

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

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 19/NB/SB/2025

Islamuddin (Male) aged about 60 years, Adhaar No. 279203723569, S/o Sri Itwari Hussain, R/o Ramangar Van Post Office & Tehsil Jaspur, Udham Singh Nagar

..... Applicant/Petitioner

Versus

1. State of Uttarakhand, through Principal Secretary Transport, Dehradun.
2. Uttarakhand Transport Corporation, Dehradun through its Managing Director Head Quarter U.C.F. House Deep Nagar Road Vishnu Vihar, Dehradun.
3. General Manager (Karmik) Uttarakhand Transport Corporation, Parivahan Bhawan, Kulhan Road, Dehradun.
4. Divisional General Manager (Operation) Uttarakhand Transport Corporation, Kathgodam, District Nainital.
5. Assistant General Manager, Kashipur Depot, Uttarakhand Transport Corporation, Kashipur, District Udham Singh Nagar.

..... Respondents

Present: Sri Subhash Joshi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondent
No. 1
Sri Prem Kaushal, Advocate for the respondents
No. 2 to 5

JUDGMENT

DATED : **03 JULY, 2025**

This claim petition has been filed seeking the following relief:-

- “(i). to issue a writ, order or direction appropriate in nature directing the respondents No. 2 to 5 to forthwith release the amount of the Gratuity of the petitioner alongwith interest as per Gratuity Act and also the amount of leave encashment after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.
- (ii). to issue order or direction appropriate in nature and direct the respondents to add his entire continuous service w.e.f. 1998 to till his superannuation, i.e., 28.02.2025

as regular service for the purpose of calculating gratuity and other admissible dues and pay the same alongwith 18% interest after calling the records.

- (iii) to issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. In brief, the facts of the case are that the petitioner was appointed as Conductor in June 1998 as contract service against substantive and vacant post and thereafter, continuous un-break service of 15 years, his services were regularized on the post of Conductor w.e.f. 16.12.2013. Thereafter, the petitioner was promoted on the post of Booking Clerk in the month of March, 2024. During the service tenure, the work and conduct of the petitioner was appreciated by his Higher Authorities. When the petitioner was posted under Mr. Anil Kumar Saini, Assistant General Manager, Kashipur Depot, then Mr. Manish Agarwal made complaint against Mr. Anil Kumar Saini in Vigilance Department of Uttarakhand. On the complaint of Mr. Manish Agarwal the Trap Team of Vigilance arrested Mr. Anil Kumar Saini red handed. Mr. Manish Agarwal, who is bus owner in his complaint specifically only named Anil Kumar Saini

that he demanded money from him and there is no mention of the petitioner in the compliant, thus, the Trap Team only arrested Mr. Anil Kumar. During investigation, it was found during the conversation between Manish Agarwal and Mr. Anil Kumar in the voice recorder, the voice of the petitioner was also traced and on the request of the investigation, the learned Special Trial Court Case Crime No. 15 of 2024 "State Vs. Anil Kumar Saini" called the petitioner for submitting his voice sample and on the direction of the learned Court, the petitioner had appeared before the learned Court and submitted his sample and the trial is going on. The respondent No. 3 vide its order dated 29.01.2025 just before one month of the superannuation of the petitioner, i.e., 28.02.2025 directed the respondent No. 4 to initiate disciplinary proceedings against the petitioner pursuant to the criminal case pending. Thereafter, the respondent No. 4 vide its order dated 04.02.2025 suspended the petitioner and attached the petitioner in his office. In the order of suspension it was observed that department proceedings will be initiated separately by giving charge-sheet. But till his superannuation no disciplinary proceedings were initiated against the petitioner and no charge-sheet was issued and vide order dated 28.02.2025, the petitioner

was superannuated from service, but due to condition that this retiral dues will be released after the disposal of his case by the respondent No. 4, till date the respondents have not released the retiral dues of the petitioner. such as, EPF pension, Gratuity, Leave Encashment, Group Insurance and other admissible dues.

2.1. Hon'ble Apex Court in the case of State Bank of India & others Vs. Navin Kumar Sinha, Civil Appeal No. 1279 of 2024 and in the case of Dev Prakash Tiwari Vs. U.P. Cooperative Institutional Service Board, Lucknow and others Civil Appeal No. 5848-49 of 2014, and also the judgment of the Hon'ble Allahabad High Court in the case of Brahmanand Tyagi Vs. State of U.P. and others in which the Hon'ble High Court has held that **“once service is not pensionable under Regulation 47 of Regulations 1984, no action be taken against him under Article 351A of CSR or any other rule adopted by respondents under Regulation 43 of Regulation, 1984.”**

2.2. In the present case, the post from which the petitioner was superannuated is non-pensionable post and only a meager EPF pension is admissible to him.

