

**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. 76/DB/2020

Bhupesh Rathore, s/o late Sri Kantu Singh Rathore, aged about 61 years, Retd. Constable, 89, Civil Police, retired from Police Line Dehradun, r/o Ward No. 12, Ambedkar Colony, Near Golden Leaf Hotel, Village Sudhowala, P.O. Chandanwari P.S. Premnagar, Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, District Uttarkashi.
4. Senior Superintendent of Police, District Dehradun.

..... Respondents

Present: Sri L.K. Maithani, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondents

Judgement

Dated: 21st December, 2022

Justice U.C. Dhyani (Oral)

This claim petition has been filed seeking the following reliefs:

“(i) To quash the impugned order No. Ja-09/2017 of dated 30.12.2018 as amended by (Annexure No. A-1) the order No. Ja-09/2017 dated 30.12.2018 upto the extent where it relates to the

fixation of pay to the period of 4993 days 06.09.2003 to the date 11.05.2017 and issue a order or direction to the concerned respondents to treat the period dated 06.09.2003 to 11.05.2017 as suspension period of the petitioner and accordingly treat the above period as duty of the petitioner with all consequential service benefit and accordingly refix the pay and pension of the petitioner and pay the arrear of pay and pension with all retrial dues with interest at the rate of 10% per annum from the due date upto the date of actual payment.

b) To quash the recovery of amount Rs. 7,75,418/- from the retrial dues of the petitioner.

c) To quash the order dated 24.07.2019, 01.02.2020, 14.02.2020 and 30.03.2020 of the respondents contained in Annexure A-2, A-3, A-4 and A-5 respectively to the claim petition with its effects and operation.

d) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

e) To award the cost of the petition to the petitioner.”

2. Petitioner, a police constable, while posted in district Uttarkashi, remained absent from duty for long and was dismissed from service. *Vide* order dated 01.04.2017, the petitioner was reinstated in service. S.P., Uttarkashi, *vide* office order dated 10.09.2017, reinstated the petitioner *w.e.f.* 01.04.2017 in the pay scale of Rs. 5200-20200/- grade pay Rs. 2,000.

3. 217 days' medical leave and 224 days' earned leave was sanctioned out of total absence of 14 years 06 months and 23 days (5317 days). Leave without pay was sanctioned for remaining 4876 days of absence. The salary of 4876 days was withheld, though leave was sanctioned without pay, on the basis of 'no work no pay'.

4. S.P., Uttarkashi issued show cause notice on 17.10.2017, which was replied to by the petitioner on 06.11.2017. The reply was disposed of by S.P., Uttarkashi, *vide* order dated 30.12.2018 (Annexure: A14). Pay-fixation order was issued on the self same date (Annexure: A15). Petitioner filed a departmental appeal against the same, which was decided by I.G., Garhwal Range, *vide* order dated 24.07.2019 (Annexure: A2 *colly*). Petitioner retired thereafter.

5. After the retirement of the petitioner, two orders were passed which were in the form of revised pay-fixation. These orders were:

(i) Order dated 01.02.2020 (Annexure: A3).

(ii) Order dated 14.02.2020 (Annexure: A4).

6. According to learned Counsel for the petitioner, a sum of Rs. 7,75,418/- was deducted from the retiral dues of the petitioner. Learned Counsel for the petitioner submitted that Annexure: A3 and Annexure: A4 were passed without affording any opportunity of hearing to the petitioner.

7. In reply, learned A.P.O. submitted that Annexure: A3 and Annexure: A4 were passed as consequential to the earlier order dated 30.10.2018, which was amended on 30.12.2018, and the petitioner has not preferred any departmental appeal against these orders.

8. Learned Counsel for the petitioner further submitted that consequent upon the rejection of departmental appeal, two orders were issued on 30.10.2018 and 30.12.2018 and the petitioner ought to have been given opportunity, if the respondent-department ordered any change in the pay-structure of the petitioner.

9. Learned A.P.O. replied that Annexure: A3 and Annexure: A4 were passed not as punishment in departmental proceedings, but were passed consequent upon the reinstatement order of the petitioner. Dismissal period of the petitioner was regularized for the benefit of the petitioner and not as a punishment.

10. Learned Counsel for the petitioner submitted that petitioner wants to make a representation against Annexure: A3 and Annexure: A4 and the same may kindly be directed to be decided by the competent authority, after affording opportunity of personal hearing at the earliest, in accordance with law, to which learned A.P.O. has no objection.

11. Without prejudice to rival contentions, the claim petition is disposed of by directing the competent authority to decide the representation of the petitioner by a reasoned and speaking order, in accordance with law, without unreasonable delay, if the petitioner makes a representation to him within a period of four weeks from today.

12. Needless to say that the decision taken by such authority shall be intimated to the petitioner soon thereafter. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 21stDecember, 2022
DEHRADUN
RS