

**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. 50/NB/DB/2019**

Smt. Maya Verma (Female) aged about 57 years, W/o Sri Shon Lal Verma, presently serving as Head Assistant, Child Development Project Office, Champawat, District Champawat.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Women Empowerment and Child Development Department, Government of Uttarakhand, Dehradun.
2. Director, ICDS (Women Empowerment and Child Development Department) Uttarakhand, near Nanda Ki Chowki, Chakrata Road, Post Office, Chandanwari, Dehradun.
3. District Programme Officer, Child Development, Champawat.
4. Child Development Project Officer, Champawat, District Champawat.
5. District Magistrate, Nainital.

.....Respondents

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

**And**

**CLAIM PETITION NO. 56/NB/DB/2019**

Bishan Singh Dhapola, aged about 55 years (Male) S/o Late Laxaman Singh Dhapola, presently posted as Chief Assistant at Child Development Project Officer's Office, Dwarahat, District Almora.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Women Empowerment and Child Development Department, Government of Uttarakhand, Dehradun.
2. Director, ICDS Uttarakhand (Women Empowerment & Child Development Department) Uttarakhand, Dehradun.

.....Respondents

Present: Sri Amar Murti Shukla, Ld. Counsel for the petitioner  
Sri Kishore Kumar, Ld. A.P.O. for the Respondents.

**JUDGMENT****DATED: MARCH 19, 2020****HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. In claim petition No.50/NB/DB/2019, Maya Verma vs. State & others, the petitioner has sought the following reliefs:

*"A. To set aside the impugned punishment order dated 14.08.2019, passed by the Respondent No.2 as corrected on 21.09.2019 (Annexure No. 1 to Compilation-I), passed against the petitioner.*

*B. To direct the Respondents to grant all consequential benefits to the petitioner.*

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

*D. Award the cost of the claim petition in favour of the petitioner."*

2. In claim petition No. 56/NB/DB/2019, Bishan Singh Dhapola vs. State & others, petitioner has sought the following reliefs:-

*"a) To set aside the impugned order dated 14.08.2019 & 21.09.2019 passed by the respondent No. (Contained as Annexure No. 1 & 2 to the petition).*

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

*c) Award cost of the petition."*

3. In both the claim petitions, issues are similar, hence, they are being taken jointly.

4. Briefly stated, facts of claim petition No. 50/NB/DB/2019, are that petitioner, in 1985 was initially appointed as junior clerk on regular basis in the Child Development Department in the erstwhile State of U.P.. She was promoted to higher post of Senior Clerk in 2003. After formation of Uttarakhand, she was further promoted to the post of Head Assistant vide order dated 10.03.2006 and presently working in the office of Respondent No. 4.

5. In the year 2007, while working as Head Assistant in the office of District Programme Officer, Child Development, Nainital, certain allegations were made against her, Smt. Bharti Tiwari, the then District Programme Officer, and Sri Bishan Singh Dhapola, Head Assistant, and criminal as well as disciplinary proceedings were started. Smt. Bharti Tiwari was placed under suspension by the State Government vide order dated 15.10.2007. On 02.11.2007, State of Uttarakhand issued an order by which Respondent No. 5 i.e. District Magistrate, Nainital was appointed as Inquiry Officer for all five officials. He was directed to submit the inquiry report in the matter, at the earliest.

6. By means of the said order, respondent No. 2 (who was the Appointing Authority of the petitioner) was also directed to issue suspension order of the employee under him and to send its copy to the inquiry officer. In compliance of the same, petitioner as well as Sri Bishan Singh Dhapola (employees of the Office), were placed under suspension by different orders.

7. Respondent No. 2, being Disciplinary Authority of the petitioner, also passed an order that the District Magistrate, Nainital who was appointed as an inquiry officer, will serve the charge sheet to the petitioner. As per the settled legal position, inquiry officer cannot be appointed before issuance of the charge sheet. In spite of this specific legal position, respondent No. 5 issued charge sheet on 01.12.2007 to the petitioner and Sri Dhapola with the alleged approval of the Disciplinary Authority (respondent No. 2) by which four charges were levelled against the petitioner and, as many as 08 charges were levelled against Sri B.S.Dhapola.

