

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D. K. Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 28/NB/DB/2016

Mahipal Singh Nayal, S/o Late Sri Sher Singh Nayal, R/o New Indira Colony, Khatiyadi, Almora.

.....Petitioner

VERSUS

1. State of Uttarakhand, through Secretary, Department of Revenue, Government of Uttarakhand, Dehradun.
2. Commissioner, Kumaon Mandal, Nainital.
3. District Magistrate, Almora.
4. Commissioner-cum-Secretary, Board of Revenue, State of Utarakhand.

.....Respondents

Present : Sri Sachin Mohan Singh Mehta,
Ld. Counsel for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: MARCH 14, 2018

HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)

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

- “(i) To quash the impugned order dated 13.7.2015 passed by learned District Magistrate, Almora awarding punishment of stoppage of three increments in salary with cumulative effects.
- (ii) To quash the impugned order dated 5.2.2016 passed by learned Commissioner, Kumaon whereby the appeal filed by the petitioner has been dismissed against the order dated 13.7.2015.
- (iii) To quash the order dated 25.4.2016 passed by learned Commissioner and Secretary, Board of Revenue whereby the representation/appeal filed by the petitioner against the order dated 5.2.2016 has been dismissed as not maintainable.
- (iv) Grant any other relief, order or direction, which this Hon’ble Tribunal deem fit and proper in the facts and circumstances of the case.
- (v) Award the cost of the petition to the petitioner .”

2.1 The petitioner is a Chief Assistant, Collectorate, Almora and he was assigned the work of Nagrik Suraksha Sahayak.

2.2. On 22.12.2014, the petitioner was suspended for unauthorized absence and delay in disposal of various cases pertaining to the Chief Minister’s Relief Fund (Annexure : A-4).

2.3. The Collector, Almora who is the disciplinary authority in respect of the petitioner appointed the Deputy Collector as the enquiry officer in the suspension order itself (Annexure : A-4).

2.4. The petitioner was issued a charge-sheet on 18.02.2015 (Annexure: A-5). The petitioner replied to the charge-sheet to the enquiry officer on 04.03.2015 (Annexure: A-6). Thereafter, the enquiry

officer conducted the enquiry and submitted the enquiry report to the Collector, Almora on 28.04.2015 (Annexure: A-7). The disciplinary authority issued a show-cause notice to the petitioner enclosing the copy of the enquiry report to the petitioner on 18.05.2015. The petitioner replied to the show-cause notice on 23.05.2015 (Annexure: A-8). Thereafter, the Collector, Almora after considering the reply to the show-cause notice passed the punishment order on 13.07.2015 awarding the punishment of stoppage of three increments with cumulative effect (Annexure : A-1). The appeal of the petitioner was rejected by the Commissioner, Kumaon Division. The petitioner also made a representation thereafter to the Secretary, Board of Revenue and it was also rejected on the ground that the same is not maintainable.

3. Apart from the other grounds, the petitioner has challenged the punishment order mainly on the ground that the enquiry officer was appointed before the charge-sheet was issued to the petitioner and, therefore, whole proceedings of enquiry from the beginning are ab-initio void.

4. The respondents in their written statement have opposed the petition on the ground 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 has rightly been found guilty.

5. The petitioner also filed a rejoinder affidavit 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.

7. The first question which comes for consideration before us is whether the enquiry officer can be appointed before the charge-sheet was issued (and the reply to the charge-sheet was received) or not. Perusal of record reveals that the enquiry officer was appointed on

20.12.2014 and the charge-sheet was issued to the petitioner on 18.02.2015 and reply to the charge-sheet was received on 04.03.2015 making it clear that the enquiry officer was appointed before the charge-sheet was issued to the petitioner.

8. The question whether enquiry officer can be appointed before the charge-sheet is issued/reply to the charge-sheet is received or not had come up for consideration before this Tribunal in Claim Petition No. 33/NB/SB/2015 Mahesh Chandra Pathak Vs. State of Uttarakhand & others and it was held that in view of the decisions of **Hon'ble High Court of Uttarakhand in Writ Petition No. 118(SB) 2008, Lalita Verma Vs. State of Uttarakhand, Dr. Harendra Singh Vs. State Public Services Tribunal & others in writ petition No. 80 of 2009 (S/B), The Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010, 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 and 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]**, the enquiry officer can be appointed only after the charge-sheet is issued to the delinquent employee and the reply to the charge-sheet is received and considered by the disciplinary authority. In the instant case, the enquiry officer was appointed before the charge-sheet was issued and, therefore, the enquiry proceedings are patently illegal and in gross violation of rules. The respondents have taken a wrong path to conduct the enquiry. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

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

ORDER

The claim petition is hereby allowed. The impugned orders dated 13.07.2015 (Annexure: A1) and 05.02.2016 (Annexure: A2) are hereby set

aside with the effect 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 14, 2018
NAINITAL

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