

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Ram Singh
----- Vice Chairman(J)
Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 55/ DB /14

Sanjay Kumar Agarwal S/o Sri Shiv Charan Dass, R/o H.No.34, Lane No.3,
Prakash Vihar, District Dehradun.

With CLAIM PETITION NO. 56/ DB /14

Mahipal Singh Saini aged about 51 years S/o Sri Jai Singh, R/o H.No.252/2
Rochipur Niranjapur, Dehradun.

With CLAIM PETITION NO. 57/ DB /14

Balbir Singh Bhandari aged about 56 years S/o Sri N.S.Bhandari, R/o
H.No.99/13 Naisvilla Road, Near Bhorkatara School, District Dehradun.

With CLAIM PETITION NO. 58/ DB /14

Chandra Singh Bhandari aged about 59 years S/o Late Sri Darban Singh
Bhandari, R/o 82 Shatabdi Enclave, Nathanpur, District Dehradun

With CLAIM PETITION NO. 59/ DB /14

Rambir Singh Pundir aged about 50 years S/o Sri Jasrai Singh Pundir, R/o
H.No.115 Kalyanpur, Geeta Bhawan Marg, Vikas Nagar, Dehradun .

With CLAIM PETITION NO. 60/ DB /14

Prem Prakash Shaily aged about 50 years S/o Sri Girija Prasad Shaily , R/o C/o
G.S.Negi, Badrish Colony, Lane No.1, Dehradun.

With CLAIM PETITION NO. 61/ DB /14

Gajendra Singh Sajwan, aged about 55 years S/o Late Sri Puran Singh Sajwan,
R/o 357, Rajeshwaripuram, Near Jogiwala, District Dehradun.

With CLAIM PETITION NO. 11/DB/15

C.P.Singh, aged about 61 years S/o Late Sri Durga Singh, R/o Raj Nagar
(Transport Nagar) Behind Highway Petrol Pump, P.O. Mohobewala, Dehradun

.....Petitioners

VERSUS

1. State of Uttarakhand through Principal Secretary, Agriculture, Secretariat, Dehradun
2. Director Agriculture, Agriculture Directorate, Nanda Ki Chowki, Dehradun.
3. The Joint Director Agriculture, Quality Control, Agriculture Directorate, Dehradun.

.....Respondents.

Present: Smt. Anupama Gautam &
Sri A.S.Bisht, Ld. Counsel for the petitioners.
Sri Umesh Dhaundiyal, Ld. AP.O.
for the respondents.

JUDGMENT

DATED: FEBRUARY 07, 2017.

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

1. In these 8 claim petitions, there is similar cause of action and the petitioners in all these petitions have sought the similar relief from the Tribunal. In this group of petitions, the facts and points of law are also similar. Hence, all these claim petitions are being decided together by this common judgment.
2. For facility, the facts in claim petition No.55/SB/2014 are being taken into consideration:-
 - 2.1 The petitioner has sought the following relief:-
 - “ a. That the punishment order dated 24.10.2009 be kindly quashed discarding the inquiry being unauthorized and baseless.
 - b. Full cost of the petition
 - c. Any other relief to which the petitioner is found entitled may very kindly be granted.”
 - 2.2 The petitioner is a Class III employee in the Department of Agriculture, Government of Uttarakhand.
 - 2.3 In the years 2003-04 and 2004-05, a project known as Haryali Yojana of the Department of Agriculture was executed at Kalsi, Dehradun District.
 - 2.4 According to an office memorandum issued by the Secretary, Agriculture, Government of Uttarakhand on 12.02.2004, the

Agriculture Finance Corporation Limited (AFC) was engaged as per direction of the Government of India to evaluate the project. The AFC conducted the Technical Audit in 2005 and thereafter submitted the report.

- 2.5 It is alleged that the AFC reported certain irregularities committed by the petitioner in the execution of Haryali Yojana in Kalsi unit.
- 2.6 In order to inquire into the matter, the Director, Agriculture appointed the Joint Director, Agriculture (Respondent No.3) as Inquiry Officer on 28.04.2006. The inquiry officer was directed by the Director, Agriculture to prepare the charge sheet and submit the same to him.
- 2.7 Thereafter, the charge sheet was given to the petitioner on 02.09.2006 which was signed by the inquiry officer (Joint Director, Agriculture- Respondent No.3) and approved by the Director, Agriculture (Appointing Authority- Respondent No.2).
- 2.8 The petitioner replied to the charge sheet on 17.01.2007 and denied the charges.
- 2.9 The inquiry officer conducted the inquiry and submitted the inquiry report to the Director, Agriculture on 07.02.2008.
- 2.10 The Director, Agriculture issued a show cause notice to the petitioner along with the copy of the inquiry report on 17.04.2008.
- 2.11 The petitioner replied to the show cause notice on 26.05.2008.
- 2.12 The Appointing Authority (Director, Agriculture) considered the reply to the show cause notice and found it unsatisfactory and by punishment order dated 24.10.2009 imposed following penalty upon the petitioner:-

