UTTARAKHAND PUBLIC SERVICES TRIBUNAL DEHRADUN BENCH AT NAINITAL

Claim Petition No. 19/N.B./D.B./2014

Munish Kumar, aged about 57 years, S/o Sri Ram Swaroop Singh, Ex-Conductor Bhowali Depot, Resident of Village and Post Feena Mohalla Holiwala, Tehsil Chandpur, District Bijnore, U.P.

……..Applicant/Petitioner

Versus

1. State of Uttarakhand through Transport Secretary, Secretariat, Dehradun.
2. Divisional Manager, Uttarakhand Transport Corporation, Kumaon Region, Nainital.
3. General Manager, Administration, Uttarakhand Transport Corporation, Head Quarter, Dehradun.
4. Chairman, Uttarakhand Transport Corporation, 01, Raj Vihar, Chakrata Road, Dehradun.

……. Respondents

Coram: **Hon'ble Mr. Justice J. C. S. Rawat**
……. Chairman
&
Hon'ble Mr. U. D. Chaube
…… Member (A)

Present : Sri A. N. Sharma, Advocate for the petitioner.
Sri V. P. Devrani, A.P.O. for the respondent no. 1.
Sri Tarun Pandey, Advocate for the respondent nos. 2 to 4.

JUDGMENT

Date: - **27-07-2015**

Justice J.C.S. Rawat (Oral)

This claim petition has been filed for seeking the following relief:-

(i) To set aside the order dated 31-8-2009 passed by the Divisional Manager, Uttarakhand Transport Corporation, Kumaon Region, Nainital whereby the petitioner was unlawfully and arbitrarily removed his service, the order dated 15-6-2010 passed by the respondent no. 3 and order dated 11-1-2012 passed by the respondent no. 4, contained as Annexure No. 01, 02 and 03 to this petition and the petitioner be kindly reinstated in service with all benefits from the date of unlawful removal,

(ii) To award the cost of the petition in favour of the applicant as against the respondents;

(iii) To award any other relief in favour of the applicant which this Hon'ble Tribunal may deem fit and proper in these circumstances of this case.

2. The petitioner had been a conductor in the respondent department at Bhowali Depot. He remained absent from his duties from 27-07-2007 to 04-09-2007 and 27-11-2007 to 13-12-2007. The matter was also reported to the Divisional Manager, Nainital regarding his absence from his duties. The Divisional Manager, Nainital framed the necessary charges and appointed the Assistant General Manager, Bhowali as inquiry officer. Thereafter the enquiry was conducted by enquiry officer and submitted his report to the Divisional Manager, Nainital. Thereafter the Divisional Manager, Nainital issued a show-cause notice and the petitioner did not submit his reply to the said show-cause and the

impugned order of punishment by way of removal was passed. Thereafter appeal was preferred which was dismissed by the appellate authority and thereafter revision was also preferred which was also dismissed by the revisional authority. The claim petition was contested by the respondents. The respondents have supported the orders impugned in this claim petition.

3. The learned counsel for the petitioner contended that enquiry has not been concluded in accordance with law and as such enquiry is liable to be vitiated. The learned counsel for the petitioner further contended that charge-sheet was submitted to the delinquent and by same order enquiry officer was also appointed by the punishing authority. The above charge-sheet also stipulates that the reply of the said charge-sheet is to be given within 15 days from the date of the service of the charge-sheet. The appointing authority even delegated his power to record his satisfaction after the reply of petitioner. Thus proceeding is liable to be vitiated. Learned counsel for the respondents refuted the contentions.

