

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 48/2011

Dr. Ajit Mohan Johri, S/o Shri Avdesh Narain Johri, Medical Officer, Additional Primary Health Centre, Advani, Pauri (Uttarakhand)

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Department of Medical Health and Family Welfare, Chikitsa Anubhag-2, Subhash Road, Dehradun,
2. Secretary, Govt. of Uttarakhand, Department of Medical Health and Family Welfare, Chikitsa Anubhag-2, Subhash Road, Dehradun,
3. Additional Secretary, Govt. of Uttarakhand, Medical Anubhag-2, Subhash Road, Dehradun,
4. Chief Medical Officer, Pauri, District Pauri (Uttarakhand),
5. Dr. Virendra Kumar Shukla, S/o Sri Vishwanath Shukla, Chief Medical Superintendent, District Hospital, Chamoli,
6. Dr. Bhagirathi Janapangi (Gabriyal) D/o Shri Lato Singh Gabriyal, Addl. Chief Medical Superintendent, Distt. Hospital, Chamoli.

.....Respondents

Present: Sri J.P.Kansal, Counsel,
for the petitioner

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

JUDGMENT

DATE: AUGUST 14, 2015

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

1. In this claim petition, the petitioner has sought following reliefs :

- i. *Setting aside the order passed by the Govt. of Uttarakhand on 23.02.2011(Annexure: A-1),*
- ii. *A declaration to the fact that the period w.e.f. 30.12.1997 to 12.10.2009 be treated on duty for all intents and purposes including salary, leave, promotion, gratuity, retrial benefits, selection grade pay and time scale promotion and so on,*
- iii. *A direction to the respondents for making payment of the salary for the period starting from 30.12.1997 to 12.10.2009 along with interest @ 12 per cent and accord all other benefits such as leave, selection grade pay, time scale and promotion etc.*
- iv. *A direction to the respondents for considering the petitioner for promotion to the post of Senior Medical Officer and Joint Director from the date of promotion of his junior namely respondent No. 5 i.e. Dr. Virendra Kumar Shukla.*

2. The petition has a chequered history. The petitioner had joined to the post of Medical Officer in the integrated State of

U.P. in the year 1995-96 and was allocated to Hill sub-cadre. He was posted in District Pauri and was given the charge of Primary Health Centre (PHC), Adwani, which was under the supervision and subordination of Community Health center, Godial. The petitioner had assumed the charge on 28.01.1997. At that time, Dr. P.L. Kandwal was incharge of the Community Health Centre, Godiyal. Dr. Kandwal was also the Drawing and Disbursing Officer for the Primary Health Centre (PHC), Adwani. Dr. P.L.Kandwal had the feeling of biasness against the residents of plane serving in that region. Dr. Kandwal would also demand for illegal gratification from the staff of the PHC as well as from the petitioner. Refusal to meet any such demand, Dr. Kandwal had stopped payment of salary of the petitioner for the month of January 1997 to May 1997. In the month of June, the petitioner was sent for training at Lucknow. Salary for the above mentioned period was paid to the petitioner during training period after repeated requests by the petitioner. After completion of the training, the petitioner had resumed duties in the month of August, 1997, but Dr. P.L.Kandwal had started harassing the petitioner again. He had again withheld the payment of the salary of the petitioner for the month of November, 1997 illegally and wrongfully which could be paid to the petitioner in the month of December on intervention by the Additional Director.

3. It is further stated that the petitioner had taken leave for 26th to 29th of December 1997 and had resumed duties on 30.12.1997. Due to continuous harassment and threats to his life by Dr. P.L.Kandwal, the petitioner had come under the severe physical and mental stress; therefore, he had applied for leave for 31.12.1997. The petitioner had also requested for the payment of salary for the month of December. The petitioner had further

