

**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. 57/DB/2019**

Shiv Prasad Uniyal s/o Late Sri Govind Ram Uniyal aged about 65 years, r/o  
74/14 Salawala, Hathibarkala, Dehradun.

.....Petitioner.

**VS.**

1. State of Uttarakhand through Princiapal Secretary, (Forest) Civil Secretariat, Dehradun.
2. Principal Chief Conservator of Forest (HoFF), Uttarakhand, Dehradun .
3. Chief Conservator of Forest, Administration, Garhwal, Dehradun.
4. Conservator of Forest, Bhaghirathi Circle, Muni-ki-Reti, Tehri Garhwal.
5. Division Forest Officer, Uttarkashi Forest Division, Uttarkahshi.
6. Asst. Director, Directorate of Treasury, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Counsel for the petitioner.  
Sri V.P.Devrani, A.P.O., for Respondents.

**JUDGMENT**

**DATED: AUGUST 07, 2019**

**Per: Justice U.C.Dhyani**

By means of present claim petition, petitioner seeks to set aside order dated 11.11.2003 (Annexure: A 1), whereby the petitioner was punished in departmental proceedings; set aside order dated 25.09.2014 (Annexure: A1), whereby the representation of the

petitioner was rejected; set aside order dated 23.05.2018 (Annexure: A 3), whereby the appeal of the petitioner was dismissed; set aside order dated 02.04.2019 (Annexure: A 4), whereby the memorial of the petitioner was rejected; set aside order dated 19.12.2004 (Annexure: A 5), whereby a sum of Rs.200104/- was recovered from the gratuity of the petitioner and direct the respondents to refund the aforesaid amount of gratuity along with interest, from the date it was recovered, till the date of actual payment to the petitioner.

2. Facts, which appear to be necessary for adjudication of present claim petition, are as follows:

Petitioner, a Deputy Ranger, was served with a charge sheet on 23.08.2001, when he was posted in Gangotri Range of Uttarkashi Forest Division, for the charges related to illegal felling of trees in Gangotri Range. Petitioner denied such charges. A show cause notice was served upon him, to which petitioner replied. *Vide* order dated 11.11.2003, the petitioner was punished. He moved representation, which was rejected after 10 long years. Thereafter, a departmental appeal was filed by the petitioner, which was dismissed *vide* order dated 23.05.2018. Dismissal of the appeal was followed by a memorial to the Governor. Memorial too was rejected. Faced with such adverse orders, petitioner had no option, but to file present claim petition.

3. Departmental action was defended on behalf of respondents by filing an affidavit of Sri Ravindra Pundir, Ranger, Badahat, Uttarakashi Forest Division.
4. Facts were although admitted, but the allegations levelled in the claim petition were denied. In para 26 of the C.A./W.S., it has been stated that the petitioner was served with a charge sheet on 23.08.2001. The inquiry proceedings against the petitioner were conducted in the year 2001 under the U.P. Government Servants (Discipline & Appeal) Rules, 1999 (for short, Rules of 1999). It has been averred in the C.A./W.S. that in pursuance of Rule 7(ii) of the said Rule,

the charge sheet was signed by the inquiry officer and was approved by the disciplinary authority. Such charge sheet was served upon the petitioner, , as per the scheme of Rule 7 (ii) of the Rules of 1999.

5. In para 23 of the W.S., it has been averred that the claim petition is time barred and the same is liable to be dismissed on this ground alone. The respondents have not been able to disclose as to how the claim petition is barred by limitation. Latest endeavour of the petitioner, for seeking the reliefs prayed for in this claim petition, was rejected *vide* order dated 20.04.2019 (Annexure: A 4). The claim petition has been filed on 20.05.2019. Claim petition, in this Tribunal, can be filed within a year. Therefore, present claim petition is held to be within limitation.
6. A very short point has been canvassed before this Tribunal. It is the submission of Ld. Counsel for the petitioner that sine the charge sheet was signed by the inquiry officer and approved by the disciplinary authority, therefore, the said fact vitiated the whole inquiry.
7. Division Bench of Hon'ble High Court of Uttarakhand in WP No. 118/SB/2008, Lalita Verma vs. State of Uttarakhand has interpreted Rule 7 of the Uttarakhand Government Servants (Discipline & Appeal) Rules, 2003 (for short, Rules of 2003),[ which is akin to the selfsame Rules of 1999] in its order dated 30.06.2008, as below:

