

**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. 04/ DB/2015

Anand Singh Chauhan, S/o Late Sri Gabar Singh Chauhan, aged about 46 years,
Plant Mechanic, Livestock Development Board, Shyampur, Rishikesh, Dheradun.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary (Animal Husbandry) Secretariat,
Subhash Road, Dehradun.
2. Director, Animal Husbandry Department, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: FEBRUARY 08, 2017

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

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

“1. यह कि माननीय न्यायाधिकरण विपक्षी संख्या 2 द्वारा पारित विवादित आदेश दिनांक 01-07-2011 (संलग्नक ए-1) तथा अपीलीय आदेश दिनांक 30.06.2015 (संलग्नक ए-19) को विधि विरुद्ध घोषित करते हुए निरस्त करने की कृपा करें ।

2. यह कि विपक्षी संख्या 2 के विवादित आदेश द्वारा संचयी प्रभाव से रोके गये दो वार्षिक वेतन वृद्धियों को मय ब्याज एवं समस्त परिणामिक लाभों सहित याची को दिलाये जाने हेतु विपक्षीगण को आदेशित व निर्देशित करने की कृपा करें ।

3. यह कि इस याचिका का व्यय तथा अन्य उपचार जो माननीय न्यायाधिकरण इस याचिका के विचारोपरान्त उपयुक्त समझे उसे भी याची का दिलाये जाने का आदेश व निर्देश संबंधित विपक्षीगण के विरुद्ध पारित करने की कृपा करें ।”

- 2.1 The petitioner is a “Plant Mechanic” in the Department of Animal Husbandry, Government of Uttarakhand.
- 2.2 The petitioner was suspended on 09.09.2010 (Annexure: A 6) on charges related to non-compliance of the orders of the higher authorities, unauthorized absence from duty, non-compliance of Government Rules, working in a careless manner and violation of the Uttarakhand Government Servant Conduct Rules, 2002.
- 2.3 The petitioner was issued a charge sheet containing ten charges on 08.10.2010 (Annexure: A 7) under the signature of the Director, Animal Husbandry, Government of Uttarakhand and was asked to submit the reply to the charge sheet within 30 days.
- 2.4 The Director, Animal Husbandry appointed Dr. Ashok Kumar, Additional Director, Animal Husbandry as Inquiry Officer vide letter dated 11.10.2010. In this letter, the Inquiry Officer was also sent the charge sheet and he was directed to serve the charge sheet upon the petitioner. The letter dated 11.10.2010 reads as under:-

“कार्यालय निदेशक, पशुपालन विभाग, उत्तराखण्ड, देहरादून।
पत्रांक 2707/स्था0 एक/व्य0प0/2010-11दिनांक 11/10/10

डा0 अशोक कुमार,
अपर निदेशक,
पशुधन विकास, गोपेश्वर- चमोली।

विषय:- श्री आनन्द सिंह चौहान प्लांट मैकेनिक, को आरोप पत्र दिया जाना ।

महोदय,

उपर्युक्त विषय के सन्दर्भ में आपको अवगत करना है कि श्री आनन्द सिंह चौहान प्लांट मैकेनिक, तरल नत्रजन केन्द्र, श्रीनगर- गढ़वाल को इस कार्यालय के आदेश सं0 2302/स्था0 एक/व्य0प0/2010-11दिनांक 09 सितम्बर, 2010 के द्वारा निलम्बित किया गया है। श्री चौहान के निलम्बन के फलस्वरूप श्री आनन्द सिंह

चौहान, निलम्बित प्लांट मैकेनिक पर लगाये गये आरोप की जांच की जानी आवश्यक है। इस हेतु आपको जांच अधिकारी नामित किया जाता है।

अतः श्री आनन्द सिंह चौहान, निलम्बित प्लांट मैकेनिक के विरुद्ध लगाये गये आरोपों की छाया प्रति आपको इस आशय के साथ संलग्न कर प्रेषित की जा रही है कि आप संबंधित प्लांट मैकेनिक को अपने स्तर से भी उक्त आरोप पत्र हस्तगत कराते हुए श्री सिंह पर लगाये गये आरोपों की निष्पक्ष जांच कर अपनी सुस्पष्ट जांच आख्या साक्ष्यों सहित 30 दिन के अन्दर अधोहस्ताक्षरी को उपलब्ध कराने का कष्ट करें। इस प्रकरण से संबंधित किसी अभिलेख/ पत्रावली की आवश्यकता हो तो आप कार्यालय से प्राप्त कर सकते हैं।

संलग्न-उक्तानुसार।

भवदीय,

(डा० ए० एस० धामी)
निदेशक”

2.5 The Inquiry Officer vide letter dated 19.11.2010 provided the charge sheet to the petitioner and directed him to give his statement with evidences before the inquiry officer within 15 days. The letter dated 19.11.2010 is reproduced below:-

“प्रेषक,

अपर निदेशक,
पशुधन विकास, पशुपालन विभाग
गोपेश्वर- चमोली।

श्री आनन्द सिंह चौहान,
प्लांट मैकेनिक,
पशुपालन विभाग।

पत्रांक: 498-500/स्था० आरोप-पत्र/ दिनांक 19/11/2010

विषय:- आरोप पत्र दिये जाने के संबंध में।

उपरोक्त विषयक निदेशक, पशुपालन विभाग, उत्तराखण्ड, देहरादून के पत्र संख्या 2707/स्था० एक/दिनांक 11.10.10 के क्रम में मुझे उपलब्ध कराया गया आरोप-पत्र जो कि आपको आरापित है, इस आशय से आपके पास भेजा जा रहा है कि आरोप-पत्र प्राप्ति के 15 दिनों के अन्दर आप पर लगाए गए आरोपों के विषय में कुछ कहना है तो अधोहस्ताक्षरी के समक्ष प्रस्तुत होकर साक्ष्य सहित बयान देवें।