8. The District Magistrate, Nainital, who was appointed inquiry officer in the matter, never conducted inquiry himself, rather he appointed District Development Officer, Nainital as an Inquiry Officer in the matter of the petitioners. The delegation of such powers by the

District Magistrate, was totally illegal and without the authority of the law.

9. The District Development Officer, Nainital, submitted his inquiry report in the matter of petitioners to the Respondent No. 5, who forwarded the same to respondent No. 1, noting his agreement with the finding of the said inquiry officer. The record reveals that petitioner, Maya Verma was exonerated from all the charges, but some adverse sketchy remarks alleging petitioner's negligence were made against her in the matter. Respondent No. 5 forwarded the inquiry report dated 09.02.2009 to respondent No. 1 vide letter dated 16.02.2009, endorsing his agreement on the findings of the inquiry officer. It is also contended that District Magistrate who was appointed as Inquiry Officer, in the matter of Smt. Bharti Tiwari, instead of holding an inquiry himself, further appointed Chief Development Officer, Nainital as an inquiry officer vide order dated 24.02.2009. The Chief Development Officer submitted his inquiry report in the matter of Smt. Bharti Tiwari to respondent No. 5 on 06.06.2009 and she was found guilty of various charges. The Chief Development Officer, Nainital also communicated such inquiry report to respondent No. 1 vide his letter dated 01.07.2009.

10. The inquiry report so submitted against the petitioner was examined by the respondent No. 1, and respondent No. 2 was directed by the State Government to submit the evidence in the matter. Respondent No. 2 issued letter to the respondent No. 5, which was replied vide response dated 19.03.2010. Respondent No. 2 sent copy of the inquiry report to the petitioner, along with the letter dated 19.03.2010, issued by respondent No. 5. The petitioner was required to submit his reply in the matter. It is also contended that the State Govt. vide order dated 01.12.2010, took a decision to revoke the suspension of the six persons and vide letter dated 14.01.2011, directed respondent no. 2 to revoke the suspension of all remaining 5 class-II and Class-III

employees, including the petitioner with full salary. Consequently, the suspension of the petitioner was revoked.

11. In a criminal case registered with an FIR under section 409 IPC, against three persons namely-(i) Smt. Bharti Tiwari, (ii) Sri Bishan Singh Dhapola and (iii) Smt. Maya Verma (Petitioner), the charge sheet was submitted in the criminal court, but the Court of Chief Judicial Magistrate, Nainital vide its judgment dated 20.02.2015, discharged all the charge sheeted persons from the charges, including the petitioner. The judgment was never challenged and it attained finality.

12. It is also contended that the State Government of Uttarakhand, finding the fact that the then District Magistrate, Nainital was appointed inquiry officer, but Inquiry report was submitted in the matter, not by him, but by the then Chief Development Officer, Nainital with his letter dated 01.07.2009, hence, vide order dated 17.03.2017, the State Government directed the District Magistrate, Nainital to hold an inquiry at his own level and submit report within a period of 15 days. It appears that no inquiry was held in pursuance of the aforesaid order dated 17.03.2017, by respondent No. 5. Consequently, respondent No. 1, State Govt. again sent a letter dated 05.07.2017 to the respondent No. 5, District Magistrate, to submit the inquiry report within 15 days. It has also been narrated in the petition that other employee Sri Dhapola made some representation before the department for granting promotion and other service benefits to him, on which, guidance was sought by respondent No. 2 from the State Govt. about judgment dated 20.02.2015, passed by the Court of Chief Judicial Magistrate, Nainital in the criminal case. Respondent No.1 vide D.O. letter dated 24.10.2017, informed respondent No. 5 that the inquiry officer, who conducted the inquiry, was not authorized at all for the same, hence, a further request/direction was issued to respondent No. 5, District Magistrate, to hold an inquiry himself and submit the same within one week.

