

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 39/2011**

Tajbar Singh, S/o Sri Vishram Singh, R/o Ramanuj Sanskrit  
Vishwavidyalaya, Mukhiya Gali Bhupatwala, Hardwar, Post  
Hardwar, District Hardwar

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary Transport, Govt.  
of Uttarakhand, Secretariat, Dheradun,
2. Chairman, Uttarakhand Road Transport Corporation,  
Headquarters 117, Indira Nagar, Dehradun,
3. Assistant General Manager, Uttarakhand Road Transport  
Corporation, Kotdwar, District Pauri (Uttarakhand)

.....Respondents

Present: Sri V.P.Sharma, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondent no. 1

Sri Indrajeet Singh, Counsel  
for the respondents no. 2 and 3

**JUDGMENT****DATE: APRIL 07, 2014****DELIVERED BY SRI V.K. MAHESHWARI**

1. The petitioner has challenged the order of dismissal passed on 15.05.2008 by the Assistant General Manager, Uttarakhand Road Transport Corporation, Kotdwar.
2. The facts as stated in the petition are that the petitioner had joined the then U.P. State Road Transport Corporation at Hardwar on the post of Driver on 31.10.1981 and after creation of State of Uttarakhand, he continued in Uttarakhand and was posted at Kotdwar depot. The Divisional Manager, Uttarakhand Road Transport Corporation Kotdwar had issued a show cause notice on 04.03.2007 on the allegations of remaining absent from duty unauthorizedly, which was properly replied by the petitioner.
3. Again, the Assistant Divisional Manager, Kotdwar Depot had issued a show cause notice against the petitioner on 30.06.2007 on the allegations of remaining absent w.e.f. 15.5.2007 continuously. The petitioner had submitted reply to the show cause notice, but a charge sheet was issued against the petitioner by the abovementioned officer on 14.9.2007 in which the petitioner was shown absent w.e.f. 10.08.2007. Thereafter, the Assistant General Manager, Rishikesh was appointed as the enquiry officer, but the enquiry officer did not give any intimation to the petitioner regarding the enquiry; but the Assistant Manager, Kotdwar again issued a show cause notice on 3.01.2008 on the ground of remaining absent from duty, which was replied by the petitioner vide his explanation dated 17.01.2008. The petitioner was summoned for personal hearing on 29.1.2008, which was adjourned for 14.2.2008. On that day, the petitioner was not heard.

4. Again, the petitioner was called for personal hearing on 14.02.2008 and thereafter, a copy of enquiry report was supplied to the petitioner on 4.3.2008. The petitioner had requested the Appointing Authority for personal hearing, but he did not give any opportunity of personal hearing. Again a show cause notice was issued against the petitioner on 3.4.2008, which was also replied by the petitioner, but an arbitrary order was passed on 15.5.2008 by which the petitioner removed from the services. The petitioner, thereafter preferred a representation against the impugned order of removal from service before the Division Manager, Uttarakhand Road Transport Corporation, which was also dismissed on 2.2.2009. Thereafter the petitioner preferred a revision against the Chairman, Uttarakhand Road Transport Corporation which was also dismissed on 28.2.2011, Hence this petition.

5. The petitioner has challenged the order of removal from the services as well as orders passed on his representation and revision on the following grounds:

- i. That the petitioner had remained on duty and false charges were levelled against him for remaining absent,
- ii. That the petitioner has always been discharging his duties with sincerity and devotion and the petitioner has a family and there is no other source of income for the maintenance of the family. The petitioner has been falsely implicated in this case,
- iii. Therefore, the petitioner has requested for setting aside the impugned orders and reinstatement in service.

6. A written statement has been filed on behalf of the respondents no. 2 and 3 which was also adopted by the respondent no.1 and it has been stated that at the relevant time, the petitioner was posted at Kotdwar Depot as a Bus Driver and was habitual of remaining absent. The absence without prior permission is a gross

