

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 30/SB/2022

Tarun Kumar, aged about 52 years, s/o Late Sri Dishondi Ram, presently posted on the post of Constable at Police Line District Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Deputy Inspector General of Police, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Haridwar.

.....Respondents

Present: Sri V.P.Sharma & Sri Abhishek Cahmoli, Advocates for the petitioner.
Sri V.P.Devrani, A.P.O. for the Respondent No.1.

JUDGMENT

DATED: MARCH 02, 2022

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks the following reliefs:

- (i) The impugned order Annexure: A-1 dated 02.03.2021 may kindly be declared void, illegal, against fundamental, constitutional, civil right of the petitioner, rules, orders and principles of natural justice and my kindly be quashed and set aside.

(ii) The Hon'ble Tribunal may kindly quash and set aside the appellate order dated 17.12.2021, Annexure: A-4 of this claim petition.

(iii) The Hon'ble Tribunal may kindly quash and set aside the suspension order dated 14.11.2019, Annexure: A-5 and revocation order dated 07.01.2020, Annexure: A-6 and allow full salary for suspension period from 14.11.2019 to 07.01.2020.

(iv) The show cause notice dated 05.08.2020, Annexure: A-7 and another show cause notice dated 05.08.2020, Annexure: A-8 are wrong, hypothetical and are liable to be quashed and set aside because absence shown is from 07.05.2019 to 03.12.2020 and notices issued on 05.08.2020 for absence from 07.05.2019 to 03.12.2020. The total days come to 575 and days of absence are shown as 178 days 14 hours.

(v) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Petitioner was posted as Constable in P.S. Kotwali, Jwalapur, Haridwar. He was directed on 07.05.2009 to go to Chamoli on *Yatra* Season duty, but he refused. Allegedly, he misbehaved with Inspector In-Charge, Jwalapur, submitted his resignation and went to his residence at Dehradun. After unauthorized absence of 178 days 14 hours, he gave his joining in Police Lines, Haridwar, on 03.12.2020. A show cause notice was given to him, as to why censure entry be not awarded to him. Another show cause notice was given to him for 'no work no pay' during the period of his unauthorized absence. He submitted his replies. Disciplinary authority was not satisfied with the same. Consequently, two orders were passed against him. Firstly, he was granted leave without pay on the principle of "no work no pay" for his unauthorized absence of 178 days +, *vide* order dated 02.03.2021 (Annexure: A1); secondly, he was awarded 'censure entry' for the misconduct, *vide* order dated 06.11.2019 (Annexure: A-2), which shall be dealt with subsequently in last part of this judgment.

2.1 Petitioner preferred departmental appeal against the order of 'leave without pay' on the principle of "no work no pay". Deputy Inspector General of Police, Garhwal Range, *vide* order dated 17.12.2021 (Annexure: A-4) did not find force in petitioner's appeal. Such appeal was, therefore, dismissed. Petitioner has challenged both the orders dated 02.03.2021 (Annexure: A-1) and 17.12.2021 (Annexure: A-4) in present claim petition.

3. Ld. Counsel for the petitioner has highlighted various anomalies in Annexure: A-1 and Annexure: A-4. The main submissions of Ld. Counsel for the petitioner, as have been highlighted in the claim petition, are as follows:

4.2 (i) Show cause notice N-142/2019 was issued on 05.08.2020 and in this notice absence was shown from 07.05.2019 to 03.12.2020. How can it be possible that on 05.08.2020 the further absence was shown from 07.05.2019 to 03.12.2020. There the show cause notice itself is wrong and liable to be quashed. A copy of show cause notice dated 05.08.2020 for purpose of punishment is liable to be quashed. A copy of show cause notice is annexed as Annexure: A-7 of this claim petition.

4.3 That the other show cause notice N-142/2019 dated 05.08.2020 issued under which absence was shown from 07.05.2019 to 03.12.2020 for 178 days and 14 hours and pay is not payable on the principle of no work no pay. How can the further absence be shown up to 03.12.2020 on 05.08.2020. A copy of show cause notice is annexed as Annexure: A 8 of this claim petition.

