

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

CLAIM PETITION NO. 30/DB/2016

Laxmi Prasad Gairola S/o Late Shri J.P.Gairola, Presently posted as
Revenue Sub Inspector, Langsi Tehsil, Joshimath, District Chamoli.

.....Petitioner

VERSUS

1. Chief Revenue Commissioner, Uttarakhand Govt. E.C. Road,
Dehradun, Uttarakhand.
2. Commissioner, Garhwal Mandal, Pauri, Uttarakhand.
3. District Magistrate, Chamoli, Gopeshwar, Chamoli, Garhwal
4. Sub Divisional Magistrate, Karanprayag, Chamoli.
5. State of Uttarakhand through Secretary, Revenue.

.....Respondents

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

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

JUDGMENT

DATED: FEBRUARY 28, 2018

Justice U.C.Dhyani (Oral)

By means of the present claim petition, the petitioner seeks
following reliefs:

*“a) To call the entire record and quash the impugned order dated
22.04.2006 passed by respondent no. 3 (Annexure-3 to this claim
petition) and appellate order dated 31.08.2007 passed by the*

respondent no. 2 (Annexure No. 7 to this claim petition) declare the same as null and void with all consequential benefits.

b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

c) Award cost of the petition."

2. Brief facts giving rise to the present claim petition are as follows:

In the year 2005, the petitioner was posted as Revenue Sub-Inspector in Langasu, Karanprayag, District Chamoli. Pradhan, Village Panchayat, Langasu, gave a complaint on 24.09.2005 regarding illegal mining in the village. An enquiry was conducted in the matter by Respondent No. 3. On 12.07.2005, Respondent No. 4 gave charge sheet to the petitioner. In such charge sheet, three charges were levelled against the petitioner. The first charge against the petitioner was that he did not take any action against illegal mining. Second charge was that he was absent from duty from 10.05.2005 to 21.05.2005, without permission. The third charge was that there was some interpolation in the *Khata* of Fasli Year 1412 to 1417. Petitioner filed his reply on 17.08.2005 and denied all the allegations levelled against him.

3. One of the grounds taken in the claim petition, is that Respondent No. 3 submitted his report without giving reasonable opportunity of being heard to the petitioner and thereafter, on 22.04.2006, petitioner was awarded 'censure entry' by Respondent No. 3, in arbitrary manner.

4. **Petitioner filed an appeal before Respondent No. 2 on 24.07.2006. Respondent No. 2 did not take any decision on the same. Petitioner approached Respondent No. 1 on 10.03.2015. Respondent No. 1, on the request made by the petitioner, made a request to Respondent No. 3, in turn, to provide necessary information in the**

matter. When the claim petition was filed, petitioner took a definite plea in Para-18 that since Respondents did not take any decision in the appeal, filed by the petitioner on 24.07.2006, therefore, the petitioner was constrained to file present claim petition.

5. **By way of amendment, the petitioner took specific plea, in the petition, that the decision of the appeal was communicated to the petitioner, only when he filed present claim petition. Such plea of the petitioner remains uncontroverted.**

6. It is settled principle of law that limitation will start running from the knowledge of the order and not from the date of the order, if it remains uncommunicated. Hence, petitioner took a plea that claim petition is well within time, inasmuch as, copy of the appellate authority's order was given to him, only when he filed present claim petition.

7. Such plea has also been taken by the petitioner while amending para-18 of the claim petition.

8. Although, in para-5 of the Counter Affidavit, a plea has been taken that the claim petition is not maintainable, as time barred, but the petitioner has been able to show that the information of the appellate authority's order was never given to him and the petitioner came to know of such authority's order, only when he filed the claim petition.

9. This court finds substance in the submission of learned counsel for the petitioner that appellate authority's order was not communicated to him, before he filed present claim petition. It may be noted here that, in Inquiry Officer's file also there is no evidence that appellate authority's order was ever served upon the petitioner.

