

**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. 66/DB/2014

Brijesh Kumar Gupta, S/o Sri Hanuman Prasad, Executive Engineer, Minor Irrigation, R/o 07, Rambagh, Dehradun.

.....Petitioner

Versus

1. State of Uttarakhand through Principal Secretary, Department of Minor Irrigation, Secretariat, Subhash Road, Dehradun.
2. Principal Secretary, Government of Uttarakhand, Department of Minor Irrigation & FRDC, Subhash Road, Dehradun.
3. Secretary, Government of Uttarakhand, Department of Minor Irrigation, Subhash Road, Dehradun.

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.,
Sri S.K.Gupta & Sri L.K.Maithani, Counsels
for the respondents

JUDGMENT

DATED: MARCH 06, 2017

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

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

“(a) the impugned order dated 30.11.2011 (Annexure: A1) and Annexure: A14 be kindly quashed and set aside with all consequential benefits including pay of the post of the petitioner, annual increments, allowances etc. as would have been admissible had the impugned order would not have been passed together with interest thereon @ 12% per annum from the date of accrual of the benefits till the date of actual payment to the petitioner;

(b) the respondents be kindly ordered and directed to refund the amount recovered by the respondents pursuant to the above impugned order together with 12% per annum interest thereon from the date of recovery till the actual date of refund to the petitioner;

(c) any other relief in addition to, modification or substitution of the above, as this Hon’ble Tribunal deems fit and proper on the facts and circumstances of the case be kindly allowed to the petitioner against the respondents; and

(d) cost of this petition Rs. 20,000/- be allowed to the petitioner against the respondents.”

2.1 The petitioner is presently Executive Engineer in the Department of Minor Irrigation, Government of Uttarakhand. During the years 2002-2004, the Department of Minor Irrigation undertook a Project namely, Hydrem Scheme of Irrigation in village Sonala, district Chamoli. The petitioner was Assistant Engineer at that time and worked on the Project. The petitioner was suspended on 20.10.2009 due to irregularities committed by the petitioner related to Selection, Design, Technical & Financial Sanction and Construction of the said Project.

2.2 The petitioner was issued a charge sheet containing seven charges on 20.10.2009 (Annexure: A2). The charge sheet was approved by the Principal Secretary, Minor Irrigation on the charge sheet itself but the charge sheet was unsigned though the name of Dr. Rakesh Kumar, Secretary, School Education, Government of Uttarakhand appears at the end of the charge sheet. The Disciplinary Authority (Principal Secretary, Minor Irrigation) appointed Dr. Rakesh Kumar, Secretary, Government of Uttarakhand as Inquiry Officer on 20.10.2009. The charge sheet dated 20.10.2009 was served upon the petitioner on 15.01.2010. The petitioner replied to the charge sheet on 03.02.2010 and denied the charges.

2.3 The Inquiry Officer submitted his inquiry report on 09.09.2010. Thereafter, a show cause notice was issued to the petitioner alongwith the copy of the inquiry report on 15.09.2010. The petitioner replied to the show cause notice on 21.09.2010. The Disciplinary Authority found reply to the show cause notice unsatisfactory and passed the punishment order on 30.11.2011 (Annexure: A1) imposing upon the petitioner the punishments of (i) stoppage of two increments with cumulative effect; (ii) recovery of Rs. 13.16 lacs; and (iii) censure entry. The salary of the petitioner in respect of suspension period was also restricted to the suspension allowance by this punishment order.

2.4 The petitioner also filed representation against the punishment order on 13.12.2011. Two reminders were also given by the petitioner to decide the representation on 28.02.2012 and 18.07.2012. Counsel for the petitioner also gave notice under Section 4(6) of the Public Services Tribunal Act on 14.10.2014 to decide the representation. After the direction by the Tribunal, the

representation of the petitioner was decided under Rule 13 of the Uttarakhand Government Servant (Punishment and Appeal) Rules, 2003 vide order dated 22.07.2016 (Annexure: A14) by which the punishment of stoppage of two increments was restricted to 10 years and the punishment of censure entry was withdrawn.