*"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. Where the department proposed to impose major punishment upon the charged official, the Division Bench of the Hon’ble High Court of Uttarakhand in *Special Appeal No. 300 of 2015, Ram Lal vs. State of Uttarakhand and others*, decided on 03.07.2015 and reported in 2015(2) U.D., 25, has 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.....”

In other decisions also, viz, writ petition No. 80 of 2009 (S/B), *Dr. Harendra Singh vs. State Public Services Tribunal & others* and writ petitions No. 999 (S/S), 1364 (S/S) and 1365 (S/S) of 2011, *Uday Pratap Singh vs. State of Uttarakhand and Others*, Hon’ble High Court has observed the same.

9. It is the settled law that an inquiry officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the delinquent official to submit his explanation, and if, after considering the explanation of the delinquent, it is found necessary to hold an

inquiry, only at that stage an inquiry officer can be appointed. The charge sheet is required to be signed by the disciplinary authority, the power of issuing charge sheet cannot be delegated to the inquiry officer. The inquiry officer, in the instant case, signed the charge sheet, got it approved by the disciplinary authority and served the same on the delinquent employee. Without issuing a charge sheet and calling for an explanation, an inquiry officer could not be appointed. Direction of the disciplinary authority to the inquiry officer to serve the charge sheet upon the petitioner was clearly unsustainable. It is clearly the stipulation of law that, it is only when the disciplinary authority, being not satisfied with the reply given to the charge sheet by the delinquent, feels that the matter is such that the charges are required to be inquired, he can appoint an inquiry officer, if he is not inclined to inquire into the charges himself, but not before that.

10. Had the respondent department, from very beginning, proposed to impose minor penalty upon the delinquent employee, there was no question of serving the charge sheet upon the petitioner. By adopting procedure meant for major penalty and then by giving minor penalty, respondent department cannot justify the lapse of the disciplinary authority/ inquiry officer in conducting the inquiry.
11. Ld. A.P.O. has referred to a decision rendered by Hon'ble Apex Court in Union of India vs. H.C. Goel, AIR 1964 SC 364, to show that an inquiry officer is merely a delegate of the disciplinary authority and his role is only to record his findings and submit his report to the disciplinary authority. Ld. A.P.O. further submitted that the delinquent did not suffer any prejudice even if the inquiry officer was appointed before reply to the charge sheet was received by the disciplinary authority.
12. In State Bank of Patiala and others vs. S.K. Sharma : (1996) 3 SCC 364, the Supreme Court considered the question whether each and every violation of rules or regulations, governing the enquiry, automatically vitiated the enquiry and the punishment awarded, or

whether the test of substantial compliance could be invoked in cases of such violation; and whether the issue could be examined from the point of view of prejudice. The Supreme Court opined that in respect of procedural provisions, other than of a fundamental nature, the theory of substantial compliance would be available; in such cases, complaint/objection on this scope had to be judged on the touch-stone of prejudice; in other words, the test was whether, all things taken together, the delinquent officer/employee had or did not have a fair hearing; and the provision which fell in the aforesaid categories was a matter to be decided in each case having regard to the nature and character of the relevant provision.

