

**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. 17/NB/SB/2017

Mahesh Chandra Joshi (Conductor) S/o Jwala Datt Joshi, presently working as Conductor, Senior Station Incharge, Uttarakhand Transport Corporation, Ranikhet, District Almora.

.....Petitioner

Versus

1. State of Uttarakhand through Principal Secretary, Transport Department, Dehradun.
2. Assistant General Manager, Uttarakhand Transport Corporation, Ranikhet, Almora.
3. Divisional Manager (Operation), Uttarakhand Transport Corporation, Kathgodam, Nainital.

.....Respondents

Present: Sri Mohd. Matloob, Ld. Counsel
for the petitioner.

Sri V.P.Devrani, Ld. A.P.O.,
for the respondent No. 1

Sri Tarun Pandey, Ld. Counsel
for the respondents No. 2 & 3

JUDGMENT

DATE: AUGUST 07, 2018

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

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

“(i) To quash the order dated 07.10.2015 passed by Assistant General Manager, Uttarakhand Transport Corporation, Ranikhet and Appellate Order dated 05.05.2017 passed by the respondent No. 03.

ii) To award any other relief in favour of the applicant which this Hon’ble Tribunal may deem fit and proper in these circumstances of this case.

iii) To award the cost of the petition in favour of the applicant as against the respondents.”

2. The petitioner is a conductor in the Uttarakhand State Road Transport Corporation (UKSRTC), Ranikhet, District Almora. The petitioner was placed under suspension on 30.09.2015 by the Assistant General Manager, UKSRTC, Ranikhet, District Almora, who is the Appointing Authority of the petitioner. The petitioner was issued a charge sheet by the Assistant General Manager on 01.10.2015. The charges against the petitioner read as under:-

“1— वरिष्ठ नागरिक द्वारा पैन कार्ड एवं सेना का डिस्चार्ज बुक, वोटर आईडी दिखाने के उपरान्त भी वरिष्ठ नागरिक को वाहन में अनुमन्य निःशुल्क यात्रा से वंचित करना।

2— वाहन में यात्रारत यात्री से दुर्व्यवहार करना।

3— शासन द्वारा यात्री को दी जा रही निःशुल्क यात्रा से यात्रियों को वंचित कर विभागीय नियमों की अवहेलना करना।

4— कर्मचारी सेवा नियमावली के प्रतिकूल आचरण करना।

5— यात्रियों के मध्य विभागीय छवि को धूमिल करना।”

Sri Umesh Upadhyay, Senior Station Incharge, Ranikhet was appointed as Inquiry Officer and his appointment as Inquiry Officer was mentioned in the charge sheet itself. The petitioner replied to the charge sheet, denied the charges and his main contention was that the person who made the complaint has withdrawn the same and, therefore,

requested to exonerate him and also reinstate him with full salary. The Inquiry Officer submitted his inquiry report on 06.10.2015 and submitted in his conclusion that since the complainant has withdrawn his complaint, it would not be appropriate to hold the petitioner guilty for the misconduct. The Appointing Authority did not agree with the report of the Inquiry Officer, he found the petitioner guilty and imposed upon a penalty of “कठोर चेतावनी” with non-payment of full salary to the petitioner for the suspension period except the subsistence allowance paid to him for the period of suspension.. The petitioner filed an appeal before the Divisional Manager (Operations), who is the Appellate Authority and the same was rejected on 05.05.2017.

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 the Inquiry Officer was appointed even before the reply to the charge sheet was submitted by the petitioner which is in gross violation of the rules and the principles of natural justice and, therefore, the whole proceedings are *void-abinitio*.

4. Respondents No. 2 & 3 in their written statement have opposed the claim petition and have submitted that the punishing authority has rightly found the petitioner guilty and his appeal has also been rejected by the appellate authority after due examination.

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

6. We have heard both the parties and perused the record.

7. **The first question which comes for consideration before us is whether it is lawful to appoint the inquiry officer before the reply to**

the charge sheet is received and considered by the disciplinary authority.

8. In the case before us, admittedly, the inquiry officer has been appointed on 30.09.2015. Admittedly, the charge sheet was issued to the petitioner on 01.10.2015. Admittedly, the reply to the charge sheet was received by the respondents on 03.10.2015. It is, therefore, clear that the inquiry officer was appointed before the reply to the charge sheet was received.