भवदीय,

(डा० अशोक कुमार,
अपर निदेशक, पशुधन विकास,
गोपेश्वर- चमोली।”

- 2.6 The petitioner has contended that the documentary evidences which were mentioned in the charge sheet were not provided to him. He has also contended that some other information/ documents required to reply to the charge sheet, which he requested vide letters dated 24.11.2010 and 17.01.2011 were also not provided to him. The respondents have contended that all necessary documents were provided to the petitioner. The petitioner did not reply to the charge sheet. The inquiry officer proceeded ex-parte and submitted his report on 25.03.2011 and found all the charges proved against the petitioner. Thereafter, a show cause notice was issued to the petitioner along with the copy of the inquiry report on 25.04.2011. The petitioner replied to the show cause notice on 17.05.2011. The Director, Animal Husbandry found reply to the show cause notice unsatisfactory and passed the punishment order on 01.07.2011 (Annexure: A 1). The petitioner was awarded the punishment of withholding of two increments with cumulative effect.
- 2.7 The petitioner also filed appeal against the punishment order on 29.09.2011 (Annexure: A 13). A reminder was also given by the petitioner to the respondents to decide the appeal on 25.03.2013(Annexure: A 14). Counsel for the petitioner also gave notice under Section 4(6) of the Public Services Tribunal Act to decide the appeal on 05.08.2014 (Annexure: A 17). The Respondent No.1 decided the appeal on 30.06.2015 (during the pendency of the claim petition) and the appeal of the petitioner was rejected (Annexure: A19).
3. The petitioner in his claim petition has challenged the punishment order mainly on the ground that the inquiry officer was appointed even before the charge sheet was served upon the petitioner in gross violation of the rules and the principles of natural justice and, therefore, the whole proceedings are void ab initio.
4. The respondents in their joint written statement have opposed the petition and contended that the inquiry has been conducted as per rules and sufficient opportunity was afforded to the petitioner to

defend himself. There was sufficient evidence against the petitioner and he has rightly been found guilty. The appeal of the petitioner was also duly considered and the same was rejected by passing a reasoned order by the Appellate Authority.

5. The petitioner has also filed the rejoinder and the same averments have been reiterated in it which were stated in the claim petition.
6. We have heard both the parties and perused the record including the original file of inquiry.
7. The question before us for consideration is whether the appointment of inquiry officer is in accordance with rules/ law or not.
8. The question whether inquiry officer can be appointed before reply to the charge sheet is received or not had come up for consideration 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 Servants (Discipline and Appeal) Rules, 2003 giving a detailed reasoning as to why the enquiry officer cannot be appointed before the reply to the charge sheet. Hon'ble High Court in para 7 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.**”*

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

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 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.

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.”

10. Subsequently, the State Government has also amended the Rules of 2003 known as ‘ The Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010. The Relevant part of amended Rule 7, is extracted as under:-

“7. Procedure for imposing major punishment.

Before imposing any major punishment on any government servant, an inquiry shall be conducted in the following manner:-

(1) 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 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 signed by the Disciplinary Authority.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub rule (8)

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub rule (8) he will forward the following to the Inquiry Officer, namely:

(a) A copy of charge sheet and details of misconduct or misbehaviour,

(b) A copy of written defence statement, if any submitted by the government servant;

(c) Evidence as a proof of the delivery of the documents referred to in the charge sheet to the government servant;

(d) A copy of statements of evidence referred to in the charge sheet.”

11. Subsequently, this matter came for consideration before the Single Judge of the **Uttarakhand High Court in Writ Petition Nos. 999 (S/S), 1364 (S/S) and 1365 (S/S) of 2011 in Uday Pratap Singh Vs. State of Uttarakhand and Others**. The Hon’ble High Court while disposing of the mater, has held as under :-

“13. Rule 7(6) and (8) of the Rules contemplate 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.***

12. **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 in 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..... 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.”

13. In the case at hand, the inquiry officer was appointed on 11.10.2010 and the inquiry officer was directed to serve the charge sheet (dated 08.10.2010) upon the petitioner. The inquiry officer served the charge sheet upon the petitioner on 19.11.2010. It is clear that the inquiry officer was appointed before the charge sheet was served upon the petitioner which cannot be sustained as per settled position of law. In the instant case, Rule 7(7) of the Government Servant

(Discipline and Appeal) Amendment Rules, 2010 (reproduced in paragraph 10 of this order) read with Rule 7(8) and Rule 7(9) were not followed and the inquiry officer was appointed at the initial stage even before the charge sheet was served upon the petitioner. Thus, the respondents have taken a wrong path to conduct the inquiry. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

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

ORDER

The claim petition is hereby allowed. The punishment order dated 01.07.2011 (Annexure: A 1) and the order of the Appellate Authority dated 30.06.2015 (Annexure: A 19) are hereby set aside. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law. The respondents would be at liberty to suspend the petitioner if they find that he is liable to be suspended in accordance with law. If the said inquiry is started against the petitioner, the same would be concluded according to rules and law expeditiously, preferable within a period of six months from the date of this order. 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.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 08, 2017
DEHRADUN

VM