

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN

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

Hon'ble Mr. D.K.Kotia  
-----Vice Chairman (A)

**CLAIM PETITION NO. 01/DB/2015**

Ratan Singh S/o Late Shri Faggan Singh, aged about 62 years, R/o Village Baradarpur Khadan, Post Office, Laxur, District Haridwar.  
.....Petitioner.

**VERSUS**

1. State of Uttarakhand through Secretary, Revenue Department-I, Uttarakhand, Dehradun.
2. Board of Revenue, State of Uttarakhand, Dehradun.
3. Commissioner, Garhwal Mandal, Dehradun.
4. Deputy Director, Consolidation and Commissioner, Haridwar.  
.....Respondents

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

**JUDGMENT**

**DATED: MARCH 01,2016.**

**(Justice J.C.S. Rawat, (Oral)**

1. The claim petition has been filed by the petitioner for seeking following relief:-  
“(1) To issue order or direction to quash the impugned orders dated 30.11.2009, 10.2.2011 and 23.07.2014 (Annexure NOs A-1, A-2 and A-3) with all consequential benefits after calling the entire records from the respondents along with its effect and operation also.  
(2) Issue order or direction to the respondents to release the entire arrears of the salary and all retiral dues including pension and gratuity

by refixing the same had it been the impugned order was never in existence together with 18% interest thereof.

(3) Issue order or direction by awarding damages to the petitioner which the Court deem fit and proper in the circumstances of the case.

(4) Any other relief which the Court deem fit and proper in the circumstances of the case.

(5) Cost of the petition be awarded to the petitioner.”

2. The petitioner was appointed as Kanoongo and thereafter subsequently he was posted in the office of Assistant Consolidation Officer. Thereafter, a complaint was received on 12.12.2008 to the departmental authority and the departmental authority suspended the petitioner for his misconducts. Thereafter, the petitioner was charge sheeted by the department. The inquiry officer, after holding the inquiry, held him guilty for the misconducts. Thereafter, the petitioner was punished with the punishment of adverse entry in the character roll of the petitioner and stoppage of two increments with cumulative effect. The petitioner feeling aggrieved by the said orders preferred an appeal and revision which were dismissed by the competent authorities. Feeling aggrieved by the orders, the present claim petition has been preferred before this Tribunal.
3. Respondents have contested the claim petition and contended that the order passed by the competent authorities are correct and the written statement supports the version of the appointing authority, appellate authority as well as of the revisional authority. It is further alleged that the claim petition is not maintainable and is liable to be dismissed.
4. We have heard learned counsel for the parties and perused the record.
5. Ld. Counsel for the petitioner contended that the charge sheet has been signed by the inquiry officer and it has been approved by the appointing authority. It was further contended that according to Rule 7 of the **Uttarakhand Government Servants (Punishment & Appeal) Rules, 2003** (hereinafter referred to as Punishment & Appeal Rules, 2003), the inquiry officer should not have been appointed at the initial stage. The departmental authority should have framed the charges by himself or he would have appointed any other officer other than the inquiry officer to prepare the charge sheet and after preparation of the charge sheet, the

charge sheet should have been approved by the appointing authority. It was further argued that the appointing authority has appointed the inquiry officer at the initial stage and he signed the charge sheet and the appointing authority has not proceeded in accordance with law. He further pointed out that the signing of the charge sheet by the inquiry officer is totally in violation of the principle of natural justice and Punishment & Appeal Rules, 2003.

6. Ld. A.P.O. refuted the contentions of the Ld. Counsel for the petitioner and contended that the charge sheet has been approved by the appointing authority, so it is sufficient compliance of Rule-7 of Punishment & Appeal Rules, 2003.
7. Now we will like to visit the relevant provisions of Rule 7 of the **Punishment & Appeal Rules, 2003** before the amendment 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.”

8. The Hon'ble High Court in the case of **Lalita Verma Vs. State of Uttarakhand and others in writ petition No. 118/08** 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 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.”*

9. In case of **Dr. Harendra Singh Vs. State Public Services Tribunal & others in writ 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.”

10. Subsequently the matter came up for consideration before the Ld. Single Judge of Hon’ble Uttarakhand High Court in the case of Uday Pratap Singh Vs. State of Uttarakhand & others 2012(1) U.D. 365. In this case 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. 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 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.

.....*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."*

11. 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 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.....”

12. This Tribunal following the decision of Hon'ble High Court at Nainital in **(Lalita Verma case), claim petition No. 19/12 Gulzlar Ali with 06/12 Ravinder Singh Tomar and 83/11 Rambeer Singh Vs. State & others 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.”

13. Following the decision of the Hon'ble High Court at Nainital (Lalita Verma case), this Tribunal has also followed 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.
14. In case in hand the charge sheet has been issued by the inquiry officer and he has also called upon the petitioner to reply to the said charges within the stipulated period. It is apparent from the perusal of the charge sheet that the reply of the delinquent could be irrelevant for the appointing authority because only inquiry officer had to adjudicate upon the reply. The inquiry officer has no power under the rules to examine the reply and to hold the delinquent guilty or not guilty to conduct an inquiry. There is no occasion for the inquiry officer to go ahead, conduct the inquiry and to send the inquiry report to the appointing authority for his consideration. Under the Rules it is obligatory that the reply of the charge sheet should be adjudicated upon by the appointing authority and thereafter if he feels the delinquent is guilty, he can proceed the inquiry

with himself or he can appoint an inquiry officer to inquire into the charges. Thus, this valuable right of the petitioner has also been infringed by signing the charge sheet. Thus, it violates the fundamental principle of natural justice in the eye of law.

15. In view of the above we hold that the charge sheet is liable to be quashed. In view of above the petition is liable to be allowed. More than three years have passed after the retirement of the petitioner, so we are not remitting the petition in the interest of justice.

**ORDER**

The claim petition is hereby allowed. The impugned orders dated 30.11.2009 (Annexure:A-1), 10.2.2011 (Annexure:A-2) and 23.07.2014 (Annexure:A-3) are hereby set aside. The petitioner is entitled to all the monetary benefits from the respondents, treating the petitioner as he has not been awarded any punishment by the authorities. Keeping this fact in account all the monetary benefits would be admissible to the petitioner. No order as to costs.

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

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

DATED: MARCH 01,2016  
DEHRADUN

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