violation of Regulation No. 81(3) of Uttar Pradesh Road Transport Corporation Employees (other than Officers) Service Regulations, 1981. The Incharge, Kotdwar Depot had reported the absence of the petitioner w.e.f. 15.5.2007. Even in the month of April, 2007, the petitioner remained on duty only for four days. It is further reported that the petitioner has driven the vehicle in the month of January, 2007 for 2461 Km., in the month of February, 2007 for 2630 Km and in the month of March, 2007 for 1750 km only. The Depot incharge also reported that the petitioner was not taking interest in discharging his official duties. On the basis of that report, the petitioner was called upon to submit his explanation vide letter dated 23.4.2007. Thereafter, a charge sheet was issued against the petitioner on 30.06.2007, which was received by the petitioner on 9.8.2007, but he did not submit any reply and continued to remain absent without any intimation. He again absented himself w.e.f. 28.8.2007. So, again a show cause notice was issued against him on 11.9.2007 and was directed to submit his reply with the charge sheet issued against him. The petitioner neither reported on duty nor submitted any explanation. Thereafter, a fresh charge sheet was issued vide memo no. 3359 dated 14.09.2007. In response to this charge sheet, the petitioner had submitted a medical certificate issued by the medical officer, Hardwar in which the petitioner was advised to remain on leave w.e.f. 15.5.2007 to 31.5.2007 and 10.8.2007 to 30.09.2007. Except this medical certificate and the application of leave, the petitioner did not submit any reply to the charge sheet and he only stated that he will submit reply on being recovered from illness. Thereafter, the enquiry officer conducted the enquiry and enough opportunity for making defense was afforded to the petitioner. The enquiry officer found a charge against the petitioner proved so after considering of the enquiry report, the disciplinary authority has passed the impugned order and there is no illegality or illegality in the impugned orders. The revision has also been properly dismissed by a speaking a reasoned order, so the petition is devoid of merits and is liable to be dismissed.

7. A rejoinder affidavit has also been filed on behalf of the petitioner and facts as stated in the petitioner have been reiterated.

8. Numbers of documents have also been filed on behalf of the parties.

9. We have heard learned counsel for the parties at length and perused the record carefully.

10. First of all, it has been contended on behalf of the petitioner that petitioner is sincere employee and he remains on duty because of the illness he could not attend duty for some time for that he had submitted his medical certificates which were issued by the Govt. Medical Officer. Neither the enquiry officer nor Appointing authority had given any reasons for discarding the medical certificates. Discarding the medical certificates without any reason is not proper. On the other hand, it has been contended that the petitioner is habitual of having absent and he did not even bother to submit his reply. In the light of the rival contentions, it is revealed from the record that petitioner had submitted a medical certificate issued by the Govt. Medical Officer and the disciplinary authority while passing the impugned order of removal from service had considered this aspect also. The petitioner did not report for duty even after the duration of the medical certificate had expired. The disciplinary authority has considered this aspect in the following words:

“भेरे द्वारा प्रकरण पत्रावली का गहनतापूर्वक अध्ययन किया गया। चालक पर मुख्य आरोप दि० 15.05.07 से बिना सूचना के कार्य से अनुपस्थित रहने का है। इस सम्बन्ध में व्यक्तिगत सुनवाई के समय दि० 14.02.2008 को जब अनुपस्थित रहने का कारण चालक से पूछा गया तो चालक ने कहा कि वह दवाई लेने रूडकी चला गया था। जिसका उसने प्रमाण-पत्र प्रस्तुत किया है जबकि चालक द्वारा रूडकी के चिकित्सक का कोई प्रमाण-पत्र प्रस्तुत नहीं किया गया है। चालक का पत्र सं० 2305 दि० 23.04.07, पत्रांक: 2982 दि० 04.08.07, पत्रांक 3323 दि० 11.9.07 एवं पत्रांक 3628 दि० 22.10.07 उसके घर के पते पर भेजे गये, जिनमें पत्रांक 3323 दि० 11.09.07 को प्राप्ति स्वीकृत

