

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

Present: Sri V.K.Maheshwari

-----Vice Chairman(J)

Sri D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 03/SB/20153**

Harshendra Kumar Singh S/o Shri R.P. Singh, Divisional Forest Officer,  
Haridwar Forest Division, Haridwar, Uttarakhand.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Chief Secretary, (State of Uttarakhand, Dehradun.
2. Principal Secretary, forest & Environment, State of Uttarakhand, Dehradun.
3. Chief Forest Conservator, Kumaun (Inquiry Officer )Nainital.

.....Respondents

Present: Sri Rajeshwar singh, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiyal, Ld. A P.O.  
for the respondents.

**JUDGMENT**

**DATED: FEBRUARY 24, 2016**

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

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

**A.** That the petitioner most humbly prays that the Hon'ble Service Tribunal may be graciously leased to issue a suitable order or direction quashing the order dated 21.5.2010 and 18.11.2014.

**B.** That Respondent Nos. 1,2 & 3 be directed to recommend the name of the petitioner to Union Public Service Commission for induction to IFS Cadre and against vacancy of 2003

**C.** To issue any other suitable order and direction which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

**D.** That during pendency of this petition, the respondent be directed not to recommend for promotion anyone else to the next post of IFS Cadre without considering the name of the petitioner.

**E.** To award the cost of the suit to the petitioner.”

2. The relevant facts in brief are that due to certain irregularities committed by the petitioner in 2005, while working as Divisional Forest Officer, Tehri Forest Division, New Tehri, an inquiry was instituted against him on 27.02.2009 (Annexure: 2). In the Office Order itself (by which the inquiry was instituted), the Principal Forest Conservator, Kumaun Division was appointed as inquiry officer. The charge sheet dated 24.02.2009 (enclosure of Annexure: 2) was served upon the petitioner on 25.03.2009. The petitioner replied to the charge sheet on 15.06.2009 (Annexure:3) and on 15.07.2009 (Annexure:3 A ). The inquiry officer submitted the inquiry report on 13.10.2009 (Annexure: 4). The disciplinary authority did not agree with the findings of the inquiry officer in respect of charge No. 2 and charge No.3. The disciplinary authority issued a show cause notice on 02.12.2009 (Annexure: 5) to the petitioner enclosing the inquiry report and recording the reasons for not agreeing with the findings of the inquiry officer in respect of charge No.2 and charge No.3. The petitioner replied to the show cause notice on 14.12.2009(Annexure: 6). After considering the inquiry report and reply to the show cause notice, the disciplinary authority passed the punishment order on 21.05.2010 (Annexure: 1) imposing the following minor punishments upon the petitioner:-

- (i) Adverse Entry and
- (ii) Stoppage of an annual increment for one year.

The petitioner filed the appeal on 18.08.2010 and Review on 18.07.2014 (Annexure: 7 & 8) against the punishment order and same were rejected on 18.11.2014 (Annexure:1A). Hence, the petition.

3. Apart from raising the issue of appointment of the inquiry officer before the reply of the charge sheet was given by the petitioner, the impugned orders have been challenged on the following grounds:-

(a) That because the order dated 21.5.2010 and 18.11.2014 are devoid of any merit and are against facts on record.

(b) That because the facts available on record are not taken into consideration while passing the order 482/X-1-2010-(6) dated 21.5.2010 and 3789/X-1-2014-02(17)/2008 dated 18.11.2014 as such are liable to be set aside.

(c) That because the order dated 21.5.2010 and 18.11.2014 both being against the facts or records and having passed in cursory manner, are liable to be set aside.

(d) That because the punishment awarded to the Petitioner is uncalled for and baseless and very much disproportionate to the alleged charge is liable to be quashed

The petitioner has also sought relief that the respondents be directed to recommend the name of the petitioner to the Union Public Service Commission for his induction to the Indian Forest Service (IFS). The petitioner in the claim petition has neither mentioned the Rule position and nor clarified about the jurisdiction of this Tribunal for selection/induction to the All India Service. We, therefore, would not like to adjudicate upon this issue.

