

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

Present: Hon'ble Mr. Rajendra Singh
----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 23/NB/DB/2021

Atar Singh, aged about 54 years, s/o Shri Mangat Singh, r/o Aurangabad
@ Sikandarpur Aurangabad, District Bijnor, U.P.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Elementary Education, Dehradun.
2. Director, Elementary Education, State of Uttarakhand, Dehradun.
3. District Education Officer, Elementary Education, District Udham Singh Nagar.

.....Respondents

Present: Sri N.K.Papnoi, Advocate for the Petitioners
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: AUGUST 25, 2022

Per: Hon'ble Mr. Rajeev Gupta, Vice Chairman (A)

Present claim petition has been filed seeking the following reliefs:

(i) To quash the impugned order dated 20.03.2020 along with its effect and operation also after calling the entire record and further direct the respondents to reinstate the petitioner in service with full back wages and consequential benefits, had it been the impugned orders are never in existence, keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately and to allow the petition in toto.

(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Brief facts according to the claim petitioner are as below:

2.1 The petitioner was selected on the post of Basic Teacher on the basis of BTC (Basic Training Certificate) training in the year 1996. On complaint of some unknown person regarding the forged BTC Certificates, the department started enquiry in the year 2019 and constituted a committee for verification of the documents of the Assistant Teachers working in the department after a long period of about 23 years. Thereafter, the respondent no. 3 in pursuance to the report of the committee issued charge sheet to the petitioner on 27.01.2020 and also suspended him. The respondent no. 3 directed the petitioner to submit his reply within 15 days. After receiving the charge sheet dated 27.01.2020, the petitioner *vide* his reply dated 10.02.2020 denied all the charges and requested for enquiry as per procedure prescribed in Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 as amended (hereinafter referred to as 'the Rules of 2003'). Thereafter, the respondent no. 3, who himself appointed him as enquiry officer without going to the material facts produced by the petitioner and without giving him opportunity of hearing passed the order dated 20.03.2020 by which the service of the petitioner has been terminated.

Hence this claim petition.

3. Respondent no. 3 has filed Counter Affidavit defending the impugned order dated 20.03.2020.

4. We have heard learned Counsel for the petitioner and learned A.P.O. and perused the record.

5. Learned Counsel for the petitioner argued that in similar matters, the Hon'ble High Court has directed the respondent department to conduct departmental enquiry as per procedure. He has referred to the judgment and order dated 28.03.2017 in Writ Petition (S/S) nos. 1152/16, 2149/15,

83/16, 82/16, 93/16, 618/16, 621/16 and 650/16, according to which the writ petitions were allowed, the termination orders were quashed and the State Govt. was directed to reinstate the petitioners in service with all consequential benefits. However, liberty was reserved to the respondent State to proceed with the matter in accordance with law. Against this order, the respondent department preferred Special Appeal no. 543 of 2017 and other Special Appeals before the Division Bench of Hon'ble High Court which were disposed of *vide* orders dated 13.02.2019. The relevant extract of judgment and order dated 13.02.2019 passed in Special Appeal No. 543 of 2017 is as below:

"6. The appellant-respondent should have conducted a departmental enquiry, in as much as the respondent-writ petitioner had denied the charges levelled against him. They should have also afforded the petitioner a reasonable opportunity of defending himself in such an enquiry and, thereafter, should have furnished him a copy of the enquiry report calling for his objections. It is only thereafter, could a punishment have been imposed on the petitioner. Instead, the appellant has straightway, after receipt of the petitioner's reply to the charge-sheet denying the charges, dismissed him from service.

7. While, we find no error in the order under appeal necessitating interference in so far as the order of punishment was set aside by the learned Single Judge, the fact however remains that the learned Single Judge has also directed that the respondent-writ petitioner be reinstated into service with all consequential benefits.

8. As noted hereinabove, the petitioner was placed under suspension on 4.12.2015, and continued to remain under suspension when he was dismissed from service by proceedings dated 6.1.2016. Setting aside the order of punishment would only require that the order of suspension be continued, and for the disciplinary enquiry to be completed early.

