

**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. 67/2010

Dr. Hiteshmani Sharma, S/o Shri Chandra Sekhar Sharma, R/o
Shyam Bhawan, Opposite Himalayan Public School, Arya Nagar,
Kashipur

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary Ministry of Chikitsa Anubhag, Dheradun,
2. Director, Ayurvedic avam Unani Services, Uttarakhand, Dehradun,
3. Divisional Ayurvedic Oficer, Champawat, Uttarakhand.
4. Divisional Ayurvedic Officer, Rudrapur, Udhamsingh Nagar, Uttarakhand.

.....Respondents

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

Sri Umesh Dhaundiyal, A.P.O.
for the respondents.

JUDGMENT

DATE: JUNE 16, 2014

DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)

1. Censure remark dated 7.8.2006 recorded in the character roll of the petitioner is under challenge in this petition. The petitioner has further prayed for the payment of salary for the

period of suspension (February, 2006 to August 2006) along with interest @ 18%.

2. The facts giving rise to this petition are that the petitioner was posted as Regional Ayurvedic & Unani Medical Officer, Udham Singh Nagar in the year 2005. One Dr. Rashmi Bala posted as Incharge Medical Officer in Government Ayurvedic Hospital, Lalpur, Udham Singh Nagar was under the subordination of the petitioner. It is said that the petitioner had submitted a false and baseless report regarding the Dr. Rashmi Bala on the basis of which her pay for the months of April, 2005 was stopped. Moreover, the petitioner had submitted report for granting the time bound pay scale to Dr. Rashmi Bala with the delay of one year. On the complaint of Dr. Rashmi Bala, the act of the petitioner was found to be malafide, therefore, the petitioner was put under suspension vide order dated 27.1.2006 and departmental action was initiated. On the conclusion of the departmental proceedings, the petitioner was found guilty and a censure remark was recorded in his character roll vide order dated 6.8.2006 (Copy Annexure 16-B). Though the petitioner was reinstated in the month of August, 2006, but salary was not paid to him for the period of suspension Hence, the petitioner has preferred this petition for the above mentioned reliefs.

3. The petitioner has challenged the departmental action for awarding censure entry and for withholding the pay for the period of suspension on the following grounds:-

- (i) That, the awarding of two punishments is not permissible and it is hit by the principle of double jeopardy.
- (ii) That, there was no role of the petitioner in withholding of stoppage of salary of Dr. Rashmi Bala as the salary was stopped on the direction of the District Magistrate Udham Singh Nagar.

(iii) That, the show cause notice dated 23.7.2009, given to the petitioner, was not speaking and thus it was illegal.

4. The petition has been opposed by the respondents on the ground that departmental proceedings were initiated against the petitioner for the malafide act of withholding of the salary of Dr. Rashmi Bala. The petitioner had also submitted the report with considerable delay for granting the time bound scale to Dr. Rashmi Bala. Both these acts of the petitioner were malafide and on complaint by Dr. Rashmi Bala, the petitioner was placed under suspension. On enquiry, the petitioner was found guilty; therefore, minor punishment of censure entry was awarded to the petitioner and vides separate order the pay for the period of suspension was also forfeited. The departmental action is not hit by double jeopardy. The departmental action was taken in accordance with the established procedure and principles; there is no illegality or irregularity in the departmental proceedings. Therefore, there is no scope for interference and the petition is liable to be dismissed.

5. Rejoinder affidavit has also been submitted on behalf of the petitioner in which the facts stated in the main petition have been reiterated. Along with the rejoinder affidavit, some documents, Anneuxre-9 to Anneuxre-16 have also been submitted. In the rejoinder affidavit it is also clarified that salary of Dr. Rashmi Bala was stopped under the directions issued by the then District Magistrate, Udhamsingh Nagar.

6. We have heard both the parties at length and perused the evidence and material available on record carefully.

7. First of all, it has been contended on behalf of the petitioner that it is totally false, baseless and unfounded allegation that the petitioner had stopped the salary of Dr. Rashmi Bala for the month of April, 2005 malafidely or illegally rather it was stopped under the

directions of the Distt. Magistrate. In support of this contention, the petitioner had referred direction by District Magistrate, Udhamsingh Nagar issued in April 2005, (Copy Annexure-A-9), which provides the stopping of salary of those employees who were found absent on surprise checking. In this regard it is also stated that Dr. Rashmi Bala was also found absent therefore her salary was stopped. Thus, there was no malafide intention or action on the part of the petitioner. While the above facts had been rebutted on behalf of the respondents and it has been stated in the written statement that the salary of Dr. Rashmi Bala was stopped just to harass her. Stoppage of payment of salary caused mental harassment to Dr. Rashmi Bala. On her complaint the action was taken against the petitioner but no evidence has been adduced on behalf of respondents which may reveal that the action of the petitioner was malafide. The fact asserted on behalf of the petitioner that the salary of the Dr. Rashmi Bala was stopped because of the directions of Distt. Magistrate, Udhamsingh Nagar is established on record by the rejoinder affidavit and copy of order passed by Distt. Magistrate, Udhamsingh Nagar (Annexure- 9). From the above material, it transpires on record that there was no malafide action on the part of the petitioner. Moreover, it is not proper to take action against any Government Employee simply because any complaint has been made. It is necessary for any action that some overt or malafide act has been done by him. In the present case no such overt act or malafide intention appears on the part of the petitioner. So, it is not proper to hold the petitioner guilty for malafide action. This Tribunal generally, does not enter into the factual aspect of the enquiry but in the present case it appears that the departmental action against the petitioner is totally baseless and is not supported by any fact or evidence which causes miscarriage of justice to the petitioner. So, we think it proper to enter into the factual aspect also.

8. It is further contended on behalf of the petitioner that adverse remark has never been communicated to him. This

allegation is contained in rejoinder affidavit of the petitioner in the following words:

“That the adverse entry was passed in the record of deponent which was never communicated to the deponent therefore, the effect of the adversently is ineffective and is liable to be quashed.”

Though it is stated in the W.S. that the minor punishment was given to the deponent but communication of the minor punishment/ adverse entry was never communicated to the deponent.”

After the above allegations regarding the non communication of the adverse remark, it was incumbent upon the respondents to rebut the allegations with some supporting material but it has not been done. Therefore, we are compelled to hold that adverse remark was not communicated to the petitioner. It is also pertinent to mention here that even in the written statement nothing has been said regarding the communication of the impugned adverse remark. Under the above circumstances the adverse remark has lost its weight and it cannot be upheld.

9. It has further been contended on behalf of the petitioner that salary of the petitioner for the period of suspension has been stopped without any just or valid ground. The contention appears to be reasonable. In fact, it was essential on the part of respondents to establish some reasonable grounds for non-payment of salary for the period of suspension which has not been done in the present case. Non-payment of salary for the period of suspension without any reasonable, just and proper ground, cannot be justified by any stretch of imagination. Therefore, even the impugned order of non-payment of salary to the petitioner for the period of suspension cannot be upheld.

10. On the basis of above discussion the petition deserves to be allowed, the adverse remark is liable to be expunged and the petitioner is found entitled for full salary for the period of suspension.

ORDER

The petition is allowed, the adverse remark is expunged and the petitioner is entitled for full salary for the period of suspension. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JUNE 16, 2014
DEHRADUN

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