4. Before analyzing the above argument, we would like to analyze the relevant Rules. The Rule 64 of the उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा नियमावली, 1981 (hereinafter referred to as "Niyamawali 1981") is produced as under:-

"(2) ऐसे कारणों को जिनके आधार पर कार्यवाही करने का प्रस्ताव हो, निश्चित आरोप या आरोपों का रूप दिया जायेगा जिसे ऐसे प्रस्तावित साक्ष्य के साथ जिस पर आरोप के समर्थन में निर्भर किया जाय, आरोपित व्यक्ति को संसूचित किया जायेगा और उससे युक्तियुक्त समय के भीतर अपने प्रतिवाद स्वरूप लिखित बयान प्रस्तुत करने और यह बताने की अपेक्षा की जायेगी कि क्या वह किसी साक्षी का परीक्षण या उससे जिरह करना चाहता है और क्या वह चाहता है कि उसकी व्यक्तिगत सुनवाई की जाय। उसे यह भी सूचित किया जायेगा कि यदि वह अपने प्रतिवादस्वरूप कोई लिखित बयान प्रस्तुत नहीं करता है तो यह उपधारणा कर ली

जायेगी कि उसे कुछ भी प्रस्तुत नहीं करना है और एक पक्षीय आदेश पारित कर दिये जायेंगे।

(3) यदि कर्मचारी चाहे या जांच अधिकारी आवश्यक समझे तो ऐसे आरोपों के सम्बन्ध में जो स्वीकार न किये गये हों, मौखिक जांच कराई जा सकती है। जांच में ऐसे मौखिक साक्ष्य की सुनवाई की जायेगी जिसे जांच अधिकारी आवश्यक समझे। आरोपित व्यक्ति साक्षियों से जिरह करने, व्यक्तिगत रूप से साक्ष्य देने और ऐसे साक्षियों को, जिन्हें वाह चाहे बुलाने का हकदार होगा, परन्तु जांच करान वाला अधिकारी ऐसे पर्याप्त कारणों से, जो अभिलिखित किये जायेंगे, किसी साक्षी को बुलाने या उसका परीक्षण करने से इन्कार कर सकता है।

(4) कार्यवाही में साक्ष्य का पर्याप्त अभिलेख और निष्कर्ष का विवरण और उसके कारण होंगे। जांच अधिकारी कार्यवाही से पृथक आरोपित की जाने वाली शास्ति के सम्बन्ध में स्वयं अपनी सिफारिश भी कर सकता है। कार्यवाही और अभिलेख नियुक्ति प्राधिकारी को भेज दिए जायेंगे।"

5. It is also admitted to the parties that the punishing authority is the Divisional Manager of the respondent. The above rules clearly contemplate that the appointing authority may impose any penalty specified in above rule and procedure as laid down. The above Rule 64 clearly provides that the major penalty may be imposed only after framing of the charges by the disciplinary authority and thereafter the delinquent will be called upon to reply the charges within the stipulated period. If the delinquent submits his reply and the disciplinary authority is not satisfied with the explanation, the disciplinary authority may himself enquire into the charges or appoint an authority subordinate to him as enquiry officer into the charges. Rule 6 & 7 of the Niyamawali 1981 clearly are similar to the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. Rule 6 & 7 of this Niyamawli are as under:-

"6. **Disciplinary Authority**:- The Appointing Authority of a Government servant shall be Disciplinary Authority who, subject to the

provisions of these rules, may impose any of the penalties specified in Rule 3 on him :

Provided that no person shall be dismissed or removed by an authority subordinate to that by which he was actually appointed:

Provided further that the Head of Department notified under the U.P. Class II Services (Imposition of Minor Punishment) Rules, 1973, subject to the provisions of these rules shall be empowered to impose minor penalties mentioned in Rule 3 of these rules:

Provided also that in case of a Government servant belonging to Group 'C' and 'D' posts, the Government, by a notified order, may delegate the power to impose any penalty, except dismissal or removal from service under these rules, to any Authority subordinate to the Appointing Authority and subject to such conditions as may be prescribed therein.

7. **Procedure for imposing major penalties**:- Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner:

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The fact 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 approved by the Disciplinary Authority:

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary of the Secretary, as the case may be, of the concerned department.

