

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

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 39/NB/DB/2022

Dr. K.B. Joshi, Aged About 59 Years, S/o Sri S.N. Joshi, Presently
Posted as Senior Cardiologist (Joint Director Grade), Govt. B.D. Pandey
District (Male) Hospital, Nainital.

..... **Petitioner**

Vs.

1. State of Uttarakhand through Secretary, Medical Health and Medical Education Department, Govt. Secretariat, Subhash Road, Dehradun.
2. Secretary, Medical Health and Medical Education, Uttarakhand Govt., State Secretariat, Subhash Road, Dehradun.
3. Director General, Medical Health and Family Welfare Department, Uttarakhand, Danda Lakhond, Post Office Gujrara, Sahastradhara Road, Dehradun.
4. Principal Medical Superintendent, Govt. B.D. Pandey District (Male) Hospital, Nainital.
5. State of Uttar Pradesh through Secretary, Medical Health and Family Welfare, Govt. Secretariat, Lucknow.

..... **Respondents**

Present: Sri K.P. Upadhyaya, Senior Advocate, assisted by
Sri Hemant Pant, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents no. 1 to 4
Case is proceeded ex-parte against respondent no. 5 vide
order dated 24.05.2023

JUDGMENT

DATED: MAY 28, 2025

This claim petition has been filed by the petitioner for following
reliefs:

- I. To issue an appropriate rule, order or direction setting aside the impugned order dated 04.06.2021 issued by the 2nd respondent (Annexure-1 to Compilation-I).*
- II. To issue an appropriate rule, order or direction holding and declaring that the petitioner's entire service with the respondents right from his initial appointment till the date of his retirement is to be treated uninterrupted continuous service.*
- III. To issue an appropriate rule, order or direction holding and declaring that the 2nd respondent's action of non-payment of salary and other service benefits for petitioner's 64 days' absence for different periods during 14.06.2017 to 29.08.2017 and 1035 days' absence from 01.09.2017 to 01.07.2020 treating the absence as "Break in Service" as arbitrary and illegal.*
- IV. To issue an appropriate rule, order or direction directing the respondents, to forthwith release all service benefits including salary and annual increments to the petitioner for different periods from 14.06.2017 to 29.08.2017 and from 01.09.2017 to 01.07.2020.*
- V. To issue a rule, order or direction requiring the respondents particularly respondents 1 & 2 to grant all service benefits to the petitioner on the basis of his seniority w.e.f. 09.09.1992 instead of 18.05.1994 and grant him arrears of salary with interest.*
- VI. To issue an appropriate rule, order or direction holding and directing that petitioner's entire services right from 09.09.1992 are to be counted uninterruptedly for all purposes including salary and pension.*
- VII. To pass any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- VIII. To award costs of the claim petition in favour of the petitioner."*

2. Brief facts of the case are that-

2.1 The petitioner was appointed by the Govt. of Uttar Pradesh vide order no.1556/Med.-4-91-1610/1991 dated 27.04.1991 as Medical Officer (ordinary grade) in PMHS cadre of Uttar Pradesh, which was effective till the availability of regular candidates.

2.2 He was again appointed vide order dated 30.04.1994 and on the basis of the appointment, he was posted in B.D. Pandey District Hospital, Nainital and he joined on 18.05.1994. He was posted in District Hospital, Nainital from 18.05.1994 to 30.07.2000.

2.3 Subsequently, the petitioner was posted in Doon Hospital w.e.f. 01.08.2000. The Govt. of Uttarakhand issued final seniority list on 30.09.2009 in which the date of appointment of the petitioner has been shown as 27.04.1991 and his seniority was being counted w.e.f. 09.09.1992. However, his service was being counted from 18.05.1994.

2.4 The petitioner was promoted to the post of Senior Medical Officer in the Grade Pay of Rs. 6600 on 03.12.2010 and on the post of Joint Director on 28.11.2011 in the Grade Pay of Rs. 8700/- He applied for Voluntary Retirement vide his letter dated 11.07.2015 in view of his failing health. He underwent angioplasty on 03.12.2016 and again requested for Voluntary Retirement on 31.03.2017.

