

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

CLAIM PETITION NO. 52/SB/2024

Sumit Kumar s/o Shri Ramesh Chand Khugsal, Sub Inspector, r/o House No. 91,
Shivpur, Kotdwar, Garhwal, Uttarakhand.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home, Uttarakhand, Subhash Road,
Dehradun.
2. Director General of Police, Headquarter Dehradun , Uttarakhand.
3. Deputy Inspector General of Police, Garhwal Range, Dehradun
4. Senior Superintendent of Police, Chamoli.

.....Respondents.

Present: Dr. N.K.Pant, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 12, 2025

Justice U.C.Dhyani(Oral)

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

“(i) Issue an order or direction calling for the record and to stop the recovery of salary from the petitioner immediately and set aside the order dated 03.06.2024 (Annexure no. 14).

(ii) Issue an order or direction calling for the record and to direct the respondent for payment of recovered amount of salary from the petitioner with market rate interest.

(iii) Issue any suitable claim, order of direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award the cost of claim petition to the Petitioner.”

2. Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Claim petition has been contested on behalf of respondents. Counter Affidavit has been filed on behalf of Respondents by Sri Amit Kumar, Deputy Superintendent of Police, Karanprayag, District Chamoli. Relevant documents have been filed in support of Counter Affidavits.

4. This is 3rd round of litigation between the parties. In order to understand the nature of dispute between the parties and for avoiding repetition of facts, it will be proper to reproduce the judgments rendered by the Tribunal on 09.01.2019 in Claim Petition No. 78/SB/2018 and on 23.11.2023 in Claim Petition No. 192/SB/2023, hereinbelow for convenience:

Judgment dated 09.01.2019 in Claim Petition No. 78/SB/2018:

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

“(i) To quash and set aside the impugned order dated 29.01.2018(Annexure No. A-1 to the claim petition) by which ‘censure entry’ has been awarded by the respondent no.3, in the service record of the petitioner, along with its effect and operation.

(ii) To quash and set aside impugned order dated 29.01.2018 (Annexure: A-2 to the claim petition) passed by Respondent No.2, for non- payment of salary for the period 2 years and 143 days on the ground of ‘no work no pay’ and special leave may kindly be granted to the petitioner at half pay for the period he was unable to report on duty.

(iii) To quash and set aside the appellate order dated 7.7.2019.

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

(v) To award the cost of this petition to the petitioner”

2. Facts, giving rise to present claim petition, are as follows:

When the petitioner was posted at Police Office, in District Chamoli, he proceeded on 26.07.2015, on 3 days’ casual leave. He could not resume his duty on 30.07.2015. He returned only on 18.12.2017, after a lapse of 2 years and 143 days. He remained absent during this period. Preliminary inquiry was instituted. The same was conducted by the Deputy Superintendent of Police, Chamoli, who, after inquiry, vide order dated 31.03.2017, found the petitioner guilty of not resuming duties for the aforesaid period. A ‘show cause notice’ was given to him on 26.12.2017, as to why ‘censure entry’ be not awarded in his character roll. The

notice was responded to by the petitioner on 15.01.2018. The explanation furnished by the petitioner was not found satisfactory and, therefore, 'censure entry' was awarded to him *vide* order dated 29.01.2018 (Copy: Annexure: A 1), under Rule 14 (2) of the Uttar Pradesh Police Officers of Subordinate Rank(Punishment & Appeal) Rules, 1991.

Subsequently, another show cause notice was given to him, on 26.12.2017, as to why his leave without pay be not sanctioned on the principle of 'no work no pay', which the petitioner responded to on 15.01.2018. The disciplinary authority/ appointing authority was, although, not satisfied with such explanation, but sanctioned the delinquent 2 years' and 143 days' leave without pay(LWP), on the principle of 'no work no pay'. This was also done *vide* order dated 29.01.2018 (Copy: Annexure: A-2). Aggrieved against the order of disciplinary authority, Annexure: A-1, the petitioner preferred departmental appeal. The appellate authority, *vide* order dated 07.07.2018 (Copy: Annexure: A-3) dismissed such an appeal. Aggrieved against the same, present claim petition has been filed by the petitioner.