13. Appointment of an inquiry officer, even before receipt of the respondent-claim petitioner's reply to the charge-sheet, is at best a procedural aberration. Save cases where a delinquent employee would suffer substantial prejudice, for non-compliance of such a requirement, the Tribunal cannot be swayed by mere technicalities for, even if an Inquiry Officer had been appointed, it was always open to the disciplinary authority, after receipt of the respondent-claim petitioner's reply to the charge-sheet and if he was satisfied therewith, to direct the Inquiry Officer not to proceed with the inquiry. The very fact that the disciplinary authority/Appointing Authority have chosen not to do so, would itself reflect their satisfaction that the inquiry should be proceeded with.

14. The Division Bench of the Hon'ble High Court of Uttarakhand has observed in the decision of WPSB No. 81/19, State of Uttarakhand and others vs. S.Paramjeet Singh, decided on 17.06.2019 that it is only in cases where the delinquent employee suffers prejudice on account of violation of a procedural Rule, interference would be justified. Ld. Counsel for the petitioner submitted that the delinquent employee suffered substantial prejudice for violation by the petitioner of the procedural requirement of appointing an inquiry officer only after considering the reply submitted to the charge sheet.

15. When punishment order was given to the petitioner by the disciplinary authority, he moved the representation against such order *vide* letter dated 16.01.2004. Such representation was decided after 10 long years, only on 25.09.2014. By such time, petitioner retired on 31.07.2014. The punishment awarded to the petitioner was not acted upon in all these years. No money was deducted from his salary. He was not given censure entry either. As per Clause 4 (j) of the petition, petitioner was substantively promoted to the post of Range Officer, *vide* order dated 08.08.2007 [punishment order was passed against him on 11.11.2003]. His appeal was decided on 23.05.2018, whereby the Additional Chief Secretary, Forests (for short, ACS), although admitted that the petitioner was given charge of Gangotri Range only after alleged illegal felling of trees, but concluded that since the petitioner was trying to shield such illegal felling of trees, therefore, he was liable for such punishment. Annexure: A 3 is copy of the order passed by Ld. Addl. Chief Secretary, Forest & Environment, Govt. of Uttarakhand, on the representation/ revision of the petitioner. Ld. ACS has noted, in his order dated 23.05.2018 (Annexure: A 3), that the petitioner was posted in Gangotri Range, Forest Division only after the incident of illegal felling of trees, which was one of the basic charges against the petitioner. Ld. ACS has, however, observed that the petitioner tried to play down the incident of illegal felling of trees. As per Annexure: A 1, the incident of illegal felling of trees took place during the tenure of the petitioner. Other charges, it appears, were framed under the belief that the petitioner was posted as In-Charge of the Forest Division when illegal felling of trees took place, such charge has not been found true by Ld. ACS in Annexure: A 3. This Tribunal is, therefore, of the opinion that had the disciplinary authority appointed inquiry officer only after submission of petitioner's reply, the real facts would have come to his notice. Further, the disciplinary authority is certainly superior to the inquiry officer, who signed the charge sheet in the instant case. Disciplinary authority would have applied his mind in a better way had he come to know that the petitioner was not posted in Gangotri Range

during the period of illegal felling of trees. This Tribunal is, therefore, of the opinion that prejudice has been caused to the petitioner for procedural violations.

16. In this piquant situation, the matter deserves to be remitted back to the disciplinary authority, giving it liberty to proceed afresh, against the petitioner, in accordance with law.
17. Order dated 11.11.2003 (Annexure: A 1), whereby the petitioner was punished in departmental proceedings, order dated 25.09.2014 (Annexure: A1), whereby the representation of the petitioner was rejected, order dated 23.05.2018 (Annexure: A 3), whereby the appeal of the petitioner was dismissed, order dated 02.04.2019 (Annexure: A 4), whereby the memorial of the petitioner was rejected, order dated 19.12.2004 (Annexure: A 5), whereby a sum of Rs.200104/- was recovered from the gratuity of the petitioner, are hereby set aside. However, it would be open to the disciplinary authority to proceed afresh against the petitioner, in accordance with law. No order as to costs.
18. It is made clear that we have not expressed any opinion on the merits of the case.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: AUGUST 07 , 2019*  
*DEHRADUN*

*VM*