2.5 The application of Voluntary Retirement was resubmitted after correcting the shortcomings pointed by the respondent authorities on 01.05.2017. The petitioner was again posted to B.D. Pandey Hospital, Nainital from Doon Hospital on 14.10.2016 which he joined on 06.06.2017.

2.6 The petitioner applied for leave on 06.06.2017 for some court related matter and other domestic works. He applied for leave from time to time on medical grounds as well as for personal matters also. In the meantime, he pursued the request for Voluntary retirement also. The State Govt. vide letter dated 09.04.2018 informed that granting VRS to the petitioner is not possible. The petitioner again requested Principal Secretary, Medical Health and Family Welfare, Uttarakhand, Dehradun on 07.01.2020 stating therein that his health was not keeping well and he has undergone angioplasty also. His condition is not allowing him to work and he requested to sanction his VRS application. He again submitted a representation on 21.04.2020. In the meantime, there was a notice published in the newspaper that 125 doctors in the Uttarakhand Cadre were absent from their places of postings for many years. The name of the petitioner was also there. These doctors were

asked to submit their replies explaining the reasons for their absence.

2.7 The petitioner submitted the explanation in pursuance of the notice of the Govt. The petitioner was transferred to B.D. Pandey Hospital, Nainital in June 2017 and after submission of explanation, he was allowed to join on 02.07.2020 in view of the Govt. Order dated 23.03.2020 to control Covid-19.

2.8 The petitioner while joining submitted several medical certificates which were issued in support of absence from duties for different periods. He was subsequently asked to appear before the Medical Board for fitness certificate. Petitioner accordingly appeared before the Regional Medical Board on 15.09.2020.

2.9 The respondent no. 4 forwarded the matter for grant of Medical/Earned leave of the petitioner to the respondent no. 3 for the following periods-

14.06.2017 to 26.06.2017	Medical Leave and Fitness certificate of 27.06.2017
04.07.2017 to 10.07.2017	Medical Leave
11.07.2017 to 31.07.2017	Earned Leave (on medical leave)
01.08.2017 to 14.08.2017	Medical Leave and Fitness certificate of 15.08.2017
21.08.2017 to 29.08.2017	Medical Leave and Fitness certificate of 30.08.2017

2.10 The respondent no. 3 kept the leave matter for the period from 14.06.2017 to 29.08.2017 for 64 days pending and instead of sanctioning, forwarded to respondent no. 2 mentioning that the petitioner had applied for further leave from 01.09.2017 to 01.07.2020 for 1035 days which will be sent to competent authority. On representation to sanction his leave, the matter was sent to the Govt. The Govt. vide order dated 04.06.2021, sanctioned break in service in respect of entire period of absence of 1099 days. On representation against the aforesaid order, on 21.02.2017, the petitioner has mentioned that he had 300 days E.L. and 263 days Medical Leave in his leave account and requested to review the

order dated 04.06.2021 of the Govt. He submitted the reminders on 28.07.2021 and 03.05.2022.

2.11 The petitioner was discriminated in granting VRS on ground of his ill-health. Whereas, one Dr. B.C. Joshi, Cardiologist, earlier working in B.D. Pandey, Hospital was given VRS in 2016. The Govt. cancelled the order dated 04.06.2021 of break-in service and issued the order for granting extra-ordinary leave for the entire period of absence of 1099 days vide order dated 26.07.2022.

3. Short Counter Affidavit followed by a detailed C.A./W.S. has been filed on behalf of the respondents, in which, it has been stated that-

3.1 याची का स्वैच्छिक सेवानिवृत्ति को आवेदन पत्र शासनादेश दिनांक 09.04.2018 द्वारा निरस्त कर निस्तारित कर दिया गया। याची द्वारा लम्बी अवधि तक अपने कार्य पर वापस नहीं आने के कारण तथा अनधिकृत रूप से अनुपस्थित रह। दिनांक 20.04.2020 को अनुपस्थित चिकित्सा अधिकारियों के सम्बन्ध में समाचार पत्रों में प्रकाशित सूची में भी उनका नाम अंकित था। वादी डा० के०बी० जोशी दिनांक 14.06.2017 से 01.07.2020 के मध्य कुल 1099 अनुपस्थित थे। उत्तराखण्ड शासन द्वारा उक्त अनुपस्थित अवधि को शासनादेश दिनांक 04.06.2021 द्वारा 'सेवा में व्यवधान' घोषित किया गया।

