

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. U.D.Chaube

-----Member(A)

**Claim Petition No. 08/N.B./D.B./2015**

Ravindra Kumar, aged about 61 years, S/o Sri B.M. Varshney, permanent R/o Murlidhar Bhawan, Main Market Road, Chhata Town, P.O. Chhata, District Mathura (at present R/o F-102, Pacific Estate, Anurag Chowk, Vasant Vihar, Dehradun).

.....Petitioner

**Versus**

1. State of Uttarakhand through Secretary, Drinking Water Department, Government of Uttarakhand, Dehradun.
2. Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, 11 Mohini Road, Dehradun through its Managing Director.
3. Chairman, Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, 11 Mohini Road, Dehradun.
4. Enquiry Officer/Additional Secretary, Drinking Water Department, Government of Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Bhagwat Mehra, Ld. Counsel  
for the petitioner.

Sri V.P.Devrani, Ld. A.P.O.  
for the respondent No. 1.

Sri B.P.Nautiyal, Ld. Sr. Counsel  
assisted by Mohd. Matloob, Advocate  
for the respondent No. 2 & 3

None for the respondents No. 4

## **JUDGMENT**

**DATED: SEPTEMBER 15, 2015.**

**(Hon'ble Mr. Justice J.C.S. Rawat, Chairman)**

1. This petition has been filed for seeking following relief:-
  - "A. To set aside the impugned office memo dated 1.1.2015 passed by the respondent No.3 (Annexure NO.A-1 to compilation –I) and also the impugned charge-sheet dated 14.1.2015 (Annexure No.A-2) to Compilation-II)
  - B. To restrain the respondents from harassing and victimizing the petitioner.
  - C. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstance of the case.
  - D. Award the cost of the claim petition in favour of the petitioner.”-
2. It is admitted case of the parties that the petitioner was Superintending Engineer w.e.f. 30.6.2008 and thereafter he was further promoted on the post Chief Engineer Level II vide order dated 20.01.2011. On 3.5.2012 the petitioner was appointed as Managing Director of the Respondent No.2 and he worked as such till 11.09.2013 and thereafter in view of the direction of Hon'ble

Supreme Court, he was repatriated to the post of Chief Engineer Level-II w.e.f. 12.09.2013. After attaining the age of superannuation he retired from the services on 31.10.2013.

3. According to the petitioner, after more than one year and two months from his retirement, the Respondent No.3 had issued office memorandum dated 1.1.2015 whereby he has directed for initiation of inquiry proceedings against the petitioner and at the same time without issuing any charge sheet the Respondent No.4 has been appointed as inquiry officer. The petitioner has alleged that no charge sheet could be served upon the petitioner without the prior approval of the Governor in accordance of Article 351 A of the Civil Service Regulations. The respondents had denied this fact and alleged that the inquiry was already pending against him and the initiation of the inquiry and issuance of the charge sheet had been done prior to the retirement of the petitioner.
4. Ld. Counsel for the petitioner contended that respondents had served a memo by way of charge sheet on 10.1.2015 and the petitioner thereafter submitted a detailed reply to Respondent No.3 stating inter-alia that the aforesaid decision to initiate disciplinary proceedings is completely barred by Article 351-A of the C.S.R.. Sri B.P.Nautiyal, Sr. Counsel for Respondent No.2 & 3 contended that the proceedings against the petitioner and others had already been initiated on the basis of report submitted by the District Magistrate, Pauri Garhwal and the D.M., Pauri Garhwal informed that the petitioner is responsible for the irregularities and the loss to the State. The said report was dated 16.4.2013. This letter also consists enquiry report of three members of enquiry

committee. Ld. Counsel for Respondent Nos. 2 & 3 further pointed out that thereafter the show cause notice was issued to the petitioner but he failed to reply the same. The petitioner ultimately submitted a reply to the said enquiry report against the irregularities which has been pointed out in the said report and he denied the same as per his explanation dated 5.9.2013. Thereafter the appointing authority, after examining the explanation of the petitioner, passed order dated 21.10.2013 to charge-sheet the petitioner. Thereafter the charges were framed against the petitioner on 31.10.2013. The said charge sheet along with a letter was sent to the petitioner on the same date by the speed post which is Annexure CA-3 to the C.A. of Respondent Nos. 2 & 3. The charge sheet is also annexed therewith. Ld. Counsel further contended that the issuance of the charge sheet and the initiation of the proceedings had been made prior to the retirement of the petitioner. As such the provisions of Article 351-A of C.S.R. would not be attracted to this case. Contra to it Ld. Counsel for the petitioner further contended that it was mandatory to show by the respondents that the said charge sheet has been received to the petitioner. He further pointed out that the said envelop only contained one letter which is Annexure-2 to the C.A. but the said letter did not contain any annexures or the charge sheet. He further elaborated his contention in the rejoinder affidavit in Para-4. He has stated that the envelop which was sent to him, was not sufficient to accommodate all these documents.

