

**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. 15/DB/2013**

Bhagati Lal, S/o Late Sri Bhachi Lal, Presently posted as Incharge,  
Block Development, Raipur through Agriculture and Soil  
Conservation Officer, Raipur, situated at Bhandari Bag, Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through its Secretary, Agriculture  
Department, Civil Secretariat, Subhash Road, Dehradun,
2. Director, Agriculture Directorate, Dehradun,
3. Chief Agriculture Officer, Dehradun.

.....Respondents

Present: Sri M.C.Pant, Counsel  
for the petitioner  
Sri Umesh Dhaundiyal, A.P.O.  
for the respondents

**JUDGMENT**

**DATE: NOVEMBER 07, 2014**

**DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

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

*“A. Issue order or direction to the respondents to quash the impugned order dated 31.07.2012 along with its effect and operation also along with all consequential proceedings based on the impugned order after calling entire record from the respondents declaring the same against the rules and law and also to give all consequential service benefits.*

*B. Issue order or direction to the respondents to allow the dues and salary and whatsoever may be benefit and other service benefit including promotion. Had it been the impugned order was never in existence and further to declare the effect and operation of the suspension order and its effect and operation as malafide, arbitrary and illegal and also allow the entire salary of the suspension period, had it been the same was never in existence,*

*C- Issue appropriate order or direction suitable in nature to award damages and compensation to the petitioner for malicious and malafide act of the respondents, by which the petitioner is facing grave mental agony and financial hardship and the amount of the damages and compensation which may be quantified by this Hon’ble Tribunal and further be directed to the respondents the amount to be recovered from the salary of the erring officer.*

*D. Issue any other suitable direction or order as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*E. Award costs of the claim petition to the petitioner.”*

2. The brief facts are that due to some irregularities, the petitioner while working as Incharge Assistant Director, Watershed, New Tehri (Garhwal) in 2008-09 was suspended on 14.01.2009 (Annexure A-2).The Deputy Director, Agriculture

was appointed the inquiry officer in the suspension order itself and he issued the charge sheet to the petitioner on 20.01.2009 under his own signature. It had the approval of the Director, Agriculture on the charge sheet itself(Annexure-A3) .The petitioner submitted his reply to this charge sheet on 16.04.2009 and 30.04.2010. After that the petitioner was issued an additional charge sheet on 24.06.2010 by the inquiry officer under his own signature which had the approval of the Director, Agriculture on the additional charge sheet (Annexure-A-8). The reply to the additional charge sheet was given by the petitioner on 16.07.2010. While the inquiry continued, the petitioner was reinstated on 04.07.2011. The inquiry officer submitted the inquiry report on 14.11.2011. Thereafter, a show cause notice alongwith a copy of the inquiry report was issued to the petitioner on 13.12.2011 as revealed from original file of the inquiry. The petitioner replied to this show cause notice on 09.04.2012. After considering the enquiry report and reply to the show cause notice, the Director, Agriculture passed the punishment order on 31.07.2012 (Annexure-A-1) imposing the following punishments upon the petitioner:

- i. Recovery of proportionate amount of Rs. 8,99,612 out of the total loss of Rs. 26,63,740.42 to the government.
- ii. Adverse remark in the Character Roll of the petitioner.
- iii. Stoppage of three annual increments with cumulative effect.

The petitioner thereafter, preferred a representation/appeal against the impugned order to the Secretary, Agriculture on 05.09.2012 (Annexure A-13) and also sent a reminder on 10.12.2012 but the same was not

decided. Thereafter, a legal notice was sent by the counsel of the petitioner to the Secretary, Agriculture (respondent no.1 ) on 02.03.2013 but the same was also unreplied. The petitioner exhausted the statutory remedies available to him, thereafter he filed the petition before this Tribunal. The petitioner also prayed for the stay of the recovery of the abovementioned amount. After hearing both the parties, the recovery of the amount of Rs. 8,99,612 was stayed till further orders on 30.05.2013.

3. The petitioner in his claim petition has challenged the punishment order mainly on the grounds that the inquiry officer was appointed before the charge sheet was issued and the charge sheet (and also the additional charge sheet) were signed by the inquiry officer (and not by the disciplinary authority) and therefore, the whole proceedings are in gross violation of the Rules. The petitioner also alleged that by the impugned order, both the major and minor punishments have been awarded which is bad in the eye of law. The petitioner has prayed to quash the impugned order.

4. The respondents in their counter affidavit 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 the petitioner has rightly been found guilty. The charge sheets which were issued to the petitioner were approved by the Director, Agriculture. The punishments awarded to the petitioner are proportionate to the misconduct

committed by him. Therefore, the petition is liable to be dismissed.

5. A rejoinder affidavit has also been filed on behalf of the petitioner and mostly the points raised in the main petition have been reiterated. Copies of the "Uttarakhand Government Servants (Appeal and Punishment) Rules 2003" along with the amendments in the Rules in 2010 have also been filed on behalf of the petitioner.

6. We have heard both the parties and perused the record carefully. The original inquiry file has also been perused.

7. The first question which comes for consideration is whether the charge sheets have 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 proceeding of inquiry is 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 of the said charge sheets and therefore, there is no illegality in signing of the said charge sheets.

8. The question whether inquiry officer can sign the charge sheet or not came up 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. 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 enquiry 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? This apart, Rule (supra) itself clearly stipulates that the charge sheet has to be signed by the disciplinary authority.”*

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.

9. In the light of the judgment of Hon’ble High Court of Uttarakhand in above para, 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. Based on the said finding of the Hon’ble Uttarakhand High Court, the State Government amended the Rule 7 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 in 2010. 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

unconstitutional and patently illegal. The entire procedure was in gross violation of the law and void ab-initio.

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

### **ORDER**

The claim petition is allowed. The impugned order dated 31.07.2012 (Annexure A-1) is hereby quashed. In case any amount is recovered from the petitioner in pursuance of the impugned order, that amount shall be refunded to the petitioner. Moreover, if adverse remark is entered in the character roll of the petitioner, that shall also be expunged. The petitioner shall also be entitled for regular annual increments. However, it would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law. No order as to costs.

Sd/-

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

Sd/-

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

DATE: NOVEMBER 07, 2014  
DEHRADUN

KNP