4. The respondent Nos. 1 & 2 and respondent No.3 by their separate written statements have opposed the claim petition and have stated that the inquiry has been conducted as per rules and sufficient opportunity was provided to the petitioner to defend himself. There was sufficient evidence against the petitioner and he has rightly been found guilty. The charge sheet which was issued to the petitioner, was approved by the disciplinary authority. The punishment awarded to the petitioner is proportionate to the

misconduct. The 'Review' representation of the petitioner has been rightly rejected as per Rules. Therefore, the petition is liable to be dismissed.

5. The petitioner has also filed the rejoinder affidavits against the written statement of respondent No.3 and the written statement of respondent Nos. 1 & 2 and the same averments which were stated in the claim petition have been reiterated and elaborated in rejoinder affidavits.

6. We have heard learned counsel for the petitioner and also learned A.P.O. on behalf of respondents and perused the record carefully. The original inquiry file has also been perused.

7. The first question which comes for consideration before us is whether it is lawful to appoint the inquiry officer before the reply to the charge sheet is received and considered by the disciplinary authority. And also, whether the charge sheet has been issued by the competent authority or not.

8. In the case before us, admittedly, the inquiry officer has been appointed on 27.02.2009. Admittedly, the charge sheet dated 24.02.2009 was served upon the petitioner on 25.03.2009. Admittedly, the reply to the charge sheet was received by the inquiry officer on 15.06.2009 and 15.07.2009. It is, therefore, clear that the inquiry officer was appointed much before the reply to the charge sheet was received.

9. The charge sheet issued to the petitioner has been enclosed with Annexure:2 to the claim petition. The perusal of the charge sheet reveals that the same has been approved by the Disciplinary Authority on 24.02.2009. Just above the signature of the Disciplinary Authority approving the charge sheet, there is mention of signature/designation of the inquiry officer but this part is left blank and it is unsigned. We also find that in the said charge sheet, the date of submitting the reply has been left blank. The last part of the charge sheet (page 9 of the charge sheet) is reproduced below:-

“आपसे अपेक्षा की जाती है कि उपरोक्त आरोपों के सम्बन्ध में अपना लिखित उत्तर दिनांक..... उसके पूर्व अधोहस्ताक्षरी को प्रस्तुत करें। आपको सतर्क किया जाता है कि यदि आपका कोई लिखित उत्तर उपरोक्त अवधि सीमा के अन्तर्गत प्राप्त नहीं

हुआ तो यह समझा जायेगा कि आपको कुछ नहीं कहना है और अन्तिम आदेश तदनुसार पारित कर दिये जायेंगे।

आपसे यह भी अपेक्षा की जाती है कि लिखित उत्तर में साथ ही यह भी अधोहस्ताक्षरी को सूचित करें कि क्या आप व्यक्तिगत सुनवाई का अवसर चाहते हैं? यदि आप किसी साक्षी का परीक्षण या प्रतिपरीक्षण करना चाहते हैं तो लिखित उत्तर में ही उनका नाम व संक्षेप में उनसे किसी बिन्दु पर बयान/साक्ष्य की अपेक्षा की जाती है, स्पष्ट करें।

हस्ताक्षर/पदनाम  
जांच अधिकारी

नियुक्ति अधिकारी द्वारा आरोप पत्र अनुमोदित व उनकी ओर से आरोप पत्र जारी करने के लिए प्राधिकृत

राज्यपाल की ओर से  
sd/-

हस्ताक्षर/पदनाम

दिनांक-24.2.09

नियुक्ति/अनुशासनिक अधिकारी”

10. While perusing the inquiry file, we find a letter of the Under Secretary on page No. 308 (क्रमांक-11), which is reproduced below:-

“संख्या-328/X-1-2009-2(17)/2008

प्रेषक,

अहमद अली  
अनु सचिव  
उत्तराखण्ड शासन,  
सेवा में,  
मुख्य वन संरक्षक,  
कुमायूँ  
नैनीताल।