5. Now we come to the contentions of the parties that the charge sheet cannot be issued after the retirement of the Government servant without the permission of the Governor.
6. Para 351-A of C.S.R. provides as under:-

**351A-** *The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:*

*Provided that- (a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment - i) shall not be **instituted** save with the sanction of the Governor.*

*ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.*

*(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause(ii) of Clause (a); and (c) The Public Service Commission, UP shall be consulted before final orders are passed.*

*(Provided further that if the order passed by the Governor relates to a case dealt with under the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.) Explanation - For the purpose of this article - (a) **departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the***

***officer has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to have been instituted:***

*(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a Civil Court.”*

7. The substantive part of para 351-A of CSR confers the power upon the Government of withholding or withdrawing a pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or negligence during his service, including service rendered on re-employment after retirement. Second part provides that the departmental proceedings cannot be initiated after the retirement without the permission of the Governor and the second embargo in the proviso is that when the charges framed against the officer are issued to him, that should not be beyond four years of irregularities from the date of his retirement. Thus, there are two important words or phrases used in Article 351-A C.S.R.. First word is “Instituted”, the proviso A sub clause (1) clearly provides that the departmental enquiry shall not be instituted save with the sanction of the Governor. Thus, word institution has its own meaning. Apart from that explanation of the said clause makes it clear that the departmental proceedings shall be deemed to have been instituted when the charges framed against an officer are issued to him or if the officer has been placed

under suspension from an earlier date, on such date by incorporating the explanation, the rule framing authority fixes two notional dates as the date in which the departmental proceeding was deemed to have been instituted against an officer. If we read combined effect of both the clauses referred above, the enquiry will be instituted after the issuance of the charge sheet. Thus, from the perusal of the pleadings as well as from the contention of the parties three things are very important; (i) date of initiation of enquiry (ii) date of issuance of charge sheet and (iii) date of receipt of charge sheet.

8. Now the question arises if the charge sheet has not been served upon the delinquent on the date of retirement or prior to the date of retirement, whether it will amount initiation of inquiry or issuance of charge sheet or whether merely dispatch of the charge sheet would be sufficient for issuance of charge sheet and initiation of enquiry. Ld. Counsel for the petitioner relied upon the judgment of Hon'ble Apex Court **State of U.P. and others Vs. R.C. Mishra Civil Appeal No. 1539/2007** in which the enquiry was initiated against the petitioner after the service of the charge sheet and inquiry was pending before the inquiry officer and thereafter writ petitioner retired from the service. The question arose before the Court that as to whether the sanction of the Governor is required in the pending enquiry if the delinquent retires before the conclusion of the enquiry. The petition was filed before the U.P. Public Services Tribunal. The Tribunal held that the sanction of the Governor is a must and the enquiry cannot proceed without the prior approval of the Governor. The Hon'ble High Court also upheld

the said decision. Hon'ble Supreme Court in its above judgment reversed the judgment and held in Para 8 as under:-

*“In the present case, the respondent had been placed under suspension and charges were also served upon him while he was in service. In such circumstances, proviso (a) did not come into play at all and there was no requirement of obtaining sanction of the Governor. The enquiry which had been instituted prior to the retirement of the respondent and was completed after his retirement could not, therefore, be held to be illegal on the ground of want of sanction of the Governor. The view to the contrary taken by the Tribunal and by the High Court is, therefore, clearly erroneous in law and cannot be sustained..”*

9. Perusal of the above judgment clearly reveals that there was no issue involved in this matter about the definition of the issuance and initiation of the proceedings. We could also lay our hand in a judgment on the same point of Hon'ble Apex Court in **Delhi Development Authority Vs. H.C. Khurana 1993 SC 196**. In this case H.C.Khurana was an Executive Engineer. A charge sheet was prepared on 11.7.1990 against him which was dispatched on 13.7.1990 for being served, however he went on long leave. The service of the charge sheet could not be affected upon him after best efforts. On 28.11.1990 the D.P.C. was held, the case of Sri Khurana was to be considered for promotion and his case was considered and his recommendation was kept in the sealed cover. After the completion of the D.P.C., on 25.1.1991 the charge sheet could be served upon Sri Khurana. The persons who were found suitable, were promoted as Superintending Engineer, while the case of Sri Khurana was kept in abeyance under the sealed cover. Sri Khurana filed a writ petition before Hon'ble Delhi High Court and the High Court allowed the petition taking the view that

framing of charges and to issue the charge sheet to the employee would not carry any purpose, therefore, there was no jurisdiction for the respondents to follow the sealed cover procedure since the actual service of charge sheet upon Sri Khurana was not made. The said order of the Hon'ble High Court was challenged by the respondents before the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed two O.Ms. issued by the Government of India in which certain guidelines have been fixed for such case. Guidelines of the O.M. dated 12.1.1988 were enforced and in which it was provided that the promotion of the Government servant against whom disciplinary proceedings are pending or whose conduct is under investigation, procedure and guidelines to be followed. Hon'ble Supreme Court quoted the said **O.M. in Para 4 & 5** of this judgment which is as under:-

“4. Para 2 is the relevant portion in these memoranda. In o.M. dated 12.1.1988, para 2 is as under :-

Cases of Government Servants,-to whom Sealed Cover Procedure will be applicable.