9. In such circumstances, we consider it appropriate to modify the order of learned Single Judge and direct the appellants-respondents to continue to pay the petitioner subsistence allowance, which he is entitled to during the period of suspension, till the completion of departmental enquiry initiated against him.

10. As a charge memo was issued to the petitioner as early as on 11.3.2014 i.e. nearly 5 years ago, the appellant-respondent is directed to complete the departmental enquiry with utmost expedition and, in any event, not later than four months from the date of production of a certified copy of this order.

11. Subject to the aforesaid modification, the appeal is disposed of. No costs. Pending application, if any, also stands disposed of."

6. Our attention was also drawn to the judgment and order dated 17.11.2021 of Hon'ble High Court passed in Writ Petition (S/S) no. 1281 of 2020, Vimal Kumar vs. State of Uttarakhand & others. This order of Hon'ble High Court is reproduced as below:-

“Hon’ble Sharad Kumar Sharma, J (Oral)”

A very peculiar situation has emerged for consideration in the present writ petition, and particularly, it would not be inappropriate to observe; that the impugned order of 09.07.2020, which has been passed by the District Education Officer, Primary Education, Haridwar, is rather contemptuous in nature, since being contrary to the directions which was issued by the earlier judgment rendered on 22.05.2019, as passed in the writ petition, which had been preferred by the petitioner being WP(SS) No.633 of 2019, whereby, the respondents were directed, rather to proceed to take an action against the petitioner; as per the provisions contained under Rule 7 of the Disciplinary and Appeal Rules, 2003, and then only to proceed to pass any order of penalty as classified and contemplated under the Rules of 2003. It goes without saying, that if the Rules of 2003, itself is taken into consideration, particularly, Rule 3, it is splitted into two segments, (i) the imposition of minor penalty contained under 3(a), and (ii) major penalty contained under 3(b) of the Rules of 2003.

2. In the case at hand, the issue would be of the consideration of the imposition of the major penalty by the impugned order, which will fall to be for determination under 3(b) of the Rules. The Rules as framed under the proviso to Article 309 of the Constitution of India. In its Rule 7 had laid down a specified procedure, which is mandatorily required to be resorted to by the “Disciplinary Authority”, before an order of imposition of the major punishment on a Government Servant, against whom a misconduct is alleged to have been committed is passed. Rule 7 of the Rules of 2003, had quite specifically classified, the steps which are required to be taken by the “Disciplinary Authority” for the purposes of conducting an inquiry, as against an employee, and there are various stages, which are mandated to be complied with. Rules 7 of the Rules of 2003, is extracted hereunder:-

“7. Procedure for imposing major punishment- Before imposing any major punishment on any Government Servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be signed by the Disciplinary Authority. Provided that where the appointing authority is Governor, the chargesheet may be signed by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of

witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(4) The chargesheet, alongwith the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records. In case the chargesheet could not be served in aforesaid manner, the chargesheet shall be served by publication in a daily newspaper having wide circulation; Provided that where the documentary evidence is voluminous, instead of furnishing its copy with chargesheet, the charged Government Servant shall be permitted to inspect the same.

(5) The charged Government servant shall be required to put in a written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the chargesheet. The charged government servant shall also be required to state whether he desires to cross examine any witness mentioned in the chargesheet whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings 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 recorded findings 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 findings recorded related to every charge and representation of charged Government Servant, if any, and subject to 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 the charged Government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged Government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub rule (8) he will forward the following to the Inquiry Officer, namely:

(a) A copy of charge sheet and details of misconduct or misbehavior;

(b) A copy of written defence statement, if any submitted by the government servant;

(c) Evidence as a proof of the delivery of the documents referred to in the chargesheet to the government servant;

(d) A copy of statements of evidence referred to in the charge-sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government Servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to the produced in his defence. Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the Inquiry Officer may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to charges.

(13) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the Date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statement of witnesses mentioned in the chargesheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers it necessary to do so, may, by an order, appoint a Government Servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge.

(15) The charged Government Servant may take the assistance of any other Government Servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits:

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Authority ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any such evidence, as provided earlier, and may examine, cross examine and reexamine him.

(17) This rule shall not apply in the following case:- i.e. there is no necessity to conduct an inquiry in such cases:-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge: or

(b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided these rules; or

(c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry in the manner provided in these Rules."

