

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 40/NB/DB/2015

Amit Kumar, s/o Sri Sunil Kumar, r/o Village Nijampur, Pargana Manglore, Tehsil Roorkee, District Haridwar

.....Petitioner.

VS.

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Deputy Inspector General of Police, Garhwal Range, Dehradun.
4. Senior Superintendent of Police, Dehradun.
5. Sampooranand Sanskrit University, Varanasi-221002, through its Registrar.
6. Sri Anuj Kumar @ Anuj @ Anju Sadhiyan, s/o Sri Chattar Singh, r/o village Jawaharkhan @ Jhibbarhedi, Police Station Laksar, District Haridwar.

.....Respondents.

Present: Sri B.B.Naithani, Counsel for the petitioner.
Sarvsri U.C.Dhaundiyal and V.P.Devrani, A.P.Os.,
for the Respondents.

JUDGMENT

DATED: JULY 04, 2018

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks to declare the action of Respondent No.4 in terminating services of the petitioner by impugned order dated 06.07.2013, as arbitrary and illegal. He also seeks to set aside the impugned termination order dated 06.07.2013 (Annexure: A-1 to compilation- I to claim petition), impugned appellate order dated 28.02.2014 (Annexure: A-2) and to direct the respondents to reinstate the petitioner in service forthwith, along with all consequential benefits.

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

Petitioner is permanent resident of District Haridwar and belongs to O.B.C. Category. After completing Junior High School, petitioner passed *Poorva Madhyama* examination, from an institute situated in Bhupatwala, Haridwar, in the year 2000, which is equivalent to High School examination, in second division. Thereafter, he took admission in Class XI, as regular student in R.M.P.P.V. Inter College, Narsan, Haridwar. He passed Intermediate examination from Uttarakhand Board from selfsame Inter College, as regular student, in 2004. He also passed B.A. first year from a college situated in Roorkee, as private student, in 2005. Posts of Constables in the Police Department were advertized in the year 2005. Since the petitioner was eligible to apply for the said post, he moved an application for the same. He was declared successful and was appointed as Police Constable, Civil Police, in Haridwar, *vide* order dated 10.04.2006. After completing six months' training, he was posted in various Police Stations.

An application, under Section 156(3) Cr.P.C. was filed against him, in the Court of C.J.M., Tehri, by respondent No.6, regarding rash and negligent driving. FIR was lodged and after investigation, a final report was submitted.

Unable to succeed in criminal case, respondent No.6 sought an information under RTI from District Education Officer, Haridwar, regarding educational qualification of the petitioner, who transferred such request to the Principal of the College, where petitioner got admission. Respondent No.6 also filed a complaint with the Police authorities. C.O., Haridwar directed the Principal of such college to submit his report. On the direction of respondent No.4, an F.I.R. was lodged against the petitioner for forgery and cheating, at the instance of complainant Anju Sadhiyan. Respondents No. 2 to 4 also initiated departmental proceedings against the petitioner, under Rule 14 (1) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 (for short, Rules of 1991). After investigation, charge sheet was submitted against him. Criminal trial against the petitioner is going on.

Respondent No.4 (Disciplinary authority) issued a show cause notice to the petitioner on 15.06.2013 (Annexure: A 24), on the basis of inquiry report dated 13.06.2013 by the inquiry officer. Petitioner submitted a detailed reply to the show cause notice. Disciplinary authority/ Respondent No.4 passed an order on 06.07.2013, whereby petitioner's services were terminated.

Feeling aggrieved, petitioner preferred a departmental appeal before respondent No.3 on 23.07.2013. Respondent No.3 dismissed the departmental appeal of the petitioner *vide* order dated 28.02.2014 (Annexure: A-2 to the Compilation-I). Hence, present claim petition.

3. It is the submission of Ld. Counsel for the petitioner that no misconduct was ever committed by the petitioner during his service in the department. Certificate of *Poorva Madhyama Pariksha* was issued by *Sampoornanand Sanskrit Vishva Vidyalaya, Varanasi*, when petitioner was not in service, and, therefore, no departmental proceedings can be held against him for an act, which was not done, while in service. It is also submitted that the complaint against the petitioner was moved before D.I.G., Police, Garhwal Range, who