2.At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.
- (iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar

grave misconduct is in progress either by the CBI. or any other agency, departmental or otherwise.

5. The substituted clause (ii) in para 2, in O.M. dated 14.09.1992, is as under :-

"(ii) Government servants in respect of whom a **Chargesheet has been issued** and the disciplinary proceedings are pending;"

10. At the last the Hon'ble Apex Court has held that the issuance of the charge sheet was sufficient and the service upon Sri Khurana was not necessary and Hon'ble Apex Court also held that the initiation of the disciplinary proceedings is prior act of the issuance of the charge sheet. The Hon'ble apex Court has held in Para 14 & 15 as under:-

*““14. Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee has emphasized in*

*para 17 of the decision. Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.*

*15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from context in which it is used. Meanings of the 'word issue' given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; .... to give or send out authoritatively or officially; to send forth or deal out formally or publicly-, to emit, put into circulation'. The issue of a chargesheet, therefore, means its dispatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and dispatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman."*

11. As we have noticed earlier that the charge sheet has already been dispatched but it was not received according to the respondents. The petitioner has only admitted that the part of the charge sheet, a letter annexed with the charge sheet was served upon him. We are not going to decide this controversy at present because now it is settled position of law that if the charge sheet has been issued and dispatched to the Government servant, the further fact of its actual service on the Government servant is not necessary as part of its requirement. The word 'Issued' has its own meaning used in Article 351 A of CSR. The interpretation of the word 'Issued' has

already been given by the Hon'ble Apex Court in the above given case. Hence our case is squarely covered by the above judgment of the Hon'ble Apex Court. The charge sheet which has been served upon the petitioner in the year 2015 is paramateria to the charge sheet which has been issued on the date of the retirement of the petitioner.

12. From the perusal of the record it is revealed that the District Magistrate, Pauri Garhwal wrote a letter in the year 2013 vide Annexure-1 by which the D.M. has stated in his letter that he constituted three members committee about the irregularity which he has received about the work and conduct of the petitioner and he has further alleged that the petitioner has committed a number of financial irregularities and has misappropriated the money sanctioned by the Government for the projects and he recommended along with the report of the enquiry to initiate the departmental enquiry against the petitioner. Thereafter Sri S.Raju, Principal Secretary wrote a letter to the petitioner on 30.07.2013 in which he has referred the letter of the D.M. and he sought reply of the petitioner within 15 days. Sri S.Raju, Principal Secretary issued a letter to In-charge Managing Director, Respondent No.4, that the charge sheet should be framed by the Chairman, Uttarakhand Peya Jal Sansadhan Vikas Evam Nirman Nigam and appoint an enquiry officer for taking necessary action against the petitioner. He further mentioned in his letter that the petitioner is going to retire on 31.10.2013. The Principal Secretary has communicated the decision to the Managing Director and further

communicated to the Chairman of Respondent No. 4. Again the same Sri S.Raju as Chairman of Respondent No. 4 sent a office memorandum on 31.10.2013 which clearly indicates that the inquiry officer should furnish his report within one month and copy of the said letter was also sent to the petitioner. It is also alleged that the charge sheet has also been annexed with the said letter of the petitioner as well as to other persons indicated in the letter itself. Photo copy of the issuance of such letter and charge sheet as alleged by the petitioner are annexed with the said letter and there is no acknowledgement of the said letter. According to the petitioner only the copy of the letter of the Chairman, Respondent No. 3 was received on 1.11.2013 and no copy of the charge sheet was received to him with it. Document, which was received, only indicated that the enquiry officer has been nominated. The petitioner has given so many details with regard to the service of the said charge sheet to prove that the said charge sheet has never been served upon him. It is clear from the record that the memo dated 31.10.2013 has not been received to the petitioner. As we have discussed above that there is no need to serve the charge sheet upon the delinquent in view of the above decisions of the Hon'ble Apex Court. Merely issuance of the charge sheet, though not received before the retirement, is necessary. In this case we conclude that departmental proceedings had already been initiated against the petitioner and we do not find any force in the contention of Sri Bhagwat Mehra, learned Counsel for the petitioner.

13. Ld. counsel for the petitioner further contended that the irregularities and misappropriation which has been alleged against the petitioner, relates to the period between 1.6.1999 to 18.9.2000, more than 15 years old incident (as alleged) and between 18.9.2002 to 19.7.2007 the petitioner was serving as Executive Engineer, Pauri, thereafter the petitioner has been given four promotions. He further contended that the Para 351-A of C.S.R. which provides that after the retirement inquiry can be held only for an incident which took place within four years before the institution of such proceedings. Admittedly, in this matter the period of events relating to the enquiry relates more than four years. Sri B.P.Nautiyal, Ld. Sr. Counsel for Respondent Nos. 2 & 3 and Ld. A.P.O. appearing on behalf of Respondent No.1 refuted the contention.
14. Whereas the submission is concerned the petitioner's contention in pith and substance is that the irregularities which had been alleged against the petitioner relates to a period between 1.6.1999 to 18.9.2000 more than 15 years old incident and between 8.9.2002 to 19.7.2007 when the petitioner had been serving as Executive Engineer, Pauri, as such the enquiry has been instituted at a belated stage which is not sustainable in the eyes of law. We have gone through the contents of the enquiry report; both the charges relate to grave irregularities and if there is delay in initiating the enquiry against the petitioner that could not alone be a ground to quash the charge sheet at this stage. Delay in initiation of disciplinary proceedings or delay in concluding the enquiry are