3. In brief, the facts of the present case are, that on account of the fact that, according to the version of the respondents, since the petitioner had been alleged to have procured an appointment as an Assistant Teacher, on the basis of the alleged forged and fabricated B.Ed. certificates, the petitioner was placed under suspension by an order dated 07.04.2018. Subsequent thereto, on the basis of the suspension order, the services of the petitioner were later on dispensed with by the respondent by an Order No.47-52, dated 07.04.2018.

4. The perusal of the said order of dispensing the services of the petitioner apparently shows that there had been a non application and compliance of the provisions contained under Rule 7 of the Disciplinary and Appeal Rules, 2003. Consequently, the petitioner had put a challenge

to the said order by preferring a Writ Petition being WPSS No.633 of 2019, which was allowed by the coordinate Bench of this Court by the judgment dated 22.05.2019, with the following directions:-

“In view of the consensus between learned counsel for the parties, the present writ petitions are disposed of in terms of judgment dated 13.02.2019 rendered by Division Bench of this Court in Special Appeal No. 543 of 2017 (State of Uttarakhand & others Vs. Krishan Pal Singh).

Learned counsel for the petitioners gives an undertaking on behalf of his clients that petitioners shall extend full cooperation to ensure that departmental inquiry is concluded within four months.”

5. In fact, if the earlier direction, which was issued by the coordinate Bench of this Court, is taken into consideration, it was based upon the principles of the procedure, which were required to be resorted to for the purposes of the imposition of the major penalty, as mandated by the judgment of the Division Bench of this Court, rendered on 13.02.2019, in **Special Appeal No.543 of 2017, “State of Uttarakhand & others Vs. Krishan Pal Singh”**, wherein, the Court has observed that wherever an employee; who on the basis of the set of allegations of misconduct, if major penalty is expected or proposed to be imposed then the respondent would have to mandatorily complied with the provisions contained under Rule 7 of the Rules of 2003. As a consequence thereto, the matter was relegated back to the respondent, District Education Officer, to reconsider the matter, and pass a fresh order and during the intervening period, the suspension order of the petitioner was directed to be kept revived. It was thereafter, that after the revival of the proceedings in pursuance to the earlier judgment dated 22.05.2019, that the respondent had proceeded to pass the present impugned Order No.70, dated 09.07.2020, wherein, in fact, they have perhaps reiterated their action taken against the petitioner of termination of the services of the petitioner on the ground that the petitioner had procured the appointment on the basis of the fraudulent B.Ed. certificate, and hence on the basis of the SIT report, and the report submitted by the Deputy Education Officer, (Primary Education), the services of the petitioner was yet again dispensed with by the impugned order dated 09.07.2020.

6. In case, if the impugned order dated 09.07.2020, is scrutinized, in fact it is nothing but a deliberate and intentional endeavour of an eye-wash for non complying with the provisions of the Rule 7, as it was directed to be adhered to, in the light of the judgment of the Division Bench of this Court, and rather the impugned order doesn't reflect at all, that the District Education Officer, Primary Education, Haridwar, had ever adhered to the complete provisions which had been provided under Rule 7 of the Rules of 2003, for the purposes of imposition of the major penalty under sub-rule (b) of Rule 3 of the Rules of 2003. It doesn't even reflect that the District Education Officer, Primary Education, Haridwar, had resorted to the various procedural stages provided under Rule 7 of the Rules of 2003, for the purposes of imposition of the major penalty, including giving an opportunity of crossexamination of the witnesses or the scrutinization of the report, as referred to in the impugned order. The petitioner submits that in fact the impugned order happens to be in

apparent non compliance of the earlier directions issued by the Division Bench.

7. After having heard the learned Counsels for the parties, and after having gone through the impugned order dated 09.07.2020, I am in agreement with the tenacity of the arguments which had been extended by the learned counsel for the petitioner; that in fact the decision of 09.07.2020, dispensing the services of the petitioner in fact is nothing but a reiteration of the earlier order of the removal of the petitioner from the services of the petitioner i.e. by an order dated 07.04.2018, and it doesn't apparently reflect, that the steps and stages which had been provided under Rule 7 of the Rules of 2003, for the purposes of imposition of the major penalty had been ever complied with in its strict sense nor any logic or reasons have been assigned, therein, by the District Education Officer, Primary Education while passing the impugned order dated 09.07.2020.