वन एवं पर्यावरण अनुभाग-1

देहरादून: दिनांक 18 मार्च, 2009

विषय:- श्री एच0के0सिंह, तत्कालीन प्रभागीय वनाधिकारी, टिहरी वन प्रभाग के विरुद्ध जांच विषयक।

महोदय,

उपरोक्त विषयक अपने पत्र संख्या -2129/16-20 दिनांक 06 मार्च, 2009 का कृपया संदर्भ ग्रहण करने का कष्ट करें।

2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि प्रश्नगत मामले में शासन स्तर से अनुमोदित आरोप पत्र आपको मूल रूप में साक्ष्यों सहित इस आशय से भेजा गया था कि आरोप पत्र को हस्ताक्षरित करने के उपरान्त आरोप पत्र की तीन प्रतियां फोटो स्टेट कराकर दो प्रतियां श्री एच0के0सिंह को भेजते हुए एक प्रति पर प्राप्ति के हस्ताक्षर लेकर उसे शासन को लौटा दी जाय, आरोप पत्र के

पृष्ठ -9 पर आरोप पत्र का उत्तर प्रस्तुत कर समय जांच अधिकारी द्वारा ही भरा जाना है, और आरोपित अधिकारी उत्तर भी सीधे जांच अधिकारी को ही प्रस्तुत करेंगे, और जांच अधिकारी जांच की कार्यवाही नियमानुसार पूरी करते हुए जांच रिपोर्ट शासन को प्रस्तुत करेंगे।

भवदीय

(अहमद अली)  
अनु सचिव”

11. It is clear from the above letter that the Government directed the inquiry officer to sign the charge sheet. The inquiry officer was also directed to fill up the date for submitting the reply of the charge sheet by the petitioner. It has also been mentioned in this letter that the petitioner will submit the reply of the charge sheet to the inquiry officer and the inquiry officer, thereafter, will conduct the inquiry and submit the inquiry report to the Government.

12. As described in paragraph 8 to 11 of this order, we find that the inquiry officer was appointed before the reply of the charge sheet was submitted and the inquiry officer was directed to sign the charge sheet.

13 **The Division Bench of Hon’ble High Court of Uttarakhand in Writ Petition No. 118(SB) 2008, Lalita Verma Vs. State of Uttarakhand** in which the interim order was passed on 30.06.2008 interpreting the Rule 7 of the Uttarakhand Government Servants (Discipline and Appeal) Rules 2003 in para 7 and 8 of the judgment held as under:

*“7.Under Rule 7 of the aforesaid 2003 Rules, a procedure has been prescribed for imposing major penalties. In practical terms, Rule 7 (supra) is in para materia to Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules 1965 and most of the other such Rules of various State Governments except that in the aforesaid 2003 Rules, the prescription is that the 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 Rule 14 (Sub Rule 5) of C.C.A. of 1965 Central Rules, there is a clear indication that the Disciplinary Authority*

*appoints an Inquiry Officer only if the charged officer pleads “not guilty” to the charges, whereas in 2003 Rules the clear indication is that even before framing and service of the charge sheet and before the charged officer pleads guilty” or “not guilty”, an Inquiry Officer is appointed. This, in our prima facie opinion, is a contradiction in terms because **the question of appointment of an Inquiry Officer would arise only if the charged officer pleads “not guilty” to the charges. If the charged officer pleads guilty to the charges there may not be any need for appointment of any Inquiry Officer.** This is one aspect of the matter. We are making a passing reference to this aspect because we found that in the present case the Inquiry Officer stood appointed even before the stage of framing the charges, the service of the charge sheet and the offering of any plea of “guilty” or “not guilty” by the petitioner. There is much more vital aspects in this case, which we shall now notice.*

*8. The charge sheet has been signed by the Inquiry Officer. **It is totally unconstitutional and patently illegal for the Inquiry Officer to sign the charge sheet.** The Inquiry Officer in the very nature of things is supposed to be an independent, impartial and non-partisan person. How can he assume the role and wear the mantle of the accuser by signing the charge sheet? This apart, Rule (supra) itself clearly stipulates that the charge sheet has to be signed by the disciplinary authority.”*

The interpretation, which has been made in the interim relief order by the Division Bench of the Hon’ble High Court has been made absolute by subsequent judgment of the Division Bench in writ petition No. 118(SB) of 2008, Lalita Verma Vs. State of Uttarakhand on 17.05.2013.