connected matters and the court may decline to quash the charge sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and the Court must reach to a logical conclusion which is proper in the circumstance. It would be very premature to say that the charges are not grave at present because at this stage a prima facie charge sheet has to be looked into when the enquiry would proceed, the gravity of the charges would come before the authorities. In the case of the delay of proceeding against the government employee, the Court has to see that any prejudice could be caused to the Government employee by initiation of the said departmental proceeding. In our opinion, at present there is no prejudice caused to the petitioner by proceeding of the enquiry and the petitioner could not demonstrate any prejudice which could be caused to him in his claim petition. Hon'ble Apex Court in the case of **Bhajan Singh Vs. State of Uttarakhand reported in 2013 (14)SCC 32**, it was also between the petitioner and the present M.D. Bhajan Singh. In this case, it was a dispute on the post of the M.D. of the respondents. Hon'ble Court in Para 18 of the judgment has held as under:-

“In the present case the respondent No. 4 was served with three charge sheets. As per the above dicta, the departmental proceedings will therefore have to be deemed to have been initiated against him. The Nigam cannot sit over the charge sheets or keep them in a wrapper, and not disclose to the selection committee until the charge sheets are either dropped or proceeded further. Once a departmental proceeding is

pending, the claim of the employee concerned for promotion will have to be kept in a sealed cover.”

The Hon’ble Court has also passed some observations against the respondents and awarded cost on the respondents. In this case a number of charge sheets have also been referred which are pending against the petitioner though it is not relevant for the purpose of this case but Hon’ble Apex Court has held even though the charge sheet has been framed against the petitioner, even then it should have been brought before the D.P.C. and the case of the petitioner could not have been considered and the procedure adopted in the case of **Union of India Vs. Janki Raman 1991(4) SCC 109** should have been adopted. Para 17 of the judgment reads as under:-

“There' is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

15. Though the above judgment was only referred to show that the petitioner and the department in that was hand in glove so that the respondents had not brought of the fact well in time before the D.P.C.. In the continuation of the above, we would also like to indicate in the case in hand also that the preliminary enquiry report

was submitted by the District Magistrate, Pauri on April, 2013. The petitioner had been working in respondent's department till 31.10.2013, the department by one pretext or the other deferred to frame the charges and issued the charge sheet to the petitioner only on the day of superannuation on 31.10.2013. We have noticed, it was very surprising that the petitioner was going to retire on 31.10.2013 and on the same day the charge sheet was framed and it was sent to the communication to the petitioner through speed post and it is said that the charge sheet has not been served upon the petitioner. Whereas the petitioner alleged that only covering letter of the said charge sheet was received and the charge sheet was not received by him on 01.11.2013. Thus, the department has made unnecessary delay to wait the day when the petitioner was to retire and to issue to serve the charge sheet upon him on the date of superannuation. Secondly, when the charge sheet was not served as alleged by the petitioner; the department had taken time about 14 to 15 months to serve the charge sheet upon the petitioner. Undisputedly, the petitioner had been working as M.D. of the respondent, Nigam as he was asked to vacate the said position by judgment of the Hon'ble Apex Court rendered in Bhajan Singh (supra) in the year 2013. Thereafter, the petitioner had taken over the charge as Chief Engineer of the Respondent No.2. The department had taken a long time to initiate the inquiry against the petitioner. The preliminary inquiry conducted through D.M., Pauri, submitted in the month of April, 2013 and charge sheet issued only on 31.10.2013, reveals that the department was hand in glove with the petitioner. Though we

have concluded above that the delay in holding the inquiry is not fatal to the department if the allegations against a Government servant are of serious nature in the charge sheet, but the prudence requires that the charge sheet should have been served promptly. The Hon'ble Apex Court in **Secretary Ministry of Defence Vs. Prabhash Chandra Mirdha 2013(11) SCC 565** in Para 8 has held as under:-

*"In Transport Commissioner, Madras-5 v. A.Radha Krishna Moorthy, (1995) 1SCC 332, this court held:*

*"Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal."*

The above observation of the Hon'ble Supreme Court squarely supports the view taken by us.

16. The next submission of the Ld. Counsel for the petitioner is that the petitioner cannot be charged in the departmental enquiry which has been initiated after the retirement for the events more than four years. But we do not agree with this contention because the general rule is that if the enquiry has proceeded prior to the retirement, then the application of the proviso has no role to play. We have extracted Rule 351 A of C.S.R. in preceding para -5 of the judgment. The said Rule had two parts; the first part deals about the general law; the second part of the Rule deals with exception of

the general. The proviso (ii) of the said Rule deals that contention of the petitioner's counsel, if the case of the petitioner falls under the exceptions, then the contention of the petitioner's counsel can be upheld. As we have pointed out in the judgment of the Hon'ble Apex Court in R.C.Mishra case (supra) that if the enquiry is already pending prior to the retirement of the petitioner and it has been initiated and charge sheet has been issued, then the proviso would not be applicable to such case. In the instant case we have already held that the enquiry has already been initiated and charge sheet has already been issued though not served but it was deemed to have been initiated prior to the retirement of the petitioner. Thus there is no application of exception of the General Rule in this case.