requested for his transfer and also to hold enquiry against Dr. Kandwal, but there was no response by the Chief Medical Officer Pauri. Consequently, the petitioner had submitted a representation to the Director General, Uttarakhand Medical and Health on 15.02.1998, but of no consequence. Under the above mentioned circumstances and in order to save his life, the petitioner had proceeded on leave. The petitioner had thereafter, moved applications continuously for extension of medical leave but all in vain. Therefore, the petitioner was compelled to prefer a writ petition bearing no. 10230 of 1998 before the Hon'ble High Court Judicature at Allahabad in which a direction was issued by the Honble High Court to the Chief Medical Officer, Pauri on 26.03.1998 to the fact that in case the petitioner submits any grievance regarding the payment of salary, it be disposed of within a period of two months. The petitioner had sent an application on 15.04.1998. In response to it, the Chief Medical Officer Pauri vide its order dated 18.05.1998 directed the petitioner to resume duties. The petitioner had reported on duty on 29.05.1998 but Dr.P.L.Kandwal wrongly and malafidly did not permit the petitioner to join. Moreover, no decision was taken on the representation of the petitioner, consequently the petitioner was forced to serve a legal notice through Advocate. The petitioner had also preferred writ petition again before the Hon'ble High Court at Allahabad for the redressal of his grievances, wherein the coercive methods were taken for ensuring the attendance of the C.M.O and Dr,. P.L.Kandwal which prompted them to concoct a story of absence of the petitioner. On the basis of concocted story of absence of the petitioner, the services of the petitioner were terminated vide order dated 04.03.1999 but with effect from 30.12.1997 but without holding any inquiry, or affording any opportunity of hearing to the petitioner . The petitioner had

assailed the order of termination by way of writ petition numbered as 26269 of 1999 before the Honble of High Court of Judicature at Allahabad, which was transferred to Honble Uttarakhand High Court. The matter was relegated to this Tribunal on 08.04.2008. The Tribunal had decided the petition numbered as 40 of 2008 of the petitioner on 14.07.2009 with the following observations:

“In the instant case the petitioner can at the most be treated to have absented from duty, but since the petitioner had applied for leave, some decision must have been taken by the department either rejecting or accepting the application for leave. The absence from duty is misconduct for which appropriate show cause notice has to be issued calling upon the petitioner to submit explanation and thereafter only appropriate decision can be taken by removal or retention of his services. In the impugned order various facts have been mentioned which show misconduct on the part of the petitioner and form the foundation of removal of the petitioner from service. The petitioner, in the background of this order has serious disadvantage in getting employment elsewhere, therefore by all means it is to be treated as stigma and in the background of this fact the services of the petitioner could not be dispensed with except by taking recourse to the disciplinary proceedings. In view of the above discussion, we are of the considered view that the impugned order is prima facie defective and liable to be set aside and the same is hereby set aside. The department shall, however be at liberty to take appropriate proceedings against the petitioner and also pass appropriate orders regarding reinstatement in service with or without pay, with appropriate directions regarding treatment of the period from the date of order dated

4.3.1999 to the date of order of reinstatement. With these directions we remit the case back to the department.

ORDER

The claim petition is partly allowed. The impugned order dated 4.3.1999 is hereby set aside and the matter is sent back to the department for passing appropriate orders within a period of three months in the light of the directions given in the body of the judgment. No orders as to costs. ”

4. In response to the Judgment of this Tribunal, the petitioner was reinstated in service on 14.10.2009 with an observation that a separate decision would be taken regarding the payment of salary for the period in question. As no decision was taken, the petitioner preferred an application of execution before this Tribunal, after which the impugned order was passed on 23.02.2011 by which earned leave for 27 days and 5 years as extra ordinary leave were sanctioned and rest of the period was ordered to be treated as break in service. The impugned order is perse illegal and cannot be sustained. Hence this petition.

5. During the pendency of the petition, the petitioner had made amendment in the petition to the fact that his juniors have been promoted whereas the petitioner has been ignored without any just and valid cause or reason and in gross violation of the principal of natural justice, while the petitioner is eligible for promotion to the post of senior medical officer and there upon to the post of joint director from the date of promotion of his juniors namely respondent no 5 and respondent no 6. It has further been stated that the petitioner has not been informed as to whether the petitioner was considered for promotion or not which is essential under the provisions of Uttarakhand Selection by promotion of the Government servant (outside the purview of the Public Service

Commission) Procedure Rules, 2013 and Uttarakhand Government Servant (Criterion for recruitment by promotion) Rules 2004.

6. The petitioner has challenged the impugned order regarding non-payment of salary and not making his promotion on the following grounds:-

A. That the petitioner had been on probation w.e.f. 28.8.1997 to 27.01.1999 and was not holding any lien on any post. Hence the provisions of Rule 81 of F.R. are not applicable in regard to the petitioner,

B. That no departmental enquiry has ever been conducted against the petitioner, so the petitioner is not at fault.

C. That the order of termination was passed in violation of the provisions of Article 311 of the Constitution of India, which has been set aside on merits.