3 Ld. A.P.O., defending the action of the department, at the very outset, submitted that, the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and the Court should not interfere with the punishment of 'censure entry' awarded to the petitioner by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.

4. Ld. Counsel for the petitioner submitted that the petitioner was suffering from Fibromyalgia, which is chronic disease and varies in intensity in fatigue and disturbance in sleep. It also creates memory problems. The common symptoms may include depression, anxiety, tension, migraine, headache, pelvic pain, irritable or overactive bladder, irritable bowel syndrome and gastrointestinal reflux disease. According to Ld. Counsel for the petitioner, the petitioner required complete bed rest and was unable to attend to his duties. Various prescriptions and medical certificates, issued from time to time, have been enclosed as per Annexure: A-4 (colly) to show that petitioner was suffering from Fibromyalgia and was advised complete bed rest at different intervals.

5. Ld. Counsel for the petitioner, at this stage of dictation, tendered apology on behalf of petitioner, on seeking instructions from his client. Ld. Counsel for the petitioner conceded that an absence of two years, 143 days from duty is, undoubtedly, inexcusable, but submitted that there was no *mala fide* on his part, as the petitioner was suffering from Fibromyalgia and, therefore, it was not possible for him to discharge his duties at Badrinath (District Chamoli) properly. Ld. Counsel for the petitioner also submitted that medical certificates (Annexure: A-4 Colly) have been filed to show that the petitioner was suffering from such disease, for which he was advised complete bed rest, from time to time. He is a resident of Kotdwar, therefore, he has filed medical certificates of a Doctor, practicing in Kotdwar. He resumed his duties at the same place from where he remained absent. In other words, he gave his joining in a remote area of Uttarakhand, when he was declared 'fit'. It is also pointed out that since then he is continuously doing his duties in the same district, i.e., District Chamoli, which means that for the last more than one year, the petitioner is continuously serving in the Hill District of Chamoli. According to Ld. Counsel, petitioner did not 'manipulate' his transfer to a plain district and is working faithfully since then. He is ready to forgo the salary for the period he remained absent from duty. He has not applied for medical leave. In his reply to the show cause notice, the petitioner stated that he has no objection, if his salary for two years, 143 days is withheld on the principle of 'no work no pay'. In the preliminary inquiry report (Annexure: A-5), it is found that the petitioner sought voluntary retirement on the ground that he was unable to continue with his services on account of familial and personal

reasons. Such an application for voluntary retirement, this Court has been informed, was not accepted by the authority concerned, and that is why he is continuing in the service. That appears to be a reason, as to why, the S.P. has 'accommodated' him by taking a lenient view and granting him only 'censure entry'. Ld. Counsel for the petitioner prayed that the 'censure entry' awarded to the petitioner should be substituted by 'warning', as censure entry entails civil consequences and it is not a case in which he should be asked to face those consequences.

6. The petitioner did not press challenge to Annexure: A-2 dated 29.01.2018, whereby 'leave without pay' has been sanctioned to him on the principle of 'no work no pay'. In other words, Ld. Counsel for the petitioner has 'not pressed' relief no.(ii) in the midst of this judgment.