17. Learned counsel for the petitioner further contended that in the present case the inquiry officer was appointed at the time of initiation of the disciplinary proceedings and also permitted to serve the charge sheet upon the Government servant. He further contended that the charge sheet has been signed by the inquiry officer and the same has been served upon the petitioner which is wholly illegal and is violative of amended Rule 7 of the Punishment & Appeal Rules, 2003. Learned counsel for the respondents refuted the contention and replied to the arguments of the petitioner on three grounds that firstly, perusal of sub-rule (1) of Rule 7 clearly reveals that before issuance of the charge sheet the appointing authority has to record his satisfaction for initiating and conducting the inquiry and if the order of issuance of inquiry has been recorded and the inquiry has been started in accordance with

Rule 7 (2), subsequent act after the initiation of inquiry, cannot be challenged at an early and premature stage. He further contended that issuance of charge sheet for conducting the disciplinary inquiry is the first step taken before holding the inquiry by the inquiry officer into the allegations in pursuance of the decision taken to initiate the disciplinary proceedings. The charges are framed on the basis of allegation made against him to give him an explanation. He further contended that framing of the charge and signing upon the charge sheet is the act after the order of the appointing authority to initiate or conduct the inquiry. He further contended that quashing of the charge sheet is premature at this stage. He further contended that the initiation of inquiry and framing of charge are two different stages within a departmental inquiry. Thus, the initiation of inquiry is genesis and framing of the charges are the specie of it. He further contended that Tribunal has to determine as to whether initiation of the inquiry was initiated by the competent person. Generally the Government frames the disciplinary rules for initiating and conducting the departmental proceedings. Where the departmental Rules exist to conduct the departmental proceedings, the departmental authority has to follow the said rules; the disciplinary authority has the right to remove the defects during the course of inquiry by serving an amended charge sheet. Judgments of the Hon'ble Court have been cited by the petitioner in which the punishment of the Government employees has been quashed, where the charge sheet has been signed by the inquiry officer and the punishment was based on the said charges sheet. In those judgments, it was held that the inquiry

was not fair and it was found against the principles of natural justice. In those judgments the charge sheet only had not been challenged at the premature stage. The argument was further advanced by the learned counsel for the respondents that the contention of the petitioner is that the charge sheet was served upon the petitioner on 1.1.2015 and only in response thereof sent a communication to the Chairman, Respondent No.3, that the charge sheet is not maintainable as the charge sheet had been served after retirement. In view of the provision under Article 351 A of the C.S.R. it cannot be served upon the petitioner without the prior approval of the Governor. After the receipt of the said letter, the petitioner was asked to send detailed reply against the charge sheet. The petitioner was allowed time till March, but the detailed reply has not been given as yet and has not been filed on record till today. He contended that the petitioner should have first replied the charge sheet, thereafter he should have filed the petition challenging the charge sheet before the Tribunal. Hence, he further contended that petitioner's petition is premature. Lastly, the Learned Sr. Counsel for the respondents further contended that the charge sheet which has been submitted to the petitioner, had also been approved by the Chairman. He further contended that the charge sheet, which has been sought to be quashed, is premature. Ld. Sr. Counsel for the respondents refuted the contention and contended that this Court has no jurisdiction to quash the charge sheet on any ground as a routine way if the enquiry has already been initiated in the right way by a competent authority. he further contended that the initiation of the enquiry

was initiated by the Government and thereafter it was initiated by the Respondent No.3, Chairman of Respondent No.2. Thus, the initiation of the enquiry is totally correct as such the charge sheet, even though it has certain lacunas, cannot be quashed at the behest of the petitioner at a premature stage. He further contended if initiation of the enquiry is correct that any irregularity even committed by the respondents during the course of the enquiry till the punishment, that cannot be looked into at this premature stage and it can only be looked into at the stage of the final conclusion, if it is challenged before the Court. The respondents had an opportunity to rectify any mistake by subsequent act of the Respondent No.3.

18. Now we have to analyze that the charge sheet is issued to the Government employee and after the issuance of the charge sheet reply thereof is sent by the respondents and after considering the said reply, the enquiry officer will proceed against the petitioner and give its finding to the appointing authority. Thereafter punishment, in case he desires to give punishment, would arise.. The first question arises as to whether can we quash the charge sheet at the initial stage and if so, what are the limitations for quashing the charge sheet. We would like to mention that in the departmental enquiry there are two phases before the charge sheet is issued to the Government servant; first phase starts when the competent authority visits into the relevant documents of the departmental enquiry and he comes to a conclusion that the departmental enquiry should be initiated against the Government servant. Thus, initiation of enquiry is the first act of the competent

authority and thereafter, he, either himself or delegates the power to any officer to frame the charges against the Government servant and as such he records his satisfaction to initiate the departmental inquiry. Thus, framing of the charge sheet and signing thereupon is a second action in the proceeding of the departmental enquiry.