3. The petitioner has challenged the punishment order mainly on the ground that the inquiry officer was appointed with the issuance of the charge sheet; even before the charge sheet was served upon the petitioner; and even before reply to the charge sheet submitted by the petitioner which is in gross violation of the rules and the principles of natural justice and, therefore, the whole proceedings are void ab-initio. Apart from this, the petitioner has also contended that inquiry was not conducted properly as per rules; documents enclosed with the charge sheet were not got proved by their authors; the inquiry committee was constituted by the inquiry officer and site inspection was done without involving the petitioner; the petitioner was not allowed opportunity to make submission on the advice of the UPSC; and the salary of the petitioner for suspension period was restricted to suspension allowance without following Rule 54 of the Fundamental Rules.

4. Respondents in their joint written statement 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 which is as per rules. The appointment of inquiry officer was also as per rules as the relevant rules permit appointment of inquiry officer with the institution of

the departmental proceedings. The inquiry was based on documentary evidences only which were in the knowledge of the petitioner. There was no need to get them proved by oral evidence. The inquiry officer was well within his right to visit the site and the report of samples taken during site inspection were shared with the petitioner in the inquiry report and the opportunity to represent against it was also provided to the petitioner through show cause notice. No prejudice has been caused to the petitioner so it cannot be said that the inquiry proceeding is vitiated or there is violation of any principle of natural justice. The punishment was imposed upon the petitioner after consultation with the UPSC and there is no rule in the Government Servants (Punishment and Appeal) Rules, 2003 according to which the advice of the UPSC is required to be provided to the petitioner for his comment. The representation of the petitioner against the punishment was duly considered and the punishment was reduced by the competent authority.

5. The petitioner has filed the rejoinder affidavit and the same averments which were stated in the claim petition have been reiterated and elaborated in it. The petitioner/respondents have also filed supplementary affidavits/documents

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

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.**

8. In the case before us, admittedly, the inquiry officer has been appointed on 20.10.2009. Admittedly, the charge sheet dated 20.10.2009 was served upon the petitioner on 15.01.2010. Admittedly, the reply to the charge sheet was received by the respondents on 03.02.2010. It is, therefore, clear that the inquiry officer was appointed much before the reply to the charge sheet was received. The Office Memorandum to appoint the inquiry officer is reproduced below:

“लघु सिंचाई अनुभाग

संख्या 1548 A/11-2009-02 (10)/2005 तद्दिनांक

देहरादून, दिनांक 20 अक्टूबर, 2009

—:: कार्यालय ज्ञाप ::—

विकासखण्ड कर्णप्रयाग, जनपद चमोली में वर्ष 2002–2003 से 2004–2005 की अवधि में निर्मित सोनला हाईड्रम, योजना की प्रारम्भिक जाँच में अनियमितता दृष्टिगोचर होने पर लघु सिंचाई विभाग के 03 अभियन्ताओं क्रमशः श्री एस0 ए0 असगर, तत्कालीन अधिशासी अभियन्ता, श्री बृजेश कुमार गुप्ता, तत्कालीन सहायक अभियन्ता एवं श्री वी0 डी0 बैजवाल, तत्कालीन कनिष्ठ अभियन्ता को शासन द्वारा निलम्बित कर दिया गया।

उक्त अभियन्ताओं के विरुद्ध विभागीय अनुशासनिक कार्यवाही संस्थित करते हुये प्रश्नगत प्रकरण की जाँच हेतु डा0 राकेश कुमार, सचिव विद्यालयी शिक्षा, उत्तराखण्ड शासन को एतद् द्वारा जांच अधिकारी नियुक्त किया जाता है। प्रश्नगत प्रकरण से सम्बन्धित प्रारम्भिक जांच आख्या एवं आरोप पत्र की तीन–तीन प्रति संलग्न करते हुए जांच अधिकारी को आदेशित किया जाता है कि वे नियमानुसार जांच कर अपनी जांच आख्या दो माह के अन्दर शासन को उपलब्ध करायें।

ह0/—

(अमरेन्द्र सिन्हा)
प्रमुख सचिव”

9. 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, Lalit 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 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.

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.
- 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.**
- iii.”