3.2 उत्तराखण्ड शासन द्वारा शासनादेश दिनांक 26 जुलाई, 2022 द्वारा सम्यक विचारोपरान्त शासनादेश दिनांक 04.06.2021 को निरस्त करते हुये वादी की कुल अनुपस्थित अवधि 1099 दिनांक को संगत अवकाश नियमों के अंतर्गत असाधारण अवकाश (अवैतनिक) स्वीकृत किया गया है। वादी डा० के०बी० जोशी को राजकीय सेवा में साधारण ग्रेड नियमित चिकित्सा अधिकारी के रूप में उनके प्रथम योगदान की तिथि से नियमानुसार समस्त सेवा लाभ (यथा वार्षिक वेतन वेतनवृद्धि, ए०सी०पी०/एस०ए०डी०सी०पी०, पेशन तथा अन्य सेवानिवृत्तिक लाभ) प्रदान किये गये हैं। पूर्व में दिये गये प्रस्तरों में अंकित विवरण के अनुसार उत्तराखण्ड शासन के शासनादेश दिनांक 30.09.2009 द्वारा प्रख्यापित अंतिम वरिष्ठता सूची के अनुसार डा० के०बी० जोशी की वरिष्ठता दिनांक 27.04.1991 से निर्धारित करते हुये वरिष्ठता सूची में उनका वरिष्ठता क्रमांक 347 निर्धारित किया गया है। उक्त वरिष्ठता क्रमांक के अनुसार डा० के०बी० जोशी को नियमानुसार देय सभी पदोन्नतियों प्राप्त हुई हैं। वादी दिनांक 09. 09.1992 से

17.05.1994 तक तदर्थ (Ad hoc) चिकित्सा अधिकारी के रूप में कार्य कर रहे थे अतः इस अवधि में उन्हें वित्तीय आदि सेवा लाभ देय नहीं है। विभाग में वर्ष 2015 से वर्ष 2018 तक कुल 02 बार सीधी भर्ती के माध्यम से साधारण ग्रेड चिकित्साधिकारियों का नियमित भर्ती हेतु चयन किया गया। परन्तु किसी भी भर्ती में कार्डियोलॉजिस्ट प्राप्त नहीं हुये हैं। अतः राज्य सरकार द्वारा सम्यक विचारोपरान्त कार्डियोलॉजिस्ट की कमी के कारण वादी डा० के०बी०जोशी का स्वैच्छिक सेवानिवृत्ति सम्बंधित आवेदन पत्र शासनादेश दिनांक 09.04.2018 द्वारा निरस्त कर निस्तारित किया गया है। याची की याचिक सव्यय अस्वीकार होने योग्य है।

4. Heard learned Counsel for the petitioner and learned A.P.O. for respondents no. 1 to 4.

5. Learned Counsel for the petitioner argued that the petitioner was appointment on the post of the medical officer on 27.04.1991. He was reappointed on as he took leave to complete his postgraduation degree from Gorakhpur on 30.04.1994. The petitioner was posted at Nainital from 2017 till his retirement. The matter pertaining to his leave is of the period from 14.06.2017 to 28.08.2017 and 01.09.2017 to 01.07.2020. The petitioner has applied for the leave whenever he left his place of posting, sometimes he extended the leave and in support of the request for extension of leave he submitted the medical certificates. The medical certificates are duly countersigned by the competent authority. No reason has been given while refusing the admissible medical leave of 263 days. Since the petitioner was not keeping well, he requested for voluntary retirement, which was turned down. Even leave of 64 days which should have been sanctioned by the Principal Medical Superintendent of the District Hospital, Nainital has not been sanctioned instead the matter was forwarded by the Principal Medical Superintendent to the Director General, Medical Health and Family Welfare, Uttarakhand.