8. Hence, this Court is of the view that this impugned order dated 09.07.2020, do not commensurate to the provisions contained under Rule 7 of the Rules of 2003, and as such, the same cannot be sustained, because merely because of an observation made in the impugned order, that the respondents have adhered to the principles of natural justice, and provided an opportunity of hearing, to the petitioner in pursuance to the notices issued by them on 22.06.2020, calling upon him to participate in the proceedings on 22.07.2020, that itself will not suffice the compliance of the Rule 7 of the Rules of 2003, for the reason being, that the fixation of the date of hearing doesn't amount to be a hearing itself, because hearing, herein, would mean calling an explanation from the delinquent employee, providing opportunity of cross-examining the witnesses, which were required to be relied with for the purposes of taking the impugned action of imposing the major penalty, and after undertaking the said process; what bearing will the evidences have to be lead by the respective parties, would have over the proposed action to be taken against the petitioner is one of the factor which is required to be strictly considered by the "Disciplinary Authority" by recording a specific finding, and the reasons for accepting or non accepting the defence taken by the petitioner or the story as levied by the prosecution against the petitioner, rather the impugned order does not reflect an application of mind, at all, besides being cryptic and non analytical.

9. In that eventuality, I am of the view that, apart from the fact that, this order happens to be in contemptuous in nature to the judgment of 22.05.2019, to be read with the Division Bench judgment dated 13.02.2019, as despite of the orders having being passed by this Court, Rule 7 of the Rules of 2003, has not been complied with and that too merely a stray observations has been made in relation to the submission of the some of the inquiry reports, that in itself will not amount to be a complete adherence of the principles of natural justice, because I am of the view that the "Disciplinary Authority" will have to apply its mind, as to how and based on what logic and in what manner, the inquiry report, which has been referred to in the impugned order would have a bearing on an action taken against the petitioner of dispensing his service on the basis of the set of allegations leveled in the charge-sheet.

10. Since the impugned order is a cryptic and non-speaking and in violation of the Rule 7 of the Rules of 2003, the same is set aside. The

writ petition is allowed. As a consequence thereto, the respondent Nos.3 and 4, are directed to reinstate the petitioner into the services. However, for the period from the date of the suspension i.e. 07.04.2018, till the date of his reinstatement, the said period would be treated as to be a period in continuity of the services without any additional monetary benefits, except the suspension allowance, which has already been paid to the petitioner.

11. Subject to the above observations, the writ petition stand allowed.”

7. The impugned order dated 20.03.2020 states that the petitioner was suspended vide order dated 27.01.2020 and charge sheet was issued to him and he was required to present his case within 15 days. Again, vide letter dated 18.02.2020, he was directed to present his case and to be present in the office on 05.03.2020. The petitioner presented his representation on 10.02.2020 which is not satisfactory. It proves that the charges against the petitioner are correct and he deserves major penalty. According to the provisions of the Rules of 2003, it has been decided to terminate his services. Therefore, he is dismissed from service with immediate effect.

8. The above shows that the procedure prescribed in Rule 7 of the Rules of 2003 has not been followed while imposing major penalty on the petitioner.

9. It is further to be mentioned that before imposing major penalty, action as per Rule 9(4) of the Rules of 2003 is also required to be taken. Rule 9(4) of the Rules of 2003 is quoted herein below:

“9(4) Action on Inquiry Report--

(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 to 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 the charged Government Servant.”

10. The impugned order in the present claim petition is in violation of the Rules of 2003 and the same is hereby set aside. The suspension of the petitioner shall be deemed to continue in the intervening period and further

till the disciplinary inquiry against him is completed in accordance with the Rules of 2003. The subsistence allowance for the intervening period and till the completion of inquiry shall be paid to him. It is also directed that the disciplinary inquiry be completed within a period of four months from the date of this order.

11. The claim petition is, accordingly disposed of. No orders as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN(A)

DATED: AUGUST 25, 2022
DEHRADUN
KNP