13. When respondent No. 2 transferred various persons from one place to another, including Sri B.S.Dhapola and the petitioner, Sri Dhapola challenged his transfer before the Hon'ble High Court in writ petition No. (S/S) No. 1642 of 2018, wherein the Hon'ble High Court directed the standing counsel to submit the status of the alleged inquiry/ matter. It was submitted by the State counsel that final decision is yet to be taken by the State Govt. because in the matter, the name of one Class-II officer, Smt. Bharti Tiwari, is also involved. Ultimately, the writ petition was disposed of vide order dated 08.04.2019 with the direction to respondent No. 1, State Govt., to take a final decision in the matter of Smt. Bharti Tiwari, the then District Programme Officer, within a period of two months and it was further directed that after passing final order in respect of Smt. Bharti Tiwari, respondent No. 2, Director, I.C.D.S. shall pass final order in respect of Sri Dhapola, without being influenced by the order to be passed by the State Govt., within a period of one month thereafter.

14. Thereafter, on 09.04.2019, the respondent No.1 again sent a D.O. letter to the District Magistrate (respondent No. 5) for submission of the inquiry report. In compliance of such order, respondent No. 5, called Smt. Bharti Tiwari, Sri Bishan Singh Dhapola and the petitioner on 15.05.2019 and they were required to submit their written reply in the matter on or before 21.05.2019. Petitioner submitted her reply on 21.05.2019 to respondent No. 5. Thereafter, respondent No. 1 sent a letter to respondent No. 2 saying that vide order dated 02.11.2007, the District Magistrate, Nainital was appointed as an inquiry officer in respect of Shri Bishan Singh Dhapola and other employees and, further action is to be taken by the respondent No. 2, as he is their Appointing Authority. As in the matter, the exchequer had suffered financial loss, hence, under the provisions of Financial Hand Book, respondent No. 2 was also directed to do further needful action in the matter.

15. Treating the aforesaid letter dated 26.07.2019, as gospel truth/mandate of the State Govt., respondent No. 2 straight away, passed the impugned punishment order dated 14.08.2019, imposing following major penalty, upon the petitioner:

- i. Reversion to the post of Junior Clerk (i.e. two posts lower)
- ii. Recovery of Rs. 11,37,650/-

16. Similar order was passed regarding Sri Bishan Singh Dhapola on the same day i.e. 14.08.2019. The impugned punishment order was communicated by the respondent No. 4 to the petitioner with covering letter dated 26.08.2019. After receipt of same, the petitioner immediately submitted representation to respondent No. 2, but no decision whatsoever has been taken on the same till date. It is also contended that respondent No. 2 vide order dated 21.09.2029 amended the impugned punishment order dated 14.08.2019, stating that the rate of interest was wrongly calculated and after recalculation, a recovery of further amount of Rs. 19,354/- was also ordered.

17. Petitioner has contended that till date neither any inquiry had been held by the respondent No. 5 as ordered by the respondent No. 1 through various letters/orders, nor any inquiry report has been submitted in the matter by the inquiry officer/District Magistrate, Nainital. It is also submitted that as per the information and belief, no punishment order has been passed against Smt. Bharti Tiwari, whose punishment order was firstly to be passed as per the directions of the Hon'ble High Court. Although, respondents had never given effect to the impugned punishment order, as amended, neither petitioner has been relieved from the post of Head Assistant, nor any recovery has been made from her salary, however, the effect to the impugned punishment orders can be given by the respondents at any time within next few days, hence the petition.

18. In view of the fact stated above, the petitions were filed on the ground that the impugned order has been passed in utter violation of the provisions contained in the Uttaranchal Government Servants (Discipline & Appeal) Rules, 2003 (hereinafter referred to as 'Rules of 2003'). A legal point has been raised that charge sheet against any employee can only be prepared and issued by the appointing authority alone and not by the inquiry officer whereas, in the present case, it was given by the inquiry officer. The major penalty was imposed against the petitioner whereas, the compliance of the Rules 7 to 9 of the Rules of 2003 has not been made. Petitioner has contended that neither the inquiry was held by the inquiry officer, respondent No. 5 himself, nor his inquiry report has been served upon the petitioner nor any show cause notice was ever served in order to enable her to file her explanation regarding the conclusion/determination made by the inquiry officer. In case of major penalty, Disciplinary Authority was under obligation to comply with the provisions of Rules 7 to 9 of the Statutory 'Rules of 2003'.

