

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S.Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.114/NB/DB/2022

Bhuwan Chandra Dangwal, aged about 56 years, s/o Sri Chandra Dutt Dangwal, presently posted as Sub Inspector (Excise), Bageshwar, District Bageshwar.

.....**Petitioner**

VS.

1. State of Uttarakhand through Principal Secretary, Excise, Govt. of Uttarakhand, Dehradun.
2. Commissioner, Excise, Uttarakhand, Dehradun.
3. District Excise Officer, Bageshwar.

.....**Respondents**

Present: Sri Vinay Kumar, Advocate for the petitioner.
Sri Kishore Kumar, A.P.O. for the Respondents.

JUDGMENT

DATED: MAY 06, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN (A)

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

“(i) To issue an order or direction calling for the record and quashing the impugned punishment order dated 02nd July 2021 passed by Commissioner (Excise), Dehradun imposing major Punishment of reversion to the post of Sub Inspector (Excise).

(ii) To issue an order or direction calling for the records and quashing the order dated 25th October 2021 passed by Appellate Authority/Secretary, Excise, Govt. of Uttarakhand whereby the Departmental Appeal preferred by the claimant was dismissed.

(iii) To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. The briefly stated facts of the claim petition, are as under:

2.1 The petitioner was posted as Inspector (Excise), Area no.4, Munsiyari District Pithoragarh in the year, 2019. On 30.09.2019, an F.I.R came to be lodged by the Inspector, In charge of the Police Station, Askot against three persons under Section 60/72 of the Excise Act. During the investigation the petitioner was arrested and remained in jail for more than 48 hours. On 06.11.2019, on the basis of the communication dated 05th November 2019 of the District Excise Officer, Pithoragarh, the Addl. Commissioner (Excise), passed the order suspending the petitioner on the ground of remaining in jail for more than 48 hours and the petitioner was attached to the office of Commissioner (Excise) Uttarakhand, Dehradun. The suspension order was revoked on 05.12.2020 and the petitioner was posted in District Bageshwar against the vacant post of Inspector, Excise.

2.2 The Disciplinary Authority issued the charge-sheet to the petitioner on 23.09.2020 containing 8 charges and required the petitioner to submit reply to the charge-sheet through the Enquiry Officer within the 15 days and maximum by 30 days. The enquiry officer was appointed on 12.10.2020. The petitioner submitted the reply to the charge-sheet to the Enquiry Officer/ Joint Commissioner (Excise), on 15.12.2020 denying the charges leveled against him. The enquiry officer conducted the enquiry on 15.12.2020.

2.3 The Enquiry Officer/Joint Commissioner (Excise) submitted the Enquiry Report to the Commissioner (Excise) on 30.12.2020 in respect of the charge- sheet dated 23rd September 2020 and found the charge no. 7 and 8 to be proved against the petitioner. Charge no. 1 and 2 were held to 'have not been proved against the petitioner whereas charge no. 3, 4 and 5 were held to be factually in nature.

2.4 On the basis of the Enquiry Report, the Excise Commissioner issued the show cause notice to the petitioner on 09.02.2021 requiring him to submit reply to the Enquiry Report. The petitioner submitted the reply to the Enquiry Report on 20.02.2021, wherein he pointed out that the Enquiry Officer has relied on the documents, which were not supplied to the petitioner and which were also not proved in evidence.

2.5 The Disciplinary Authority vide order dated 02.07.2021, rejected the reply of the petitioner, on the ground that the petitioner has failed to disclose substantive evidence in his defence and imposed the major punishment, reverting the petitioner to the post of Sub-Inspector (Excise).

2.6 The petitioner preferred Departmental Appeal on 27.07.2021 before the Departmental Appellate Authority/Secretary (Excise), Government of Uttarakhand on the ground that the major punishment has been imposed on the petitioner in violation of the procedure prescribed under Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as amended from time to time. Petitioner pointed out that, the disciplinary proceedings initiated against the petitioner has been vitiated from the stage of issuance of the charge sheet, in as much as the petitioner was required to submit the reply to the charge-sheet through Enquiry Officer.

2.7 Departmental Appellate Authority/Secretary(Excise), passed the impugned order dated 25.10.2021, confirming the punishment imposed by the Disciplinary Authority on 02nd July 2021.

2.8 The petitioner preferred Writ Petition No. 1572 of 2021(S/S), Bhuwan Chandra Dangwal V/s State of Uttarakhand and ors against the impugned punishment order dated 02nd July 2021 and the Appellate Order dated 25th October 2021, before the Hon'ble High Court of Uttarakhand. The Hon'ble High Court vide its order dated 25th July 2022 dismissed the Writ Petition on the ground that

the petitioner has alternative remedy before the Uttarakhand Public Service Tribunal.

3. The petitioner has challenged the impugned orders on the following grounds:

3.1 These impugned orders dated 02nd July 2021 and 25th October 2021 are not sustainable as have been passed by the Respondents in violation of principle of natural justice and also in violation of the procedure prescribed in Rule 7 of Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 as amended from time to time, and thus the action of the respondents is violative of Article 14 of the Constitution of India.