19. The Hon'ble Apex Court in the judgment of **H.C.Khurana** (supra) in para 9 has held as under:-

“The question now, is: What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the chargesheet, since issue of the chargesheet is a consequence of the decision to initiate disciplinary proceedings. Framing the chargesheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The chargesheet is framed on the basis of the allegations made against the government servant; the chargesheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges-, if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the chargesheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the chargesheet to the government servant, after it has been framed and dispatched,

does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the chargesheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings.”

20. The Hon’ble Apex Court has clearly laid down that the decision to initiate the disciplinary proceedings cannot be subsequent to the issuance of the charge sheet and the issuance of the charge sheet is a consequence of the decision to initiate the disciplinary proceedings. These two aspects have been clearly clarified by the Hon’ble Apex Court in the above judgment.
21. The framing of the charge sheet is an act of the initiation of departmental proceedings. Under these circumstances, the Hon’ble Apex Court in Para 9 in the case of **Inspector General of Police and another vs. Thavasiappan 1996(2)SLR 470** held as under:-

“As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2 A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling, authority and confine it to the authorities mentioned in Rule 2 A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties

specified in clauses (d), (h), and (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceedings. This Rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second paragraph of that sub-rule. If it was intended by the rule-making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance with law.

22. The Hon'ble Supreme Court in the case of the **Secretary Ministry of Defence & others Vs. Prabhash Chandra Mirdha (2013)11 SCC 565** has held as under, :-

“Thus, the law on the issue can be summarized to the effect that *chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings.* Neither the disciplinary proceedings nor the

charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

Perusal of the above extract clearly reveals that quashing of the charge sheet at an initial stage, would be a premature stage to deal with the issue. Hon’ble Apex Court has also held that the charge sheet can be quashed if it had not been issued by an authority not competent to initiate the disciplinary proceedings or the authority was not competent to initiate the proceedings. The above observations of the Hon’ble Apex Court clearly negates the contention of the Ld. Counsel for the respondents. The Hon’ble Apex Court in **Coal India Ltd & two others Vs. Saroj Kumar Mishra 2007 (4) SLR 75** has held as under:--

*“A departmental proceeding is ordinarily said to be initiated only when a charge sheet is issued.”*

Thus, in view of the above judgment scope of quashing of the charge sheet is very limited.

23. From the perusal of the record it is revealed that the initiation of the enquiry had been made by Sri S.Raju, Chairman, Respondent No. 3 on 31.10.2013 (Annexure-3 to the C.P. and the copy of the charge sheet is also annexed with it), the said charge sheet was not

served upon the petitioner. Thereafter a subsequent charge sheet has been served upon the petitioner in the year 2015. . It is revealed from the perusal of the charge sheets that the charge sheet, though has been signed by the enquiry officer but it has also been signed and approved by the Chairman. The Ld. Sr. Counsel laid stress that the main feature of the charge sheet is that at the end the charge sheet , where it has been sought response, is written “undersigned”; that denotes the reply can be sent either to the Chairman or the enquiry officer. The reply of the said charge sheet has been sent to the Chairman by the petitioner, which is also annexed as copy with the claim petition and the copy thereof has also been sent to the enquiry officer and the matter is still pending before the authorities. The Ld. Counsel for the petitioner submitted that it did not make any difference if the charge sheet has been signed by the inquiry officer. The fact that Article 351 A also provides in proviso *Explanation* that the departmental proceeding shall be deemed to have been instituted when the charges framed against the petitioner are issued to him or if the officer has been placed under suspension from an early date on such date. Thus, these words used in Article 351 A are also very relevant. The initiation of the departmental inquiry starts when the charge sheet is framed. Rule 4 of the above Disciplinary & Punishment Rules, 2003 provides that the Government servant against whom an enquiry is contemplated and he may be placed under suspension pending conclusion of the enquiry in its discretion. Thus, the suspension order can be passed if the competent authority has come to the conclusion that the sufficient

material for the enquiry is there and the disciplinary inquiry is in contemplation. These provisions further fortifies the fact that the service of the charge sheet is the initiation of departmental inquiry as provided under Rule 7 of the Disciplinary & Punishment Rules, 2003. Hon'ble Apex Court in the case of **Union of India & another Vs. Ashok Kacker 1995(7) SLR 430 in para 4** has observed as under:-

"ADMITTEDLY , the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

The above judgment clearly held that the charge sheet had not been issued so the petition was held to be premature. Thus, it is

clear that prior to the charge sheet, no claim petition can be filed. It further negates the contention of the Ld. Sr. counsel for the respondents.

24. Now, we will like to visit the relevant provisions of Rule 7 of the **Uttarakhand Government Servants (Punishment & Appeal) Rules, 2003** as amended in the year 2010 (hereinafter referred to as the Punishment and Appeal Rules. Rule 7 provides as under:-

“(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 approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge-sheet may be signed by the Principal Secretary or 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 names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(4) The charge sheet along with the 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 a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged government servant shall be permitted to inspect the same.”