19. The reasonable opportunity of defending herself, was not given to the petitioner as per the rules which resulted in miscarriage of justice. The disciplinary authority did not even care to discuss the findings of the inquiry officer regarding the charges and without any discussion/satisfaction, punishment order has been passed. Not a single reasons for agreement/disagreement with the findings of the inquiry officer has been recorded nor proper show cause notice has been issued to the petitioner in order to get her comment on the findings of the inquiry officer. As per settled pronouncement of the Hon'ble Apex Court, it is the requirement of the natural justice that in disciplinary proceedings, before taking final decision, an opportunity should be given to the delinquent officer to defend her/himself. By not supplying inquiry report with any show cause notice, before imposing major penalty, the petitioner was denied opportunity of hearing and she has been prejudiced. The impugned order cannot sustain in the eyes of law and deserves to be set aside. Hence, this petition.



20. The facts of the claim petition No. 56/NB/DB/2019, Bishan Singh Dhapola vs. State & others, are more or less similar, only with a difference that his appointment was made as Junior Clerk in the year 1982 and was transferred in different places of U.P. and thereafter, Pithoragarh, Udham Singh Nagar and Nainital. At the time of alleged irregularity, he was posted as Senior Clerk in 2006. When he was transferred to Ukhimath, District Rudra Prayag, he filed a writ petition in the year 2007, before the Hon'ble High Court. After filing his writ petition in the Hon'ble Court, the Child Development Officer lodged an FIR against Smt Bharti Tiwari, District Programme Officer, Smt. Maya Verma, Head Assistant and the petitioner on 14.06.2007 and the petitioner was named on account of the reason that he had filed a Writ Petition No. 252 of 2007 against the department, alleging that the cash book of the department has intentionally been misplaced by the persons mentioned in the FIR. The aforesaid case was registered as case Crime No. 08 of 2007 U/s 409 IPC at Kumoun Revenue, Police Tehsil in District Nainital.

21. Respondent No. 2, placed the petitioner under suspension by contemplating the disciplinary inquiry. The charge sheet dated 01.12.2007 was served by the inquiry officer to the petitioner with the approval of the respondent No. 2, disciplinary authority, wherein, it was stipulated that the reply to be submitted to the inquiry officer.

22. The petitioner aggrieved by the suspension order, filed a writ petition No. 1694 of 2007 (S/S) before the Hon'ble High Court, which came up for hearing on 16.10.2008 and the same was disposed of with the direction that the inquiry officer shall submit the inquiry report within a period one month from the date of production of certified copy of the order by the petitioner and thereafter, the punishing authority/appointing authority shall take decision thereupon within further 15 days and if the inquiry is not completed or the decision is not taken, within that period, the suspension order will stand revoked. As

the inquiry was not completed as per the direction of the Hon'ble High Court, the respondent No. 2 vide order dated 20.01.2011 revoked the suspension order of the petitioner and attached him at Child Development Project Officer's office, Dwarahat, District Almora.

23. In a criminal case, police submitted a charge sheet against the petitioner and other persons. The Court of Chief Judicial Magistrate, Nainital acquitted them from the charges vide its order dated 20.02.2015. The judgment attained finality, as it was never challenged in any appeal or revision. Thereafter, the petitioner made a representation dated 15.07.2017 to the respondent No. 2 by which he prayed for his salary, arrears of salary, the amount deposited by him under protest, travelling allowance, LTC, promotion as per his seniority, promotional grade pay and other benefits. The grievance of the petitioner had not been redressed inspite of the reminders. However, respondent No. 2 vide its letter dated 09.10.2017 sought guidance from the Government, regarding compliance of the order of the Chief Judicial Magistrate. The disciplinary proceedings were initiated against the petitioner as well as against District Programme Officer, Smt. Bharti Tiwari and Smt. Maya Verma in the year 2007 and it was kept pending for long time due to which the petitioner was deprived from several benefits like promotion etc. During pendency of the disciplinary proceedings, the services of the petitioner were again transferred from Dwarahat, Almora to Child Development Project Officer office, Lohaghat, vide order dated 29.05.2018.