directed S.S.P., Haridwar to inquire into the matter. Preliminary inquiry was conducted by C.O., Traffic, Haridwar, who submitted his report on 15.01.2013. No cause of action arose in District Dehradun, where disciplinary inquiry was held. It is S.S.P., Dehradun, who passed the impugned order(Annexure: A 1), *sans* authority. It is the submission of Ld. Counsel for the petitioner that since the petitioner was appointed by S.S.P., Haridwar and complaint was filed in Haridwar, therefore, no proceedings ought to have been initiated at Dehradun. Impugned order is liable to be set aside on this ground. Charge sheet against the petitioner was served without any document in support of the charges. Although, petitioner refuted the charges levelled against him, yet, no date, place or time was ever fixed for further proceedings, like oral inquiry, proving the documents and for cross-examination of prosecution witnesses. Witnesses, who were cited in the charge sheet, were never examined, what to talk of subjecting them to cross-examination. Ld. Counsel for the petitioner further submitted that neither *Poorva Madhyama Pariksha* certificate has been withdrawn, nor declared to be forged, by the University, who issued such certificate. The inquiry officer has not only held the petitioner guilty, but has also recommended removal of the petitioner from service, who was not competent to suggest the same. There is no finding that the petitioner ever forged the certificate. No such charge was levelled against him.

4. Ld. Counsel for the petitioner also submitted that the inquiry officer cannot issue charge sheet and only the disciplinary authority is competent to draft and issue the charge sheet to the delinquent employee, after receiving the reply of the charge sheet. Only after reply of the charge sheet or on expiry of time to file the reply, an inquiry officer can be appointed.
5. It is reiterated that petitioner's certificate is a genuine document, the same has not been cancelled so far by the educational authorities and, therefore, petitioner's services cannot be terminated on the basis of declaring a genuine document as forged document. Ld. Counsel

for the petitioner also contended that no inquiry was conducted as per law and the finding arrived at by the inquiry officer, is nothing but reasserting the inference drawn in the preliminary inquiry. The inquiry officer has not applied its mind except for reproducing the inference drawn during the course of preliminary inquiry. The inquiry suffers from various infirmities. The conclusion arrived at, on the basis of such erroneous inquiry, should be set aside, according to Ld. Counsel for the petitioner.

6. A perusal of report dated 13.06.2013, of inquiry officer, would reveal that such an officer has based her findings entirely upon the inference drawn in preliminary inquiry. During preliminary inquiry, statement of Shri Prabhu Dayal Sharma, Principal, Chetan Jyoti Sanskrit Mahavidyalaya, Bhupatwala was taken. Sri Sharma had stated that one student Ishwari Sharan Upadhyay filled up the form in the year 2000, he was allotted Roll No. 60031, but he did not appear in the examination. Amit Kumar (petitioner) neither took admission in the college, nor ever appeared in the examination.
7. It has been indicated in the inquiry officer's report that certificate in question was sent to Registrar, *Sampoornanand Sanskrit Vishva Vidyalaya, Varanasi*. One student Ishwari Sharan Upadhyay was allotted Roll No. 60031. The certificate submitted by the petitioner was found to be forged. This fact was verified and confirmed by the Registrar of *Sampoornanand Sanskrit Vishva Vidyalaya, Varanasi*, in his subsequent letter.
8. While submitting his explanation, the petitioner submitted that he passed *Poorva Madhyama Pariksha* (High School) from *Sampoornanand Sanskrit Vishva Vidyalaya, Varanasi*. The delinquent petitioner requested the inquiry officer to get this fact verified from the University concerned. According to inquiry officer, the document submitted by the petitioner, was found to be forged.

9. It is thus clear that the inquiry officer has based her findings merely on the fact that the document submitted by the petitioner was forged. She has said so, solely on the basis of preliminary inquiry. No independent inquiry was held at the level of the department. The inquiry officer has said, in so many words, that since one Ishwari Sharan Upadhyay was allotted Roll No. 60031, in the year 2000, therefore, the certificate submitted by the petitioner was a forged document. It is, therefore, noticed that the entire inquiry report is based upon the defence evidence, which was not found satisfactory. There is no reference of any departmental witnesses. While proving guilt against a delinquent, department has to stand on its own legs, which is missing in the instant case. No one can deny the fact that even single departmental witness was not produced in an effort to prove the guilt against the delinquent. The question of cross-examination would come only when departmental witness(es) is/ are produced. If the delinquent was found saying that he has not to cross-examine any witness, that does not mean that department has not to prove its own case. The delinquent was found stating that there is no witness to the charge, which is contrary to the law governing the field. How can a delinquent say that there is no witness against him? It is the department, who has to say that such witnesses are being produced against the delinquent. In other words, instead of producing and relying upon departmental witness(es), inquiry officer has based her entire finding on the fact that defence evidence is not acceptable.
10. Departmental evidence will come first, even if charged Government servant states that he does not wish to cross-examine any witness mentioned in the charge sheet. It is incumbent upon the disciplinary authority or inquiry officer to call the witness(es) 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 witness(es), after recording the aforesaid evidence. [Sub Rule (10) of Rule 7 of the Uttarakhand Government Servants (Discipline and Appeal) Rules (As Amended in) 2010, which is equivalent to Rule

14(1) of the U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991]. On this aspect of the matter, procedure relating to the conduct of departmental proceedings against Police Officer has been provided in Appendix I, which pertains to Rule 14(1) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991, and is excerpted herein below for reference:

“14(1) Procedure for conducting departmental proceedings- (1) Subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I, which is also being reproduced herein below for convenience:

APPENDIX—I

PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER

[See RULE 14(1)]

UPON institution of a formal enquiry such police officer against whom the enquiry has been instituted shall be informed in writing of the grounds on which it is proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form-1 appended to these Rules which shall be communicated to the charged police officer and which shall be so clear and precise as to give sufficient indication to the charged police officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged police officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish: provided that the Inquiry Officer may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged police officer.”