25. Whereas the next contention of the Ld. Counsel for the respondent that the petitioner is premature as petitioner had not submitted reply of the charge sheet is concerned, it is transpired from the record that on 14.01.2015 the petitioner instead of submitting the reply he only replied that the charge sheet submitted to him is liable to be cancelled in view of Regulation 351 A of C.S.R. and no other reply has been received by the petitioner regarding the allegations made in the charge sheet. Petitioner sent the reply dated 14.1.2015 to the Chairman and the copy of the said has been sent to the Principal Secretary of State Government of Uttarakhand as well as inquiry officer. The inquiry officer has sent letter again to the petitioner to submit his reply regarding the allegations made in the charge sheet and last opportunity was given by the respondents to submit his reply till March, 2014. No reply was filed by the petitioner. Learned counsel for the parties could not demonstrate that further reply has been filed by the petitioner except the reply dated 14.01.2015. In reply dated 14.01.2015, there is no denial of the charges made by the petitioner. Learned Counsel for the respondents contended that he should first reply to the charge sheet then he can file the claim petition before the Tribunal and the said contention has been refuted by Ld. Counsel for the petitioner. The Ld. Sr. Counsel for the respondents further contended that the petitioner should have given the detailed reply to the charge sheet on the factual aspect also and he should have

taken the plea before the appropriate authority that the charge sheet has been signed by the inquiry officer hence it is void ab-initio. We do not find any force in the contention of the Ld. Sr. Counsel for the respondents because the charge sheet has been served upon the respondents signed by the inquiry officer.

26. Perusal of sub-rule (1) of Rule 7 clearly provides that an inquiry shall be conducted in the following manner. Rule 7(1) further provides that whenever the Disciplinary authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehaviour against the Government servant, he may conduct or initiate an inquiry. Further Rule 7(2) provides that misconduct shall be reduced in the form of definite charge of charges to be called charge sheet. Thus, the Rule 7(1) & 7(2) are totally different with each other. Rule 7(1) provides to initiate the inquiry and Rule 7(2) provides to frame the charges and after preparation, the charge sheet must be approved by the Disciplinary authority then the charge will be served upon the Government employee. Under Rule 7(3), 7(4) & 7(5), it is contemplated that after service of the charge sheet, within 15 days the Government servant will submit his reply; if the Government servant admits the allegations of the misconduct, the disciplinary authority may award the penalty as provided under rules. If by the written reply the Government servant refuses the allegations made in the charge sheet, the disciplinary authority may appoint the inquiry officer to inquire the allegations made in the charge sheet. Now, perusal of above Rule 7(1) clearly provides that there will be an initiation of the inquiry; the charges will be framed in writing; the charge sheet shall be

approved by the disciplinary authority. It is clear from the above Rule that initiation of the inquiry starts from the stage of framing of the charges. In Uday Pratap Singh Vs. State of Uttarakhand & others 2012(1) U.D. 365 the Hon'ble Uttarakhand High Court has quashed the order to appoint the inquiry officer to issue the charge sheet. Hon'ble Court has held as under in Para 5,13,14,15:-

*"5. The learned counsel for the petitioner attacked the impugned order on three grounds, namely, that the suspension order as well as the appointment of the Enquiry Officer was in gross violation of the Rules as amended from time to time. It was contended that under -3- the amended Rules, the Enquiry Officer can only be appointed after the charge sheet is served and the charged officer denies the charge, whereas in the present case, the Enquiry Officer was appointed prior to the initiation of the disciplinary proceedings and also prior to the serving of the charge sheet. ....It was also urged that the direction of the disciplinary authority to the Enquiry Officer to sign the charge sheet and serve the same upon the charged officer was wholly illegal and again in violation of the amended Rule 7 of the Rules.*

*13. Rule 7(ii) indicates that the charge sheet shall be signed by the disciplinary authority. Prior to the amended Rules, it was open to the disciplinary authority to sign the charge sheet himself or direct any subordinate officer or the Enquiry Officer to sign the charge sheet. This Rule has been specifically amended by the Amendment Rules, 2010 pursuant to the interim order of the High Court and the reason is not far*

*to see. An Enquiry Officer should not be allowed to sign the charge sheet. An Enquiry Officer is required to be an independent person, who is required to proceed and analyze the evidence that comes before him -13- and should not be a signatory to the charges that are being levelled against the charged officer. It is on account of this salutary principle that the Rules have been amended specifically for a solitary purpose, namely, that the disciplinary authority alone is required to sign the charge sheet. Consequently, the direction of the disciplinary authority to the Enquiry Officer to sign the charge sheet was patently erroneous and was in gross violation of the amended Rules 7(ii) of the Rules.*

