BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

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

------ Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

CLAIM PETITION NO. 44/DB/2018

Mohan Lal Bijalwan, s/o Sri Sundermani Bijalwan, aged about 56 years, presently working and posted on the post of Paricharak, A.D.B. Section, Garhwal Mandal, Vikas Nigam Ltd., 74/1, Rajpur Road, Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through Principal Secretary, Tourism, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chairman, Garhwal Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dheradun.
3. Managing Director/ Appointing Authority, Garhwal Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dheradun.
4. Chief Manager (Administration/ Mining), Garhwal Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dheradun.
5. Board of Director, Garhwal Mandal Vikas Nigam Ltd., 74/1, Rajpur Road, Dheradun.

…….Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondent No.1.
Sri V.D.Joshi & Sri S.K.Jain, Counsel for Respondents No. 2 to 5.

JUDGMENT

DATED: JULY 12, 2019

Justice U.C.Dhyani (Oral)

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

"(i) To quash the impugned punishment order dated 02.07.2016 and appellate order dated 23.08.2017 (Annexure: A-1 and A-2 to the petition) of respondent no.3, declaring the same as null and void in the eyes of law with all consequential benefits.

(ii) To issue an order or direction to the respondents to release the two increments with consequential benefits, i.e., with arrears with interest, pay fixation etc. which were withheld by the impugned order dated 02.07.2016 of respondent no.3.

(iii) To issue an order or direction to the respondent to pay the remaining pay and allowances of the suspension period with interest to 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. Facts, which appear to be necessary for proper adjudication of present claim petition, are as follows:

Petitioner is currently working as *Paricharak* in mining section of Garhwal Mandal Vikas Nigam (for short, GMVN), Dehradun. In the year 2001, he was posted in the mining section. He was placed under suspension on the allegation that money worth 5 cubic meter *Bajri* (mineral) was misappropriated by him. Departmental inquiry was conducted. Charge sheet was given to him. Inquiry officer was appointed. Specific charge against the petitioner was, that while he has issued permit of 6 cubic meter mineral by vehicle No. UGY9975 (Truck) *vide Ravanna* (permit) No. 087503, on 29.11.2001, release of only 1 cubic meter mineral has been shown by *Buggi* Truck in the office copy. He was *prima facie* found to be guilty of misappropriation of money worth 5 cubic meter mineral. The petitioner submitted reply to the charge sheet on 14.03.2002 and, again, on 26.03.2002 to the inquiry officer. Respondent No.3, *vide* order dated 05.09.2002 awarded certain punishments to the petitioner and revoked his suspension. Petitioner preferred a departmental appeal against the punishment order dated 05.09.2002 to respondent no.2 on 01.10.2002. Respondent No.2, after a lapse of 7 years, modified the order dated 05.09.2002, *vide* order dated 04.08.2009, only in respect of punishment no.2. The petitioner was punished with stoppage of two increments *vide* order dated

04.08.2009. Aggrieved against the punishment order dated 05.09.2002 and appellate order dated 04.08.2009, the petitioner filed a claim petition No. 85/2011. This Tribunal allowed the claim petition and passed the following order on 13.01.2015:

> "*The claim petition is allowed. Impugned order dated 05.09.2002, Annexure: A-1 and order dated 04.08.2009, Annexure: A-2 are hereby set aside. It would be open to the disciplinary authority to proceed afresh against the petitioner, in accordance with law. The question regarding the payment of salary for the period of suspension would be decided by the competent authority in accordance with rules. No order as to costs.*"

In a nutshell, the petitioner, who was a Class IV employee in GMVN, committed an irregularity, was placed under suspension *w.e.f.* 21.12.2001 and departmental inquiry was initiated against him. He was issued a charge sheet on 25.02.2002, which was signed by the inquiry officer. Managing Director (for short, M.D.), GMVN, approved the same. [*This mistake was rectified while conducting fresh inquiry under the orders of the Court*]. The only charge mentioned in the charge sheet was that the petitioner, while posted in Adhoiwala Mining Area, issued a *Ravanna* to a truck for taking out the mineral on 29.11.2001, in which, quantity of mineral (*Bajri*) was shown as 6 cubic meter, whereas in the original copy of *Ravanna* in the official record, it was shown only 1 cubic meter(that too by a *Buggi*). The petitioner was, accordingly, alleged to have committed misconduct for causing financial loss to GMVN. The inquiry officer, after conducting the inquiry, submitted his report on 03.04.2002. He concluded that the charge against the petitioner was not proved. M.D., GMVN, disagreeing with the findings of the inquiry officer, passed an order on 05.09.2002 and imposed the following penalties: (i) non- payment of salary for the suspension period except the subsistence allowance;(ii) stoppage of four annual increments with cumulative effect; and (iii) censure entry.

