

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 34/DB/2017

Arjun Singh S/o Late Sh. Manipal Singh, aged about 34 years, Constable 37, Civil Police at the office of C.O., Kotdwar, District Pauri Garhwal, R/o Village Mirzapur Sadhat, Post Kherikalan, District Haridwar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary (Home), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Pauri Garhwal.

.....Respondents

Present: Sri M.C.Pant & Sri L.K.Maithani, Ld. Counsels
for the petitioner
Sri U.C.Dhaundiyal, Ld. A.P.O.
for the respondents

JUDGMENT

DATE: JULY 11, 2018

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

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

“a) To issue order or direction to quash both the impugned order of dated 01.05.2013 (Annexure No. A-1 & A-2) and appellate order dated 09.12.2014 (Annexure No. A-3) alongwith its effect and operation after calling the

entire records from the respondents and further to issue order or direction directing to the respondents to grant all consequential service benefits to the petitioner had it been the impugned orders were never been in existence for all practical purposes.

b) To issue order or direction to declare the Rule 7(4), 14 and Appendix-I of the U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) rules, 1991 as adopted by the State of Uttarakhand which is running contrary to provisions of Article 311 of the Constitution of India and against the law laid down by the Apex Court as ultra virus and unconstitutional and to be deleted from the statue book. Further to direct the Respondents to frame Rules regulating the disciplinary proceedings strictly in terms of Article 14, 16, 311 of the Constitution of India and as per law laid down by the Apex Court.

c) Any other relief which the court may deem fit and proper in the circumstances of the case.

d) Cost of the petition be awarded to the petitioner.”

2. The petitioner is a Constable in India Reserve Battalion (IRB), Uttarakhand Police and presently, he is posted at District Pauri Garhwal under Respondent no. 3. In the year 2010, the petitioner was sent on election duty in Bihar. A departmental inquiry was instituted against him for major penalty under Rule 14(1) of the U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (hereinafter referred as Rules of 1991) for unauthorized absence for a period of 415 days. The petitioner was issued a charge sheet and in his reply to the charge sheet, the petitioner denied the charges and explained that due to illness, he could not join his duties and was forced to remain absent. The Deputy Superintendent of Police (DSP), Kotdwar, district Pauri Garhwal was appointed the Inquiry Officer, who after conducting the inquiry, found the petitioner guilty for unauthorized absence and

submitted his inquiry report to the Senior Superintendent of Police, Pauri Garhwal (Respondent No. 3) on 09.3.2013. Respondent no. 3 issued a show cause notice to the petitioner and the copy of the inquiry report was also enclosed with it. The petitioner replied to the show cause notice and the Respondent no. 3 after considering the reply, did not find it satisfactory and punishment was imposed upon the petitioner on 01.05.2013 by which the petitioner was placed in the minimum pay scale for three years. The petitioner was also issued a separate show cause notice for non-payment of salary to the petitioner for 415 days on the principle of 'No work No pay'. The petitioner also made an appeal against the punishment order and the same was rejected by the Deputy Inspector General of Police, Garhwal Range on 09.12.2014. The petitioner has also filed a delay condonation application which was opposed by learned A.P.O. on behalf of the respondents. The contention of the petitioner is that due to his nature of duty and also family problems, he could not file the claim petition on time. It has also been stated by the petitioner that Rules of 1991 have also been challenged in the present claim petition and, therefore, delay may be condoned. After hearing both the parties, we find it appropriate to condone the delay.

3. Though, the petitioner has challenged the impugned orders on many grounds but at the time of hearing, learned counsel for the petitioner has confined his argument only on the ground that while conducting the departmental inquiry, the inquiry officer was appointed before the reply to the charge sheet was submitted by the petitioner and the charge sheet was signed by the inquiry officer and, therefore, whole proceedings of the inquiry are *ab-initio* void.

4. The respondents in their joint written statement have opposed the claim petition on the ground that the inquiry has been conducted as per Rules of 1991 and justified the departmental action and punishment order against the petitioner.

5. No rejoinder affidavit has been filed by the petitioner.

6. The main submission of Ld. Counsel for the petitioner is that, in the instant case, inquiry officer was appointed even before issuance of charge sheet, which is contrary to the principles of natural justice. Ld. Counsel for the petitioner also pointed out that the charge sheet, in the instant case, has been signed by the inquiry officer, which is contrary to the dictum laid down by the Hon'ble High Court in *Writ Petition No. 118(SB) 2008, Lalita Verma vs. State of Uttarakhand*, *Writ petition No. 80 of 2009 (S/B,) Dr. Harendra Singh vs. State Public Services Tribunal & others*, *writ petitions No. 999 (S/S), 1364 (S/S) and 1365 (S/S) of 2011 in Uday Pratap Singh vs. State of Uttarakhand and Others and Special Appeal No.300 of 2015, Ram Lal vs. State of Uttarakhand and others*, decided on 03.07.2015.

7. The question whether inquiry officer can sign the charge sheet or not and whether the 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 sign the charge sheet and why inquiry officer cannot be appointed before the reply to the charge sheet.

