

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 09/NB/SB/2017

Bhupal Singh Adhikari, S/o Late Sri Dev Singh Adhikari, Employed as Senior Clerk, Uttarakhand Transport Corporation, Ram Nagar Depot, District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Secretary, Uttarakhand Transport Corporation, Government of Uttarakhand, Secretariat, Dehradun.
2. Uttarakhand Transport Corporation through its General Manager (Discipline) Headquarter, 117 Indira Nagar, Dehradun.
3. Mandaliya Prabandhak (Operation) Uttarakhand Transport Corporation, Kumaon Region, Nainital

.....Respondents

Present: Sri C.K.Sharma, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondent No. 1
Sri Tarun Pandey, Ld. Counsel
for the respondents No. 2 & 3

JUDGMENT

DATED: APRIL 10, 2018

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

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

“ i) to set aside the impugned order dated 27.11.2008 (Annexure No.1 to the claim petition) passed by General Manager (Discipline) Uttarakhand Transport Corporation, Dehradun.

ii) to issue an order or direction directing the respondents not to give effect the impugned order dated 27.11.2008 (shown as annexure no. 1 to the claim petition) passed by General Manager (Discipline) Uttarakhand Transport Corporation, Dehradun.

iii) to award the cost of the present claim petition in favour of the petitioner.”

2.1 The petitioner was initially appointed as Booking Clerk in erstwhile U.P. State Road Transport Corporation and after creation of the Uttarakhand State, he was absorbed in the Uttarakhand Transport Corporation.

2.2 In the year 2004, when the petitioner was posted at Kashipur, a departmental inquiry was instituted against him. A charge sheet was issued to the petitioner on 25.10.2004 (Annexure: A10).

2.3 The main charges against the petitioner which were stated in the charge sheet are that he is liable for the loss of two Ticket Books and two Waybills.

2.4 In the charge sheet dated 25.10.2004 itself, Assistant Regional Manager, UTC was appointed the inquiry officer.

2.5 The petitioner submitted reply to the charge sheet on 13.12.2004 (Annexure: A12) and denied the charges. The inquiry officer conducted the inquiry and submitted the inquiry report to the disciplinary authority.

2.6 Thereafter, a show cause notice was issued to the petitioner alongwith copy of the inquiry report on 10.3.2008 (Annexure: A20). After considering the show cause notice, the Disciplinary Authority

found the petitioner guilty and passed the punishment order on 30.06.2008 (Annexure: A22). The petitioner was awarded the punishment to recover the loss caused to the Corporation to the tune of Rs. 1,84,230/- and the petitioner was reverted in the lowest pay scale for 5 years.

2.7 The petitioner preferred an appeal to the Appellate Authority on 26.08.2008 (Annexure: A23). After considering the appeal, the same was though rejected on 27.11.2008 (Annexure: A 1) but the Appellate Authority reduced the period of lowest pay scale to two years only.

2.8 Thereafter, the petitioner challenged the punishment order as well as the appellate order before the Hon'ble High Court at Nainital. The Hon'ble High Court dismissed the writ petition on 11.04.2017 on the ground of alternative remedy before the Tribunal.

3. The petitioner has challenged the punishment order and the appellate order mainly on the ground that the inquiry officer was appointed with the charge sheet itself even before the charge sheet was served upon him and, therefore, whole proceedings of the inquiry from the beginning are *ab-initio* void. It has also been contended by the petitioner that he was not provided necessary documents which he had demanded to reply to the charge sheet to defend himself.

4. The respondents in their written statement have opposed the claim petition and submitted that the inquiry has been conducted as per rules and reasonable opportunity was provided to the petitioner to defend himself. There was sufficient evidence against the petitioner and he has been rightly found guilty. The appellate authority while holding the findings of the Disciplinary Authority, reduced the punishment.

5. The petitioner also filed rejoinder affidavit and the same averments have been reiterated in it which were stated in the claim petition.

6. None appeared on behalf of the petitioner as well as Respondents No. 2 & 3 at the time of argument on 09.04.2018. On previous date, after noticing that sufficient opportunity was given earlier, it was made clear that since there is a direction of the Hon'ble High Court to decide the matter within a stipulated time, arguments of the parties present on the next date will be heard and the matter will be decided. We have heard learned A.P.O. and perused the record.

7. First issue before us for consideration is the contention of the petitioner regarding appointment of the inquiry officer in the charge sheet itself. In other words, whether it is lawful to appoint the inquiry officer before the reply to the charge sheet is received.

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.

9. 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.

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. 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.....”

12. In the light of the judgments of Hon’ble High Court of Uttarakhand in above paragraphs, it is clear 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. **In the instant case, the inquiry officer was appointed before the charge sheet was served upon the petitioner. Therefore, the inquiry proceedings are patently illegal and in gross violation of principles of natural justice and cannot be sustained in the eye of law.**

13. It is settled position of law that the inquiry officer can be appointed only after the reply of the charge sheet is received (and the delinquent official pleads not guilty to the charges). In the case in hand, the inquiry officer was appointed before the charge sheet was served upon the petitioner and before the reply of the charge sheet was submitted by the petitioner. 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.

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

ORDER

The claim petition is hereby allowed. The punishment order dated 30.06.2008 (Annexure: A22) and the order passed by the Appellate Authority dated 27.11.2008 (Annexure: A1) 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: APRIL 10, 2018

NAINITAL

KNP