2.3. In the present case, the respondent department till his superannuation has not served the charge-sheet to the petitioner and now, by taking advantage of the disciplinary proceedings are not paying the retiral dues of the petitioner, due to which, the petitioner is suffering from financial and mental agony.

2.4. Apart from that, the Section-7 of the Payment of Gratuity Act, 1972 provides for determination of amount gratuity and similarly Sub-Section-3A provides for interest for delayed payment of gratuity.

2.5. Another aspect of the matter is counting of service discharge as daily wager/temporary/contract/work-charge service for the purpose of pensionary benefits such as Gratuity. Since in this respect now, the law was settled by the Hon'ble Apex Court that any temporary service followed by regularization means that the same was on a substantive and permanent post, the case of the petitioner for counting of service is squarely covered with the case of Prem Singh, which was followed by this Hon'ble Tribunal in various cases. The act of the respondents amounts to social

pollution and against the public policy. The act of respondents is also violative to Section-23 of the Contract Act and depriving the petitioner from advancement in service as per time framed is also violative to principles of natural justice. The act of the respondents is against the principle of natural justice as well as infringement of fundamental rights as enshrined under Article 14, 16 and 21 of the Constitution of India.

3. Counter Affidavit has been filed on behalf of the respondents No. 2 to 5 by Sri Prem Kaushal, Advocate, in which, it has been stated that:-

3.1. Against the claimant, the disciplinary proceedings are proposed on the following charges:-

- (i). Director Vigilance, Vigilance Directorate, Uttarakhand, Haridwar Bypass, Kargi Road, Dehradun by letter No. A.S.P. No./S.A./Trap-20/2024/2475 dated 28.10.2024, due to receipt of sufficient evidence regarding the involvement of the petitioner Shri Islamuddin, Clerk, Uttarakhand Transport Corporation, Kashipur in demanding bribe, under Section-19 of

Prevention of Corruption Act, under Section-7 of Prevention of Corruption Act, 1988 (Amendment Act, 2018), recommendation was made to the Uttarakhand Government to prosecute in the Hon'ble Competent Court.

- (ii). Uttarakhand Government by its order dated 11 December, 2024, sent a photocopy of letter No. A.S.P. No./S.A./Trap-20/2024/2475 dated 28.10.2024 alongwith attachments to the Uttarakhand Transport Corporation by Suspect Vigilance, Vigilance Directorate, Uttarakhand, Haridwar Bypass, Kargi Road, Dehradun and directed the Uttarakhand Transport Corporation to take further necessary action in the case as per rules.
- (iii). General Manager (Personnel), Uttarakhand Transport Corporation, Headquarters, Dehradun issued a letter No. 11, dated 29th January, 2025 to Divisional Manager (Operations) Kathgodam to ensure disciplinary

action against the petitioner Shri Islamuddin, Booking Clerk, Kashipur Depot.

- (iv). Divisional Manager (Operations), Uttarakhand Transport Corporation, Kathgodam by order No. 433 dated 04 February, 2025 by by the petitioner Shri Islamuddin, Booking Clerk, Kashipur Depot, on the complaint of the complainant contracted bus owner, in the investigation done by the Trap Team of Vigilance Establishment, Sector Nainital, Haldwani, the petitioner was found involved in demanding bribe, tarnishing the image of the Corporation contrary to the duties and responsibilities of his post, found involved in corruption during duty and on the basis of the complaint against the rules, the petitioner Shri Islamuddin. Booking Clerk, Kashipur Depot, was immediately suspended.

3.2. Due to the involvement of the petitioner Shri Islamuddin in the corruption of demanding bribe from the

contracted bus owner, currently a case under Section-19 of the Prevention of Corruption Act, Crime No. 15/2024, Section-7 of the Prevention of Corruption Act, 1988 (Amendment 2018) is in progress at the level of Vigilance Establishment. In such a situation, it is not appropriate to pay the dues to the petitioner after retirement, as the petitioner has been found involved in corruption, which has been confirmed by the Vigilance Establishment. Further decision regarding the dues of the petitioner will be taken only after the completion of the proceedings at the level of Vigilance Establishment.