24. Feeling aggrieved by the transfer order, petitioner again approached the Hon'ble High Court by filing a writ petition No. 1642 of 2018 (S/S). The said petition came up for hearing before the Hon'ble Court on 19.06.2018 and an interim order was passed by the Hon'ble High Court, directing the respondents to conduct and conclude the inquiry within a period of two months from the date of passing of order and for the period of two months only the effect and operation of

transfer order dated 29.05.2018 would be kept in abeyance. The order was served on the respondents but inquiry was not concluded within the time as directed by the court. The writ petition again came up for hearing on 11.03.2019 and the Hon'ble High Court directed the learned counsel appearing on behalf of the State to seek instructions in the matter, who submitted that the inquiry officer has submitted inquiry report in the year 2017 and respondent No. 2, Director ICDS vide letter dated 09.10.2017 forwarded the inquiry report to the State Government for taking final decision in respect of other charge sheeted officers, one of them happens to be a class-II officer, for whom, State Government alone is competent to take final decision upon completion of inquiry. It was also submitted that since the decision of State Government in regard to Class-II officer namely, Smt. Bharti Tiwari is awaited therefore no final order could be passed in respect of the petitioner. The State counsel further submitted that as soon as the State Government passes a final order in respect of that officer, final order would be passed in respect of the petitioner also. The Hon'ble High Court on the basis of the submission of learned counsel for the State, disposed of the writ petition with the direction to the State Government to take final decision in respect of the then District Programme Officer (Smt. Bharti Tiwari) by passing a final order within two months from the date of receipt of the copy of the order. It was further directed by the Hon'ble Court vide order dated 08.04.2019 that the respondent No. 2 (disciplinary authority of the petitioner) will pass final order in respect of the petitioner within one month, thereafter.

25. After order of the Hon'ble High Court, State Govt. issued letter to the inquiry officer, stating that he was appointed to inquire into the charges, but the District Magistrate further delegated the power of the inquiry to Chief Development Officer, Nainital of which there is no provision whatsoever in the Rules of 2003. Consequently, the State Government directed the inquiry officer/ District Magistrate, Nainital to conduct and conclude the inquiry himself, within a week and same be

sent to the State Govt. Thereafter, District Magistrate issued a letter dated 10.05.2019 to the petitioner asking him to remain present either on 14, 15, 16 or 17.05.2019 to submit his version in defense. The petitioner appeared before the District Magistrate (inquiry officer) on 15.05.2019 and prayed for some time to file his defence. The District Magistrate granted time upto 31.05.2019 to the petitioner as well as others. Pursuant to the letter dated 10.05.2019 and 15.05.2019, the petitioners submitted their detailed reply on 15.05.2019 and 20.05.2019 denying the charges levelled against him.

26. It is the contention of the petitioner that pending such proceedings, the respondent No. 2 passed the impugned punishment orders dated 14.08.2019 imposing the penalty and further issued order dated 21.09.2019 by which order dated 14.08.2019 has been modified to the extent of recovery amount from Rs. 24,50,616.00. The above orders have been challenged by the petitioner more or less on the similar ground like Smt. Maya Verma that due procedure has not been followed; without holding proper inquiry, without giving show cause notice with the inquiry report, the respondent No. 2 has passed the punishment order whereas, on the one hand, the inquiry is still being done by the District Magistrate, Nainital and the State Govt. has not taken any decision in the case of Smt. Bharti Tiwari as per the direction of the Hon'ble High Court; the principles of natural justice have been violated and a major punishment has been imposed, without following the due procedure in law hence, punishment orders cannot sustain in the eyes of law and same deserves to be set aside.

27. Petitioner has also contended that the charge sheet has been issued by the inquiry officer and not by the disciplinary authority. The inquiry has not still been concluded. Respondent No.2, in simple compliance of the order of the respondent No. 1, directly passed the punishment order. Rules of law require a proper inquiry and after inquiry, the show cause notice must have been given. The disciplinary

authority has relied upon with the inquiry report of District Development Officer, who was never appointed as an inquiry officer and the State Government itself has set aside that inquiry report, as the District Magistrate further wrongly delegated the powers of the inquiry officer. Directions have been issued to the District Magistrate to hold an inquiry himself, which is yet to be completed. So the punishment order was passed without following the due procedure and without conducting a proper inquiry, punishment order has been passed in gross violation of the rules and the law, hence, same are liable to be set aside.