11. A perusal of charge sheet (Annexure A- 19) would indicate that the department had proposed following witnesses in support of the charge (to be established) against the delinquent, which is excerpted as below for :

Sl. No.	Name of witnesses	Fact, which will be verified by the witness(es).
1.	Sri Chandra Mohan Singh, C.O. Traffic, Distt. Dehradun.	Witness will verify the preliminary inquiry conducted against the delinquent.
2.	A.S.I.(M) Sri Salman Ali, Police Office, Dehradun.	The witness will verify the certificate relating to educational qualification of the delinquent employee available in character roll.
3.	Sri Prabhudayal Sharma, s/o Sri Ram Bharose Lal Sharma, Principal, Chetan Jyoti Sanskrit Mahavidyalaya, Bhupatwala, Distt. Haridwar.	The witness will verify report dated 05.10.2012.
4.	Sri Anju Sadhiyan, Village-Jawahar Khan, P.O., Sultanpur Distt. Haridwar.	Witness will verify the complaint dated 19.09.2012.

12. The Rules also provide that after recording the oral evidence(s) of the witness(es), proposed in the charge sheet, the inquiry officer shall, then call and record the oral evidence which the charged government servant desired, in his written statement, to be produced in his defence.
13. Here the witnesses proposed in the charge sheet, have not been orally examined. The inquiry officer has also not recorded the reason as to why evidence of departmental witnesses is not called for.
14. It may also be mentioned here that it is not a case in which the delinquent has admitted the charges mentioned in the charge sheet, issued against him. He has contested the charges and has pleaded, repeatedly, that he has appeared in the examination in question, passed the same and, accordingly, certificate of *Poorva Madhyama Pariksha* was issued to him, which is equivalent to High School examination. Inference against the petitioner was drawn on the basis of

the fact that he could not produce any valid defence in his favour. Such an approach is anathema to the concept of departmental proceedings, in which one has to be held guilty, only when there is evidence against him, based upon oral testimony and /or documentary proof. In the absence of departmental evidence, a delinquent cannot be held guilty, merely on the basis of lack of giving valid defence. It, therefore, follows that if the delinquent so desires or if inquiry officer so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted.

15. In the instant case, the delinquent employee has not admitted the allegations levelled against him. He has nowhere stated that oral inquiry, by the department, should be dispensed with. All that the delinquent has said, in his reply, is that he does not want to cross-examine departmental witnesses. The department itself, in the charge sheet (Annexure: A 19) relied upon four witnesses, none of whom has been produced during the course of inquiry. Annexure: A 19 also proposed as to what these witnesses will prove or verify. Although, these documents were discussed during the course of inquiry, but they have not been proved by the witnesses who were supposed to prove them. In other words, none of the witnesses has been examined by the department. Documents, which are relied upon by the department, are not public documents. Hence, they require proof. None of these documents, as stated above, has been proved by the department. If the delinquent employee has said that he does not want to cross-examine departmental witnesses, even then the department has no choice but to examine those proposed witnesses during the course of inquiry, in order to establish its case.

16. In *Satya Prakash Singh vs. State Public Services Tribunal, Lucknow, 2016 (151)FLR 619*, it was held by the Division Bench of Hon'ble Allahabad High Court that, it is trite law that the departmental proceedings are *quasi* judicial proceedings. The inquiry officer functions as *quasi* judicial officer. He is not merely a representative of

the department. He has to act as an independent and impartial officer to find out truth. The major punishment awarded to an employee visits serious civil consequences and, as such, the departmental proceedings ought to be in conformity with the principles of natural justice. Even if an employee prefers not to participate in the inquiry, department has to establish charges against such employee by adducing oral as well as documentary evidence. In case the charges warrant major punishment then oral evidence by producing witnesses is necessary.

In *Subhash Chandra Sharma vs. Managing Director and another*, 2000(1) UPLBEC 541, the following was observed:

“In our opinion after the petitioner replied to the charge sheet, a date should have been fixed for the inquiry and the petitioner should have been intimated the date, time and place of the inquiry and on that date, the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence.....”

