

**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. 59/SB/2022

Vinod Kumar, aged about 52 years, s/o Sri Om Prakash, Conductor, Hill Depot.,
Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Transport, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand H.Q. UCF Sadan, Vishnu Vihar, Deepnagar Road, Ajabpur Kalan, Dehradun.
3. Regional Manager (Operation), Uttarakhand Transport Corporation, Office of the Regional Manager (Operation), 66, Gandhi Road, Dehradun.
4. Assistant General Manager (Hills) Uttarakhand Transport Corporation, Depot Workshop, Haridwar Road, Dehradun.

.....Respondents

Present : Sri L.K.Maithani & Sri R.C.Raturi, Advocates
for the petitioner.

Sri V. P. Devrani, A.P.O. for the Respondent No.1.

Sri Vaibhav Jain, Advocate for Respondents No. 2, 3 & 4.

JUDGMENT

DATED: JUNE 22, 2023

Justice U.C.Dhyani (Oral)

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

“i) To quash the impugned punishment order dated 12.06.2020 of respondent No. 4 (Annexure No. A-1), Impugned appellate order dated 31.12.2020 of respondent No. 3 (Annexure No. A-2) and Impugned revisional order dated 31.01.2022 (Annexure No. A-3) with its effect and operation declaring the same as null and void in the eyes of law.

ii) To issue an order or direction to the respondents to grant the increments, withheld due to the above punishment, to the petitioner

iii) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.

iv) To award the cost of petition..”

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

2.1 The petitioner is working as Conductor in the Respondent Corporation in Dehradun. On 25.06.2019, Respondent No.4 issued a charge-sheet to him along with the copy of report of Station-in-charge, Mussoorie Bus Station and attendance register, in which charges levelled against the petitioner were regarding interpolation in the attendance register. Petitioner replied to such charge-sheet. He denied the allegations levelled against him. The disciplinary authority was not satisfied with the reply of the petitioner and appointed Assistant General Manager (B) Depot ISBT, Dehradun , as enquiry officer. (Copy of charge-sheet: Annexure- A 4)

2.2 The enquiry officer conducted the enquiry and submitted his report to Respondent No.4. Respondent No.4 issued show cause notice dated 18.02.2020 (Annexure: A 6) to the petitioner along with copy of the enquiry report and asked the petitioner to file reply, if any, to the show cause notice. Petitioner submitted reply to the disciplinary authority on 03.03.2020 (Annexure: A 7), mentioning therein that the interpolation in the attendance register has not been done by the petitioner. In the show cause notice, the

disciplinary authority proposed punishment of withholding increments for 04 years with cumulative effect.

2.3 Aggrieved with the punishment order, the petitioner preferred appeal to Respondent No.3, Regional Manager (Operation), Uttarakhand Transport Corporation, Dehradun on 17.07.2020 (Annexure: A-8). Although the appellate authority agreed with the submission of the petitioner, but, instead of quashing the punishment order, modified the punishment order and directed withholding of 02 increments with cumulative effect, *vide* order dated 31.12.2020 (Copy of order: Annexure-A 2).

2.4 The petitioner filed revision against such order to Respondent No.2 on 09.03.2021 (Annexure: A 9). Respondent No.2, *vide* order dated 21.01.2022 (Copy of order: Annexure- A 3), further diluted the punishment order and directed 'temporary stoppage of 02 increments'. Hence, present claim petition. Documents have been filed by the petitioner in support of his claim petition.

3. Written Statement has been filed on behalf of Respondent Corporation. Counter Affidavit has been filed by Sri Sanjay Gupta, Divisional Manager (Operation), Uttarakhand Transport Corporation, Dehradun.

3.1 Ld. A.P.O. submitted that Respondent/ State is adopting the same written statement which has been filed on behalf of Respondents No. 2 & 3.

3.2 Every effort has been made to justify the departmental action. In Para 49 of the C.A., order passed in revision, has been reproduced.

Rejoinder Affidavit thereto has been filed on behalf of the petitioner.