14. In case of **Dr. Harendra Singh Vs. State Public Services Tribunal & others in wirt petition No. 80 of 2009 (S/B)**, the Division Bench of Hon’ble High Court at Nainital has also held as under:-

“In the judgment dated 30<sup>th</sup> June, 2008 passed by a Division Bench of this Court in writ petition No. 118(S/B) of 2008; Smt. Lalital Verma Vs. State and another, inter alia, this court had laid down the following three propositions of law:

- i. With reference to the first proviso to sub-rule (1) of Rule 4 of Uttaranchal Government Servants (Discipline, Appeal) Rules, 2003 the suspension order must say, record and mention, that the charge against the concerned Government Servant are so serious that in the event of these being established, ordinarily major penalty would be inflicted. (refer to para 4 of the aforesaid judgment)
- ii. By referring to Rule 7 of the aforesaid 2003 Rules in comparison to Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, 1965, the Inquiry Officer should be appointed only after the charge sheet is served upon the delinquent and he pleads “not guilty” to the charges. There is no reason or occasion to appoint an Inquiry Officer before the delinquent officer pleads “guilty” or “not guilty” to the charge sheet (refer to para 7 of the aforesaid judgment.)
- iii. The charge sheet should not be signed by the Inquiry Officer, (refer to para 8 of the aforesaid judgment.)

The impugned Suspension Order bearing No. 250/XXIV/11/2-2009-89/2008 dated 8<sup>th</sup> April, 2009, in the present case, suffers from all the aforesaid three legal defects. It does not mention as to whether the charges are so serious against the petitioner that ordinarily he will be inflicted a major penalty. The Inquiry Officer, in the present case, has been appointed even before the petitioner was served the charge sheet. And lastly, but not the least, the charge sheet has been signed by the Inquiry Officer.

The aforesaid actions of the respondents, being in clear violation of the aforesaid Division Bench judgment of this court, this Court has no hesitation in holding that prima facie the suspension order as well as the proceedings initiated against the petitioner suffers from lack of constitutionality.”

**15. This Tribunal following the decision of Hon’ble High Court at Nainital in (Lalita Verma case) claim petition No. 19/12 with 06/12 and 83/11 on 08.07.2014 in the combined decision has held as under:-**

“The Hon’ble High Court vide its interim order dated 30.6.2008, which was affirmed and adopted in the writ petition No. 118(SB)/2008 Lalita Verma Vs. State of Uttarakhand dated 17<sup>th</sup> May, 2013, has held that in that case the charge sheet had been signed by the enquiry officer and that is totally unconstitutional and patently illegal. The charge sheet should not have been signed by the enquiry officer. The Hon’ble High Court by referring to Rule 7 of the aforesaid 2003 Rules in comparison



Rule 14 of the CCS, Rules 1965 has held that the enquiry officer should be appointed only, after the charge sheet is served upon the delinquent official and he pleads not guilty to the charges. There is no reason or occasion to appoint enquiry officer before the delinquent officer pleads guilty or not guilty to the charges. In the instant case the appointing authority had already appointed the enquiry officer who framed the charges and the said charges had been approved by the appointing authority on 6.9.2008. Based on this analogy as laid down in Lalita Verma case (supra), the charge sheet signed by the enquiry officer is totally unconstitutional and patently illegal. Based on the said finding, the State Government amended the said rules and replaced the Rule 7 as indicated above. **The enquiry officer should not be allowed to sign the charge sheet because an enquiry officer is required to be an independent person who is required to analyze and appreciate the evidence produced by both the parties and as such he should not be the signatory to the charge sheet. Thus, we hold that the direction of the disciplinary authority to the enquiry officer to sign the charge sheet was patently illegal and in violation to the constitutional scheme.** Thus, we further conclude that the entire procedure adopted by the respondents was in gross violation of the fundamental rules of the law, therefore, the procedure adopted cannot be sustained and is liable to be set aside. For the reasons stated above, the claim petitions are liable to be succeeded.”