10. **It is, therefore, held that the claim petition is well within time and is not barred by limitation.**

11. Coming to the merits of the claim petition, SDM was appointed as inquiry officer even before the charge sheet was served upon the petitioner. There is breach of Rule 7(7) and Rule 7(8) of the Uttaranchal Government Servants (Discipline & Appeal) Rules 2003. It is an admitted fact that the procedure of major penalty has been followed in the instant case, although, the same terminated in the 'adverse entry' to the petitioner. Let us see, what is the law on this point?

12. Rule 7 of the Uttaranchal Government Servants (Discipline & Appeal) Rules, 2003 provides as under:

"7. Procedure for imposing major penalties.-Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:-

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

(ii) 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."

13. This Rule came up for interpretation before the Division Bench of Hon'ble Uttarakhand High Court in **Writ petition No. 118(SB) 2008 Lalita Verma vs. State of Utarakhand** in which an interim order was passed giving detailed reasons as to why the enquiry officer should not sign the charge sheet. Subsequently, the State Government amended the Rules of 2003 known as 'the Uttarakhand Government Servants (Discipline and Appeal) Amendment Rules, 2010'. Original Rule 7 was substituted by amended Rule 4 as follows:-

" 4. Substitution of Rule 7.- In the principal rules for Rule 7, the following rule shall be substituted, namely-

7. Procedure for imposing major punishment.-Before imposing any major punishment on a 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 misbehavior 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 approved by the Disciplinary Authority.

Provided that where the appointing authority is Governor, the charge-sheet may be signed by the Principal Secretary or Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. The proposed documentary evidences and the names of the witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(4) The charge sheet along with the documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged government servant personally or by registered post at the address mentioned in the official records. In case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged government servant shall be permitted to inspect the same.

(5) The charged government servant shall be required to put in written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also be required to state whether he desires to cross-examine any witness mentioned in the charge sheet whether he desires to give or produce any written or oral evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(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 the charge sheet and details of misconduct or misbehavior;

(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.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant who

shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged government servant desired in his written statement to be produced in his defence.

Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce any documents in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to the charges.

(13) Where the charged government servant does not appear on the date fixed in the enquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statements of witnesses mentioned in the charge sheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers necessary to do so, may, by an order, appoint a government servant or a legal practitioner, to be known as "Presiding Officer" to present on his behalf the case in support of the charge.

(15) The charged government servant may take the assistance of any other government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presiding Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Officer ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry

Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him.

14. It is the submission of learned A.P.O. that old Rules [Uttaranchal Government Servants (Discipline & Appeal) Rules, 2003] were applicable in the case of the petitioner. This Tribunal is unable to agree to such submission. Hon'ble Division Bench of Uttarakhand High Court, in paras 7, 8 & 9 of the judgment of **Smt. Lalita Verma vs. State of Uttarakhand & others Writ petition No. (S/B)118 of 2008** has 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 material 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 intimation 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 not 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? This apart, Rule (supra) itself clearly stipulates that the charge sheet has to be signed by the disciplinary authority.

9. Rule 7 also stipulates that the charge sheet shall be approved by the Disciplinary Authority. Disciplinary Authority has been defined in Rule 6 as the Appointing Authority of the Government servant concerned. In the counter affidavit, it has not been stated as to who is the Appointing Authority of the petitioner. Therefore, this Court cannot find out as to whether the charge sheet has been approved by a competent Disciplinary Authority or not."

15. The Court held that the disciplinary proceedings against the delinquent Smt. Lalita Verma were, *prima facie*, violative of Rule 7.