(iii) The charges framed shall be so precise and clear as to given 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 alongwith oral evidences, if any shall be mentioned in the charge-sheet.

(iv) The charged Government servant shall be required to put in a written statement of 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 state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce 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 inquiry officer shall proceed to complete the inquiry ex-parte.

(v) The charge-sheet, 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 charge-sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in daily newspaper having wide circulation:

…….”

6. It is also clear that the enquiry officer has no right to decide the representation against the charge-sheet as stipulated in the rules. This controversy has been settled by the Division Bench of Hon’ble Uttarakhand High Court in Writ Petition No. 118 (SB) of 2008 Lalita Verma Vs. State of Uttarakhand in which the interim order was passed giving a detailed reasoning as to why the enquiry officer should not act as a punishing authority in the matter of the enquiry. However, in the case charge sheet has been signed by the Divisional Manager and the

matter was relegated to the inquiry officer. This aspect has also been considered by the Division Bench is 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 Rule14 (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 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 accused by signing the charge sheet? This apart, Rule (supra) itself clearly stipulates that the charge sheet has to be signed by the disciplinary authority.

9. Rule 7 also stipulates that the charge sheet shall be approved by the Disciplinary Authority. Disciplinary Authority has been defined in Rule 6 as the Appointing Authority of the Government servant concerned. In the counter affidavit, it has not been stated as to who is the Appointing Authority of the petitioner. Therefore, this Court cannot find out as to whether the charge sheet has been approved by a competent Disciplinary Authority or not."

7. The Hon'ble High Court vide its interim order dated 30.6.2008, which has been affirmed and adopted in the final judgment in **writ petition No. 118/SB/2008, Lalita Verma Vs. State & others** decided on 17.05.2013 has also compared the aforesaid Rule 7 of 2003 Rules with the Rule 14 of CCS Rules, 1965 and held that the enquiry officer should only be appointed after the charge sheet is served upon the delinquent officer and he pleads not guilty to the charges. There is no occasion to the departmental authority to appoint the inquiry officer before the delinquent official pleads guilty or not guilty to the charges. In the case in hand, the punishing authority had already appointed the inquiry officer and he framed the charges against the delinquent official and he also appointed the inquiry officer and he also appointed the inquiry officer without waiting the reply of the petitioner. In view of the above judgment, the controversy is squarely covered in the instant case also. The State of Uttarakhand had amended the Rules in view of the above judgment in the year 2010.

As such, the proceeding initiated by punishing authority is not in accordance with law.

8. Secondly, learned counsel for the petitioner further contended that from the perusal of record it is revealed that the enquiry officer who has conducted the enquiry and recorded the statement of Girish Chandra Joshi Station In-charge Bhowali. The enquiry officer immediately after recording the statement summoned the petitioner and he was cross-examined by of question and answer without recording any statement of the petitioner. At the last the petitioner was allowed to put question to the witness Girish Chandra Joshi. Learned counsel for the petitioner further contended that perusal of enquiry report as well as statement of the witness clearly reveals that the petitioner was not given proper opportunity of hearing and to defend himself. The conduct of the inquiry officer was not upto the mark and it was totally hostile to the petitioner. The learned counsel for the petitioner further contended that the inquiry officer sent his notice for 20.5.2008 for hearing of the inquiry. But the inquiry was conducted on 19.5.2008 without any notice to the utter surprise of the petitioner. The learned counsel for the respondents refuted the contentions.

9. We have gone through the contents of enquiry report as well as statement recorded by the enquiry officer. As such, the enquiry officer has recorded statement of Girish Chandra Joshi Station In-charge and thereafter without giving any opportunity to cross-examine the witness by the petitioner he started questioning the petitioner as a prosecutor and at the last the petitioner was given opportunity to put the question to the witness. Perusal of this statement clearly reveals that inquiry officer has illegally violated the principle of natural justice.