3.3. The grounds raised for payment of dues and the claim petition filed in the Hon'ble Tribunal on those grounds are not acceptable on the basis of the case mentioned in the report.

4. Learned Counsel for the petitioner does not wish to file Rejoinder Affidavit to the Counter Affidavit filed on behalf of the respondents No. 2 to 5 by Sri Prem Kaushal, Advocate, Respondent Corporation.

5. During the arguments, the Learned Counsel for the petitioner emphasized that the petitioner was neither arrested under the prevention of Corruption Act, 1988 alongwith the main

accused in the matter, nor has he ever received any formal order as a suspect from the side of Investigating Officer, or has ever been charge-sheeted in the matter, though this criminal case was initiated in the January 2025. The petitioner had been called by the Investigating Officer only for giving his voice sample and nothing else. Even then, the petitioner was suspended by the respondent Corporation just one month prior to his superannuation on the basis of suspicion of petitioner's connivance with the main accused Mr. Anil Kumar Saini. Though the petitioner has superannuated on 28.02.2025, his retiral benefits have not been released by the respondent Corporation as yet. Learned Counsel for the petitioner admitted that the petitioner's service is non-pensionable, however, he is entitled for other retiral dues like gratuity; leave encashment etc., which cannot be procrastinated by the respondent Corporation on the basis of suspicion regarding the above mentioned criminal case. Even during the suspension pending enquiry it should not have been retained. And now, after the petitioner's superannuation, the suspension pending enquiry is already infructuous. Therefore, his retiral dues must be released urgently. Learned Counsel for the petitioner also attracted the Tribunal's attention

towards second prayer of the petitioner to add his entire continuous service w.e.f. 1988 till the petitioner's superannuation on 28.02.2025 and the final payment must be sanctioned in favour of the petitioner alongwith an interest on 18% for the delayed period. Learned Counsel for the petitioner has relied upon the case of Civil Appeal No. 8251 of 2018 (Arising out of S.L.P. (Civil) No. 3852/2017 Union Bank of India and others vs. C. G. Ajay Babu and another dated 14th August, 2018 passed by the Hon'ble Apex Court .

6. Learned A.P.O. apprised the Tribunal that the Government is only a formal party and does not have stakes in this instant matter.

7. The Learned Counsel for the respondent Corporation has contended that apart from the criminal proceedings, a departmental enquiry is also going-on against the petitioner and this is the reason why the petitioner has not been given the retiral dues. Nonetheless, the petitioner too had not approached the Departmental Superior Officers previously through a well reasoned representation to that effect. According to him, the claim petition is pre-mature and leaves out the scope for the

petitioner to submit a detailed representation before the respondent Corporation, and then the matter could be decided as per the rules and landmark rulings as relied upon by the learned Counsel for the petitioner, if applicable.

8. Learned Counsel for the petitioner accepted the fact the petitioner had not submitted any representation earlier regarding the payment of retiral dues before the superior officers of the respondent Corporation.

9. After having perused the record, evidences and arguments of all the parties, this Tribunal opines that though this claim petition is pre-mature for adjudication, yet the petitioner should not be penalized for the mistakes of his Counsel. Therefore, in the interest of justice it seems appropriate to allow the petitioner to submit a detailed and well reasoned representation alongwith a certified copy of the judgment before the respondent Corporation praying for release of his retiral dues. The respondent Corporation must decide the petitioner's representation as per the existing rules and in accordance with various directions as given by the Hon'ble Apex Court in several landmarks rulings, if applicable. The matters of adding-up the

petitioner's services since 1998 with his confirmed service later on, for the purpose of calculation of retiral dues and payment of interest on the delayed payment MUST also be vividly and transparently decided in an unambiguous manner by the respondent Corporation in its decision upon the said representation.

ORDER

In accordance with the aforesaid conclusion of this Tribunal, the claim petition is partly allowed with a direction to the petitioner to file a detailed and well reasoned representation before the respondent Corporation within 30 days from the detailed judgment of this Tribunal, and the respondent Corporation, in turn, is directed to take an appropriate decision on the said representation within next 60 days' time period from the date of submission of a detailed representation submitted by the petitioner alongwith a certified copy of this judgment. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE : 03 JULY, 2025
NAINITAL
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