The petitioner filed departmental appeal against the punishment order. The appellate authority, *vide* order dated 04.08.2009, upheld the punishments no. (i) and (iii) mentioned above, but amended the punishment no. (ii) to the extent of stoppage of two increments, instead of four. Aggrieved by the punishment, petitioner filed claim petition no. 85/2011, which was allowed *vide* order dated 13.01.2015, operative portion of which has been quoted in italics above.

Thus, in the earlier round of litigation, this Tribunal interfered with the punishment order on the ground, *inter alia,* that the inquiry officer was appointed before the charge sheet was issued and served upon the petitioner. The charge sheet was signed by the inquiry officer himself and, therefore, the inquiry proceedings were *de hors* the Rules and were patently illegal. The entire procedure was found to be in gross violation of law and was, therefore, declared void *ab initio*. Another ground for intervention was that in case the disciplinary authority does not agree with the findings recorded by the inquiry officer, the disciplinary authority must record reasons for disagreement and communicate the same to the delinquent official seeking his response. Only after considering the same, he could pass the order of punishment. In the instant case, although the disciplinary authority disagreed with the findings of inquiry officer and also recorded reasons for disagreement, yet, the same were not communicated to the petitioner and was not provided any opportunity for his explanation. The punishment order, thus passed by the disciplinary authority, was found to be violative of the principles of natural justice. This Tribunal, *vide* order dated 13.01.2015 also observed that since the forfeiture of salary has not been prescribed as punishment under the Discipline and Appeal Rules of GMVN, therefore, the punishment of non-payment of salary, for suspension period, passed by the appointing authority, cannot be justified. Fresh inquiry was initiated against the petitioner by respondent no.3. The charge sheet, which was issued to him on 17.04.2015 for the same charge, which was the subject matter of charge sheet dated 25.02.2002, petitioner submitted his reply on

28.04.2015. Not only did he deny the charge levelled against him, but also requested for cross-examination of departmental witnesses and for production of his own witnesses. Respondent No.3 issued a show cause notice along with copy of inquiry report to the petitioner, in which he was informed that the inquiry officer has found him guilty of misappropriation of money worth 5 cubic meter mineral. He also sought the reply of the petitioner, which the petitioner did on 14.08.2015. Respondent No. 3 passed the punishment order on 02.07.2016 (Annexure: A 1), which is under challenge in present claim petition. Aggrieved by the same, the petitioner preferred an appeal to Respondent No.2 on 21.07.2016, but the same was dismissed *vide* order dated 23.08.2017 (Copy Annexure: A 2). Hence, present claim petition.

3. One of the grounds taken in the claim petition is, that the complainant Sri J.P.Joshi, Regional Manager, Mining passed away on 30.08.2014. It was only on the report of Sri J.P.Joshi, the departmental inquiry was initiated against the petitioner. In the previous inquiry, in the year 2002, the statement of Sri Joshi was not recorded by the then inquiry officer. According to Ld. Counsel for the petitioner, the report of Late Sri Joshi was an important piece of evidence in the inquiry, but no departmental witness was called by the inquiry officer in the inquiry to verify the complaint.

4. Another ground, which has been taken in the claim petition is, that the inquiry officer held the petitioner guilty of the charge/ misconduct, on the basis of so called copy of *Ravanna*, which is not the original copy. According to Ld. Counsel for the petitioner, a photocopy cannot be read as evidence in the inquiry. So called *Ravanna* has not been sent to a handwriting expert to prove that the signature and handwriting on the *Ravanna* are of the petitioner. Besides above, it is also contended that the complaint has not been examined during inquiry. Some general grounds have also been taken in the claim petition. It has been pointed out by Ld. Counsel for GMVN that the

petitioner had taken these two grounds in the earlier claim petition also, but this Tribunal has not said anything on the same in its' judgment dated 13.01.2015. The grounds of interference, largely, were that the inquiry officer was appointed even before the charge sheet was issued, the charge sheet has not been signed by the inquiry officer and although the disciplinary authority disagreed with the findings of the inquiry officer and also recorded reasons for disagreement, yet, the same were not communicated to the petitioner and he was not provided any opportunity for his explanation.