**14.** *Rule 7(6) and (8) of the Rules contemplates that after submission of the reply to the charge sheet, it would be open to the disciplinary authority to inquire into the charges himself or may appoint an Enquiry Officer for the purpose of sub-rule (8). Sub-rule (8) provides that the disciplinary authority or the Enquiry Officer would inquire into the charges. The reason for the appointment of an Enquiry Officer after the service of the charge sheet and the reply of the charged officer has a purpose, namely, that in the event the charged officer pleads guilty to the charges, in that event, it would not be necessary for the disciplinary authority to appoint an Enquiry Officer and it would be open to the disciplinary authority to proceed and impose a penalty contemplated under the Rules. Consequently, the earlier Rules, which contemplated that an Enquiry Officer could be appointed even before the submission of the charge sheet, was done away under the*

*amended Rules. The amended Rules clearly indicate that an Enquiry Officer can only be appointed after the charge sheet is served upon the charged officer and after a reply is given by the charged officer. In the present case, the Court finds that the Enquiry Officer was appointed on 21st April, 2011. The charge sheet under the signature of the Enquiry Officer was served upon the petitioner after he was suspended by an order dated 20th July, 2011.*

*15. From the aforesaid, it is clear that the entire procedure adopted by the respondents was in gross violation of the amended Rules of 2010 and therefore, the procedure adopted cannot be sustained and are liable to be set aside."*

27. This judgment further fortifies the contention of the petitioner. The Division Bench of Uttarakhand High Court in Lalita Verma Vs. State of Uttarakhand and others in writ petition No.118/08 in Para 7, 8 has 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 paramateria 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 intimation 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 not 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. 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.”**

28. The above interpretation, which has been made in the interim relief order by the division bench of the Hon’ble Uttarakhand High Court, has been made absolute by subsequent judgment of the Division Bench in Writ petition No. **118(SB)/2008 Lalita Verma Vs. State of Uttarakhand** dated **17<sup>th</sup> May, 2013**.

29. The Division Bench of the Hon’ble High Court in the case of **Ram Lal Vs. State of Uttarakhand and others, 2015 (2)U.D., 25** has also held as under:

**“As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that an Inquiry officer can be appointed only after the disciplinary authority issues a charge-sheet calling upon the delinquent officer to submit his explanation and, if, after considering the explanation of the delinquent officer, it is found necessary to hold an inquiry, only at that stage, an Inquiry officer can be appointed. As far as the charge-sheet is concerned, after the amendment to the Rules in 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. Therefore, in the light of these settled principles, if we examine the impugned order; it is clear that it is afflicted by two vices. Firstly, even without issuing a charge-sheet and calling for an explanation, an Inquiry Officer has been appointed. This part of the order cannot be sustained. Equally without legal foundation and contrary to law is the direction to the Inquiry Officer to serve the charge-sheet upon the appellant. These portions are clearly unsustainable and, therefore, they deserve to be quashed.”**

The Division Bench of Hon'ble High Court has also affirmed the view taken in Udai Pratap's case (Supra).

30. In **R.C.Chauhan Vs. State & others C.P. No.22/2011 decided on 17.04.2014** decision of this Tribunal has followed the decision of the Hon'ble High Court and Hon'ble Supreme Court. The Tribunal has again affirmed the above decision in Chandan Singh Vs. State of Uttarakhand Claim Petition No. 87/11, copy of which is Annexure-A-8 to the claim petition. We do not want to again quote the findings of our judgment to burden this judgment because it is the part of the record.
31. Now the question arises as to whether we can quash the charge sheet on this ground at this stage or not. The judgment of Hon'ble Supreme Court in Prabhash Chand Mirdha (supra) as we have quoted above in which it has been held that the charge sheet cannot generally be challenged before the Tribunal or court

because it does not adversely effect the right of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Thus, the above law laid down by the Hon'ble Court that at the stage of the challenge of the charge sheet, the Court or Tribunal has only to see whether the charge sheet was issued by the competent authority to initiate the disciplinary proceedings or not. In the instant case same question arose before us and we are also of the view that the charge sheet has also not been signed by the competent officer. Hence, charge sheet can be challenged at the preliminary stage and is liable to be quashed on the ground that it had been signed by the inquiry officer who was not competent to initiate the inquiry against the petitioner. The Chairman of the Respondents, though was competent to initiate the inquiry and he was competent to sign on the charge sheet, the inquiry officer was appointed at the initial stage, as such the appointment of the inquiry officer before the reply of the Government Servant and satisfaction of the departmental authority was absolutely illegal. The inquiry officer should have been appointed after the receipt of the reply of the Government servant and the Government servant would not have accepted the allegation and would have denied the allegations made in the charge sheet. The departmental authority had the power either to proceed himself to inquire the allegations or to appoint the inquiry officer. Thus, the appointment of the inquiry officer is premature in accordance with rules. In view of above the petition is liable to be allowed and the charge sheet is liable to be quashed

32. The petition is liable to be allowed and the charge sheet signed by the inquiry officer is liable to be quashed. The disciplinary authority, if deems it proper, may proceed afresh against the petitioner in accordance with law.
33. The petition is disposed of accordingly. No order as to costs.

**U.D.CHAUBE)**  
MEMBER (A)

**(JUSTICE J.C.S.RAWAT)**  
CHAIRMAN

DATE: SEPTEMBER 15, 2015  
NAINITAL

KNP