9. The question whether inquiry officer can be appointed before reply to the charge sheet is received or not had come up for consideration before the Division Bench of **Hon'ble High Court of Uttarakhand in Writ Petition No.118 (SB) 2008, Lalit Verma Vs. State of Uttarakhand** in which the interim order was passed on 30.06.2008 interpreting the Rule 7 of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 giving a detailed reasoning as to why the enquiry officer cannot be appointed before the reply to the charge sheet. Hon'ble High Court in para 7 of the judgment held as under:

"7. Under Rule 7 of the aforesaid 2003 Rules, a procedure has been prescribed for imposing major penalties. In practical terms, Rule 7 (Supra) is in para materia to Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules 1965 and most of the other such Rules of various State Governments except that in the aforesaid 2003 Rules, the prescription is that the Inquiry Officer may be appointed by the Disciplinary Authority at the very initiation of the inquiry, even before the charge sheet is served upon the delinquent officer. In the aforesaid Rule 14(Sub Rule 5) of C.C.A. of 1965 Central Rules, there is a clear indication that the Disciplinary Authority appoints an Inquiry Officer only if the charged officer pleads "not guilty" to the charges, whereas in 2003 Rules the clear indication is that even before framing and service of charge sheet and before the charged officer pleads

*“guilty” or “not guilty”, an Inquiry Officer is appointed. This, in our prima facie opinion, is a contradiction in terms because **the question of appointment of an Inquiry Officer would arise only if the charged officer pleads “not guilty” to the charges. If the charged officer pleads guilty to the charges there may not be any need for appointment of any Inquiry Officer.**”*

The Interpretation, which has been made in the interim relief order by the Division Bench of the Hon’ble High Court has been made absolute by subsequent judgment of the Division Bench in writ petition No. 118(SB) of 2008, Lalita Verma Vs. State of Uttarakhand on 17.05.2013.

10. In case of **Dr. Harendra Singh Vs. State Public Services Tribunal & others in writ petition No. 80 of 2009 (S/B)**, the Division Bench of Hon’ble High Court at Nainital has also held as under:-

“In the judgment dated 30th June, 2008 passed by a Division Bench of this Court in writ petition No. 118(S/B) of 2008; Smt. Lalital Verma Vs. State and another, inter alia, this court had laid down the following three propositions of law:

i.

ii. **By referring to Rule 7 of the aforesaid 2003 Rules in comparison to Rule 14 of Central Civil Services (Classification Control and Appeal) Rules, 1965, the Inquiry Officer should be appointed only after the charge sheet is served upon the delinquent and he pleads “not guilty” to the charges. There is no reason or occasion to appoint an Inquiry Officer before the delinquent officer pleads “guilty” or “not guilty” to the charge sheet.**

iii.....”

11. **The Division Bench of the Hon’ble High Court at Nainital in the case of Ram Lal Vs. State of Uttarakhand and others Special Appeal**

No.300 of 2015 decided on 03.07.2015 [2015(2)U.D., 25] has also held as under:

“As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that 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.....”

12. In view of description in paragraph 7 to 11 above, it is clear that the inquiry officer can be appointed only after the reply of the charge sheet is received. In the case in hand, the charge sheet was issued on 05.11.2008. The Inquiry Officer was appointed on 20.01.2009. The petitioner submitted reply to the charge sheet on 12.03.2009, 26.03.2009 and 22.09.2009. Thus, the inquiry officer was appointed before the reply to the charge sheet was received. **Legal position is that the reply of the charge sheet should be considered by the disciplinary authority. If after considering the reply of the charge sheet, the disciplinary authority finds that the delinquent official has not admitted the charges or the disciplinary authority is not satisfied by the reply of the delinquent, he can proceed and can either conduct inquiry himself or appoint an officer to conduct the inquiry. In the instant case, the reply of the charge sheet submitted by the petitioner became immaterial as the inquiry officer was directed to proceed with the inquiry prior to the reply of the charge sheet was received and considered by the disciplinary authority. Thus, the respondents have taken a wrong path to conduct the inquiry. In view of settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.**

13. For the reasons stated in the preceding paragraphs, the petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. The punishment order dated 07.10.2015 and the rejection of appeal vide order dated 05.05.2017 are hereby set aside with effects and operation of these orders. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law.

Before parting with the matter, it is clarified that no opinion has been expressed on the merits of the case. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: AUGUST 07, 2018
NAINITAL

KNP