7. The petitioner has come to the Court with clean hands. Although he remained absent from duty for more than two years, which appears to be unpardonable, but the fact remains that he was suffering from Fibromyalgia and, therefore, it was not possible for him to discharge his duties at Badrinath. According to the literature provided, Fibromyalgia is a chronic pain state in which the nerve stimuli causing pain originates mainly in the tissues of the body. A few unfortunate individuals have a congenital absence of pain sensation; they do not fare well due to repeated bodily insults that go unnoticed. His *bona fide* stems from the fact that he resumed his duties at the same place from where he remained absent. It has been brought to the notice of the Court that, for the last more than a year, he is continuously doing his duties in the same Hill District, which means that he has not 'manipulated' his transfer to a plain district, as is usually done by some unscrupulous employees. The matter does not end here. The petitioner is ready to forgo salary for the period he remained absent from duty. He has not applied for medical leave. In his reply to the show cause notice, he did not object to non-payment of salary on the principle of 'no work no pay', for the period he remained absent. Further, he sought voluntary retirement on account of familial and personal reasons, which was not accepted by the authority concerned. The circumstances suggest that there were compelling reasons for him not to continue with his services, and, therefore, his absence from duty for such a long period is pardonable. The ability to say 'sorry' is an attribute of the strong. It is the weak that tend to be defensive. Since, the disciplinary authority was conscious of these facts, therefore, such authority has awarded minimum minor punishment to the petitioner, which should further be mitigated by the Court, in the ends of justice.

8. Although Ld. A.P.O. submitted that 'warning' is not punishment, but the question which arises for consideration is- is it necessary to impose the punishment prescribed in the rules in each and every case? In normal circumstances, the Court should strictly adhere to the rules, unless it feels necessary, in special circumstances, to mellow down the rigour of the rule. This is one of those cases, in which, the Court feels that, instead of maintaining "Censure Entry", warning should suffice to the petitioner. This Tribunal is of the opinion that 'warning' should be sufficient to meet the ends of justice, in the peculiar facts of the case.

9. This Court is, therefore, of the opinion that the 'censure entry' should make way for 'warning' to the petitioner. In other words, censure entry should be diluted and the petitioner should be 'warned to be careful in future'.

10. Order accordingly.

11. While finding of 'misconduct' arrived at by the disciplinary authority, as affirmed by the appellate authority, is maintained, this Court finds cogent reasons, in the peculiar facts of the case, to substitute the minor punishment of

‘censure entry’ awarded to the petitioner, with ‘warning’. ‘Censure entry’ is, accordingly, substituted with ‘warned to be careful in future’.

12 The claim petition thus stands disposed of. No order as to costs.”

Judgment dated 23.11.2023 in Claim Petition No. 192/SB/2023:

“Earlier, a petition being claim petition no. 78/SB/2018, Sumit Kumar vs. State of Uttarakhand & others, was decided by this Tribunal on 09.01.2019, in which, a finding of 'misconduct given by the disciplinary authority, as affirmed by the appellate authority, was maintained, but the Tribunal, in the peculiar facts of the case, observed that minor punishment of 'censure entry' awarded to the petitioner be substituted with 'warning'. In the subsequent decisions this Tribunal, on the strength of a decision of Hon'ble Supreme Court in Rajasthan Tourism Development Corporation Limited and Another Jai Raj Singh Chauhan, (2011)13 SCC 541, observed that the Tribunal cannot usurp the jurisdiction of disciplinary authority and cannot substitute its own discretion for the discretion of departmental authority in the matters of disciplinary proceedings. The Tribunal, in claim petition no. 78/SB/2018, had observed that the censure entry should be diluted, rigour of the rule should be mellowed down and petitioner should be 'warned to be careful in future'.

2. When the aforesaid claim petition no. 78/SB/2018 was decided, the petitioner did not press challenge to Annexure: A2 dated 29.01.2018, whereby leave without pay' was sanctioned to him on the principle of 'no work no pay. In other words, learned Counsel for the petitioner did not press relief no. (ii) in the midst of that judgment. Relief (ii) was as follows:

"(ii) To quash and set aside impugned order dated 29.01.2018 (Annexure: A-2 to the claim petition) passed by Respondent No.2, for non-payment of salary for the period 2 years and 143 days on the ground of 'no work no pay and special leave may kindly be granted to the petitioner at half pay for the period he was unable to report on duty."

