

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

CLAIM PETITION NO. 38/DB/2017

Laxmi Prasad Gairola S/o Late Shri J.P.Gairola, aged about 41 years,
Revenue Sub Inspector, Langsi Tehsil, Joshimath, District Chamoli,
Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Revenue, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun..
2. Commissioner, Garhwal Mandal, District Pauri.
3. Collector/ District Magistrate, District Chamoli.

.....Respondents

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

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

JUDGMENT

DATED: APRIL 03, 2018

Justice U.C.Dhyani (Oral)

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

“ (i) To quash the impugned punishment orders dated 14.01.2016 passed by the Respondent No.3 (Annexure: A 1) and appellate order dated 25.10.2016 passed by the respondents No.2 declaring the same as null and void in the eyes of law with all consequences benefit.

(ii) To issue an order or direction to the concerned respondents to release the withheld increments to the petitioner along with interest.

(iii) To issue order or direction to the respondents to delete the endorsement of special adverse entry and warning from the service records of the petitioner.

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

(v) To award the cost of the case."

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

In an incident, criminal law was set into motion by one Mohan Singh against accused Kanhya Prasad Sati at Patwari Circle Mathar, Tehsil Gairsain, District Chamoli in the year 2011.

Petitioner was entrusted with the work of investigation of such criminal case. Petitioner investigated the case. After investigation, he filed a charge sheet under Section 497 IPC against accused Kanhya Prasad Sati.

The allegations against the petitioner are many fold. These allegations form part of departmental charge sheet, which was issued to the petitioner by Respondent No.3. A Perusal of Annexure: A 3 will indicate that four charges were levelled against the petitioner, which are being referred to herein below for convenience:

(i) Whereas public at large caught hold of the accused of rape case and was handed over to the petitioner, the petitioner did not arrest the accused, who was allowed to escape. The petitioner did not record the statement of the victim. She was not medically examined either.

(ii) Chic FIR was lodged under Sections 363, 366, 375, 376 and 506(II) IPC. Whereas it was lodged on 04.06.2011, the same was sent to Tehsil Headquarter only on 05.06.2011.

(iii) When the petitioner was transferred to another Revenue Circle on 26.07.2011, he did not handover

the file to his successor in office. The same was given to the new investigating officer only on 03.08.2011, after nine days.

(iv) Petitioner sent the victim to Women Protection Home, Kotdwar, without recording her evidence. Petitioner caused disappearance of evidence of offence and submitted the charge sheet relatively for less heinous offence under Section 497 IPC (Adultery).

3. It is the submission of Ld. A.P.O. that the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and the Court should not interfere with the punishment awarded to the petitioner by the appointing authority/disciplinary authority, which has been upheld by the appellate authority.
4. It is the submission of Ld. Counsel for the petitioner that the departmental proceedings initiated against the petitioner, suffers from various legal infirmities. One of such lacuna is that the inquiry officer was appointed along with charge sheet (Annexure: A 3). A perusal of charge sheet dated 19.02.2011 would indicate that there is substance in the submission of Ld. Counsel for the petitioner.
5. It is next submitted by Ld. Counsel for the petitioner that no witness was examined in presence of the petitioner. He was not afforded any opportunity to cross-examine any witness. It is also submitted by Ld. Counsel for the petitioner that second show cause notice given to the petitioner, was not given by the disciplinary authority, but by an officer, who was not competent to issue the same. In reply, Ld. A.P.O. submitted that Annexure: A 6 was only a communication on behalf of the appointing authority for personal hearing, and, therefore, it cannot be said that the second opportunity of hearing was given by an officer, who was not competent to do the same. Ld. A.P.O. also emphasized that due opportunity of cross-examination of the witnesses was given to the petitioner, but he did not avail of the opportunity for the same.

6. SDM, Gairsain 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

7. 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.”

8. 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 be appointed before the reply to the charge sheet is received. 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.

9. 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."

10. The Court held that the disciplinary proceedings against the delinquent Smt. Lalita Verma were, *prima facie*, violative of Rule 7.
11. 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."

12. 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.
13. 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.
14. It is, therefore, clear 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.
15. 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. As far as the charge sheet is concerned, after the amendment to the Rules in 2010, it is not disputed that the charge sheet is to be signed by the disciplinary authority. The power of issuing the charge sheet cannot be delegated to the Inquiry Officer. Therefore, in the light of these settled principles, if we examine the impugned order; it is clear that it is afflicted by two vices. Firstly, even without issuing a charge sheet and calling for an explanation, an Inquiry Officer has been appointed. This part of the order cannot be sustained. Equally without legal foundation and contrary to law is the direction to the Inquiry Officer to serve the charge sheet upon the appellant. These portions are clearly unsustainable and, therefore, they deserve to be quashed.”

16. In the light of the Amendment Rules, 2010 and 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 with the issuance of the charge sheet. Therefore, inquiry proceedings are illegal.
17. 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 has not admitted the charges or the disciplinary authority is not satisfied with the reply of the delinquent, he can proceed and can either conduct inquiry himself or appoint an

officer 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. Inquiry is, therefore, vitiated.

18. Once we have arrived at the conclusion that the departmental inquiry against the petitioner has been vitiated, we do not find any reason to deal with other submissions of Ld. Counsel for the petitioner as well as of Ld. A.P.O.. Suffice will it be to say that the respondents have not observed Rule 7 of the Rules of 2003 (as amended in 2010) correctly, which is fatal to departmental case.
19. For the reasons indicated herein above, claim petition must succeed and the orders impugned cannot be allowed to sustain.
20. Claim petition is, therefore, allowed. The orders impugned dated 14.01.2016 and 25.10.2016 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. No order as to costs.
21. It is made clear that we have not expressed any opinion on the merits of the case.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 03, 2018
DEHRADUN

VM