D. That during the period intervening between 30.12.1997 to 13.10.2009, the petitioner was not gainfully employed anywhere, so this period should be counted as on duty for all purposes and intent including the salary, leave, promotion, selection grade, time scale promotion, gratuity, as well as on all other retiral benefits.

E. That the petitioner has not been considered for promotion to the post of Senior Medical Officer and Joint Director despite the fact that petitioner is eligible for promotion to this post and his juniors, respondents no. 5 and 6 have been promoted.

7. On the basis of the above grounds, the petitioner has sought the reliefs mentioned hereinbefore.

8. The petition has been opposed on behalf of the respondents No. 1 and 2 and 4, namely the State, Secretary and Chief Medical Officer, Pauri. The petition has not been opposed on behalf of the respondents No. 3, Additional Secretary, Medical Health, and respondents No. 5 and 6, namely Dr. Virendra Kumar Shukla and Dr. Bhagirathi Janapangi (Gabriyal) respectively.

9. Two separate counter affidavits have been filed on behalf of respondents No. 1, 2 and 4 and it has been stated in these counter affidavits that all the allegations levelled against Dr. P.L.Kandawal are false and baseless and the petitioner has not made any complaint against Dr. P.L.Kandwal so the petitioner is not entitled for any reliefs on the basis of the above allegations made against Dr. P.L. Kandwal. It is further stated that the petitioner had left the place of his posting on casual leave for 26th, 27th 28th and 29th December, 1997. The petitioner had not moved any application for leave thereafter.

10. It is further stated that the petitioner has not made any representation to the Chief Medical officer, Pauri in accordance with the directions of Hon'ble High Court of Judicature Allahabad issued in Civil Misc. Writ Petition No. 10230 of 1998. The petitioner had only sent an application for granting him annual increment said to fallen due on 01.1.1998 and further requested to make an enquiry against Dr. Kandwal.

11. On the other hand, the chief Medical Officer had intimated to the petitioner vide his letter dated 18.05.1998 to report for duty as he is absent w.e.f. 30.12.1997. The petitioner

instead of reporting for duty sent a notice through his Advocate. It has further been stated that due to continuous absence of the petitioner from the duty, a proclamation was published in a newspaper on 04.09.1998 asking the petitioner to resume duties within a period of 15 days, but the petitioner did not report for duty and continued to remain absent. It is further stated that Dr. P.L.Kandwal never refused or objected in the joining of the petitioner. As the petitioner absented himself during the period of probation, therefore, he was removed from service w.e.f. 30.12.1997 vide order dated 04.05.1999.

12. It is further stated that in view of the judgment passed by this Tribunal in Claim Petition No. 40/2008, Dr. Ajit Mohan Johari Vs. State and others, dated 14.07.2009, the petitioner was reinstated in service and he was sanctioned earned leave for 27 days and extraordinary leave for five years, but without pay. Rest of the period of his absence was treated to be break in service. The petitioner is not entitled for any salary for the period of his absence on the basis of the principle of 'no work no pay'.

13. A rejoinder affidavit has been filed on behalf of the petitioner on 03.4.2012 and it has been stated that the primary health centre, Advani is about 20 km from the District Headquarters where even the basic amenities just as electricity or water is not available. Even the building of the centre is in very deplorable condition, which may collapse any moment; the population is also very scant. Rests of the facts have been reiterated already stated in the claim petition.

14. A supplementary rejoinder affidavit has also been filed on 11.7.2014 wherein the facts already stated, have been

reiterated. Numbers of documents have been filed on behalf of both the parties.

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

16. It is admitted to both the parties that petitioner has been reinstated in service without holding an enquiry after the judgment passed by this Tribunal in claim petition no. 40 of 2008. It is further admitted that salary for the period of 30.12.1997 to 13.10.2009 has not been paid to the petitioner but by way of impugned order dated 23.2.2011, earned leave for 27 days and extraordinary leave without pay for a period of five years was granted to the petitioner. Rest of the period for his absence was treated as break in service and this order is under challenge in this petition. So, we have to see as to whether the petitioner is entitled for pay for the aforesaid period or not. As regard to the absence of the petitioner is concerned, it is revealed from the facts available on record that petitioner had left the station on casual leave w.e.f. 26.12.1997 to 29.12.1997 and thereafter, he did not report for duty. Though, it has been said on behalf of the petitioner that he had reported for duty, but Dr. P.L.Kandwal did not permit him to join, but this fact is not substantiated from any material on record. The petitioner seems to be disinterested in joining on the ground of non-availability of the basic amenities at the place of posting and becomes clear from his own rejoinder affidavit dated 03.04.2012, which is quoted below:

