

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

Present: Hon'ble Mr. A. S. Nayal

----- Member (A)

CLAIM PETITION NO. 44/NB/SB/2019

Umesh Chandra Pargain (Male) aged about 54 years, S/o Sri Jamuna Dutt Pargain, presently serving as Leading Fireman, Fire Station Tanakpur, District Champawat.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Home Department, Government of Uttarakhand, Dehradun.
2. Inspector General, Fire Services, Uttarakhand, Dehradun.
3. Inspector General of Police, Kumaun Region, Nainital.
4. Superintendent of Police, Champawat.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel
for the petitioner.
Sri Kishore Kumar, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: JULY 15, 2021

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

“(i) To set aside the impugned order dated 17-03-2018, issued by respondent No. 4, as well as the order dated 03-08-2018 passed by respondent No. 3, whereby the petitioner’s appeal was cursorily rejected. (Annexure No. 1 and 2 respectively to Compilation-I).

(ii) To declare the action of the respondents in treating the order dated 17-03-2018 as a punishment

one, for the purpose of petitioner's claim for promotion to the next higher post of Fire Station Second Officer, as arbitrary and illegal.

(iii) To direct the respondents to consider and promote the petitioner to the post of Fire Station Second Officer, from due date, and to grant all consequential benefits.

(iv) To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(v) To allow the claim petition with cost."

2. Brief facts of the claim petition are as under:-

The petitioner was transferred to District Champawat from Udham Singh Nagar vide order dated 31.05.2016. Against this order the petitioner submitted his representation and also approached before the Hon'ble High Court to quash or cancel his transfer on the basis of various grounds which included his personal situation and also his plea that the length of service spent on lower post should not be counted in counting normal tenure in one district, and hence transfer cannot be effected by counting the period spent on the lower post also. The petitioner's representation in the department was rejected and he did not get any relief from the Hon'ble High Court as well. Consequently, he joined his duties in Champawat on 11.11.2017 and it was held by the department that he had reported in the office after a delay of 50 days from the date he should have joined his new place of posting. Show-cause notice to this effect was issued to him, in which he was asked to show why the above absence of 50 days should not be treated on the principle of "No work No pay". The petitioner's reply to the above was not considered satisfactory and the Superintendent of Police Champawat passed a reasoned order vide order dated 17.03.2018 in which it was held that for a period of absence of 50 days "No work No pay" shall be applied in this case. The petitioner preferred an appeal

before the Inspector General of Police, Kumoun Region, Nainital which was rejected vide order dated 03.08.2018 again by a reasoned order.

3. However, the petitioner did not appeal against the said orders within the stipulated limitation period, but challenged the above orders when he discovered that the above order "No work No pay" was being treated as a punishment order against the petitioner for the purposes of promotion to the next higher post in the cadre and in this circumstance the petitioner approached the Tribunal with this petition and his prayer to quash the orders dated 17.03.2018 and 03.08.2018 and to declare the action of the respondents in treating the order dated 17-03-2018 as a punishment one, for the purpose of petitioner's claim for promotion to the next higher post of Fire Station Second Officer, as arbitrary and illegal.

4. The respondents have stated that cause of action arose to the petitioner on 03.08.2018 when his statutory appeal has been rejected and he has approached before the Hon'ble Tribunal after expiry of the limitation period and has not explained day-by-day delay in his delay condonation application. Hence, this claim petition is liable to be dismissed. It was also stated by the respondents that if the petitioner was really ill then he should have informed the local police officers about his illness under the provision of Para-381 & 382 of Police Regulation. But the petitioner violated this provision and the "No work No pay" order dated 17.03.2018 which has been passed by the respondent No. 4 Superintendent of Police, Champawat and the appellate order dated 03.08.2018 were speaking orders in which various argument were discussed and appropriate orders were passed by the competent authority.

5. I have heard both the parties and perused the record.

6. Learned counsel for the petitioner submitted that non-grant of salary for a period of absence is not a punishment under Section-23 of

the U.P. Police Act, 2007, but still when the petitioner in August 2019 participated in a promotional exercise at Dehradun he was told orally that “No work No pay” orders shall be held against him and his promotion is likely to be withheld. Later, the department has come to the view that “No work No pay” is not a punishment and the petitioner has even been promoted to the next higher post and that the petitioner does not wish to pursue this matter anymore. Learned A.P.O. also is of the view that main reason for the petitioner for appealing against the orders dated 17.03.2018 and 03.08.2018 was because the order of “No work No pay” was allegedly being considered by the department as a punishment order and promotion was being denied to the petitioner on this basis. Since he has now been promoted by the department, therefore, the petition is rendered infructuous and may be dismissed.

7. As far as the orders dated 17.03.2018 and 03.08.2018 are concerned there is no illegality and infirmity in these orders and there is no reason for the petitioner to believe that he will be barred for promotion because his representation and appeal has been decided against him. Subsequently, the department has even promoted the petitioner as submitted by his learned counsel.

ORDER

On the basis of above, the claim petition of the petitioner is rendered as infructuous and, therefore, it is dismissed. However, if any fresh cause of action arises in future the petitioner is at liberty to file a fresh petition before the appropriate forum. No order as to costs.

(A. S. NAYAL)
MEMBER (A)

DATE: JULY 15, 2021
NAINITAL
BK

