

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S. Nayal

-----Member (A)

CLAIM PETITION NO. 06/NB/SB/2018

Smt. Vimla Rawat, W/o Sri Tara Singh, Lady Constable, 484, Civil Police,
Mallital, Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Inspector General of Police, Police Headquarter, Uttarakhand, Dehradun.
2. Deputy Inspector General of Police, Kumaun Region, Nainital.
3. Senior Superintendent of Police, Nainital.

.....Respondents

Present: Sri Rajesh Joshi, Ld. Counsel
for the petitioner
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents.

JUDGMENT

DATED: JUNE 19, 2019

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed the present claim petition for the following reliefs:-

"1. To quash and set-aside the impugned order No. 7/2016 dated 29.05.2016 passed by the learned Senior Superintendent of Police, Nainital i.e. respondent No. 3, whereby the respondent No. 3 imposed a censure entry

in service book and also withheld the salary of 154 days on the basis of no work no pay and also to quash and set aside the order dated 30.08.2016 passed by the learned Deputy Inspector General of Police, Kumoun Region, Nainital i.e. Respondent No. 2, Kumaun Region, Nainital.

II. To direct the respondent authority to make the payment of salary of 154 days when the medical leave was granted to the applicant alongwith reasonable interest of 9% per annum.

III. To pass any other rule order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

IV. To award cost of the petition in favour of petitioner."

2. While posted in Police Line, Nainital, petitioner was deputed for duty at NCC Camp, Ranibagh. On 01.08.2015, she was transferred from District Nainital to District Champawat and her date of relieving was fixed as 05.08.2015, but the petitioner became absent from duty and did not report back at the police line, Nainital for her relieving, despite all the informations given to her by the concerned person of the Police Line, Nainital and In-charge of NCC Camp, Ranibagh.

3. According to petitioner, she could not join her duty at the new place of posting due to illness and after absence of 154 days, she reported back on duty at Police Line, Nainital. An inquiry was conducted by the inquiry officer i.e. concerned Deputy Superintendent of Police of the area. Thereafter, a show cause notice was issued to the petitioner and after considering her reply, the impugned order of punishment dated 29.05.2016 was passed, whereby a censure entry was awarded as punishment to the petitioner and by another order of similar date, denying the sanction of medical leave, she was granted

leave without pay for her absence of 154 days. Both these orders were challenged by the petitioner in appeal, which were dismissed by the respondent No. 2 on merits vide order dated 30.08.2016, hence, this petition was filed by the petitioner on 19.06.2018 after a period of about two years, explaining the delay on the ground of time spent in disposal of her revision.

4. Petition was opposed by the respondents on the ground of delay as well as on merits and it was contended that no sufficient reasons, for justifying day-to-day delay, has been shown and the petition is time barred. On merits, it was contended that petitioner was duly informed about her transfer order dated 01.08.2015 and the fixed date of her relieving as 05.08.2015. Even after communication to her, by the Counting Mohrir of Police Line, Naintial as well as Head Constable Parameswari Verma, In-charge NCC Camp (where she was working), the petitioner willfully absented herself from government duty and did not report at police line, Nainital. She remained unauthorisedly absent from duty for 154 days, against which, a preliminary inquiry was conducted and she was found guilty of such absence. Respondents also contended that the petitioner was given due opportunity of hearing during the course of inquiry; the case of petitioner is full of evidence and there is no perversity, irregularity & impropriety in conducting the departmental inquiry; the petitioner was given proper opportunity of defending herself and was rightfully punished by the department; the medical slips submitted by the petitioner were not as per Rules; the petitioner being a member of disciplinary police force, did not follow the procedure laid down under para-381, 382 and 383 of the Police Regulations. After considering all the circumstances, the punishment order was passed and according to respondents, the scope of judicial review is very limited, hence, the claim petition is liable to be dismissed.

5. It was also contended that applying the principles of 'No work No pay', the period of absence was regularized and this is not a punishment in the eye of law. Hence, petitioner is not entitled for the relief as sought above.

6. A Rejoinder Affidavit has also been filed by the petitioner, reiterating the same facts as have been stated in the petition.

7. We have heard both the sides and perused the record.

8. It is admitted to the petitioner that she was posted at Police Line, Nainital at the relevant time and was deputed to do her duty at NCC Camp, Ranibagh. It also an admitted fact that she was transferred from District Nainital to District Champawat vide order dated 01.08.2015 and her date of relieving was already fixed therein. Petitioner became absent from duty without prior sanction of leave and without getting prior permission of the concerned authority. The reason of absence, submitted by the petitioner was her illness, but she never submitted any application alongwith medical certificates, as per relevant Police Regulations. During the inquiry proceedings, the petitioner submitted that she sent information through her husband, but it was found incorrect by the inquiry officer. The petitioner has contended that the department was duty bound to inform her about the transfer and she was having no knowledge of transfer order hence, she could not join the duty.

9. It has been contended on behalf of the respondents that petitioner herself was duty bound to be in touch with her appointing authority. This court is also of the view that petitioner has no right to remain absent without timely information and due permission from the department, which was found lacking in this matter. This court cannot sit as an appellate court and we cannot test the subjective satisfaction of the disciplinary authority, and in view of the court, the

legality of procedure of disciplinary proceedings, started against the employee, can be seen.

10. After going through all the records, this Court finds that a preliminary inquiry was conducted in a lawful manner; the petitioner was given proper opportunity of hearing and a reasoned order was passed. We find no impropriety, irregularity or infirmity in the proceedings. The reply to show cause notice was duly considered by the disciplinary authority.

11. Petitioner cannot claim that she is not duty bound to be in touch with her appointing authority and the appointing authority was under any duty to keep in touch with her. This is against the principle of master and servant. Petitioner was always under a duty to timely inform her department and she was also duty bound to submit an application along with medical certificates, immediately when she was unable to attend her duty, which was not done in the present case by the petitioner. The medical certificates were not countersigned as per the Rules, hence the disciplinary authority was within their right, not to sanction the medical leave. The record also reveals that petitioner was not hospitalized, rather she got her treatment as an outdoor patient. When she was able to move to the hospital from her residence, hence, she was not prevented by any reason from contacting with her employer, to whom she was duty bound to be in touch, but she remained knowingly absent. Hence, this court also did not find any justification in her absence.

12. The impugned punishment, passed by the disciplinary authority, was within law and it was within their authority. The period of absence was allowed/granted as leave without pay, without any break in her service hence, it is not a punishment, within the definition of Punishment Rules. The argument of petitioner about double jeopardy/punishment cannot be accepted. The disciplinary authority

passed a separate order about non-payment of salary and such order was not made as a part of punishment order. Hence, on this count, we find no illegality or irregularity in the orders passed by the disciplinary authority about non-payment of salary.

13. Considering all the circumstances of the case, this court finds no merit in the petition and the same deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JUNE 19, 2019
NAINITAL
KNP