10. As a matter of fact the inquiry officer at the first stage should have recorded the statement of the witness and immediately thereafter the

petitioner should have been given a right to cross-examine the witness. If the department would have closed its evidence then the petitioner should have been asked to give his statement in the inquiry. After concluding his statement the enquiry officer had a right to put the questions to ascertain the truth. However, the right of the enquiry officer exists that during the course of the statement of the petitioner, the enquiry officer can ask the question to clarify any statement given in his evidence .In the case of hand the inquiry officer has taken sheet of the paper and at the top of the sheet the statement of the witness was recorded and the statement was concluded. Then the inquiry officer summoned the petitioner and he started putting him questions and to record the replies of the petitioner and immediately concluding the statement of the petitioner, the petitioner was allowed to put question to the witness. Thereafter, the inquiry was concluded. Thus the procedure adopted by the enquiry officer is contrary to the law. Thus we are completely in agreement with the contention of the learned counsel of the petitioner. The perusal of record reveals that the enquiry officer assumed the role of the prosecutor of the department as in the manner he conducted the inquiry.

11. A similar matter came up before the Hon'ble Apex Court in the case of **State of Uttaranchal vs. Kharak Singh 2008 SCC (L&S) 698**. In this case an enquiry officer, instead of examining the witnesses, he himself inspected the area in the forest and after taking a note of certain alleged discrepancies, secured some answers from the delinquent by putting some question and as such he acted as an investigator, prosecutor and a judge. Such a procedure is opposed to principles of natural justice. The same view has been re-agitated by the Hon'ble Supreme Court in **Mohd. Yunus Khan Vs. State of U.P. 2010 (7) SC 970**.

In view of the above discussion it is clear that the inquiry officer has violated the principle of natural justice and he was bias and he worked like a prosecutor, investigator and a Judge.

12. Learned counsel for the petitioner further contended that the enquiry was not properly conducted by the enquiry officer. The petitioner was not given fair chance to produce the evidence in defence before the enquiry officer. It was further contended that the enquiry officer without any assigning reason preponed the date of hearing of enquiry from 20-05-2008 to 19.5.2008 and after concluding the enquiry on 19.5.2008 no opportunity was given to the petitioner to produce the defence. The enquiry officer has also put question to him regarding the production of evidence in his defence. The petitioner has replied in positive. Learned counsel for the respondents refuted the contentions and it is admitted that the date for the hearing of the enquiry was fixed 20.5.2008. The original record of the department which was summoned by us clearly reveals that the notice was sent for 20.5.2008 and appellate order also speaks about it. But the enquiry was preponed for 19-5-2008 and entire enquiry was concluded on 19.5.2008. From the perusal of the record, there is no iota of evidence that the petitioner was given any chance to produce any evidence in defence either oral or documentary. Nothing could be demonstrated by the learned counsel for the respondents that any opportunity has been given to the petitioner to adduce the evidence in defence. The learned counsel for the respondents could not demonstrate that as to why the enquiry dated was preponed from 20-5-2008 to 19-5-2008. Thus, the petitioner was not given a fair chance during the enquiry.

13. No other argument has been advance by the parties before us.

14. In view of the above, the entire proceeding of enquiry is liable to be vitiated. The punishment order dated 31-08-2009, appellate order dated 15-06-2010 and revisional order dated 11-01-2012 is liable to be accordingly quashed. The matter is remitted back to the punishing authority and the punishing authority may also, if so he desires, frame the charges and proceed in accordance with law and according to the observations made in the body of the judgment and may proceed further against the petitioner accordingly. The original record was submitted before the Tribunal by the learned counsel for the respondent nos. 2 to 4 which was returned back to the learned counsel for the respondent nos. 2 to 4.

15. The claim petition is disposed off accordingly. No order as to costs.

Sd/- Sd/-

U.D. Chaube **Justice J.C.S. Rawat**
Member (A) **Chairman**

B.K.

Date :- 27-07-2015