

**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. 01/DB/2014

S.Paramjeet Singh S/o S. Harbans Singh, aged about 56 years, Superintending Engineer, Minor Irrigation Circle, Haldwani R/o 245/l, Vijjai Park Extension, Dehradun.

.....Petitioner

Versus

1. State of Uttarakhand through its Principal Secretary, Department of Minor Irrigation, Secretariat, Subhash Road, Dehradun-248001..
2. Principal Secretary to the Government of Uttarakhand, Department of Minor Irrigation & FRDC, Subhash Road, Dehradun-248001..
3. Secretary to the Government of Uttarakhand, Department of Minor Irrigation , Subhash Road, Dehradun-248001.

.....Respondents.

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

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

JUDGMENT

DATED: JAUNARY 04, 2018

(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 orders dated 01.09.2011 (Annexure-A1) and Annexure-A 30 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 @ 12% per annum from the date of accrual of the benefits till the date of actual payment to the petitioner;

(b) The respondents be kingly ordered and directed to refund the amount recovered by the respondents pursuance 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 kingly 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. The petitioner is presently Superintending Engineer in the department of Minor Irrigation, Government of Uttarakhand. During the year 2002-2004, the department of Minor Irrigation undertook many projects under Accelerated Irrigation Benefits Programme and other irrigation schemes in various districts of Garhwal Division. The petitioner was Executive Engineer at that time and supervised these projects. The petitioner was placed under suspension on 16.10.2008 due to alleged irregularities committed by the petitioner.
3. The petitioner was issued a charge sheet containing seven charges on 05.11.2008. The charges against the petitioner were mainly related to the allegations that he did not make physical verification of works and also failed to discharge his duties as Drawing and Disbursing Officer leading to the illegal payments. The appointing authority appointed Shri Manjul Joshi, Additional Secretary, Government of Uttarakhand as

Inquiry Officer on 20.01.2009. The petitioner replied to the charge sheet on 12.03.2009, 26.03.2009 and 22.09.2009 and denied the charges.

4. The Inquiry Officer conducted the inquiry and submitted the inquiry report dated 31.03.2010 to the appointing authority. Thereafter, a show cause notice was issued by the appointing authority to the petitioner along with the copy of the inquiry report on 21.04.2010. The petitioner replied to the show cause notice on 11.05.2010. The appointing authority considered the reply to the show cause notice and found it unsatisfactory and after consulting the Public Service Commission, he passed the punishment order on 01.09.2011 imposing upon the petitioner the punishments of (i) recovery of Rs.2,97,965; (ii) censure entry; and (iii) withholding of three increments with cumulative effect. It was also mentioned in the punishment order that the petitioner will not be paid salary of the suspension period except the subsistence amount paid during the period of suspension.
5. The petitioner filed a "review" against the punishment order 17.10.2011 and thereafter, also sent reminders for disposal of his "review". The "review" was considered and the same was rejected by the competent authority on 20.12.2016.
6. The petitioner has challenged the punishment order mainly on the ground that the inquiry officer was appointed even before reply to the charge sheet was 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 respondents could not impose major and minor punishments simultaneously; the punishments imposed upon the petitioner are disproportionate to the alleged misconduct; the review petition has been decided in unlawful manner; 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.

7. 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 issued to the petitioner was signed 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. 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 Uttarakhand Public Service Commission 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 review of the petitioner against the punishment was duly considered and the same was rightly rejected by the competent authority.
8. 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.
9. We have heard learned counsel for the petitioner and also learned counsel on behalf of respondents along with learned A.P.O. and perused the record including the original file of inquiry.
10. **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.**

11. In the case before us, admittedly, the inquiry officer has been appointed on 20.01.2009. Admittedly, the charge sheet was issued to the petitioner on 05.11.2008. Admittedly, the reply to the charge sheet was received by the respondents on 12.03.2009, 26.03.2009 and 22.09.2009. 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:-

“उत्तराखण्ड शासन
लघु सिंचाई विभाग

संख्या –110/11-2009 –02(12)/2005
देहरादून दिनांक 20 जनवरी, 2009

शुद्धि पत्र

विकासखण्ड मोरी, जनपद उत्तरकाशी में वर्ष 2002-04 के दौरान निर्मित 07 लघु सिंचाई योजनाओं में हुई अनियमितता के सम्बन्ध में श्री परमजीत सिंह, अधीक्षण अभियन्ता एवं श्री राजीव कुमार, प्रभारी अधिशासी अभियन्ता के विरुद्ध अनुशासनिक जांच हेतु शासन के कार्यालय ज्ञाप संख्या 1701/11-2008 –02(12)/2005 , दिनांक 11.11.2008 के द्वारा श्री मंजुल कुमार जोशी, अपर सचिव, राजस्व, उत्तराखण्ड शासन को अध्यक्षता में एक जांच समिति गठित की गई थी।

2. उक्त कार्यालय ज्ञाप में आंशिक संशोधन करते हुये “उत्तरांचल सरकारी सेवक(अनुशासन एवं अपील) नियमावली 2003” के तहत अब श्री मंजुल कुमार जोशी, अपर सचिव, राजस्व, उत्तराखण्ड शासन एकल रूप में उक्त दोनो अधिकारियों क विरुद्ध अनुशासनिक जांच सम्पादित करेंगे।

3. श्री मंजुल कुमार जोशी, जांच अधिकारी को यह निर्देश दिया जाता है कि वह “उत्तरांचल सरकारी सेवक (अनुशासन एवं अपील)नियमावली 2003” के तहत दोनो अधिकारियों के विरुद्ध लगाये गये आरोपों की जांच कर जांच आख्या शासन को उपलब्ध करायें।

4. उक्त कार्यालय ज्ञाप उक्त सीमा तक संशोधित समझा जाय।

(विनोद फोनिया)
सचिव”

12. 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.

13. 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.....”

14. **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.....”

15. In view of description in paragraph 10 to 14 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 charge sheet was issued on 05.11.2008. The Inquiry Officer was appointed on 20.01.2009. The petitioner submitted reply to the charge sheet on 12.03.2009, 26.03.2009 and 22.09.2009. Thus, the inquiry officer was appointed 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.

16. In view of above, we do not find it necessary to deal with other points raised by the counsels for the parties.
17. 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 01.09.2011 (Annexure: A1) and the order dated 20.12.2016 (Annexure: A 30) 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: JANUARY 04, 2018
DEHRADUN

VM