Hon'ble High Court in para 7 and 8 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.** 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 now 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?....."***

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.

8. 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. The charge sheet should not be signed by the Inquiry Officer."

9. Subsequently, the State Government has also amended the Rules of 2003 known as 'The Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010. Amended Rule 7 is extracted hereunder:-

"7. Procedure for imposing major punishment.

Before imposing any major punishment on any 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 misbehaviour 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 signed by the Disciplinary Authority:

.....

(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.

.....

(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 charge sheet and details of misconduct or misbehaviour,

(b) A copy of written defence statement, if any submitted by the government servant;.....”

10. Subsequently, this matter came for consideration before the Single Judge of the **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. The Hon'ble High Court while disposing of the mater, has held as under:-

*“12. Rule 7(2) 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 see. **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(2) of the Rules.***

*13. Rule 7(6) and (8) of the Rules contemplate 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.....”***

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 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.”

12. **In the instant case, the inquiry officer was appointed before the charge sheet was issued and he served the charge sheet upon the petitioner. Moreover, the charge sheet was signed by the inquiry officer himself, therefore, the inquiry proceedings are patently illegal and in gross violation of the principles of natural justice and cannot be sustained.** 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) and further the charge sheet should not be signed by the inquiry officer. 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. As far as signing of the charge sheet is concerned, the legal position is that the charge sheet should not be issued and signed by the inquiry officer. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

13. **In MS Dasauni vs. State of Uttarakhand & others, 2016 (1) UD, 321, a decision which pertains to a Police official, Hon'ble High Court of Uttarakhand, in an identical matter, has observed and held as under:-**

"13..... they have not proposed the punishment. The Committee has simply given a finding that the action on the part of the petitioner is an act of serious misconduct, and therefore, proceedings should be drawn against him under Rules 4(1)(a) and 14(1) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. Under the provision of sub rule (1) (a) of Rule 4 and Rule 14(1) of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 proceedings have drawn against Police Officer, which entails major penalty and this has to be read with appendix I of the said Rules. Rule 4(1)(a) of Uttar Pradesh Police Officers of The Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:-

"4. Punishment (1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-

(a) Major Penalties –

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

14. Rule 14(1) of Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:- “14. 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.”

15. Appendix-I of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 reads as under:-

“Procedure relating to the conduct of departmental proceedings against Police officer: Upon Institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was 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 finding 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.”

“17. The second order dated 04.01.2010 on which action actually has been taken by the appointing authority is an order which has not been referred by the petitioner in the writ petition. This order has been placed before this Court by the State in its counter affidavit.

18.From the perusal of annexure No. 2 which is impugned order dated 04.01.2010, it seems to be passed by the enquiry officer. This is the charge sheet and an enquiry officer is not supposed to prepare a charge-sheet, as this is the job of the appointing authority. Enquiry officer has to conduct an enquiry in an impartial manner and therefore, framing of the charge-sheet is not one of the duties of the enquiry officer. Therefore, as far as the order dated 04.01.2010 is concerned that seem to be without jurisdiction.

19. The subsequent order which is the second order dated 04.01.2010 which is annexed as annexure No. 2 to the writ petition, given by the investigating officer is hereby quashed. Let the appointing authority give a charge sheet to the petitioner in accordance with law as the charge against the petitioner is of a very serious nature and a departmental proceeding is in order.

20. With the aforesaid observations, the writ petition stands disposed finally.

21. The Registrar General of this Court is hereby directed to apprise the Director General of Police, Uttarakhand of this order for onwards compliance, as expeditiously as possible, in accordance with law.”

14. It is the submission of Ld. Counsel for the petitioner that judgment rendered by Hon’ble High Court in MS Dasauni’s case (*supra*), on 23.11.2015, has neither been stayed, nor challenged before the Division Bench of Hon’ble Court. In other words, it is the submission of Ld. Counsel for the petitioner that the aforesaid judgment is the law

governing the field and has not been overruled by any superior court. As on date, it is the law of the land.

15. Considering the backdrop of present claim petition, we think that since facts of the instant case are entirely covered by the decision of MS Dasauni's case (*supra*), therefore, present claim petition should be decided in terms of the aforesaid judgment rendered by Hon'ble High Court of Uttarakhand. MS Dasauni's decision (*supra*) has clinched the issue in favour of the petitioner.

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

ORDER

The claim petition is hereby allowed. The punishment order dated 01.5.2013 (Annexure No. A-1) and rejection of appeal by the appellate authority dated 09.12.2014 (Annexure No. A-3) are set aside with the effect and operation of these orders. Let the appointing authority give a charge sheet to the delinquent, as per law, afresh. Fate of Annexure: A-2 will depend upon the outcome of the departmental proceedings, which will be conducted against the petitioner.

Let a copy of this judgment be sent to the Superintendent of Police, Pauri Garhwal for compliance of this order, as expeditiously as possible, in accordance with law.

It is made clear that we have not expressed any opinion on the merits of the case.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: JULY 11, 2018
DEHRADUN

KNP