BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT NAINITAL

Through Audio Conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani

------ Chairman

Hon'ble Mr. Rajeev Gupta

------Vice Chairman (A)

CLAIM PETITION NO. 85/NB/SB/2020

Dinesh Chandra Sati, aged about 53 years, s/o Late Sri M.N.Sati, r/o Talli Haldwani, Industrial State, Bareilly Road, Haldwani, District Nainital, presently posted as Principal, District Education and Training Institute, Didihat, District Pithoragarh.

……Petitioner

vs.

1. State of Uttarakhand through Secretary, Secondary Education, Dehradun.
2. Director General, School Education, Uttarakhand, Dehradun.
3. Director, Secondary Education, Government of Uttarakhand, Dehradun.
4. Director, Elementary Education, Government of Uttarakhand, Dehradun.
5. State Project Director, Sarv Shikksha Abhiyan, Uttarakhand, Dehradun
6. Project Director, Sarv Shikksha Abhiyan, Udham Singh Nagar.

...…….Respondents.

Present: Dr. N.K.Pant, Advocate for the petitioner.
Sri Kishore Kumar, A.P.O. for the Respondents.

JUDGMENT

DATED: SEPTEMBER 28, 2021.

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner, *inter alia* seeks to quash the impugned charge sheet dated 28.12.2017 and impugned order dated 14.07.2020.

2. Brief facts, giving rise to the present claim petition, are as follows:

2.1 When the claim petition was filed, petitioner was posted as Principal, District Education and Training Institute, Didihat, District Pithoragarh. Charge sheet dated 28.12.2017 (Copy: Annexure- A1) was issued to him by Additional Secretary, Secondary Education, Govt. of Uttarakhand. The petitioner filed reply to the charge sheet on 15.01.2018 (Copy: Annexure- A3).

2.2 Audit of the District Project Officer, *Sarv Shiksha Abhiyan*, Udham Singh Nagar was conducted by the Accountant General (Account Audit Team for the financial year 2011-12 to 2015-16 and two Paras (of the objection) were issued by the Accountant General on 31.03.2016 (Copy: Annexure- A 4). Petitioner forwarded para-wise replies with evidence to such paras (Copy: Annexure- A 5).

2.3 Inquiry officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the delinquent officer to submit his explanation and after considering the explanation of the delinquent officer, if it is necessary to hold an inquiry, and only at that stage, an inquiry officer can be appointed. After the amendment of Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 in the year 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. If the impugned order is examined legally, it is clear that it is afflicted by two vices. Firstly, even without issuing a charge sheet calling for an explanation, the inquiry officer has been appointed. Equally without legal foundation and contrary to law is the direction to the inquiry officer to serve the charge sheet upon the petitioner.

2.4 Subsequent thereto, the inquiry report was prepared by the inquiry officer, but the copy of the said inquiry report was not supplied to the petitioner. In this way, no opportunity was given to the petitioner to say something on inquiry report, which is against the principles of natural justice. The description of audit paras has been given in the charge sheet dated 28.12.2017 (Annexure: A 1). The Tribunal does not think it necessary to reproduce contents of those audit paras in the text of this

judgment for the sake of brevity. *Vide* order dated 14.07.2020, issued by Respondent No.1, the explanation submitted by the delinquent petitioner was not found satisfactory and, therefore, he was awarded censure entry along with stoppage of annual increment for three years.

2.5 Petitioner has challenged both the orders *viz*, dated 28.12.2017, charge sheet issued by Addl. Secretary, Secondary Education and dated 14.07.2020, which is Office Order issued by Secretary, Education, Respondent No.1, in present claim petition.

3. C.A./W.S. has been filed on behalf of respondents. In the Counter Affidavit, which has been filed by Sri R.Meenakshi Sundaram, Director General, School Education, description of audit paras has been given, which is not being reproduced here, for the same is part of record.

4. Issuance of charge sheet has been admitted in the C.A. Main focus in the C.A. is on financial irregularities highlighted in the audit paras, committed by the delinquent petitioner.

5. Specific reply has been given to the averments contained in Para '4f' of the claim petition, which relates to the appointment of inquiry officer and issuance of charge sheet by the disciplinary authority. According to the C.A. filed by Respondent No.1, the appointing authority of the delinquent petitioner is Govt. and charge sheet has been issued by Addl. Secretary to the Govt. A perusal of charge sheet dated 28.12.2017 (Annexure: A 1) would indicate that the same has been issued by the Addl. Secretary to the Govt., on behalf of the Governor.