“That the contents of paragraph no. 3 of the written statement are wrong and denied. The facts given in para no. 4 (3) of the claim petition are true and reiterated. The Addl. Primary Health Centre is about 20 KM from District

Headquarters on steep height where no basic amenities are available even now. The Centre has acute shortage of staff, no electricity connection and water arrangement. The building of the Centre being in very deplorable condition, likely to collapse any time, the annual maintenance, expense allotted to the centre were returned to the authorities. In its nearby area 15-20 small houses are situated, wherein only Nepali labours reside. Local hill people are not residing in the vicinity of the Centre. So, the number of visiting patient in the Centre is negligible. ”

The above facts, reveal that the mental state of the petitioner. Due to non-availability of the basis amenities and being located in the interior part of the Hilly area, the petitioner seems to be disinterested to serve there and it appears to be a ground of non-joining of the petitioner.

17. Whereas, on the other hand, it becomes clear from the record that Chief Medical Officer, Puari had directed to the petitioner to report for duty, but the petitioner did not join. Even a proclamation was issued in a newspaper asking the petitioner to join immediately, but even than the petitioner did not join rather an application was sent by registered post to Director General, Medical Health on 07.09.1998. The fact of absence of the petitioner from duty is also established from the copy of the attendance register filed on behalf of the petitioner himself as Annexure No. A-24 in which he has been shown absent after 29.12.1997. Though, the petitioner had made complaint against Dr. P.L. Kandwal, but it does not seem to be sufficient ground for non-reporting for duty. The petitioner has further failed to prove

his presence after 29.12.1997. It also transpires from the record that instead of joining, the petitioner preferred a writ petition before the Hon'ble High Court. The petitioner failed to prove his presence after 29.12.1997. The petitioner was removed from service vide order dated 04.03.1999 and was reinstated only on 14.10.2009 on the basis of the orders passed by this Tribunal. From all these facts, it becomes clear that petitioner was absent from duty w.e.f. 30.12.1997 to 13.10.2009.

18. Now the question arises as to whether the petitioner is entitled for salary and other benefits on the ground of his reinstatement. In this regard, it has been stated on behalf of the respondents that the petitioner is not entitled for pay on the basis of no work no pay. It has been contended on behalf of the petitioner that there was no fault of the petitioner in remaining absent, he had applied for leave, which was not granted. Moreover, his services were terminated in gross violation of the statutory provisions and principles of natural justice. Therefore, the petitioner cannot be held to be at fault in remaining absent. It was the fault of the State for which the petitioner cannot be penalized. As no enquiry has been conducted against the petitioner, so the petitioner is entitled for treating the period of absence as period on duty and he is entitled for salary and other benefits. In support of this contention, the petitioner relies upon the judgment of Hon'ble Supreme Court in **Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar, 2014(10) SCC, 301**. The Hon'ble Supreme Court has held as under:

“45. It is an undisputed fact that the dispute was raised by the workman after he was acquitted in the criminal case which was initiated at the instance of the respondent. Raising the industrial dispute

belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board. Even assuming for the sake of the argument that there was a certain delay and latches on the part of the workman in raising the industrial dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudicating the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal have failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgment & order of the High Court are liable to be set aside. When we arrive at the aforesaid conclusion, the next aspect is whether the workman is entitled for reinstatement, back wages and consequential benefits. We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for back wages and other consequential benefits from the date of raising the industrial dispute i.e. from 02-03-

2005 till reinstatement with all consequential benefits.

46. For the foregoing reasons, we grant the following reliefs to the workman by allowing this appeal:

46.1. The award of the Labour Court, judgment and orders passed by the High Court are set aside;

46.2. The respondent is directed to reinstate the appellant-workman with back wages from the date of raising the industrial dispute i.e. 02.03.2005 till the date of his reinstatement with all consequential benefits such as continuity of service, wage revisions and other statutory monetary benefits as the respondent has been litigating the dispute without tenable and acceptable reason....”