ए०ड० पर चालक के हस्ताक्षर है एवं दि० 27.09.07 अंकित है जिसकी पुष्टि में दि० 14.02.08 को पूछे गये प्रश्न के उत्तर में चालक ने स्वयं स्वीकार किया है कि उस पर उसके हस्ताक्षर है तथा दि० 27.09.08 अंकित है जो चालक के कार्य से अनुपस्थित रहने की पुष्टि करता है। चालक ने दि० 01.10.07 को दि० 10.08.07 से 30.09.07 तक हरिद्वार चिकित्सालय का प्रमाणपत्र एवं फिटनेस प्रमाणपत्र वरिष्ठ केन्द्र प्रभारी, कोटद्वार के कार्यालय में दिया तथा दि० 01.10.07 से कार्य पर लेने का निवेदन किया, लेकिन फिर भी कार्य पर उपस्थित नहीं हुआ। चालक ने पूर्व में दिये गये कारण बताओ नोटिस सं० 5098 दि० 03.01.08 के उत्तर में उल्लेख किया है कि वह दि० 31.12.07 को जॉच कार्यवाही में शामिल नहीं हुआ तथा इस तिथि में वह घर से बाहर नहीं गया, जबकि दि० 14.02.2008 को जब प्रकरण में पुनः जॉच तिथि निर्धारित की गई तो पूछे गये प्रश्न के उत्तर में चालक ने कहा कि सूचना उसे मिली तथा वह दि० 31.12.07 को जॉच हेतु उपस्थित हुआ जिसकी पुष्टि में पत्रावली में उसके हस्ताक्षर है तथा दि० 31.12.07 अंकित है। इसके अतिरिक्त चालक द्वारा जॉच के समय रिपोर्टकर्ता से कोई जिरह करने अथवा बचाव में कोई गवाह आदि प्रस्तुत करने से भी मना किया गया। साथ ही उपरोक्त आरोप-पत्रों का कोई भी स्पष्टीकरण प्रस्तुत नहीं किया गया। प्रकरण में चालक के अपना बचाव पक्ष प्रस्तुत करने का पर्याप्त अवसर दिया गया तथा पूर्व में दिये गये कारण बताओ नोटिस को पत्रांक: 7040/गढ/ई०-3/अनुशा/08 दिनांक 29 जनवरी 2008 के द्वारा निरस्त करते हुए पुनः जॉच की गई, लेकिन चालक अपने बचाव में कोई साक्ष्य प्रस्तुत करने में असफल रहा। श्री ताजबर सिंह, चालक वर्तमान में भी बिना सूचना के कार्य से अनुपस्थित चल रहा है जिससे स्पष्ट है कि चालक निगम के कार्य करने का इच्छुक नहीं है। चालक को बिना सूचना के कार्य से अनुपस्थित रहने का दोषी पाया गया है तथा चालक कारण बताओ नोटिस में प्रस्तावित दण्ड का ही पात्र है।

अतः श्री ताजबर सिंह, चालक का अनुपस्थित अवधि का वेतन राज्यसात करते हुए चालक को निगम सेवा से पृथक किया जाता है।  
एतद्द्वारा प्रकरण का अन्तिम निस्तारण किया जाता है।”

Thus, the contention of the petitioner that he remained on duty and his medical certificate submitted by him was not considered has no force and no benefit can be extended to him on this ground. It is also pertinent to mention that as per the medical certificate submitted by the petitioner, he was declared fit for joining the duties by the doctor

on 01.10.2007, but even than he did not join the duty which reveals the malafides of the petitioner.

11. It has further been contended on behalf of the petitioner that the petitioner had always been discharging his duties sincerely and regularly, but this fact is not substantiated by any evidence. On the other hand, the main enquiry file has been submitted on behalf of the respondents. We have perused that record also carefully. In that record, copies of the character roll of the petitioner for the year 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 are appended. In all these years, the assessment of the petitioner has been remained either poor or adverse. In no year, the performance of the petitioner was assessed even as average. So, we do not find any force in the contention of the petitioner that he was discharging his duties diligently and sincerely. In this regards it was also contended that previous conduct of the petitioner can not be taken into consideration but we are not convinced with this contention as no new evidence has been taken into consideration rather these reports were already available on the record of enquiry.

12. It has further been contended on behalf of the petitioner that sufficient opportunity of hearing as well as personal hearing was not afforded to him but contention has been rebutted on behalf of the respondents. In the light of these contentions also, we have gone through the record carefully and have noticed that the petitioner had participated in the enquiry proceedings and questions were asked from him as well as from other witnesses on his behalf. Apart from it, it also transpires from the record that the petitioner did not even submit his reply of several notices issued against him. It is also clear from the record that copy of the enquiry report was supplied to the petitioner. A show cause notice was also issued to the petitioner before passing the impugned order of removal from service. Under the above circumstances, it becomes clear that the petitioner had participated in the enquiry and enough and sufficient opportunity of making defense was afforded to him. There is no violation on the part of the respondents of principles of natural

justice. The contention of the petitioner that sufficient opportunity of hearing was not afforded to him does not bear any force.

13. At last, it has also been contended on behalf of the petitioner that the impugned punishment is excessive and harsh. But keeping in view the conduct of the petitioner, the punishment does not seem to be harsh. Learned counsel for the respondents have also drawn our attention towards the principle laid down by Hon'ble Apex Court in Rajsthan Tourism Development Corporation Ltd. & others Vs Jairaj Singh Chauhan (2011) 13, SCC, 541. We have also gone through the above noted case and in this case, it is held that the courts cannot and should not substitute their punishment as penalty is already awarded by the disciplinary authority and it is the subjective satisfaction of the disciplinary authority. Keeping in view the above principle, we do not find any scope in interfering in the order of punishment.

14. On the basis of the above discussion, we are of the considered view that the petition has no force and is liable to be dismissed.

### **ORDER**

The claim petition is dismissed. No order as to costs.

Sd/-

**D.K.KOTIA**  
VICE CHAIRMAN (A)

Sd/-

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: APRIL 07, 2014  
DEHRADUN

KNP