16. **Following the decision of the Hon’ble High Court at Nainital (Lalita Verma case), this Tribunal has also affirmed the above decision in R.C.Chauhan Vs. State & others, claim petition No. 22/2011 decided on 17.04.2014, Chandan Singh Vs. State of Uttarakhand, Claim Petition No. 87/11 decided on 27.02.2015 and Bhagati Lal Vs. State of Uttarakhand, Claim Petition No.15/DB/2013 decided on 07.11.2014.** We do not want to again quote the findings of these judgments to lengthen this judgment.

17. **The Division Bench of the Hon’ble High Court at Nainital in the case of Ram Lal Vs. State of Uttarakhand and others Special Appeal No. 300 of 2015 decided on 03.07.2015 [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 Inauiry 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.....”

18. In view of description in paragraph 13 to 17 above, it is settled position of law that the inquiry officer can be appointed only after the reply of the charge sheet is received ( and the delinquent official pleads not guilty to the charges) and further the charge sheet should not be signed by the inquiry officer. In the case in hand, the inquiry officer was appointed before the charge sheet was served upon the petitioner and before the reply of the charge sheet was submitted by the petitioner. Legal position is that the reply of the charge sheet should be considered by the disciplinary authority. If after considering the reply of the charge sheet, the disciplinary authority finds that the delinquent official has not admitted the charges or the disciplinary authority is not satisfied by the reply of the delinquent, he can proceed and can either conduct inquiry himself or appoint an officer to conduct the inquiry. In the instant case, the reply of the charge sheet submitted by the petitioner became immaterial as the inquiry officer was directed to proceed with the inquiry prior to the reply of the charge sheet was received and considered by the disciplinary authority. Thus, the respondents have taken a wrong path to conduct the inquiry. As far as signing of the charge sheet is concerned, the legal position is that the charge sheet should not be issued and signed by the inquiry officer. In the case in hand, the charge sheet has been approved by the Appointing Authority but the charge sheet has been signed and issued by the inquiry officer who was appointed as inquiry officer prior to even service of the charge sheet. The letter issued by the Government which has been reproduced in paragraph 10 of this order reveals that the inquiry officer was directed to sign the charge sheet and to serve it upon the petitioner. The said letter has also directed the inquiry officer to receive the reply of the charge sheet from the petitioner and, thereafter, conduct the inquiry and submit the inquiry report to the Government. In view of settled legal position, we find that the process of inquiry adopted by the respondents as stated in the letter of the Government was not in accordance with law. Therefore, we hold that the appointment of the inquiry officer prior to the reply of the petitioner and signing of charge sheet by the inquiry officer was

patently illegal and unconstitutional and the procedure adopted cannot sustain in the eye of law.

19. For the reasons stated above, the petition deserves to be allowed in respect of impugned orders dated 21.05.2010 (Annexure:1) and dated 18.11.2014 (Annexure: 1 A).

**ORDER**

The claim petition is, hereby partly allowed. The impugned orders dated 21.05.2010 (Annexure:1) and 18.11.2014 (Annexure:1 A) are set aside. If any adverse remark is entered in the character roll of the petitioner, the same shall be expunged. The petitioner shall also be entitled for regular annual increment which was stopped as a result of the punishment order. However, it would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law. No order as to costs.

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

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

DATED: FEBRUARY 24,2016  
DEHRADUN

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