

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S. Nayal

-----Member (A)

CLAIM PETITION NO. 19/NB/DB/2019

Praveen Gururani, S/o Shri N. B. Gururani, R/o Indira Kunj, Garden House, Mallital, Nainital, presently serving as Assistant Engineer World Bank Division, Public Works Department, Nainital, District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Additional Chief Secretary, Public Works Department, Government of Uttarakhand, Dehradun.
2. Chief Engineer, Public Works Department, Uttarakhand, Dehradun.

.....Respondents

Present: Sri Alok Mehra, Ld. Counsel
for the petitioner.
Sri Kishore Kumar, Ld. A.P.O.
for the Respondents.

JUDGMENT

DATED: NOVEMBER 06, 2019

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this claim petition for the following reliefs:

“i) To call for the records and set-aside the impugned order dated 14.02.2019 and the charge sheet dated 20.05.2016 (letter no. 670/III(I) 16-12(09) विस/15).

ii) To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

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

2. The petitioner is serving as Assistant Engineer in Public Works Department. In the year 2016, vide O.M. dated 20.05.2016, respondent No. 1 initiated a disciplinary proceedings against the

petitioner and the same day, i.e. 20.05.2016, the inquiry officer was also appointed. A charge sheet signed by the inquiry officer and approved by the disciplinary authority, was served upon the petitioner on 31.05.2016, and the petitioner was required to submit his reply within a stipulated time. A reply to the charge sheet was submitted by the petitioner on 06.07.2016 and charges were denied, but without considering his reply to the charge sheet, the inquiry officer was appointed, who completed the inquiry and submitted his report to the Disciplinary Authority on 13.07.2017. The Disciplinary Authority, annexing the inquiry report, issued a show cause notice dated 19.01.2018, and required the petitioner to submit his reply, and after considering his reply to the show cause notice, the impugned punishment order dated 14.02.2019 was passed, whereby two increments with cumulative effect were withdrawn and the order of recovery of Rs. 2,28,439/- was passed, which has been challenged by way of this petition.

3. Respondents by way of Counter Affidavit, opposed the petition with the contention that due procedure was followed; the petitioner was given every opportunity of hearing and the punishment order was passed on account of illegality in making additional payment for the bills, for which, payment was not to be made. After giving full opportunity of hearing, the inquiry officer submitted his report dated 13.07.2017 to the government, on which, the show cause notice was duly issued and after considering his reply to the show cause notice, the impugned punishment order was rightly passed. The respondents have also pleaded in their Counter Affidavit that stoppage of increments for two years is a minor punishment as per the concerned Disciplinary Rules, and no violation of the procedure has been made. The charge sheet was duly approved and issued by the Disciplinary Authority and was properly served upon the petitioner. The procedure followed was lawful and in accordance with rules. No prejudice was caused to the

petitioner by the procedure adopted in the proceedings. The claim petition deserves to be dismissed.

4. By way of Rejoinder Affidavit, the petitioner has reiterated the facts of his petition and has contended that the stoppage of two increments with cumulative effect is a major punishment under the Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003 (hereinafter referred to as the Discipline Rules, 2003) and under Rule-3 of the said Rules, imposed penalty is a major punishment. The procedure mentioned in Rule 7 of the Discipline and Appeal Rules, 2003, was to be followed and as per the Rule-7 (as amended in 2010), the charge sheet must be signed by the Disciplinary Authority and the inquiry officer can only be appointed after reply to the charge sheet is received and considered by the Disciplinary Authority. Whereas, in this case, the inquiry officer was appointed even before asking the reply to the charge sheet. Gross violation of the rule 7 has been made and the petition deserves to be allowed.

5. We have heard both the sides and perused the record.

6. The main question which came for consideration before this court is whether the charge sheet can be signed by the inquiry officer and whether inquiry officer can be appointed before reply to the charge sheet is received and considered by the disciplinary authority.

7. Admittedly, in the case before us, the inquiry officer was appointed on 20.05.2016, charge sheet was also prepared on 20.05.2016, which was signed by the inquiry officer, although, it was approved by the Disciplinary Authority. This charge sheet was served upon the petitioner vide letter dated 31.05.2016 by the inquiry officer and petitioner was required to submit his reply. The petitioner submitted his reply to the charge sheet on 06.04.2016 wherein, the charges were denied but without considering his reply to the charge

sheet, the inquiry officer was already appointed by the Disciplinary Authority.