28. Respondents have opposed both the petitions on similar ground and it is contended that in the present case, issue of corruption by government servants was involved, who were found responsible for embezzlement along with other persons. On receiving complaint, the Commissioner, Kumoun Division, Nainital constituted a committee for inquiring into the matter. The preliminary inquiry was held in the year 2006 in which both the petitioners and their officer, Smt. Bharti Tiwari were found involved in the year 2004-05 and 2005-06. The committee found that the embezzlement has been made, the government funds have been misappropriated and the petitioners were also found involved. The committee submitted its report to the Commissioner, Kumoun Division, who vide his letter dated 05.05.2007 forwarded the same to the government. Thereafter, departmental inquiry was initiated against the petitioners and the then District Magistrate, Nainital was appointed as an inquiry officer. The charge sheets were accordingly served with the approval of the appropriate authority and in the inquiry, petitioners were found guilty for misappropriation of funds and were also found responsible for embezzlement of Rs. 56,88,250/-. Hence, the department passed the order of recovery and their reversion, as a lesson to other employees who are involved in such type of corrupt practices. The contention of the petitioners has been denied and it was contended that the petitioners were found guilty in the preliminary inquiry and also in the departmental inquiry held later on by the District Development

Officer. By following the provisions and procedure of the Rules of 2003, as amended 2010, suspension order was also passed. The Hon'ble Supreme Court in the case of **Sukhendra Chandra Das vs Tripura Union State Region, AIR 1962** and in the case of **Police Inspector General vs. Thavasiyappan (1996)2, SCC, 145**, has held that the appointment of inquiry officer by the disciplinary authority is valid.

29. The District Magistrate, Nainital submitted the inquiry report dated 18.12.2008, conducted by the District Development Officer, Nainital against Sri Dhapola and a similar report dated 09.02.2009 was also prepared against Smt. Maya Verma for the financial irregularity. The inquiry officer also found Smt. Bharti Tiwari guilty of financial/administrative irregularities in connivance with the petitioners. The proceedings of the criminal case are different from the departmental proceedings and even if they were discharged from the criminal proceedings, the departmental proceeding can go on. The Uttarakhand Govt. vide its order dated 26.07.2019, directed the disciplinary authority to pass appropriate orders against the petitioners and in compliance of that order, after hearing the petitioners, the impugned punishment orders have rightly been passed and correction orders were passed, to correct the calculation mistake. Petitioners were found guilty of misappropriation of government fund hence, order of recovery has rightly been made. The petitions have no merit and deserve to be dismissed.

30. The petitioners in their R.As. reiterated the facts of the petition and contended that government in its order dated 09.04.2019, clearly stated that the Chief Development Officer, Nainital or District Development Officer, Nainital were never authorized to hold the inquiry in the matter. As such, District Magistrate, Nainital was further directed to hold fresh inquiry within one week. In compliance of the judgment of the Hon'ble High Court dated 08.04.2019 as well as order dated 09.04.2019, passed by the State Govt., the District Magistrate, Nainital is

holding the inquiry in the matter and petitioner and other persons were directed to submit their written submission/version on or before 21.05.2019. In pursuance of which, they have submitted their submissions and the inquiry is going on at level of the District Magistrate, Nainital. The respondent No. 2 relying upon the report of the District Development Officer, which has been set aside by the State Govt., has passed the impugned orders, which deserves to be set aside.

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

32. Both the petitioners, who were Head Assistants in the respondent department, were found involved in embezzlement of Government money along with the District Programme Officer, Smt. Bharti Tiwari. When the matter was reported by the Commissioner, Kumoun, to the Government after making a preliminary inquiry, the State Government appointed District Magistrate, Nainital as an inquiry officer, to inquire into the matter. In relation to both the petitioners, the Appointing Authority/Disciplinary Authority was Respondent No. 2, but as there was also an involvement of Class-II officer, for whom, State Government is the Appointing Authority, hence, inquiry officer was appointed by the State Govt.