3.3 Whereas Ld. Counsel for the petitioner have assailed the impugned orders on merits, Sri Vaibhav Jain, Ld. Counsel for Respondent Corporation submitted that the petitioner has not approached the

Tribunal with clean hands; petition is not legally maintainable; he was afforded full opportunity of hearing; present petition is an abuse to the process of law; petitioner was involved in the act of corruption; complete procedure has been adopted by the respondent department while conducting the enquiry and therefore, the petition is liable to be dismissed.

4. Assistant General Manager (B) Depot, Dehradun, *vide* office order dated 12.06.2020 (Copy: Annexure- A 1), awarded the major punishment of withholding of 04 increments with cumulative effect to the petitioner.

5. On representation, *vide* office order dated 31.12.2020 (Copy: Annexure- A 2), the Regional Manager (Operation), Uttarakhand Transport Corporation, reduced the punishment from withholding of 04 increments with cumulative effect to withholding of 02 increments with cumulative effect. The Regional Manager, in his office order dated 31.12.2020 (Annexure: A-2), found substance in the submission of the delinquent- petitioner that petitioner should not have been held guilty of interpolation in the attendance register. According to such authority, the position was not clear and, therefore, it was not proper on the part of A.G.M. (Hills) to award severe punishment to the petitioner. The Regional Manager (Operation) has, however, found that on the basis of earlier record, it was found that the petitioner has been involved in using abusive language and misbehaving with concerned Timekeepers.

6. In the humble opinion of the Tribunal, the Regional Manager has committed error in giving the punishment to the petitioner on the basis of something which was not the subject matter of enquiry. In other words, no show cause notice was given to the petitioner in respect of his alleged misbehaviour and using abusive language. The enquiry was being conducted only in respect of interpolation of attendance register. Had the charges been levelled against the petitioner in respect of alleged misbehaviour and using abusive language, it is possible that the position

would have been different. When overwriting/ cutting by the petitioner in the attendance register was not proved, the petitioner ought to have been exonerated and no punishment should have been awarded to him merely because it was revealed that , in the past, he misbehaved and used abusive language with some Timekeepers. While holding enquiry, this was not the charge against the petitioner.

7. Managing Director, Uttarakhand Transport Corporation, in his office order dated 31.01.2022 (Annexure: A-3) further reduced the punishment awarded by the appellate authority and directed that the delinquent- petitioner shall be given minor punishment of 'temporary stoppage of 02 increments'. In the office order dated 31.01.2022, the competent authority has mentioned, while deciding the revision, that the delinquent- petitioner was not directly guilty of the charges levelled against him. The revisional authority, however, found that availing leave without giving leave application is contrary to the leave rules, which reflects carelessness on the part of the delinquent-petitioner.

8. Sri Vaibhav Jain, Ld. Counsel for the Respondent Corporation made all-out efforts to defend the departmental version. He submitted that the delinquent-petitioner has violated Rule 60 (1) and Rule 61 of the *Uttarakhand Parivahan Nigam Karmchhari (Adhikariyon se Bhinn) Sewa Niymawali, 2015* . In reply, Ld. Counsel for the petitioner submitted that the salary has been released to the petitioner during the entire period, which shows that his leave was sanctioned. Moreover, the charge, if any, should be definite to bring home misconduct against the erring official.

9. Here, again, no show cause notice was given to the petitioner in respect of such imputation. He was never charged for availing leave without moving leave application. How can the delinquent- petitioner be held guilty in respect of anything, regarding which no show cause notice was given to him and he was not charged for such misconduct. The Managing Director, appears to have committed mistake while issuing

office order dated 31.01.2022 (Annexure: A-3) to this extent. Interference is called for in the same.

10. The impugned orders dated 12.06.2020 (Annexure: A-1), 31.12.2020 (Annexure: A-2) and 31.01.2022 (Annexure: A-3) , therefore, cannot sustain and are liable to be set aside.

11. The orders impugned are, accordingly, set aside. The claim petition is disposed of . No order as to costs.

12. It is made clear that the Tribunal has not expressed any opinion on such imputations which were never the subject matter of charge-sheet, in the instant case.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
(virtually from Nainital)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 22, 2023
DEHRADUN

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