

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 28/ DB/2015

Arun Kumar Jaiswal S/o Late Sri Murari Lal Jaiswal aged about 65 years R/om, Raj Vihar, Chakarata Road, Dehradun.

.....Petitioner

Versus

1. State of Uttarakhand through Principal Secretary, Department of Food & Civil Supplies, Civil Secretariat, Dehradun.
2. The Chief Secretary, Government of Uttarakhand, Civil Secretariat, Dehradun.
3. Commissioner, Food & Civil Supplies, Uttarakhand, Dehradun.
4. Regional Food Controller, Garhwal Region, Dehradun.
5. District Supply Officer, Tehri Garhwal.

.....Respondents.

Present: Sri Shashank Pandey, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: SEPTEMBER 28, 2016

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

1. The petitioner has filed this petition for seeking following relief:-
“(i) Issue an order or direction to quash the punishment order dated 22.05.2015.

(i)(a) Issue an order or direction to quash the order dated 19.10.2015 by which the appeal of the petitioner was rejected.

(ii) Issue any order or direction to fix the pension of the petitioner and pay the gratuity to the petitioner along with an interest of 12% p.a. from 30.11.2010 i.e., the date of retirement of the petitioner to the date of actual payment.

(iii) Issue any other order or direction which the Hon'ble Court deems fit and proper.

(iv) Award the cost of claim petition to the petitioner."

- 2.1 The facts in brief are that the petitioner is a retired Supply Inspector of Department of Food & Civil Supplies, Government of Uttarakhand, Dehradun. The petitioner was posted at Kalsi, Dehradun during the year 2006-07. While working as Supply Inspector, it was noticed by the respondents that the petitioner diverted the food grains which were in the warehouse for A.P.L. and B.P.L. to the S.G.R.Y. scheme, resulting in financial loss to the Government. The Commissioner, Food and Civil Supplies, Government of Uttarakhand appointed the Regional Food Controller, Garhwal Region, Dehradun as inquiry officer on 06.09.2006 (Annexure:A-7). Vide this letter dated 06.09.2006, the inquiry officer, Regional Food Controller, was directed to prepare a charge sheet against the petitioner and send the same to the Commissioner, Food and Civil Supplies, Government of Uttarakhand for approval. As per the direction of the Commissioner, Food and Civil Supplies, the inquiry officer i.e. Regional Food Controller prepared the charge sheet and the same was approved by the Commissioner, who is the disciplinary authority. Thereafter, charge sheet dated 9.11.2006 (Annexure: A-1) was served upon the petitioner.
- 2.2 The petitioner was also served a supplementary charge sheet dated 25.08.2008 (Annexure:A-2) and in case of supplementary charge sheet also the Regional Food Controller i.e. the inquiry officer was directed to prepare the supplementary charge sheet and send it to

the Commissioner for approval. The Commissioner i.e. the disciplinary authority approved the charge sheet, sent back to the inquiry officer who then served the supplementary charge sheet to the petitioner.

- 2.3 The petitioner replied to both the charge sheets on 19.11.2008 (Annexure: A-8) and denied the charges. Thereafter, the inquiry officer conducted the inquiry and submitted the inquiry report to the Commissioner on 6.10.2009 (Annexure:A-3). The Commissioner, in his capacity as the disciplinary authority, issued a notice to the petitioner enclosing the inquiry report on 16.10.2009 (Annexure: A-10) and sought the explanation of the petitioner. The petitioner replied to this notice on 5.11.2009 (Annexure: A-11) and in his explanation the petitioner emphasized that the diversion of the food grains from one scheme to the another has been done on orders from the higher authorities in public interest and he was not at fault and requested to drop the proceedings against him.
- 2.4 During the pendency of the final decision of the disciplinary authority, the petitioner retired on 30.11.2010.
- 2.5 The disciplinary authority i.e. the Commissioner, Food and Civil Supplies Department, Government of Uttarakhand did not find the reply (Annexure: A-11) of the petitioner satisfactory and in the punishment, a recovery of Rs. 81,21,482-00/- was ordered on 22.5.2015 (Annexure: A01).
- 2.6 The petitioner filed an appeal (Annexure: A-15) against the punishment order on 23.6.2015 and the appeal of the petitioner was considered and rejected vide order dated 19.10.2015 (Annexure: A-18).
3. The petitioner in his claim petition has challenged the punishment order mainly on the ground that the inquiry officer was appointed before the charge sheet was issued(also the supplementary charge sheet) and both the charge sheets were signed by the inquiry officer and not by the disciplinary authority, therefore, the whole proceedings are in gross violation of the rules and the principles of

natural justice. It has also been contended by the petitioner that the inquiry has not been conducted properly. The then S.D.M., on whose orders the petitioner had acted, was not examined as witness and the petitioner was not given any opportunity to cross-examine him. It is also the contention of the petitioner that there is no charge of embezzlement or misappropriation of money against him and the Government has not suffered any financial loss.

4. The respondents in their counter affidavit have opposed the petition and contended that the inquiry has been conducted as per rules and reasonable opportunity was afforded to the petitioner to defend himself. There was sufficient evidence against the petitioner and the petitioner has rightly been found guilty. The charge sheets, which were issued to the petitioner, were approved by the disciplinary authority. The appeal of the petitioner was also duly considered and the same has been rightly rejected as per rules.
5. No rejoinder affidavit has been filed by the petitioner.
6. We have heard both the parties and perused the record carefully. The original record of inquiry has also been perused.
7. The first question which comes for consideration is whether the charge sheets have been signed by the competent authority or not. It has been contended on behalf of the petitioner that the inquiry officer was appointed even before the first charge sheet was issued and both the charge sheets have been signed by the inquiry officer and therefore, the whole proceeding of inquiry is vitiated. On the other hand, learned A.P.O. contended that the inquiry officer was competent to sign the charge sheets and the appointing authority has given approval on the said charge sheets and therefore, there is no illegality in signing of the said charge sheets.
8. Before we discuss the issue in question, it would be appropriate to mention here relevant provision of Rule 7 of the Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003 which provides as under:-

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

(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.”

9. The question whether inquiry officer can sign the charge sheet or not and whether inquiry officer can be appointed before reply to the charge sheet is received came up before 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 Servant (Discipline and Appeal) Rules, 2003 giving a detailed reasoning in this regard. Hon’ble High Court 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?**”*

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.

10. 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 30th 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 8th 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."

11. **This Tribunal following the decision of Hon'ble High Court at Nainital (Lalita Verma case) in claim petition Nos. 19/12 Gulzar Ali Vs. State and others with 06/12 Ravindra Singh Vs. State and others and 83/11 Rambeer Singh Vs. State and 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 17th 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 with 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.”

12. **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. 87/2011 decided on 27.02.2015, Bhagati Lal Vs. State of Uttarakhand, Claim Petition No.15/DB/2013 decided on 07.11.2014 and claim petition No. 10/SB/2013 Matloob Ahmed Vs. State and others decided on 29.05.2015. We do not want to again quote the findings of these judgments to lengthen this judgment.**

13. **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.....”

14. In view of description in paragraph 7 to 13 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. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

15. For the reasons stated above, the petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 22.05.2015 (Annexure:A-4) and the appellate order dated 19.10.2015 (Annexure: A-18) are hereby set aside. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law. Before parting with the matter, we may clarify that we have not expressed any opinion on the merits of the case. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: SEPTEMBER 28, 2016
DEHRADUN

VM