“1.श्री संजय अग्रवाल तत्कालीन कनिष्ठ अभियन्ता जलागम प्रबन्धन इकाई कालसी जनपद देहरादून की चरित्र पंजिका में उक्त आशय की तथ्यात्मक प्रतिकूल प्रविष्टि प्रदान करते हुये उनकी सत्य निष्ठा अप्रमाणित की जाती है ।

2. श्री संजय अग्रवाल तत्कालीन कनिष्ठ अभियन्ता जलागम प्रबन्धन इकाई कालसी जनपद देहरादून द्वारा बरती गयी गम्भीर वित्तीय अनियमितताओं में दोषी पाये जाने के फलस्वरूप उनकी एक वार्षिक वेतन वृद्धि सदैव के लिए रोकी जाती है।

3. श्री संजय अग्रवाल तत्कालीन कनिष्ठ अभियन्ता जलागम प्रबन्धन इकाई कालसी जनपद देहरादून द्वारा राजकोय सेवा में महत्वपूर्ण एवं उत्तरदायी पद पर तैनात रहते हुये उपरोक्त आरोप सं० एक, दो तीन, पांच, छः आठ एवं नौ के अनुसार शासकीय क्षति की धनराशि क्रमशः रू० 300100.32 रू० 297646.05 , रू० 2205.00 एवं 500.00 कुल धनराशि रू० 600451.37 के कराये गये कार्यों में बरती गयी अनियमितता में पूर्णतः दोषी पाये जाने के फलस्वरूप उक्त समस्त धनराशि रू० 600451.37 के 1/4 भाग रू० 150128.84 के 80 प्रतिशत भाग रू० 120090.27 की वसूली उनके मासिक वेतन से किये जाने के आदेश पारित किये जाते हैं।”

2.13 The petitioner submitted an appeal to the Appellate Authority on 30.11.2009 which remained undecided even after the notice given by the Counsel for the petitioner under Section 4(6) of the Public Services Tribunal Act.

2.14 Meanwhile, the petitioner approached the Hon'ble Uttarakhand High Court at Nainital and the Hon'ble High Court vide order dated 24.09.2014 relegated the matter to the Tribunal.

2.15 Hence, the claim petition before this Tribunal.

3. The petitioners (in all the claim petitions) have challenged the punishment order mainly on the ground that the inquiry officer was appointed before the charge sheets were issued and the charge sheets have been signed by the inquiry officer, therefore, the whole proceedings are illegal ab initio and there is gross violation of rules and the principles of natural justice. It has also been contended by the petitioners that the inquiry was initiated against the petitioners on the basis of the Technical Audit Report which was unsigned and the whole proceedings are based on an unauthentic document and, therefore, the Report cannot be made the basis of the inquiry and punishment.

4. The respondents in their written statements have opposed the petitions and contended that the inquiry has been conducted in accordance with the Uttarakhand Government Servant (Discipline and

Appeal) Rules, 2003 and reasonable opportunity was afforded to the petitioners to defend themselves. There was sufficient evidence against the petitioners and they have been rightly found guilty. It has further been contended by the respondents that the Technical Audit Report was made the basis of the inquiry and it was used as a preliminary inquiry report.

5. 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 petitioners that the inquiry officer was appointed even before the charge sheets were issued and the charge sheets have been signed by the inquiry officer and therefore, the whole proceedings of inquiry get 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.
6. 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.”

7. 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.

8. 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.”

9. **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 (which are similar on facts and points of law to the cases in present claim petitions) 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.”

10. **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, claim petition No. 10/SB/2013 Matloob Ahmed Vs. State decided on 29.05.2015 and Arun Kumar Jaiswal Vs. State of Uttarakhand (Claim petition No. 28/DB/2015) decided on 28.09.2016. We do not want to again quote the findings of these judgments to lengthen this judgment.**
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. In view of description in paragraph 5 to 11 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 cases in hand, the inquiry officer was appointed before the charge sheet was served upon the petitioners and before the reply of the charge sheet was submitted by the petitioners. 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 cases, the reply of the charge sheet submitted by the petitioners became immaterial as the inquiry officer was directed to proceed with the inquiry prior to the reply of the charge sheets 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 cases in hand, the charge sheets have been approved by the Appointing Authority but the charge sheets have been signed and issued by the inquiry officer who was appointed as inquiry officer prior to even service of the charge sheets. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.
13. For the reasons stated above, all the petitions deserve to be allowed.

ORDER

All the claim petitions are hereby allowed. The impugned punishment orders in all the claim petitions are hereby set aside. However, it would be open to the competent authority to proceed afresh against the petitioners in accordance with law. Before parting with the matter, it is

clarified that no opinion has been expressed on the merits of the case.
No order as to costs.

Let a copy of this judgment be kept in claim petition Nos. 56/ DB /14, 57/ DB /14, 58/ DB /14, 59/ DB /14, 60/ DB /14, 61/DB/14 and 11/ DB/15.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 07, 2017
DEHRADUN

VM