19. The petitioner in support of his contention has also referred the decision of Hon’ble Supreme Court in **Gurpal Singh Vs. High Court of Judicature at Rajsthan, 2012, SCLJ, 1182** and the Hon’ble Supreme Court has held as follows:

“45. In this case, it is a matter of record that upon exoneration in the departmental enquiry, the petitioner was reinstated in service. No punishment was inflicted on him at all. However, during the pendency of the criminal trial as also the departmental proceedings, he was not considered for promotion, when the cases of persons junior to him were considered. In our opinion, the High Court erred in directing in the Full Court Resolution dated 29th November, 2008, and the

communication dated 24th January, 2009 that the petitioner shall not be entitled for any promotion.

46. We, therefore, partly allow the writ petition. We reject the submissions of Mr. Calla that the suspension of the petitioner was rendered wholly unjustified upon acquittal by the trial court. We also reject the submissions of Mr. Calla that the suspension of the petitioner was wholly unjustified during the pendency of the appeal before the High Court. We, however, hold that the continued suspension of the petitioner during the pendency of the departmental proceedings was wholly unjustified. The petitioner is, therefore, held entitled to full pay and allowances from 27th September, 2005, i.e. the date of the judgment rendered by the Delhi High Court onwards. We further hold that the petitioner was entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. We, therefore, direct the High Court to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the rules) from the date when a person junior to him was considered and promoted to the next higher post. Let such a decision be taken by the High Court within a period of three months from the date of receipt of this order. We further direct that the petitioner would be entitled to all consequential benefits, such as salary and other allowances by treating him on duty with effect from the date the appeal against acquittal was dismissed by the Delhi High Court and after fixing his last pay drawn correctly. The consequential benefits shall be paid to

him with 6% interest from the date of the dismissal of the appeal by the High Court on 27th September, 2005. The enhanced retiral benefits shall be released to him within three months of the receipt of a copy of this order.”

20. The petitioner has further referred the judgment of Hon’ble Supreme Court in **R.S. Misra Vs. Union of India and others, 2012-13, SCLJ, 1055**, wherein, the Hon’ble Supreme Court has held as under:

“15. It is neither the pleaded case of the respondents nor it was argued before us that during the pendency of the enquiry, the appellant was kept under suspension and he was paid subsistence allowance. This being the position, there could be no justification to deny full salary to the appellant for the period between 5.11.2003 and 31.12.2005.

16. In the result, the appeal is allowed, the impugned order is set aside and the respondents are directed to pay full salary and allowances to the appellant for the period between 5.11.2003 and 31.12.2005. The needful be done within a period of two months from today by getting prepared a demand draft in the appellant’s name, which shall be delivered at his residential address on or before the end of two months period.”

21. On the other hand, the answering respondents relies upon the judgment passed by this Tribunal in Claim Petition No. 31/DB/2013, Const. No. 28, Sushil Kumar vs. State & others, and in Claim Petition No. 67 of 2012, Virendra Lal Vs. State & others.

In both these cases, this Tribunal held that the petitioners are not entitled for salary for the period of their absence.

22. From the facts of the case in hand, it becomes clear that though the petitioner remained absent from 30.12.1997 to 13.10.2009 and his services were terminated vide order dated 04.03.1999. It means that the petitioner was in service before 04.03.1999. At least it was incumbent upon the petitioner to show his bonafide for remaining present on duty, but the petitioner has measurably failed to prove his bonafide to remain on duty even during this period. After the termination of the services of the petitioner, the petitioner remained absent and the only inference can be drawn that petitioner was absent from duty w.e.f. 30.12.1997 to 13.10.2009 and on the basis of the principle of no work no pay, the petitioner is not entitled for payment of salary for the period of absence. Apart from the principle of no work no pay, there is an important aspect in the present case due to which the petitioner cannot be said to be entitled for salary for the period of absence. In fact, the petitioner could have claimed salary had he not been gainfully engaged in any other job or profession, but the petitioner has himself admitted that he was working as a medical practitioner on the clinic of his wife. He has further admitted that he had some income from there, which he said to be negligible. This admission of the petitioner is contained in paragraph 4(30) of the main petition and it is pertinent to quote the relevant paragraph, which is reads as under:

“That during the period of 30.12.1997 to 12.10.2009, the petitioner was not gainfully employed. During this period, the petitioner was casually sitting at the clinic

on his wife who is a practitioner doctor and he had negligible income.”