8. The question 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 W.P. No. 118 (S/B) of 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 Inquiry 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.

9. In the 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. Lalita 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.”

10. Subsequently, the Government of Uttarakhand issued a Government Order dated 23.07.2009 which is reproduced below:

ऑसंख्या: 827 / कार्मिक-2 / 2009

प्रेषक,

शत्रुघ्न सिंह
सचिव,
उत्तराखण्ड शासन।

सेवा में,

1. अपर मुख्य सचिव, 2. समस्त प्रमुख सचिव/सचिव,

उत्तराखण्ड शासन। उत्तराखण्ड शासन।

3. समस्त विभागाध्यक्ष/कार्यालयाध्यक्ष, 4. मण्डलायुक्त, कुमायूँ/गढ़वाल।

उत्तराखण्ड।

5. समस्त जिलाधिकारी,

उत्तराखण्ड।

कार्मिक अनुभाग-2

देहरादून: दिनांक: 23 जुलाई, 2009

विषय: सरकारी कर्मचारियों का निलम्बन तथा निलम्बन से सम्बन्धित मामलों का शीघ्र निस्तारण।

महोदय,

उपर्युक्त विषय के संबंध में मुझे यह कहने का निदेश हुआ है कि शासकीय कृत्यों के निर्वहन में की गई गम्भीर अनियमितताओं के संज्ञान में आने पर शासकीय कर्मचारियों का निलम्बन एवं उससे सम्बन्धित मामलों के निस्तारण के सम्बन्ध में स्पष्ट दिशा निर्देश पूर्व से ही शासनादेश संख्या 1626/कार्मिक-2/2002 देहरादून दिनांक 23 जनवरी 2003 के द्वारा जारी किये गये हैं तथा किसी सरकारी सेवक के विरुद्ध दीर्घ शास्ति अधिरोपित करने की प्रक्रिया उत्तरांचल सरकारी सेवक (अनुशासन एवं अपील नियमावली 2003) के नियम 7 में निर्धारित की गयी है।

2- रिट याचिका संख्या 118/एस0बी0/2008 श्रीमती ललिता वर्मा बनाम राज्य एवं अन्य एवं रिट याचिका संख्या 80 (एस0बी0)/2009 डा0 हरेन्द्र सिंह बनाम राज्य लोक सेवा अधिकरण एवं अन्य में मा0 उच्च न्यायालय द्वारा क्रमश दिनांक 30.06.2008 एवं दिनांक 1.7.2009 में पारित आदेशों में निम्नवत कार्यवाही के निर्देश दिये गये हैं।”

1- With reference to the proviso to sub-rule (1) of Rule 4 of Uttaranchal Government Servants (Discipline, appeal) Rules, 2003, the suspension order must say, record and mention, that the charges against the concerned Government Servant are so serious that in the event of these being established, ordinarily major penalty would be inflicted.

2- 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 officer 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.

3- The charge sheet should not be signed by the Inquiry Officer.

3- अतः आपसे अनुरोध है कि निलम्बन से संबंधित प्रकरणों में मा0 न्यायालय के उपरोक्त प्रस्तर- 2 में वर्णित निर्देशों का अनुपालन करने का कष्ट करें। संगत नियमावली 2003 में संशोधन की कार्यवाही पृथक से की जा रही है।

भवदीय,
(शत्रुघ्न सिंह)
सचिव।

11. In 2010, the State Government has also amended the Rules of 2003 accordingly by 'the Uttarakhand Government Servant (Discipline and Appeal) Amendment Rules, 2010'

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 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.....”

13. In view of the above, it is clear that the inquiry officer can be appointed only after the reply of the charge sheet is received. In the present case, the charge sheet was signed on 20.05.2016 and was issued on 31.05.2016 to which reply was submitted by the petitioner on 06.07.2016, but before inviting the reply and considering the same, the inquiry officer was already appointed on 20.05.2016.

14. The 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.

15. 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 the settled legal position, we find that the process of inquiry, adopted by the respondents, was not in accordance with law.

16. In view of the above, we do not find it necessary to deal with other points raised by the counsel for the parties.

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

ORDER

The claim petition is hereby allowed. The impugned punishment order dated 14.02.2019 (Annexure: 1) is hereby set aside with all effects and operation of the above order. 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.

A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 06, 2019
NAINITAL
KNP