4.4 That show cause notices are also wrong, the absence from 07.05.2019 to 03.12.2020 for 178 days and 14 hours. Whereas the period from 07.05.2019 to 03.12.2020 comes 575 days as follows:

Days	Months
24	May 2019
30	June 2019
31	July 2019
31	August 2019
30	September 2019
31	October 2019
30	November 2019
31	December 2019
31	January 2020
29	February 2020
31	March 2020
30	April 2020
31	May 2020
30	June 2020
31	July 2020
31	August 2020
30	September 2020
31	October 2020
30	November 2020
03	December 2020

4. In show cause notice dated 05.08.2020, (Annexure: A-7) also, the period of unauthorized absence has been shown from 07.05.2019 to 03.12.2020, which comes out to be 575 days, whereas insinuation depicts that he remained absent from duty for 178 days 14 hours. Same period of

absence has been shown in appellate order dated 17.12.2021 (Annexure: A-4). There is error apparent on the face of record. There appears to be material injustice. Ld. Counsel for the petitioner, therefore, seeks and is granted liberty to file statutory revision under Rule 23 of the Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991, which reads as under:

“23. Revision—(1) An officer whose appeal has been rejected by any authority subordinate to the Government is entitled to submit an application for revision to the authority next in rank above by which his appeal has been rejected within the period of three months from the date of rejection of appeal. On such an application the powers of revision may be exercised only when, in consequent of flagrant irregularity, there appears to have been material injustice or miscarriage of justice :

Provided that the revising authority may on its own motion call for and examine the records of any order passed in appeal against which no revision has been preferred under this rule for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit :

Provided further that no order under the first proviso shall be made except after giving the person effected a reasonable opportunity of being heard in the matter. (2) The procedure prescribed for appeal applies also to applications for revision. An application for revision of an order rejecting an appeal shall be accompanied by a copy of the original order as well as the order of appellate authority.”

5. Delay, if any, in filing the application for revision may be condoned in the interest of justice (*although there is no delay, as on date*). If such statutory revision is filed, it is expected that the same shall be decided at the earliest possible, without unreasonable delay, but only in accordance with law.

* * *

6. Since necessary documents required for deciding this claim petition are available on the file including the departmental version (Copy: Annexure- A 1) along with other papers, therefore, the Tribunal does not think it necessary to grant time to Ld. A.P.O., as prayed for by him, to file C.A./W.S. Ld. Counsel for the petitioner submitted that the claim petition may kindly be decided at the admission stage, inasmuch as the facts are not in

dispute and it can be decided on law points only.

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7. Censure entry, which was awarded to the petitioner by the disciplinary authority has been set aside in departmental appeal by learned Inspector General of Police, Garhwal Range, *vide* order dated 31.08.2020 (Annexure: A-3). Inference was drawn by learned appellate authority that since the appellant-petitioner was above 49 years of age, therefore, he ought not to have been sent on season duty. It was also inferred by learned appellate authority that there was no evidence of misbehavior allegedly committed by the petitioner against S.H.O. Kotwali. Departmental appeal was allowed. Order dated 06.11.2019 of SSP, Haridwar (Respondent No.3) for awarding censure entry in the service record of the petitioner was, accordingly, set aside (by the Ld. Appellate Authority).

8. Order dated 14.11.2019 (Annexure: A-5) indicates that the delinquent petitioner was suspended in contemplation of departmental proceedings. During suspension period, he was attached to Police Lines, Haridwar. *Vide* order dated 07.01.2020, petitioner's suspension order was revoked (Annexure: A-6) by the disciplinary authority. In this way, petitioner's services were suspended for about 52 days. When it has been held by disciplinary authority, that sending of petitioner on 'Yatra Season Duty' was bad, which order was set aside, therefore, by the same analogy and reasoning, the suspension order is also set aside. In other words, when order of disciplinary authority of censure entry awarded to the petitioner was set aside by the appellate authority, the suspension order automatically stands set aside. It was indicated in order dated 07.01.2020 (Annexure: A-6) that separate order will be passed regarding salary and allowances of the petitioner during suspension period, which order, it appears, was never passed.

9. Para 54-B, Financial Handbook, Vol. II, Part 2 to 4, reads as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension,

the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

[*Emphasis supplied*]

9.1 Para 54-B Financial Handbook (*supra*), therefore, provides that when a Govt. servant, who has been suspended, is reinstated, the authority competent to order reinstatement, shall consider and make a specific order regarding pay and allowances to be paid to the Govt. servant for the period of suspension ending with reinstatement and whether or not the said period shall be treated as a period spent on duty.

9.2 In the instant case, the ‘misconduct’ for which the ‘censure entry’ was awarded to the petitioner, has since been set aside by learned appellate authority, therefore, the disciplinary authority should feel no difficulty in passing the orders that the petitioner shall be paid all the pay and allowances during suspension period minus the pay and allowances already paid to him during such period and the said period shall be treated as a period spent on duty, if the same is not covered under the period of unauthorized absence.

10. Respondent No.3, SSP, Haridwar is, accordingly, directed to pass appropriate orders regarding release of salary and allowances, which were withheld during the suspension period. The same may be done within eight (08) weeks of presentation of certified copy of this order.

11. The claim petition is, accordingly, disposed of at the admission stage. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 02, 2022
DEHRADUN

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