33. Admittedly, this is a matter of major punishment, for which, Rule 7 to 9 of the Uttaranchal Government Servant (Discipline & Appeal) Rules, 2003, are the relevant law, which prescribes the procedure to be adopted in such cases. Relevant Rules 7 to 9 read as under:-

*"7. Procedure for imposing major penalties- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:*

*(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.*

*(ii) 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 approved by the Disciplinary Authority.*

*Provided that where the Appointing Authority is Governor, the charge sheet may be approved by the Principle Secretary, or the Secretary, as the case may be, of the concerned department.*

*(iii) The charges levelled shall be so precise and clear as to give sufficient indication to the charges Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same alongwith oral evidences, if any, shall be mentioned in the charge sheet.*

*(iv) The charged Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge sheet and to state whether he desires to cross examine any witness mentioned in the charge sheet and whether desire to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry exparte.*

*(v) The charge sheet, alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge sheet could not be served in aforesaid manner, the charge sheet shall be served by publication in a daily newspaper having wide circulation:*

*Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge sheet, the charged Government Servant shall be permitted to inspect the same before the Inquiry Officer.*

*(vi) Where the charged Government Servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.*

*(vii) Where the charged Government Servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in the presence of the charged Government Servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence.*

*Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.*

*(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in Uttarakhand under provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.*

*(ix) The Inquiry Officer may ask any question, he pleases, at any time from any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.*



(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the Service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry *ex parte*. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge sheet in absence of the charged Government Servant.

(xi) The Disciplinary Authority, if it considers necessary to do so, may by an order, appoint a Government Servant or a legal practitioner, to be known as "Presenting Officer," to present on its behalf the case in support of the charge.

(xii) The Government Servant may take the assistance of any other Government Servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or Disciplinary Authority having regard to circumstances of the case so permits:

Provided that this rule shall not apply in following case:-

(i) Where any major penalty imposed on a person on the ground of conduct which has led to his conviction on criminal charge; or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules: or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules.

#### 8. Submission of Inquiry Report--

When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority alongwith all the records of the inquiry. The inquiry report shall contain a sufficient record of brief facts, the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer shall not make any recommendation about the penalty.

#### 9. Action on Inquiry Report--

- (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government Servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule-7.
- (2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.
- (3) In case the charges are not proved, the charged Government Servant shall be exonerated the Disciplinary Authority of the charges and informed him accordingly.
- (4) If the Disciplinary Authority, having regard to its findings on all or any of charges, 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 inquiry report and his findings recorded under sub-rule (2) 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 inquiry and representation of the 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."*

34. Hence, according to the procedure prescribed by the rules, a delinquent employee should be served with the charge sheet and after obtaining his reply to the charge sheet, the Disciplinary Authority, if not satisfied with his reply, should record such opinion and then he can conduct the final inquiry, either himself, or through another officer, appointed by him, in this behalf. Respondent No. 2, who was the Appointing Authority of the petitioners, never appointed any inquiry officer, rather, the inquiry officer was appointed by the State Govt. and the District Magistrate, Nainital was ordered to hold inquiry against the petitioners as well as Smt. Bharti Tiwari, the then District Programme Officer.

35. The record reveals that District Magistrate, Nainital never conducted the inquiry himself, rather he delegated this power to the Chief Development Officer, for the matter relating to Smt. Bharti Tiwari and in relation to the petitioners, power was delegated to the District Development Officer. The District Development Officer conducted the inquiry against the petitioners and his report was forwarded to the State Govt. The record also reveals that when the matter came before the State Govt. for consideration, it was held that the District Magistrate was not having any powers to further delegate his power of inquiry and accordingly, directions were again issued by the State Govt. to the District Magistrate, Nainital to hold an inquiry himself and to report the matter.

36. Learned A.P.O. on behalf of the respondents as well as learned counsel for the petitioners also admits that the report of the District Magistrate, Nainital (inquiry officer) is yet to be acted upon, at the level

of the State Govt. against Smt. Bharti Tiwari. There is no proof on behalf of the respondents that upon any legal inquiry conducted by the District Magistrate, Nainital, any action has been taken against Smt. Bharti Tiwari, the then District Programme Officer. There was a round of litigation, before the Hon'ble High Court, wherein, directions were issued to finalize the result of inquiry against District Programme Officer, Smt. Bharti Tiwari and thereafter, respondents were allowed to take action against the petitioners, who were clerks in the department.