3. Petitioner's salary of 2 years and 143 days was withheld on the principle of 'no work no pay'. The Advocate, who was representing the petitioner in claim petition no. 78/SB/2018 had submitted that the petitioner is ready to forgo the salary for the period he remained absent from duty. In his reply to the show cause notice, the petitioner stated that he has no objection, if the salary for two years, 143 days is withheld on the principle of 'no work no pay'. This has been observed by the Tribunal in para 5 of the judgment dated 09.01.2019 in Claim petition no. 78/SB/2018.

4. In a nutshell, as has been observed by this Tribunal in para 6 of the judgment dated 09.01.2019, the petitioner did not press challenge to Annexure No. A-2 dated 29.01.2018, whereby 'leave without pay' was sanctioned to him on the principle of 'no work no pay which is now challenged in present claim petition.

5. Learned A.P.O. submitted that when a particular relief has been relinquished by the petitioner in earlier claim petition, he is barred from pressing the same through fresh claim petition on the principle of 'constructive res-judicata'. In reply, Dr. N.K.Pant, learned Counsel for the petitioner submitted that it was not relinquishment and it is cardinal principle of law that a litigant should not be allowed to suffer on account of mistake, even if willful, committed by his lawyer.

6. The fact remains that a particular relief, which was not pressed earlier, is being pressed in present claim petition. Learned Counsel for the petitioner submitted that the petitioner will make a representation to the Senior Superintendent of Police, Chamoli (respondent no. 4), who should be directed, in the peculiar facts of the case, to consider adjusting the leave available in the account of the petitioner, against his period of absence. He submitted that

Financial Rules provide for the same. In reply, learned A.P.O. submitted that since the absence by the petitioner was deliberate, he had already forgone his claim earlier, therefore, such relief should not be granted to him. Learned A.P.O., however, has no objection, if a direction is given to respondent no. 4 to consider representation of the petitioner, in accordance with law.

7. Leave account of the employees is usually maintained in the Govt. departments. Leave is granted to a government servant only when the report regarding its admissibility is obtained from the authority maintaining leave account. The order sanctioning leave, indicates the balance Earned Leave, Medical Leave etc. at the credit of a government servant. Leave is not granted to a government servant, to whom a competent punishing authority decides to dismiss, remove or compulsory retire from the government service. Leave account of the petitioner also must have been maintained by the respondent department. The respondent no. 4 may, therefore, consider adjusting leave available in the account of the petitioner, as per rules.

8. Since the facts of the case are undisputed, therefore, claim petition is disposed of, at the admission stage, by requesting respondent no. 4 to consider adjusting leave available in the account of the petitioner, when he moves a representation to this effect, in accordance with law.

9. Till such representation is decided, which the petitioner should move within three weeks from today, the respondent no. 4 may also consider staying recovery from the salary of the petitioner, in the peculiar facts of the case, as per the decision rendered by the Hon'ble Apex Court in State of Punjab and others vs. Rafiq Masih, 2015(8) SRL SC, 234, which runs as below:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

[Emphasis supplied]

10. The claim petition thus stands disposed of, at the admission stage. No order as to costs."

5. Ld. Counsel for the petitioner submitted that petitioner will make a fresh representation to S.S.P., Chamoli, Respondent No.4, with new grounds, who may kindly be directed to decide the representation of the

petitioner in a time bound manner, in accordance with law. Ld. A.P.O. submitted that although petitioner's representations have earlier been decided, but, since it is an innocuous prayer, he has no objection if a direction is given to the authority concerned to decide the representation of the petitioner with new grounds, as per rules.

6. The claim petition is disposed of, with the consent of Ld. Counsel for the parties, by directing Senior Superintendent of Police, Chamoli, Respondent No.4, to decide the representation of the petitioner by a reasoned and speaking order, in accordance with law, as expeditiously as possible, and without unreasonable delay on presentation of certified copy of this order, along with fresh representation, enclosing the documents in support thereof.

7. Rival contentions are left open.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 12, 2025
DEHRADUN

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