3.2 The report of the District Excise Officer dated 17th December 2020 and the forensic laboratory report which was considered by Enquiry Officer without seeking reply of the petitioner.

3.3 The Enquiry Officer has committed illegality in submitting the Enquiry Report only on the basis of unproved documentary evidence.

3.4 The impugned order dated 2nd July 2021 is not sustainable for the reason that the disciplinary authority has not considered the grounds taken by the petitioner in his reply to the show cause notice.

3.5 The impugned order dated 25th October 2021 passed by the Appellate Authority is not sustainable for the reason that the Appellate Authority has dismissed the departmental appeal only by observing that the disciplinary authority has taken a decision only after following the procedure therefore, there is no requirement of amendment in the order of the disciplinary authority.

3.6 The orders impugned dated 02nd July 2021 and 25th October 2021 are not sustainable for the reason that the prejudice has been caused to the petitioner by non-supply of the documents mentioned in the charge-sheet and also the report of the District Excise Officer and forensic laboratory to the petitioner. The aforesaid

orders have been filed in violation of the procedure prescribed in Rule 7 of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules 2003 as amended from time to time.

4. C.A./W.S. has been filed on behalf of the respondents and it has been stated that:-

4.1 याची आबकारी निरीक्षक के पद पर वर्ष 2016 से अपराध निरोधक क्षेत्र-4-मुनस्यारी में तैनात थे, दिनांक 30.09.2019 को अस्कोट के ओमला पुलिस वैरियर पर पुलिस द्वारा 616 पैटी अवैध अंग्रेजी शराब पकड़ी, जिसमें संलिप्तता एवं कागजात के आधार पर पुलिस विभाग द्वारा याची के विरुद्ध मुकदमा पंजीकृत कर गिरफ्तार कर जेल में भेजा गया, जेल में 48 घंटे से अधिक अवधि होने के कारण आबकारी विभाग द्वारा दिनांक 06.11.2019 को राजकीय कर्मचारी आचरण नियमावली-2002 का दोषी मानकर निलम्बित कर कार्यालय आबकारी आयुक्त, देहरादून सम्बद्ध कर दिया गया। संयुक्त आबकारी आयुक्त, सम्बद्ध कुमांऊ मण्डल द्वारा दिनांक 16.11.2019 को आबकारी आयुक्त को प्राथमिक जांच रिपोर्ट दाखिल कर याची के विरुद्ध कठोर विभागीय कार्यवाही की संस्तुति सम्बन्धी पत्र प्रेषित किया गया।

4.2 कार्यालय पत्राक-9049 दिनांक 23.09.2020 द्वारा अनुशासनिक अधिकारी ने आरोप पत्र प्रेषित किया तथा पत्राक 10647 दिनांक 12.10.2020 द्वारा याची के बयानों के प्रतिउत्तर में जांच हेतु श्री के०के० काण्डपाल, संयुक्त आबकारी आयुक्त, कुमांऊ मण्डल को जांच अधिकारी नामित किया कार्यालय पत्राक-13368 दिनांक 05.12.2020 द्वारा निलम्बन के 06 माह से अधिक होने व विभागीय कार्यवाही में समय लगने के कारण विभागीय/अनुशासनात्मक कार्यवाही संस्थित रखते हुए सेवा में बहाल किया गया। बागेश्वर में रिक्त आबकारी निरीक्षक के पद पर तैनात किया कार्यालय पत्रांक 311 दिनांक 02.12.2020 द्वारा जांच अधिकारी ने याची को पत्र प्रेषित कर दिनांक 14.12.2020 को उनके कार्यालय में उपस्थित होकर लिखित कथन प्रस्तुत करने एवं यदि वे किसी साक्ष्यों की परीक्षित का प्रतिपरीक्षण चाहते हैं। तो लिखित कथन के २३ साथ उपस्थित होने के निर्देश किये। दिनांक 15.12.2020 को याचिका कर्ता द्वारा जांच अधिकारी के समक्ष लिखित प्रश्नों का उत्तर दिया तथा कोई अन्य साक्ष्य प्रस्तुत करने से इन्कार किया। याचिकाकर्ता द्वारा दिनांक 15.12.2020 को विभागीय जांच अधिकारी को जारी आरोप पत्र पर अभिकथन प्रस्तुत किया कार्यालय पत्राक- 416 दिनांक 20.12.2020 द्वारा जांच अधिकारी द्वारा जारी आरोप पत्र पर जांच आख्या प्रस्तुत की गई।

4.3 आबकारी आयुक्त द्वारा 09.02.2021 को पत्राक संख्या-17393/अधि-एक द्वारा याचिकाकर्ता को पत्र लिखकर प्राप्त जांच आख्या के आधार पर वृहत दण्ड देने से पूर्व नोटिस देकर प्रतिउत्तर हेतु 07 दिवस का अवसर प्रदान किया गया। जिस पर याचिकाकर्ता द्वारा दिनांक 20.02.2021 को उत्तर प्रस्तुत किया गया। पत्रांक- 3226 दिनांक 02.07.2021 के निर्णय द्वारा याची को परिक्षणोंपरान्त उप आबकारी निरीक्षक के