5. It is no doubt true that the inquiry was initiated on the complaint of Sri J.P.Joshi, who has passed away in the year 2014 and according to one of the grounds taken in the claim petition, the statement of Sri Joshi was not recorded even in the previous inquiry, in the year 2002. The reply to the said ground has been given on behalf of the respondents in Para(ix), Pp.11. It has been stated, in the C.A., that the delinquent official had already been informed *vide* letter dated 03.06.2015 that Sri Joshi had passed away on 30.08.2014. No allegation against Sri Joshi was ever made, during his lifetime, that there were interpolations in the *Ravanna*. Copy of *Ravanna,* which was handed over to the permit holder and office copy of *Ravanna,* were filled up separately by the same person under the same handwriting.

6. When the charge sheet was issued to the petitioner during fresh inquiry on 17.04.2015, he requested for cross-examination of the then Regional Manager, knowing it fully well that he has passed away on 30.08.2014 and, therefore, cross-examination of Sri Joshi was not possible.

7. The petitioner, during inquiry, had also pleaded ignorance saying that he does not remember as to what are the contents of the original *Ravanna* and it's corresponding office copy. The appellate authority has interfered with the punishment order only to the extent that there will be stoppage of two increments, instead of four, with cumulative effect. When Sri Joshi has passed away, how could he be summoned for cross-

examination? Secondly, the documents pertaining to fresh inquiry, have been brought on record by the respondents, along with C.A. (Annexure: R 1 to R-10). Annexure: R 1 is photocopy of a letter written by Sri Joshi, the then Regional Manager, to General Manager (Admin) on 20.12.2001 with the allegation that while a *Ravanna* for 6 cubic meter mineral was issued, only 1 cubic meter mineral was shown in the office copy and thereby, the delinquent official has committed misappropriation of the value of 5 cubic meter minerals. Annexure: R 2 is the office copy of *Ravanna* No. 087503. It is shown that *Ravanna* of 1 cubic meter mineral was issued to be carried through *Buggi* from Susua river to Dehradun. The coordinator had verified Annexure: R 2 from the original office copy of the *Ravanna*, on 19.08.2008. The copy of *Ravanna,* which was given to the truck owner has also been brought on record as Annexure: R 3. The *Ravanna* number in Annexure: R 1 and R2 is the same. Whereas, according to Annexure: R 2, the office copy of *Ravanna*, permit of 1 cubic meter mineral was issued, according to Annexure: R 3, official copy of *Ravanna,* permit of 6 cubic meter mineral was issued to the truck owner on 29.11.2001 at 11 AM. Annexure: R 4 is the office copy of suspension order, as also appointment of inquiry officer. Annexure: R 5 is copy of charge sheet. Annexure: R 6 is reply of the delinquent official in which he has stated, **" I do not remember what is written in the original copy and what are the ingredients of office copy".** Annexure: R 7 is copy of the order issued by M.D., GMVN, in which there is reference of the reply of the petitioner stating that he does not remember what is written in the original *Ravanna* and what are the contents of office copy. The inquiry officer had given benefit of the same to the petitioner, to which M.D. did not agree and awarded punishment to the petitioner. Annexure: R 8 is copy of the appeal, addressed to Board of Directors. Annexure: R 9 is copy of minutes of meeting held on 30.05.2009 under the chairmanship of Vice Chairman, GMVN, on the appeal of the petitioner. Annexure: R 10 is consequential order, issued by M.D., GMVN, on the decision taken by the Board of Directors.

8. It is well settled that in a domestic inquiry, strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such materials and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. In State of Haryana & another vs. Rattan Singh, 1977(1) Services Law Reporter 750, it was observed by Hon'ble Supreme Court that, "The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..... The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a ending is certainty available for the court to look into because it amounts to an error of law apparent on the record."