16. Subsequently, this matter came up for consideration before learned Single Judge in writ petition **Uday Pratap Singh vs. State of Uttarakhand and Others 2012 (1) U.D. 365**. Proceedings of suspension were initiated under new Rules. Hon'ble High Court, while disposing of the mater, has held as under :

"12. Rule 7(ii) indicates that the charge sheet shall be signed by the disciplinary authority. Prior to the amended Rules, it was open to the disciplinary authority to sign the charge sheet himself or direct any subordinate officer or the Enquiry Officer to sign the charge sheet. This Rule has been specifically amended by the Amendment Rules, 2010 pursuant to the interim order of the High Court and the reason is not far to seek. An Enquiry Officer should not be allowed to sign the charge sheet. An Enquiry Officer is required to be an independent person, who is required to proceed and analyze the evidence that comes before him and should not be a signatory to the charges that are being levelled against the charged officer. It is on account of this salutary principle that the Rules have been amended specifically for a solitary purpose, namely, that the disciplinary authority alone is required to sign the charge sheet. Consequently, the direction of the disciplinary authority to the Enquiry Officer to sign the charge sheet was patently erroneous and was in gross violation of the amended Rules 7(ii) of the Rules.

13. Rule 7(6) and (8) of the Rules contemplates 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. In the present case, the Court finds that the Enquiry Officer was appointed on 21st April, 2011. The charge sheet under the signature of the Enquiry Officer was served upon the petitioner after he was suspended by an order dated 20th July, 2011.

14. From the aforesaid, it is clear that the entire procedure adopted by the respondents was in gross violation of the amended Rules of 2010 and therefore, the procedure adopted cannot be sustained and are liable to be set aside. For the reasons stated above, the writ petitions succeed and are allowed. The impugned order dated 21st April, 2011 appointing the Enquiry Officer is quashed. Since the direction contained in the suspension order dated 20th July, 2011 directing the Enquiry Officer to sign the charge sheet under his signature, being patently erroneous and against the amended Rules of 2010, the entire suspension order is accordingly quashed. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law.”

17. Hon’ble High Court, by referring to Rule 7 of the aforesaid 2003 Rules, compared the same with Rule 14 of the CCS Rules, 1965 and has held that the inquiry 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 occasion to appoint inquiry officer

before the delinquent employee pleads guilty or not guilty to the charges.

18. In Uday Pratap's case (*Supra*), the appointing authority had already appointed the inquiry officer, who framed the charges against the delinquent, though the charges were approved by the appointing authority. Based on the law as laid down in Lalita Verma's case (*supra*), the charge sheet issued by the inquiry officer was, held to be, bad in law.

19. It is, accordingly, held that the law laid down by the Hon'ble Uttarakhand High Court in Writ Petition No. 118 (S/B)/2008, Lalita Verma vs. State of Uttarkahand and in the decision of Uday Pratap Singh vs. State of Uttarakhand & others, 2012(1) U.D., 365, as also amended Rule 7 of the Uttaranchal Government Servants (Discipline & Appeal) Rules, 2003, have been observed by breach in the instant case. **Inquiry is, therefore, vitiated.**

20. Besides the above, it is also pointed out that copy of the inquiry report was not served upon the petitioner before awarding punishment; and that 'adverse entry' has not been prescribed as punishment under the Uttaranchal Government Servants (Discipline & Appeal) Rules, 2003. In other words, 'adverse entry' has neither been described as major penalty, nor as minor punishment. Further, the petitioner moved a representation against his 'adverse entry', which has not been decided as per the Uttaranchal Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied matters) Rules, 2002. *Prima-facie*, this court finds substance in the submissions of learned counsel for the petitioner, but is not inclined to deal with them in great detail inasmuch as it has already been held above, that Respondents have not observed Rule 7 of the Rules of 2003 correctly, which is fatal to departments' case.

21. For the reasons indicated herein above, claim petition must succeed and the orders impugned cannot be allowed to sustain.

22. Claim petition is, therefore, allowed. The orders impugned dated 22.04.2006 and 31.08.2007 are hereby set aside. No order as to costs.

23. It would, however, be open to the disciplinary authority to proceed against the petitioner afresh in accordance with law, if it is so advised.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 28, 2018
DEHRADUN

KNP