पद पर प्रत्यावर्तित कर दिया। तत्पश्चात् इस निर्णय के विरुद्ध याची द्वारा शासन स्तर पर सचिव महोदय के समक्ष अपील की गई। अपील की सुनवाई पश्चात् सचिव महोदय के आदेश 911/दिनांक 25.10.2021 द्वारा आयुक्त द्वारा पारित आदेश में कोई संशोधन न कर अपील को निस्तारित कर दिया गया।

5. No R.A. has been filed on behalf of the petitioner.

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

7. In this case, the Disciplinary Authority passed order for major penalty as downgrading to the lower scale. As per the Discipline and Appeal Rules, 2003 (Amended Rule 2010), the disciplinary authority was required to follow the procedure of Rule 7 of the said Rules, which reads as under:

7. Procedure for imposing major punishment--

Before imposing any major punishment on any Government Servant, an inquiry shall be conducted in the following manner:--

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) 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 signed by the Disciplinary Authority: Provided that where the appointing authority is Governor, the charge- sheet may be signed by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

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

(4) The charge sheet, along with the copy of 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.

(5) The charged Government servant shall be required to put in a written statement in 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 clearly inform whether he admits or not all or any of the charges mentioned in the charge sheet. The charged government servant shall also required to state whether he desires to cross examine any witness mentioned in the charge sheet whether he desires to give or produce any written or oral evidence in his defence. He shall be 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 ex-parte inquiry shall be initiated against him.

(6) Where on receipt of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings 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 recorded findings 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 findings recorded related to every charge and representation of 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.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub rule(8) he will forward the following to the Inquiry Officer, namely:(a) A copy of charge sheet and details of misconduct or misbehavior (b) A copy of written defence statement, if any submitted by the government servant (c) Evidence as a proof of the delivery of the documents referred to in the chargesheet to the government servant (d) A copy of statements of evidence referred to in the chargesheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to the produced in his defence:

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

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him 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 the State of Uttarakhand under provisions of Section-86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the Inquiry Officer may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to charges.

(13) 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 Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the

statement of witnesses mentioned in the chargesheet in absence of the charged Government Servant

(14) The Disciplinary Authority, if it Considers it 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 his behalf the case in support of the charge

(15) The charged 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 of the Disciplinary Authority, having regard to the circumstances of the case, so permits:

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Authority ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any such evidence, as provided earlier, and may examine, cross examine and reexamine him.

(17) This rule shall not apply in the following case;--i.e. there is no necessity to conduct an inquiry in such cases:-

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

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

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

8. In this case the charge sheet has not been signed by the Disciplinary Authority, the Excise Commissioner. It has been signed by the Additional Excise Commissioner (Administration). The Charge sheet dated 23.09.2020 issued to the petitioner does not have the documents based on which the charges are framed and also the list of the witnesses which are the basis of charges mentioned in the charge sheet. Mr. K.K.Kandpal, Joint Commissioner (Excise) Nainital Region was appointed as inquiry officer vide letter dated 15.10.2020 and a copy of charge sheet was given to him. Mr. K.K. Kandpal, earlier submitted the preliminary enquiry in this case, based on which the charges were framed against the petitioner. The inquiry officer conducted the enquiry and on the same date, the petitioner submitted the written statement on 15.2.2021 to the Inquiry Officer instead of to the Disciplinary Authority.

9. The Rule-7 clearly mentions that the charge sheet shall be signed by the Disciplinary Authority and the inquiry officer will be appointed only after reply to the charge sheet has been submitted by the charged officer to the Disciplinary Authority. This issue, 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.

10. 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.”

11. The Division Bench of the Hon’ble High Court at Nainital in the case of **Ram Lal Vs. State of Uttarakhand and others Special Appeal No.300 of 2015 decided on 03.07.2015 [2015(2)U.D., 25]** has also held as under:

“As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that an Inquiry Officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the delinquent officer to submit his explanation and, if, after considering the explanation of the delinquent officer, it is found necessary to hold an inquiry, only at that stage, an Inquiry Officer can be appointed.....”

12. In view of the above rules and the decisions of the Hon’ble High Court of Uttarakhand at Nainital, it is clear that the inquiry officer can be appointed only after the reply of the charge sheet is received. 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.

13. 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.

Besides above, the charge sheet has not been signed by the disciplinary authority and the documents based on which the charges have been framed along with the statement of the witnesses have not been provided to the petitioner in this case. Thus, the respondents have not followed the procedure for imposing major penalty as provided in Rule-7 of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 (as amended 2010). In view of the aforesaid rules and settled legal position, we find that the process of inquiry, adopted by the respondents, was in violation of Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 and not in accordance with law.

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

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

ORDER

The claim petition is hereby allowed. The impugned punishment orders are hereby set aside. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law. It is further clarified that no opinion has been expressed on the merits of the case. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(A.S.RAWAT)
VICE CHAIRMAN (A)

DATE: MAY 06, 2025

NAINITAL

KNP