[Emphasis supplied]

9. Hon'ble Apex Court has observed in B.C.Chaturvedi vs. Union of India and others, (1995) 6SCC 749, that,

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or

> conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
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> 13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

10. Even though original *Ravanna* could not be placed on record, because of unavoidable reasons, the allegations against the delinquent employee have been established by the evidence, acting upon which a reasonable person acting reasonably and with objectivity will arrive at a finding upholding gravamen of the charge against the delinquent employee. It has been observed in catena of decisions that the strict Rules of evidence are not applicable to departmental inquiry proceedings. The Court exercising the jurisdiction of judicial review would not intervene with the finding of fact arrived at in the departmental inquiry proceedings excepting in a case of *malafide* or perversity, *i.e.*, where there is no evidence to support the finding or where a finding is that no man acting reasonably and with objectivity, could have arrived at that finding. The Tribunal cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. In the instant case, there is documentary evidence, although,

in the absence of original, could not be proved, as per strict rules of evidence, which are not applicable to departmental inquiry proceedings. Such evidence, which has been brought on record, inspires confidence. There is some evidence to support the conclusion arrived at by the departmental authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained, as has been held by Hon'ble Supreme Court in Bank of India and others vs. D. Suryanarayana, (1999) 5 SCC 762. The Constitution Bench has held in Union of India vs. H.C.Goel, AIR 1964 SC 364, as under:

> "The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

11. If the evidence, in the instant case, is examined from the point of view of the above, the whole of the evidence led in the inquiry , should be accepted as true, and if it is so, the conclusion follows that the charge in question is proved against the delinquent employee. The Tribunal has taken evidence as it stands and has examined whether on that evidence legally the impugned conclusion follows or not. The irresistible conclusion would be that the charge in question is proved against the delinquent employee.

12. The disciplinary authority, on receiving the report of inquiry officer, may or may not agree with the findings recorded by the later. In case of disagreement, the disciplinary authority has to record the reasons for disagreement and to record his own findings, if the evidence available on record is sufficient for such exercise or else to remit the case to the inquiry officer for further inquiry and report. This Tribunal intervened in the punishment order in the first round of litigation. Second round of litigation does not attract such proposition

of law, in as much as the disciplinary authority has accepted the findings of inquiry officer holding the delinquent guilty.

13. It is the submission of Ld. Counsel for the petitioner that the signatures of Sri J.P.Joshi on the photo copy of *Ravanna* have not been compared. First of all, Sri Joshi has passed away in 2014. When he was alive, such a prayer was never made by the petitioner. It was not possible to bring him into witness box. Secondly, it is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are- Sections 45, 47 and 73. Both under Sections 45 and 47, the evidence is an opinion. In the former case, it is by a scientific comparison and in the latter, on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter.

14. Here, the signatures on the disputed document can be compared by anybody with naked eye. Such exercise of comparison is permissible under Section 73 of the Evidence Act. In such view of the matter, handwriting expert’s evidence was not required. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the

disciplinary proceedings, the preliminary question is whether the employee is guilty of such conduct as would merit action against him; whereas in criminal proceedings the question is whether the offences registered against him are established and if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. In case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond reasonable doubt" has no application. 'Preponderance of probability' and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

15. Ld. Counsel for the petitioner has also submitted that the departmental inquiry against the delinquent was initiated on the complaint/ report of Sri J.P.Joshi, the then Regional Manager, Mining, who has passed away on 30.08.2014. The statement of Late Sri Joshi was not recorded in previous inquiry also (in the year 2002). It is also submitted that no departmental witness was called by the inquiry officer to verify the report of the complainant. Ld. Counsel for GMVN submitted that even if the statement of Sri Joshi was not recorded by the inquiry officer, what prevented the delinquent from making such request while entering into defence? Further, departmental proceedings are quasi judicial proceedings. Ld. Counsel for GMVN also replied that previous judgment dated 13.01.2015 of this Tribunal did not permit the petitioner to open Pandora's box.

16. We find substance in the submission of Ld. Counsel for GMVN that, firstly, the delinquent could have requested the then inquiry officer to bring Sri J.P.Joshi into the witness box, when Sri Joshi was alive, which he did not do. Of course, when the inquiry was conducted subsequently, Sri J.P.Joshi could not have been made available. The M.D./ appointing authority has appropriately dealt with the issue of comparison of permit holder's copy and office copy of *Ravanna*. He has appropriately come to the conclusion that both the copies were

written separately and differently, by the same person, which is delinquent. Original inquiry report has been placed before this Tribunal. We do not feel it appropriate to intervene in the said finding of the appointing authority, as affirmed by the appellate authority. The delinquent himself pleaded ignorance on the contents of the copies of *Ravanna* by stating that he does not remember what is written in the original office copy and what is written in permit holder's copy of such *Ravanna*.

