by the petitioner on 06.07.2010 under the Right to Information Act. By perusing the record, it is clear that the receipt of the petitioner is not available and the counsel for the respondents could not demonstrate that the copy of the appellate order was ever received by the petitioner on 04.08.2009. Apart from it, it is also important that the petitioner has also filed an application to review the

order dated 05.09.2002 and 04.08.2009 on 22.12.2010 but this was not decided by the respondents. Keeping all these facts and circumstances in mind, we are of the view that the petition is not barred by time.

11. Now another question, we would like to deal with the issue of the competence of the authority for appointing the inquiry officer. Learned counsel for the petitioner contended that the Managing Director, GMVN is the appointing authority of the petitioner while the appointment of the inquiry officer has been made by the Chief Manager (Administration). Learned counsel for the respondents filed an order dated 17.10.2001 of delegation of powers which says that except appointment/ termination, all other matters relating to Class IV employees are delegated to the Chief Manager (Administration). In the light of this delegation order, we do not find any illegality in the appointment of inquiry officer by the Chief Manager (Administration).

12. Learned counsel for the respondents further contended that the inquiry which was conducted against the petitioner was merely a preliminary inquiry and it was not a regular inquiry. The procedure of preliminary enquiry has therefore, been followed and minor penalties have been imposed upon the petitioner but in the light of the facts on record available, it is difficult to agree with this contention of the counsel for the respondents. The petitioner was

suspended on 21.12.2001 (Annexure: A-3). The suspension order very clearly mentions that the departmental inquiry is instituted against the petitioner. In the suspension order itself, the inquiry officer was appointed. Thereafter, the petitioner was also issued a charge sheet on 25.2.2002 (Annexure A-5). The perusal of the inquiry file also reveals that the petitioner was placed under suspension and regular departmental inquiry was instituted against him. There is no mention of the “preliminary inquiry” in the whole record of inquiry. We are therefore, of the view that this is a matter of regular departmental inquiry and not of a preliminary inquiry.

13. The next question which comes for consideration is whether the charge sheet has been signed and issued 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 proceeding of inquiry is vitiated. On the other hand, counsel for the respondents contended that the inquiry officer was competent to sign the charge sheet and the appointing authority has approved the said charge sheet and therefore, there is no illegality in signing of the charge sheet by the inquiry officer. The question whether inquiry officer can sign the charge sheet or not came 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 giving a detailed reasonings as to why the enquiry officer cannot sign 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?”*

The interpretation 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. The above findings of the Hon’ble High Court is binding in nature and so it can safely be concluded that charge sheet can only be issued by the disciplinary authority and not by any other authority as has been done in the present case. It is also pertinent to mention here that the Discipline and Appeal Rules of the GMVN in respect of conducting departmental inquiry are *pari matiria* to the Discipline Rules of the State Government interpreted by the Hon’ble High Court in the above case. In the light of the judgment of Hon’ble High Court of Uttarakhand, it becomes clear that the inquiry officer should be appointed only after the charge sheet is served upon the delinquent official and after he pleads not guilty to the charges. It is also 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 served upon and also the charge sheet was signed by the inquiry officer himself and therefore, the inquiry proceedings are dehere the rules and patently illegal. The entire procedure was in gross violation of the law and therefore void ab-initio.

14. Learned counsel for the petitioner has further contended that the inquiry officer in his report found the charge not proved against the petitioner. The appointing authority had disagreed with the findings of the inquiry officer and imposed penalties without providing any opportunity of making defence to the petitioner. As has been held by various courts, the well settled position of law is that in case the disciplinary authority does not agree with the findings recorded by the enquiry officer in disciplinary proceedings, the disciplinary authority must record reasons for disagreement and communicate the same to the delinquent official and seek his response, only after considering the same, he could pass the order of punishment. Learned counsel for the petitioner has referred the judgment of the Hon'ble Supreme Court in *S.P. Malhotra Vs. Punjab National Bank and others* (2013 LLR 897). It was held in this that the order of punishment would stand vitiated in case the reasons recorded by the disciplinary authority for disagreement with the inquiry officer had not been supplied to the delinquent and his explanation had not been sought. In the said case, the

judgment of the Hon'ble Supreme Court in *Punjab National Bank Vs. Kunj Bihari Mishra 1998 SCC (L&S) 1783* has also been relied upon. In Kunj Bihari Mishra case, the Hon'ble Supreme Court in Para 19 has held as under:-

*“As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”*

In the instant case, though the disciplinary authority disagreed with the findings of the inquiry officer and also recorded reasons for disagreement yet the same were not communicated to the petitioner and he was not provided an opportunity for his explanation. The punishment order was

thus passed by the disciplinary authority violating the fundamental principle of natural justice and therefore, is bad in the eye of law.

15. The counsel for the petitioner also contended that the petitioner has not been paid full salary for the period of suspension, which is not proper. Non-payment of salary has been decided by the appointing authority as one of the punishments. It was argued that non-payment of salary for the suspension period has not been prescribed as punishment under the rules. Only such punishment, as is authorized under the rules can be imposed on an employee. In the case of *Vijay Singh Vs. State of U.P. (AIR 2012 SC 2480)*, it was held that a settled proposition of law is that punishment not prescribed under the rules, cannot be awarded. We are convinced with this argument of the petitioner that the forfeiture of salary has not been prescribed as punishment under the Discipline and Appeal Rules of the GMVN, so the punishment of non-payment of salary for the suspension period passed by the appointing authority in the impugned order cannot be justified.

16. The counsel for the petitioner has raised some other issues also related to the procedure of inquiry etc. as mentioned in paragraphs 6 and 8 above. Since the charge was not proved as per findings of the inquiry and the report of the inquiry officer is favourable to the petitioner, we do

not find it necessary to deliberate upon these issues as they have become irrelevant in light of above findings.

17. In view of the above discussion, we reach the conclusion that the impugned orders are not justified. So, the petition deserves to be allowed and impugned orders of punishment are liable to be set aside.

### **ORDER**

The claim petition is allowed. The impugned order dated 05.09.2002 (Annexure: A-1) and order dated 04.08.2009 (Annexure: A-2) are hereby set aside. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law. The question regarding the payment of salary for the period of suspension would be decided by the competent authority in accordance with rules. No order as to costs.

Sd/-

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

Sd/-

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

DATE: JANUARY 13, 2015  
DEHRADUN

KNP