11. **Subsequently, the Government of Uttarakhand issued a Government Order dated 23.07.2009** which is reproduced below:

“संख्या: 827 / कार्मिक-2 / 2009

प्रेषक,

शत्रुघ्न सिंह
सचिव,
उत्तराखण्ड शासन।

सेवा में,

1. अपर मुख्य सचिव,
उत्तराखण्ड शासन।
2. समस्त प्रमुख सचिव / सचिव,
उत्तराखण्ड शासन।
3. समस्त विभागाध्यक्ष / कार्यालयाध्यक्ष,
उत्तराखण्ड।
4. मण्डलायुक्त, कुमायूँ / गढ़वाल।
5. समस्त जिलाधिकारी,
उत्तराखण्ड।

कार्मिक अनुभाग-2

देहरादून: दिनांक: 23 जुलाई, 2009

विषय: सरकारी कर्मचारियों का निलम्बन तथा निलम्बन से सम्बन्धित मामलों का शीघ्र निस्तारण।

महोदय,

उपर्युक्त विषय के संबंध में मुझे यह कहने का निदेश हुआ है कि शासकीय कृत्यों के निर्वहन में की गई गम्भीर अनियमितताओं के संज्ञान में आने पर शासकीय कर्मचारियों का निलम्बन एवं उससे सम्बन्धित मामलों के निस्तारण के सम्बन्ध में स्पष्ट दिशा निर्देश पूर्व से ही शासनादेश संख्या 1626 / कार्मिक-2 / 2002 देहरादून दिनांक 23 जनवरी 2003 के द्वारा जारी किये गये हैं तथा किसी सरकारी सेवक के विरुद्ध दीर्घ शास्ति अधिरोपित करने की प्रक्रिया उत्तरांचल सरकारी सेवक (अनुशासन एवं अपील नियमावली 2003) के नियम 7 में निर्धारित की गयी है।

2- रिट याचिका संख्या 118 / एस0बी0 / 2008 श्रीमती ललिता वर्मा बनाम राज्य एवं अन्य एवं रिट याचिका संख्या 80 (एस0बी0) / 2009 डा0 हरेन्द्र सिंह बनाम राज्य लोक सेवा अधिकरण एवं अन्य में मा0 उच्च न्यायालय द्वारा क्रमश दिनांक 30.06.2008 एवं दिनांक 1.7.2009 में पारित आदेशों में निम्नवत कार्यवाही के निर्देश दिये गये हैं।

- 1- With reference to the 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 charges against the concerned Government Servant are so serious that in

the event of these being established, ordinarily major penalty would be inflicted.

2- 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 officer 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.

3- The charge sheet should not be signed by the Inquiry Officer.

3- अतः आपसे अनुरोध है कि निलम्बन से संबंधित प्रकरणों में मा० न्यायालय के उपरोक्त प्रस्तर- 2 में वर्णित निर्देशों का अनुपालन करने का कष्ट करें। संगत नियमावली 2003 में संशोधन की कार्यवाही पृथक से की जा रही है।

भवदीय,

(शत्रुघ्न सिंह)
सचिव।”

12. In 2010, the State Government has also amended the Rules of 2003 accordingly by 'the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010'.

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 clear that the inquiry officer can be appointed only after the reply of the charge sheet is received. In the case in hand, the petitioner was suspended on 20.10.2009. The charge sheet was also issued on 20.10.2009. The Inquiry Officer was appointed on 20.10.2009. The charge sheet was served upon the petitioner on 15.01.2010. The petitioner submitted reply to the charge sheet on 03.02.2010. Thus, the inquiry officer was appointed before the charge sheet was served upon the petitioner and before the reply to the charge sheet was received. **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. In view of settled legal position, we find that the process of

inquiry, adopted by the respondents, was not in accordance with law.

15. In view of above, we do not find it necessary to deal with other points raised by the counsels for the parties.

16. For the reasons stated in the preceding paragraphs, the petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. The punishment order dated 30.11.2011 (Annexure: A1) and the order dated 22.07.2016 (Annexure: A14) are hereby set aside with effects and operation of these orders. However, it would be open to the competent authority to proceed afresh against the petitioner 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.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: MARCH 06, 2017
DEHRADUN

KNP