Neither impugned order dated 26/7/2022 nor the Govt. notings indicate any reason for not granting of the medical leave of

263 days with salary to the petitioner. The petitioner after absence of 1035 days at different intervals joined on 02/7/2020 and thereafter served the department for 2 years, that also served the ground for the petitioner to claim 263 days of medical leaves with salary. Director General, Medical Health and Family Welfare also forwarded the same to the Government. He has requested for sanctioning 1099 days leave (566 days and 263 days of Half pay leave) to the Government through Principal Medical Superintendent, B.D. Pandey, District Hospital. He has not been given any increment for the period from 2017 to 2022 during period he worked till his retirement. Due to non-sanctioning of the leave in time the leave to be decided accumulated to 1099 days (EL and Half Pay leave). The respondent authority initially sanctioned break in service for the entire period of leave requested but that was modified as leave without pay. The petitioner has retired on 30.05.2022. He has been paid unutilized leave of 300 hundred days. So the petitioner is not pressing for sanctioning of Earned Leave but 263 days of the half pay leave only along with the increments also.

6. Learned A.P.O. has argued that the Government has already sanctioned leave without pay for the period of absence of 1099 days. The petitioner has retired and he has been sanctioned leave encashment for 300 days after retirement after taking into consideration the total leave including the Half Pay leave accumulated in his leave account. Now nothing is due for the payment to the petitioner. Whether the medical certificates justified his absence or not has been decided while granting extra ordinary leave of 1099 days. So the petition is liable to be dismissed.

7. Based on the arguments of the parties and the documents placed, we find that the petitioner remained absent on medical grounds and other reasons. The request for the leave has been duly recommended by the Principal Medical Superintendent, Govt. B.D. Pandey District (Male) Hospital, Nainital and the Director General,

Medical Health and Family Welfare Department, Uttarakhand. The petitioner has pressed for sanctioning of half pay leave of 263 days as the petitioner has retired and he has been paid the unutilized of 300 days. Since the petitioner has retired and his leave matter stands closed, in such situation, the respondent authorities are supposed to review the matter of sanctioning medical leave to the petitioner.

8. The application for medical leave was accompanied by the medical certificates which has been duly countersigned by the Competent Authority. The Director General, Medical Health and Family Welfare, Uttarakhand has recommended to Government for sanctioning of the leave to the petitioner, so it can be understood that he was satisfied with the medical certificates submitted by the petitioner in support of his application for sanctioning of leave on medical grounds.

9. The provision of medical leave as mentioned in the Financial Hand Book clearly mentions that sanctioning of the leave is at the discretion of the appointing authority, which is supposed to ensure the genuineness of the medical certificates submitted by the applicant. The same has not been considered by the competent authority but the higher officers recommended the leave meaning thereby that they agree with the genuineness of the reason for the absence and the medical certificates were supporting the same. Had the half pay leave been sanctioned before retirement, they would not have lapsed.

10. In view of the above, we hold that even the controlling officer of the petitioner did not sanction the leave for 64 days for which he/she was competent to sanction. Non-sanctioning of leave has put the petitioner in financially disadvantageous position. The competent authority should sanction half pay leave of 263 day to the petitioner out of extra-ordinary leave of 1099 days of sanctioned vide order dated 26.07.2022 and rest of the period will be

sanctioned as extra-ordinary leave. Since the petitioner has retired, the reliefs other than sanctioning of half pay leave sought by the petitioner have no relevance now.

11. In view of the facts mentioned above, the claim petition is disposed of by directing the respondent authority to review the order dated 26.07.2022 and to sanction half pay leave of 263 days to the petitioner out of extra-ordinary leave of 1099 days sanctioned vide aforesaid order. No order as to costs.

A.S. RAWAT
VICE CHAIRMAN (A)

DATED:MAY 28, 2025
DEHRADUN
RS/KNP

RAJENDRA SINGH
VICE CHAIRMAN (J)