17. In para 10 of the W.S., it has been averred that Sri L.M.Srivastava, Deputy General Manager (Admn) was appointed as inquiry officer who submitted his report on 04.07.2015 and found the delinquent guilty. The photocopy of the entire departmental proceedings have been enclosed with W.S. as Annexure R-1 to R-16. This Tribunal has noted above that the original inquiry file has also been placed before us and we have noticed that the photocopies are exact reproduction of the original inquiry file. When the inquiry officer found the delinquent guilty of charges levelled against him, punishment order was passed, against which he filed representation, which was dismissed on 02.07.2016 on the basis of decision taken by the Board of Directors.

18. No unusual features, which should arise suspicion, have been found in the inquiry. A bare look at the *Ravanna* would indicate that the original office copy and carbon copy were prepared separately, although by the same person, i.e., delinquent employee. Sri J.P.Joshi, who has passed away on 30.08.2014, could not have been called for cross-examination when the fresh inquiry was conducted under the orders of this Tribunal. No prejudice has been caused by such omission, if it could be termed so. The gravamen of the charge against the delinquent-petitioner is that he has shown *Ravanna* of 1 cubic meter mineral in the office record, whereas he has actually given *Ravanna* of 6 cubic meter mineral to the truck owner. The delinquent has shown *Buggi* (Buffalo cart) as carrier, whereas he has shown truck as carrier in

the *Ravanna* given to the permit holder, which clearly shows ' misconduct' on the part of the petitioner.

19. Inquiry file has been placed before the Tribunal. We have perused the same. When 'benefit of doubt' (*this was not a criminal case*) was given by the earlier inquiry officer, it has been indicated in the first note dated 27.07.2000 that such copy of *Ravanna*, which was given to permit holder, was lost. Such loss of *Ravanna* is obvious and understandable, for, why a person will file an evidence which goes against him or against the person from whom he derived 'undue benefit' or who was hand-in-glove with him? Here 'undue benefit' was given to the permit holder by giving a permit of mineral worth 6 cubic meter, which was to be carried by a truck, whereas in the office copy of *Ravanna*, it was indicated that the permit is being given for mineral worth 1 cubic meter, which was to be carried by bullock cart/ buffalo cart. It has also been indicated in the note that the security personnel, who were then posted, are not available. It has also been mentioned in the first note of the inquiry file that there is no interpolation in any of the Photostat copies (i.e., one given to the permit holder and the other one which is retained in the office record). M.D., GMVN disagreed with the findings of the first inquiry officer and punished the delinquent. This Tribunal intervened on 13.01.2015, leaving it open to the disciplinary authority to proceed afresh against the petitioner in accordance with law. Office order regarding fresh disciplinary proceedings against delinquent-petitioner was issued on 10.04.2015. Fresh charge sheet was issued to him by M.D.,GMVN on 16.04.2015. The delinquent employee filed his reply on 28.04. 2015. The inquiry officer was appointed on 16.05.2015, office order of which was issued on 20.05.2015. Thus, the mandate of law, as propounded, by Hon'ble High Court of Uttarakhand 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 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, was observed.

20. In reply to the charge sheet, the delinquent employee stated that the original documents have not been supplied. It was also stated in reply dated 28.04.2015 that the possibility of interpolation in photocopies cannot be ruled out. This Tribunal has already mentioned the circumstances under which the original copy could not be produced. We have also indicated above that the handwriting (of the delinquent)on the office copy and the copy of permit holder is the same. The contents of both the copies are different. In such circumstances, it is not possible to hold that there might be interpolation in the copies of documents. This Tribunal has already held above that strict rules of evidence are not applicable to disciplinary proceedings. There is, therefore, some documentary evidence, which inspires confidence of the Tribunal. Another ground which has been taken by the petitioner in his reply that there was no complaint against him in past. No warning was given to him earlier. It does not lie in one's mouth to say that he has not committed any irregularity because in the past, he was not found to have committed such irregularity. Another ground which the petitioner has taken, in his reply dated 28.04.2015, is that the then Regional Manager, Mining should be summoned for cross-examination. It may again be noted, at the cost of repetition, that the complainant has since passed away, how could he be produced for cross-examination. Moreover, these are quasi judicial proceedings in which there is no opportunity of strict rules of evidence. The petitioner has not taken any other ground in his reply dated 28.04.2015.

