

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

CLAIM PETITION NO. 176/SB/2023

Ms. Pooja Saini, d/o Sri Vijaypal Singh Saini, aged about 28 years,
3 C.P. Constable, Care of Kotwali, District Rudraprayag,
Uttarakhand.

.....Petitioner

versus

1. State of Uttarakhand through Additional Chief Secretary, Home,
Government of Uttarakhand.
2. Inspector General of Police, Garhwal Region, Uttarakhand.
3. Senior Superintendent of Police, Tehri Garhwal, Uttarakhand.

..... Respondents

Present : Dr. N.K. Pant, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

JUDGEMENT

Dated: 17th October, 2023

Justice U.C. Dhyani (Oral)

Present claim petition has been filed by the petitioner being aggrieved against her 'censure entry' (Annexure No. 9), non-payment of salary for the period of unauthorized absence on the basis of 'no work no pay' (Annexure No. 11) and appellate order dated 30.06.2023 (Annexure No. 12).

2. It is a case in which Child Care Leave for 90 days was sanctioned to the petitioner on 21.09.2021. She had to resume duty on 19.12.2021 but she failed to join. The enquiry was conducted. The petitioner neither reported for the duty nor gave information to the department regarding her unauthorized

absence. She was sent letters to report for duty in the ensuing assembly elections but even then she failed to resume her duty. She remained absent unauthorisedly for 120 days, for which, after giving show cause notice, to which she did not reply, she was given 'censure entry' for the year 2021. She was also given notice as to why she be not paid salary for the period she did not work and when she did not submit reply/ explanation, an order was passed that she will not be entitled to salary for unauthorized period of 177 days on the principle of 'no work no pay'. 90 days Child Care Leave, which was sanctioned on 21.09.2022 was cancelled *vide* order dated 21.11.2022, which order is also under challenge in present claim petition. The petitioner filed departmental appeal before the appellate authority (I.G., Garhwal Range), which appeal was dismissed *vide* order dated 30.06.2023, which is also under challenge in present claim petition.

3. The principal contention of learned Counsel for the petitioner is that 'reasonable opportunity of hearing' was not given to the petitioner before passing the impugned orders. According to the learned Counsel for the petitioner, even if the petitioner did not reply to the show cause notice, another opportunity could have been granted to her in the interest of justice. In a nutshell, according to learned Counsel for the petitioner, the petitioner was not given 'reasonable opportunity' to defend her case before the departmental authorities.

4. Learned A.P.O., while defending the departmental action with vehemence, replied that the petitioner is a member of disciplined police force, therefore, she ought to have given reply once the show cause notice was served upon her. According to learned, A.P.O. issuance and service of show cause notice on her has not been denied by her.

5. Learned Counsel for the parties submitted that the claim petition may be disposed of, at the admission stage, without

calling for the counter affidavit inasmuch as the facts of the case are not in dispute. The Tribunal concurs with such submission.

6. The sole question which arises for consideration of the Tribunal is, whether 'reasonable opportunity' was given to the petitioner to defend her and whether one more opportunity should be given to her to make submissions before the authorities concerned? It is no doubt true that the petitioner is a member of disciplined police force but, still, considering the peculiar facts of the case and purely in the interest of justice, the Tribunal deems it appropriate to grant one more opportunity to the petitioner to give replies/ make her submissions before the authorities concerned, to enable them to reconsider their decisions. The Tribunal feels that order for cancellation of already sanctioned 'Child Care Leave' without cogent reasons, appears to be a harsh order, which should definitely be reconsidered by the appropriate authority.

6. Whereas no interference is called for, as of now, in the orders impugned, the petitioner is granted liberty to submit her replies to the departmental authorities and if such submissions are duly forwarded, in writing, departmental authorities are directed to reconsider their decision after considering the replies of the petitioner, in accordance with law. Authorities concerned are at liberty to either affirm or modify/ amend earlier orders passed by them in respect of 'censure entry', cancellation of 'Child Care Leave' and denial of the salary on the principle of 'no work no pay'.

7. The claim petition is, accordingly, disposed of. No order as to costs.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 17th October, 2023
DEHRADUN
RS