37. Respondent No. 2 after receiving a letter from the Govt., to take lawful action in the matter, against the employees, directly issued show cause notice to the petitioners and after obtaining their replies, the impugned punishment orders were passed. We find that there is no lawful inquiry in the matter, conducted by the Disciplinary Authority, either himself or by the officer appointed by him, nor Disciplinary Authority has recorded his concurrence on any such lawful inquiry finding. In this matter, the Disciplinary Authority relying upon the inquiry report, prepared by the District Development Officer, with the delegated power of District Magistrate, Nainital, the punishment orders have been passed, whereas, the inquiry conducted by the District Development Officer, is not an inquiry by a person authorized by the Disciplinary Authority. Moreover, such report has been set aside by the State Govt., and setting aside that report, directions were again issued to the District Magistrate, Nainital to conduct the inquiry himself.

38. We find that the Disciplinary Authority, Respondent No. 2 never served the petitioners inquiry any report, conducted by the District Magistrate, Nainital along with the show cause notice, neither concurrence has been recorded as per law.

39. We find that without following the due procedure of inquiry, laid down in the rules, the impugned punishment orders have been passed by respondent No.2. Even if, the letter was written by the State Govt. to take appropriate action in the matter, there was a need to

conduct a lawful inquiry by the Disciplinary Authority or by any other officer, appointed in this behalf, and in that inquiry, there was also the requirement of the law that petitioners must have been given due opportunity of hearing i.e. cross-examination of witnesses and the right to defend themselves.

40. If the inquiry officer, District Magistrate, Nainital after conducting inquiry himself had given his finding against the petitioners then, only on the basis of that inquiry report, the Disciplinary Authority, after recording his concurrence, was under obligation to serve with a show cause notice and thereafter, the punishment orders would have been passed. It has been admitted by the respondents that the action on the inquiry report of the District Magistrate, Nainital, is yet to be finalized at the level of the State Government.

41. We find that the impugned order of reversion as well as of recovery were passed in violation of the law and without following the due procedure, prescribed in the rules. The Respondent No. 2, after receiving a letter from the Govt., to take lawful action in the matter against the employees, directly issued show cause notice and after obtaining their replies, the impugned punishment orders were passed whereas, there was no lawful inquiry in the matter, conducted by the Disciplinary Authority, either himself or by any officer appointed by him. The Disciplinary Authority relying upon the inquiry report submitted by the District Development Officer, under his delegated power of Inquiry, passed the impugned punishment orders whereas, the inquiry conducted by the District Development Officer was not by a person authorized by the Disciplinary Authority or by the State Government. Hence, the impugned orders deserve to be set aside.

42. Learned A.P.O. also submitted that the proper inquiry report of the District magistrate, Nainital is yet to be considered by the State Govt. in relation to Smt. Bharti Tiwari, District Programme Officer as per the order of the Hon'ble High Court and after passing final order against

Smt. Bharti Tiwari, the proceedings against the petitioners (her clerks) can be taken thereafter. We agree to that any hold that without doing any such exercise in that sequence and without acting on the report a lawful inquiry and following the due procedure, respondent No. 2 directly passed the impugned orders of reversion and recovery, hence, such orders deserve to be set aside. Such orders were passed without any proper inquiry and without giving the proper opportunity of hearing to the petitioners. Accordingly, both the petitions deserve to be allowed, and following order is hereby passed.

**ORDER**

The claim petitions are hereby allowed. The impugned orders dated 14.08.2019 and 21.09.2019, passed by the Respondent No.2 in respect of the petitioners, are hereby set aside. However, the respondents will have liberty to proceed with the result of any lawful inquiry, conducted as per law, in the sequence & compliance of the order dated 08.04.2019, passed by the Hon'ble High Court in Writ Petition No. 1642 of 2018. No order as to costs.

Let copy of this order be kept on the file of Claim Petition No. 56/NB/DB/2019, Bishan Singh Dhapola vs. State & others.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: MARCH 19, 2020*  
*NAINITAL*  
*KNP*