23. From the above averment made in the petition itself, it becomes clear that the petitioner was working at the clinic of his wife and he had also some income from there. Though, the income is said to be negligible but it was incumbent upon the petitioner to disclose the income which is not done. In our opinion, the aforesaid averment is sufficient to reach to the conclusion that the petitioner was practicing medicine at the clinic of his wife and he had some income therefrom and thus, the petitioner was gainfully employed during the period of absence. As the petitioner was engaged in medical profession during the period of absence, he cannot be any help from the principles laid down by the Hon'ble Supreme Court in the cases referred on behalf of the petitioner.

24. It has further been contended that it is not justified to treat the period of absence as break in the service because the Rule 81 of FR is not applicable in his case. The petitioner was probationer and was not entitled to hold any lien on any post, but we are not convinced with the contention raised on behalf of the petitioner. We have carefully gone through the relevant Rule 81(b) of Fundamental Rules and there is no provision in this Rule that any probationer will not hold any lien in any service. From the perusal of the above Rule, it becomes clear that it is applicable to all the Govt. Servants after entering into the service after April 01, 1966. The extract of the above Rule as (a) and (b) are quoted below:

“(a) all Government servants who enter Government service on or after April 1, 1966,

and hold a lien on the permanent post or would have held a lien on such post, had their lien not been suspended;

(b) all Government servants who were recruited before April 1, 1966 and to whom Fundamental Rule 81-B applied on that date:

Provided that the earned leave at their credit on April 1, 1966, shall stand and they shall earn further leave under sub-rule (1) of this rule with effect from that date;”

25. We are of the considered view that Rule 81(b) is applicable in case of the petitioner also and it contains a provision for the extraordinary leave in accordance with rule 85. Rule 85 reads as under:

“85.(a) Extraordinary leave may be granted in special circumstances (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.

(b). The authority which has the power to sanction leave may grant extraordinary leave as in clause(a) in combination with, or in continuation of, any leave that is admissible and may commute retrospectively periods of absence without leave into extraordinary leave.”

26. From the perusal of the aforesaid Fundamental Rule, it becomes clear that in case of extraordinary leave, the Govt. Servants does not remain entitled for any salary. Therefore, on this ground also, the petitioner is not entitled for salary for the period of absence.

27. On the basis of the above discussion, we are of the considered view that absence of the petitioner could not be explained by him. Therefore, he is not entitled for the salary for the period of absence on the basis of no work no pay and on being employed in the medical profession gainfully.

28. It has further been contended that the petitioner has wrongly been ignored from promotion though his juniors have been promoted. It is true that the respondents No. 5 and 6 have been promoted, but it becomes clear from the copy of proceedings of Departmental Promotion Committee held on 15.3.2013 that the petitioner was considered for promotion and he was found unfit. It is admitted that services of the petitioner are governed by the Uttar Pradesh Medical & Health Group-B Services Rules, 1995. It is also admitted to both the parties that the Govt. of Uttarakhand had framed new Rules called as Uttarakhand (Outside the purview of Public Service Commission State Services Selection for Promotion) Rules, 2013, which provides that no employee can claim to be promoted only on the basis of the seniority and for promotion, the character roll for five years will be considered. It also becomes clear that the criteria for promotion shall be seniority subject to rejection of unfit. It also appears from the record that the petitioner was considered for promotion and was found unfit and the petitioner failed to point out any illegality or irregularity in the proceedings of the Departmental Promotion Committee. It is also contended on behalf of the petitioner that it was incumbent upon

the respondents to inform the petitioner in case he was found unfit. In this regard, a copy of letter No. 133/XXVII-2/01(100) 10 dated 03.02.2014 has been submitted on behalf of the respondents, which reveals that the petitioner was informed that he was found unfit for promotion by the Departmental Promotion Committee. Therefore, the contention of the petitioner regarding promotion as well as no intimation, has no basis.

29. On the basis of the above discussion, we reach to the conclusion that there is no illegality or irregularity in the impugned order, therefore, the petitioner is not entitled for any relief and the petition is liable to be dismissed.

ORDER

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

D.K.KOTIA
VICE CHAIRMAN (A)

V.K.MAHESHWARI
VICE CHAIRMAN(J)

DATE: AUGUST 14, 2015
DEHRADUN