

**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. 02/NB/SB/2017

Daya Sagar Arya, S/o Sri Prem Ram, R/o Jaspur Khurd, Near Shagum Garden, Bari Mandir Road, Kashipur, Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Revenue, Government of Uttarakhand, Dehradun.
2. Board of Revenue, Uttarakhand, Dehradun, through its Commissioner/Secretary.
3. Commissioner, Kumaon Mandal, Nainital.
4. Additional District Magistrate (Nazul), Udham Singh Nagar.
5. Sub Divisional Magistrate, Kahsipur, District Udham Singh Nagar.

.....Respondents

Present: Sri R.C.Tamta, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: MAY 08, 2018

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

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

“(a) To call the entire record and quash the impugned termination order dated 2-3-2015 passed by respondent no.3 (Annexure No. 1) and impugned order dated 7-10-2016 passed by respondent No. 2 (Annexure No. 2).

(b) To issue an order or direction, directing the respondent No. 3 to forthwith reinstate the petitioner in the services alongwith all consequential benefits.

(c) To issue an order or direction, directing the respondent no. 3 to pay the entire arrears of suspension allowance to the petitioner w.e.f. the date on which suspension order was passed i.e. 27.5.2013, which has allegedly been withheld by the respondent no. 3.

(d) To issue an order or direction, which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

2.1 The petitioner was an Administrative Officer/Reader in the office of S.D.M., Kalsipur, District Udham Singh Nagar..

2.2 On 14.05.2013, the petitioner was trapped by the Vigilance Department for taking a bribe of Rs. 20,000 and the departmental proceedings were initiated against the petitioner. The petitioner was suspended on 27.05.2013. The A.D.M. (Nazul), Udham Singh Nagar was appointed inquiry officer on 20.08.2014.

2.3 The inquiry officer issued the charge sheet to the petitioner on 15.10.2014 under his own signature (Annexure: A 10). The charge sheet also had the approval of the Disciplinary Authority on the charge sheet itself.

2.4 The petitioner submitted his reply to the charge sheet on 5.11.2014 (Annexure: A 11) and denied the charges. Thereafter, the

inquiry officer conducted the inquiry and submitted the inquiry report on 24.12.2014 (Annexure: A 12).

2.5 Thereafter, a show cause notice was issued to the petitioner along with copy of the inquiry report on 01.01.2015. The petitioner replied to the show cause notice on 15.01.2015.

2.6 The Respondent No.3 thereafter, passed the punishment order on 02.03.2015 (Annexure: A 1) and petitioner was removed from the service. Apart from other grounds, the punishment order has been challenged by the petitioner on the ground the punishment order has been passed without considering the reply to the show cause notice submitted by the petitioner.

2.7 The petitioner preferred an appeal to the Appellate Authority on 28.09.2016. After considering the appeal, the same was rejected by the Appellate Authority on 07.10.2016 (Annexure: A 2) on the ground of delay.

3. 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. The charge sheet, which was issued to the petitioner was approved by the disciplinary authority. Therefore, the petition is liable to be dismissed.

4. The petitioner did not file any rejoinder affidavit.

5. In spite of sufficient opportunity, none appeared on behalf of the petitioner at the time of hearing. We have heard learned A.P.O. on behalf of the respondents and perused the record.

6. The question which comes for consideration before us is whether the charge sheet has been signed by the competent

authority or not. The perusal of record reveals that the inquiry officer was appointed even before the charge sheet was issued and the charge sheet has been signed by the inquiry officer and therefore, the whole proceedings of inquiry are vitiated. On the other hand, learned A.P.O. contended that the inquiry officer was competent to sign the charge sheet and the appointing authority has given approval on the said charge sheet and therefore, there is no illegality in signing of the charge sheet.

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.

8. 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.

9. 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."

10. 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;.....”

11. 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....."***

12. 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. 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.”

13. 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. It is also clear that the charge sheet should not be signed by the inquiry officer. **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 rules and cannot be sustained.**

14. In view of description in paragraph 6 to 13 above, 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 the case in hand, the charge sheet has been approved by the Appointing Authority but the charge sheet has been signed and issued by the inquiry officer who was appointed as inquiry officer prior to even service of the charge sheet. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

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

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 02.03.2015 (Annexure: A1) and rejection of appeal by the Appellate Authority dated 07.10.2016 (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. The petitioner would be re-instated. The respondents would be at liberty, if they feel that the petitioner is liable to be suspended in accordance with law, they may suspend him after joining the

service. The question regarding the payment of salary for the period from the removal to the re-instatement would be decided by the competent authority at the appropriate time during the inquiry or after the inquiry 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.

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

Sd/-

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

DATE: MAY 08, 2018
NAINITAL

KNP