6. Other grounds taken up by the petitioner in his claim petition have although been met in the W.S./C.A. filed on behalf of respondents, but the Tribunal finds that there is no proper reply to the averments contained in Para '4g' of the claim petition. In Para '4g' of the petition, it has specifically been mentioned that copy of the inquiry report has not been supplied to the petitioner and thereby principles of natural justice have been violated.

7. In Para 26 of the C.A./W.S., although a reference of the averments contained in Para '4g' of the claim petition has been given but

no reply has been given as to whether, copy of the inquiry report was given to the delinquent petitioner or not. A vague reply has been given that the decisions cited by the petitioner are not applicable to him and legal reply shall be given during the course of arguments.

8. During the course of arguments, Sri Kishore Kumar, Ld. A.P.O. submitted that liberty may be granted to the disciplinary authority to comply with sub-rule (4) of Rule 9 of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 to proceed against the petitioner afresh, in accordance with law.

9. We do not find anything on record to suggest that copy of the inquiry report was given to the delinquent petitioner.

10. Hon'ble Apex Court, in the decision of Managing Director ECIL Hyderabad vs. B.Karunakar, (1993) 4 SCC 727, has observed as under:

> "2. The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:
>
> (i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?
>
> .....
> 4.....In State of Gujarat v. R. G. Teredesai (1970) 1 SCR 251 : (AIR 1969 SC 1294) this Court held that the requirement of a reasonable opportunity would not be satisfied unless the entire report of the Inquiry Officer including his views in the matter of punishment were disclosed to the delinquent public servant. The Inquiry Officer is under no obligation or duty to make any recommendations in the matter of punishment and his function merely is to conduct the inquiry in accordance with law, and to submit the records along with his findings. But if he has also made recommendations in the matter of punishment "that is likely to affect the mind of the punishing authority with regard to penalty or punishment to be imposed" it must be disclosed to the delinquent officer. Since such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him so that he could, while showing cause against the proposed punishment, make a proper representation. The entire object of supplying a copy of the report of the Inquiry Officer is to enable the

delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved, the punishment proposed to be inflicted is unduly servere".

In General Manager, Eastern Railway v. Jawala Prosad Singh (1970)3 SCR 271 : (AIR 1970 SC 1095) it is reiterated that the duty of the Inquiry Officer ends with the making of the report. The disciplinary authority has to consider the record of the inquiry and arrive at its own conclusion on each charge. Even if the inquiry committee makes a report absolving the employee of the charges against him, the disciplinary authority may on considering the entire record come to a different conclusion and impose a penalty. A reference is made in this connection to H. C. Goel's case (AIR 1964 SC 364) (supra).

In Uttar Pradesh Govt. v. Sabir Hussain (1975) Supp SCR 354: (AIR 1975 SC 2045), it was held that in the absence of furnishing the copy of the report of the Inquiry Officer, the plaintiff had been denied a reasonable opportunity of showing cause against his removal. It was also held that although S. 240(3) of the GOI Act did not cover a case of "removal", it did not mean that the protection given by the said section did not cover the case of "removal". From the Constitutional stand-point "removal" and "dismissal" stand on the same footing except as to future employment. In the context of S. 240(3). removal and dismissal are synonymous terms-the former being only species of the latter. The broad test of "reasonable opportunity" is whether in the given case the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage or in the alternative to show that the penalty proposed was much too harsh and disproportionate to the nature of the charge established against him.

In Union of India v. Tulsiram Patel (1985) Supp 2 SCR 131 :(AIR 1985 SC 1416), this Court had specifically to consider the legal position arising out of the 42nd Amendment of the Constitution by which clause (2) of Art. 311 was amended and the part of the said clause, viz., "and where it is proposed, after such inquiry, to impose on him any such penalty until he has been given reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" was deleted. In that decision, this Court has not dealt with the procedure to be followed by the disciplinary authority after the Inquiry Officer's report is received by it. The question whether the delinquent employee should be heard by the disciplinary authority to prove his innocence of the charges levelled against him when they are held to have been proved by the Inquiry Officer, although he need not be heard on the question of the proposed penalty was neither raised nor answered. This decision, therefore, is not helpful for deciding the said question.

In Secretary, Central Board of Excise and Customs v. K. S. Mahalingam (1986) 3 SCC 35 : (AIR 1987 SC 1919), again the question did not arise as to whether the report of the Inquiry Officer should be furnished to the delinquent employee as a part of the reasonable opportunity at the first stage, Viz., before the disciplinary authority took its decision on the said report and came to its own conclusions with regard to the guilt or innocence of the employee. The contention raised there was with regard to the non-supply of the report to show

cause against the penalty proposed. Since it was raised in ignorance of the 42nd Amendment of the Constitution, this Court rejected the said contention.