17. Further, in *Subhash Chandra vs. U.P. Co-operative Spinning Mills and others*, 2001 (2) UPLBEC 1475, it was observed that:

“In cases where a major punishment is proposed to be imposed, an oral inquiry is a must, whether the employee requests for it or not.....”

18. Hon’ble Apex Court in *State of U.P. vs. Saroj Kumar Sinha*, 2010 (124) FLR 857(SC,) has observed that, “When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in

proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

19. It is also well settled law that when statute provides to do a thing in a particular manner, that thing has to be done in that very manner.
20. Like Satya Prakash Singh's case (*supra*), in the instant case also, neither any witness was examined by the department, nor any officer has been examined to prove the documents in the proceedings.
21. Further, preliminary inquiry cannot be the sole basis of holding a delinquent guilty, in regular inquiry, which is to be held independently of discrete inquiry. In *Nirmala J.Jhala vs. State of Gujrat and another*, (2013) 4 SCC 301, Hon'ble Apex Court has observed that, evidence as recorded in preliminary inquiry, cannot be used in regular inquiry, as delinquent is not associated with it and opportunity to cross-examine persons examined in preliminary inquiry is not given. Thus, using such evidence violates principles of natural justice since cross-examination is an integral part of natural justice. Preliminary inquiry may be useful only to take prima facie view, as to whether there is some substance in allegations made against employee which may warrant further inquiry. Preliminary inquiry and its report loses significance once regular inquiry is initiated by issuing charge sheet to delinquent.
22. Original record of inquiry, which is available for perusal of this Court, also suggests that there are material contradictions in the reports of educational institutions regarding authenticity of the certificate of *Poorva Madhyama* examination, issued by the *Sampoornanand Sanskrit Vishva Vidyalaya, Varanasi*. Some of the officials say that the certificate is genuine, while others say that it has not been issued by the University, who never came forward to cancel such certificate. In any case, it requires thorough probe and findings arrived at by the disciplinary authority/ appellate authority against the delinquent employee, requires reconsideration.

23. Such a discussion, on our part, propels us, not to enter into other aspects of the case. In other words, we are not inclined to go into other aspects of the matter, in view of the aforesaid discussion, in which we have held that proper procedure, as laid down in the Uttarakhand Government Servants (Discipline and Appeal) Amendment Rules, 2010 and Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991 have not been followed and the inquiry officer has based her inquiry, largely, upon the findings arrived at, during preliminary inquiry.
24. We have, therefore, no hesitation in concluding that inquiry against the delinquent petitioner has not been held as per Rules.
25. The decision of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others, (2014) 2 SCC (L&S)184* is pressed into service by Ld. Counsel for the petitioner in an effort to get back wages for the petitioner. We have gone through the facts of the case of *Deepali Gundu*. The said decision pertains to an employee of private school. This is the case of a Police constable. In *Deepali Gundu's* case, appellant's suspension and termination was found *per se* illegal and, hence, award was set aside and appellant was reinstated. Although, Tribunal gave full back wages on reinstatement, but Hon'ble High Court disagreed with the same. Hon'ble Supreme Court ruled that reinstatement entitles an employee to claim full back wages. Here facts are different. It is not a case under the Industrial Dispute Act, 1947, this is a case of a Police Constable. This Tribunal is, obliquely, remitting back the matter to the competent authority to conduct the departmental proceedings against the delinquent petitioner from the stage the reply to the charge sheet was submitted by the petitioner, as per law.
26. Therefore, the Court does not think it proper to grant back wages to the petitioner, at this stage. The same should be left to the discretion of the competent authority to decide the same, either during the pendency of inquiry, or after inquiry, as per law. In doing so, this Court has relied upon a decision of Hon'ble High Court of Uttarakhand

rendered in *State of Uttaranchal and others vs. Prem Chandra Sachan, 2009(2) U.D., 484*, in which it was observed that, “the arrears of salary from the initial period of suspension, till the conclusion of the inquiry proceedings, would remain in abeyance and would be subject to the final order, which would be passed by the disciplinary authority”.

27. The impugned order dated 06.07.2013 terminating services of the petitioner by Respondent No.4, as also impugned appellate order dated 28.02.2014, passed by Respondent No.3, are hereby set aside. Respondents are directed to reinstate the petitioner into service within two weeks of production of certified copy of this order. Payment of back wages from the date of termination of service to reinstatement, shall be decided by the appointing authority, either during the pendency of inquiry or after inquiry, as per law. The competent authority is directed to conduct the departmental proceedings against the delinquent petitioner from the stage the reply to the charge sheet was submitted by the petitioner, as per law. Such an inquiry must be completed at an earliest possible, but not later than 4 months from today.
28. It is made clear that this Tribunal has not drawn any inference as to whether *Poorva Madhyama* certificate possessed and filed by the petitioner, is a fake document or not.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 04, 2018
DEHRADUN

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