21. *Vide* letter No. 669/DP dated 03.06.2015 , the inquiry officer supplied photocopies of the desired documents (on which department relied) to the petitioner. He was also informed that Sri J.P.Joshi, the then Regional Manager, Mining has passed away.

22. The inquiry officer, after inquiry, found the delinquent guilty. Inference was drawn that while issuing the permit, office copy and copy

of *Ravanna* which was issued to the permit holder, were filled up separately, by the delinquent employee, by indicating different amount of minerals. Legally, both the copies should be carbon copies of the same document, which has not been done in the instant case. It has also been indicated in Para 3 of the inquiry report that the photocopies of the documents, as desired by the delinquent, were supplied to him. He did not say anything thereafter. The question of summoning the then Regional Manager, Mining did not arise, because he had died. The signatures and handwriting in the permit holder's copy and office copy were of the delinquent employee. This Tribunal concurs with such findings of inquiry officer. On 26.03.2002 also, the delinquent employee had stated that he does not remember what was written in the original copy and what was mentioned in the office copy of the *Ravanna.* Possibility of interpolation in the *Ravanna* is ruled out in view of such facts. Thus, the grounds, which were taken by the petitioner, in his reply, were met by the inquiry officer. Due procedure has, therefore, been followed. Ld. Counsel for the petitioner pointed out that no opportunity of defence was given to the delinquent employee. It may be noted here that when the petitioner did not offer any evidence in his defence, how any defence evidence could be reduced to writing by inquiry officer.

23. Thereafter, show cause notice was issued to the petitioner. He filed his reply on 14.08.2015 reiterating the same facts. He also submitted, in his reply, that there was no requirement of filing fresh reply, which means that the petitioner had nothing to say in the matter. He has repeatedly raised two points, *viz,* (i) non production of original copy and (ii) cross-examination of the then Regional Manager, Mining. So far as the question of producing the original copy is concerned, we have already observed that, in the first page of the inquiry file, it has been indicated that the original has been lost, which is obvious. The delinquent may be instrumental behind such loss of original record. No adverse inference can be drawn against the department on this count. The then security personnel were also not available. M.D., GMVN, *vide*

order dated 30.06.2016 concurred with the findings of the inquiry officer and punished him accordingly.

24. Rule32 of the Model Rules, which were adopted in the Board of Directors' meeting of GMVN, empowers competent authority to deduct pay and allowances for the period of suspension. Such Rule prescribes the following:

> When the employee under suspension is reinstated, the competent authority may grant to the employee the following pay and allowances for the period of suspension:
>
> a. If the employee is exonerated and not awarded any of the penalties the full pay and allowances which employee would have been entitled to if employee had not been suspended, less the subsistence allowance already paid to the employee; and
>
> b. If otherwise, such proportion of pay and allowances as the competent authority may prescribe.
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> [*The above is not the transliteration of the Rule. It only conveys meaning.*]

25. Under Rule 33 of the Model Conduct, Discipline and Appeal Rules of Garhwal Mandal Vikas Nigam (for short, the Model Rules), the following are minor penalties-

> "(a)**Censure**;
> (b) Stoppage of increment, with or without cumulative effect;
> (c) Withholding of promotion; and
> (d) Realization of money for the loss caused by the delinquent to the Government.

26. On the basis of above dictation, this Tribunal is unable to take a view different from what was taken by the appointing authority as affirmed by the appellate authority except the fact that adverse entry which was given to the petitioner for the year 2001-02 does not come within the definition of penalty. Hence, that portion of penalty no. 3 should be set aside.

27. Order accordingly.

28. The claim petition is hereby dismissed in respect of all the reliefs except, for that portion of penalty no. 3, whereby an adverse entry for the year 2001-02 was awarded to the petitioner, as penalty. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 12, 2019
DEHRADUN

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