In Ram Chander v. Union of India (1986)3 SCC 103 : (AIR 1986 SC 1173) which is a decision of two learned Judges of this Court, it was lamented that after the 42nd Amendment of the Constitution, the question still remained as to the stage when the delinquent Government servant would get the opportunity of showing that he had not been guilty of any misconduct so as to deserve any punishment or that the charges proved against him were not of such a character as to merit the extreme penalty of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case. The Court, however, felt that it was bound by the majority decision in Tulsiram Patel's case (AIR 1985 SC 1416) (supra). The Court further went on to observe that in view of the constitutional change and the decision of the majority in Tulsiram Patel's case (supra), the only stage at which now a civil servant can exercise the said valuable right was by enforcing his remedy by way of a departmental appeal or revision or by way of judicial review.

In Union of India v. E. Bashyan (1988) 3 SCR 209 : (AIR 1988 SC 1000), the question squarely arose before a Bench of two learned Judges of this Court as to whether the failure to supply a copy of the report of the Inquiry Officer to the delinquent employee before the disciplinary authority makes up its mind and records the finding of guilt would constitute violation of Art. 311(2) of the Constitution and also of the principles of natural justice. It was opined that in the event of failure to furnish the report of the Inquiry Officer, the delinquent employee is deprived of crucial, and critical material which is taken into account by the real authority which holds him guilty, viz., the disciplinary authority. According to the Court, it is the real authority because the Inquiry Officer does no more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt, to assist the disciplinary authority who alone records the effective finding. The non-supply of the copy of the report would, therefore, constitute violation of the principles of natural justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Art. 311(2) of the Constitution. It was observed that there could be glaring errors and omissions in the report or it may have been based on no evidence or rendered in disregard to or by overlooking evidence. If the report is not made available to the delinquent employee, this crucial material which enters into the consideration of the disciplinary authority never comes to be known to the delinquent and he gets no opportunity to point out such errors and omissions and to disabuse the mind of the disciplinary authority before he is held guilty. The Court then specifically pointed out that serving a copy of the inquiry report on the delinquent employee to enable him to point out anomaly, if any, before finding of guilt is recorded by the disciplinary authority, is altogether a different matter from serving a second show cause notice against the penalty to be imposed which has been dispensed with by virtue of the amendment of Art. 311(2) by the 42nd Amendment of the Constitution. The Court then found that the said point required consideration by a larger Bench and referred the matter to Hon'ble the Chief Justice for placing it before a larger Bench.

5. Since it is contended that in K. C. Asthana v. State of U. P., (1988) 3 SCC 600: (AIR 1988 SC 1338), a Bench of three learned Judges has taken a view that it is not necessary to furnish the report of the Inquiry Officer to the delinquent employee before the disciplinary authority arrives at its conclusions, it is necessary to consider the said authority a little closely. In that case, pursuant to the direction of the High Court, an inquiry was conducted by the Administrative Tribunal under the Uttar Pradesh Disciplinary Proceedings [Administrative Tribunal] Rules, 1947 against the petitioner who was a Munsiff Magistrate. The charge against him was that he had demanded bribe from a plaintiff in a suit pending before him. After completion of the inquiry, the entire matter was considered by the Full Court of the High Court which approved the findings of the Administrative Tribunal holding the writ petitioner guilty. The High Court thereafter requested the Governor to remove the petitioner from service and the impugned order terminating the services of the petitioner was accordingly passed. The petitioner challenged the order under Article 32 of the Constitution. The petitioner had also filed an application under Article 226 of the Constitution before the Allahabad High Court which was dismissed in limine. The appeal against the said order was also heard along with the writ petition. One of the contentions raised before this Court by the counsel for the petitioner was that a copy of the report of the Administrative Tribunal was not made available to the petitioner and this must be held to have vitiated the subsequent proceedings including the impugned order of punishment. In this connection, a reference was made to the Explanation to sub-rule (3) of Rule 9 of the said Rules providing that a copy of the recommendations of the Tribunal as to the penalty should be furnished to the charged Government servant. As against this, the learned counsel for the respondents-State of U. P. and others pointed out that after the 42nd Amendment of the Constitution the said Explanation was dropped, the Court, therefore, observed as follows [AIR 1988 SC 1338, Para 5]:

"The question of service of copy of the report arose on account of a right of a second show cause notice to the government servant before the 42nd Amendment and since present disciplinary proceeding was held later, the petitioner cannot legitimately demand a second opportunity. That being the position, non-service of a copy of the report is immaterial."

In this view of the matter, the Court dismissed the writ petition. It would thus be clear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage, i.e., against the penalty proposed. That was also how the contention was understood by this Court. The connection was not and at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in E. Bashyan's case (AIR 1988 SC 1000) (supra) by a Bench of two learned Judges or to the view taken by three learned Judges in Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588:(AIR 1991 SC 471).

In Mohd. Ramzan Khan's case (supra), the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz.,

that although on account of the 42nd Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the Inquiry Officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the Inquiry Officer is other than the disciplinary authority and the report of the Inquiry Officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

6. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A. K. Kraipak v. Union of India,(1970) 1 SCR 457: (AIR 1970 SC 150), it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi- judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

In Chairman, Board of Mining Examination v. Ramjee, (1977)2 SCR 904: (AIR 1977 SC 965), the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety

being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

In Institute of Chartered Accountants of India v. L. K. Ratna, AIR 1987 SC 71, Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 : (AIR 1990 SC 1480), (Bhopal Gas Leak Disaster Case) and C. B. Gautam v. Union of India, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated.

7.....The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity it the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary, authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary, authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the

evidence, the report of the Inquiry Officer and the representation of the employee against it.

The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry Officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry to impose upon him any such penalty such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the Inquiry Officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the Inquiry Officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Inquiry Officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry Officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

(i) **Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject**.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court! Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court., Tribunal comes to the conclusion that the non-supply of the report would have made no

difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.

The Court/Tribunal should nut mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a: difference to the result in the case that should set aside the order of punishment Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

20. The findings or recommended punishment by the enquiry officer are likely to affect the mind of the disciplinary authority in his concluding the guilt or penalty to be imposed. The delinquent is, therefore, entitled to meet the reasoning, controvert the conclusions reached by the enquiry officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in dark to know the findings, the reasons in support thereof or nature of the recommendation on penalty. He would point out all the factual or legal errors committed by the enquiry officer. He may also persuade the disciplinary authority that the finding is based on no evidence or the relevant material evidence was not considered or overlooked by the enquiry officer in coming to the conclusions, with a view to persuade the disciplinary authority to disagree with the enquiry officer and to consider his innocence of the charge, or even that the guilt as to the misconduct has not been established on the evidence on records or disabuse the initial impression formed in the minds of the disciplinary authority on consideration of the enquiry report. Even if the disciplinary authority comes to the conclusion that charge or charges is/are proved, the case may not warrant imposition of any, penalty. He may plead mitigating or extenuating circumstances to impose no punishment or a lesser punishment. For this purpose the delinquent needs reasonable opportunity or fair play in action. The supply of the copy of the report is neither an empty formality, nor a ritual, but aims

> to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Art. 226 of the Constitution or S. 19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial thereof is offending not only Art. 311(2) but also violates Arts. 14 and 21 of the Constitution."

11. It will also be profitable to quote Sub-Rule (4) of Rule 9(4) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as below:

> "**9 Action on Inquiry Report –** (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government Servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule-7.
> (2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.
> (3) In case the charges are not proved, the charged Government Servant shall be exonerated by the Disciplinary Authority of the charges and inform him accordingly.
> (4) **If the Disciplinary Authority, having regard to its findings on all or any of charges, 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 inquiry report and his findings recorded under sub-rule (2) 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 inquiry and representation of the charged Government Servant, if any, and subject 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 charged Government Servant**."
>
> [*Emphasis supplied*]

12. All the penalties ‘major or minor’ have been mentioned in Rule 3 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as below:

> “**3. Penalties** - The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servant -
>
> **(a) Minor Penalties**-
>
> *(i) Censure;*
>
> *(ii) Withholding of increments for a specified period;*
>
> *(iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;*
>
> *(iv) Fine in case of persons holding Group “D” posts*
>
> *(v)*
>
> *Provided that the amount of such find shall in no case exceed twenty five percent of the month’s pay in which the fine is imposed*
>
> **(b) Major Penalties**-
>
> *(i) Withholding of increment with cumulative effect;*
>
> *(ii) Reduction to a lower or grade or time scale or to lower stage in a time scale;*
>
> *(iii) Removal from the Service which does not disqualify from future employment;*
>
> *(iv) Dismissal from the Service, which disqualifies from future employment.”*

13. Findings of the inquiry officer along with copy of inquiry report has since not been given to the charged Govt. Servant (petitioner) to enable him to submit his representation, therefore, the punishment thus given to him cannot sustain. The same should be and is, accordingly, set aside leaving it open to the disciplinary authority to comply with sub-rule (4) of Rule 9 of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 to proceed against the petitioner afresh, in accordance with law.

14. The claim petition thus stands disposed of. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: SEPTEMBER 28, 2021
DEHRADUN.

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