

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 62/NB/DB/2020**

Constable 216 Armed Police Suraj Singh, s/o Sri Gopal Singh, Reserve  
Police Line, Pithoragarh, District Pithoragarh.

.....Petitioner.

**vs.**

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Additional Director General of Police, Uttarakhand, Dehradun
4. Deputy Inspector General of Police, Kumaon Region, Nainital.
5. Superintendent of Police, District Pithoragarh.

.....Respondents.

Present: Sri D.S.Mehta, Advocate, for the Petitioner.  
Sri Kishore Kumar, A.P.O., for Respondents.

**JUDGMENT**

**DATED: SEPTEMBER 29, 2021**

**Justice U.C.Dhyani (Oral)**

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

(i) In view of the facts and grounds as mentioned above the applicant prays that this Hon'ble Tribunal may graciously be pleased to set aside/ quash the impugned order dated 03.12.2019 issued by Deputy Inspector General of Police Kumaun Region, Nainital.

(ii) To direct the respondents to pay the full salary of the post of Constable to the petitioner w.e.f. April, 2018 and also pay the arrears of full salary with interest.

(iii) To direct the respondents to pay the salary of termination period i.e., 11.03.2008 to 29.04.2017.

(iv) To direct the respondents to fix the seniority of the petitioner from his initial date of appointment i.e. 11.10.2001, ignoring the termination period.

(v) To direct the respondents to transfer the petitioner from Armed Police to Civil Police as he was appointed in Civil Police.

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

2.1 Petitioner was appointed as Constable on 10.10.2001. Due to severe ailments, he could not attend his duties from (i) 07.10.2007 to 31.10.2007 and (ii) 01.11.2007 to 26.11.2007. He recovered on 28.11.2007, but before that, *vide* order dated 16.11.2007 S.S.P., Pithoragarh (Respondent No.5) placed him under suspension in contemplation of departmental inquiry. On 13.12.2007, charge sheet was issued to him for his absence from duty for about 53 days. Petitioner replied to the charge sheet on 01.01.2008, but without considering the reply of the petitioner, the inquiry officer held him guilty. Respondent No.5, *vide* order dated 11.03.2008, terminated the services of the petitioner. Aggrieved with the same, the petitioner preferred departmental appeal, but the same was rejected by DIG, Police, Kumaun Region (Respondent No.4) *vide* order dated 26.04.2008. Against such order, the petitioner preferred a revision under Rule 23 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991, before I.G, Police, Kumaun Region, which was not decided. The petitioner filed Writ Petition No. 348/2009 before Hon'ble High Court, such writ petition was disposed of *vide* order dated 17.04.2012, directing the authority to decide the revision within three months. Revision filed by the petitioner was dismissed *vide* order dated 15.07.2010. Petitioner filed Claim Petition No. 13/NB/DB/2012 before this Tribunal challenging the orders dated

11.03.2008(termination order), 21.07.2008 and 15.07.2010. This Tribunal *vide* order dated 23.05.2013 set aside these orders and directed the appellate authority to decide the matter afresh in the light of contentions raised by the petitioner (Copy of order: Annexure- A 2). Consequently, Respondent No.4 *vide* order dated 20.07.2013 dismissed the appeal of the petitioner, who filed revision against order dated 20.07.2013, which was also dismissed *vide* order dated 31.05.2014. Petitioner again preferred a claim petition bearing No. 11/NB/DB/2014, which was disposed of by the Tribunal *vide* order dated 10.05.2016 quashing the impugned order and inquiry proceedings from the stage of show cause to the stage of findings. Respondent No. 5 was directed to start the proceedings afresh, if he so desires, in accordance with law. Petitioner was directed to be reinstated with liberty to suspend him during inquiry, in accordance with law (Copy of order: Annexure- A 3). Respondent No.5 issued show cause notice on 20.07.2016, without reinstating the petitioner into service. Petitioner replied to the same, but still Respondent No.5 was not satisfied. Respondent No.5 *vide* order dated 04.08.2016 confirmed the earlier termination order. Petitioner preferred departmental appeal before Respondent No.4, who *vide* order dated 11.03.2017 allowed the appeal and quashed the order dated 04.08.2016 passed by Respondent No.5 while reinstating the petitioner into service and directed him to proceed with the departmental inquiry afresh (Copy of order: Annexure-A 4). Respondent No.5, *vide* order dated 26.04.2017 reinstated the petitioner into service (Copy: Annexure- A 5). Petitioner joined his duties on 29.04.2017. He was granted pay scale of Rs.21,700/- w.e.f. 29.04.2017. He was thereafter granted revised pay scale of Rs.23,100/-. *Vide* order dated 21.11.2017, Respondent No.5 demoted the petitioner to minimum salary of Constable for a period of one year (Copy of order: Annexure- A 8). Petitioner moved an application on 15.11.2019 before Respondent No.4, stating that, “in pursuance of the order of the Hon’ble Tribunal the respondent authority passed order dated 26.04.2017 by which the petitioner was reinstated in service from the date of joining at Police Line, Pithoragarh and the final order dated 21.11.2017 the respondent authority passed order to the effect that

petitioner has been kept on the post of Constable on minimum pay scale but the respondent authority after completion of period of one year in minimum pay scale the admissible salary of the Constable after counting the entire service has not been given and also the benefit of seniority from the date of initial appointment has also not been given and the petitioner also made request to transfer him in Civil Police. True copy of representation dated 15.11.2019 is annexed as Annexure-A 9 to this petition.”

2.2 Petitioner made a representation to Respondent No.4 for granting full salary, seniority and salary of termination period, but the said respondent wrongly considered the representation of the petitioner as an appeal against the order dated 21.11.2017. The petitioner, on the one hand, was demoted for a period of one year on minimum salary of the post of Constable, but, on the other hand, he was also deprived of the salary of termination period *w.e.f.* 11.03.2008 to 29.04.2017.

2.3 Petitioner was appointed in the Civil Police but he is working in the Armed Police. The Constables, who were appointed with the petitioner, are working in the Civil Police. Petitioner is entitled to salary of termination period *w.e.f.* 11.03.2008 to 29.04.2017. He is entitled to seniority from initial date of appointment i.e. 11.10.2001. *Vide* order dated 21.11.2017, the petitioner was kept on minimum pay scale for one year from the joining of service (i.e. 29.04.2017). He completed one year in the month of March, 2018, but still he was denied full salary for which he is legally entitled. For grant of full salary, seniority and salary for termination period, petitioner made representation before respondent authority but Respondents No. 4 & 5 have not paid any heed to such representation of the petitioner. Hence, present claim petition.

3. *Vide* order dated 11.03.2017 (Annexure: A 4), while allowing the appeal of the delinquent petitioner, which was directed against the order dated 04.08.2016 of Respondent No.5, the petitioner was reinstated into service. His termination order was set aside. Respondent No.5 was directed to proceed afresh with departmental inquiry. *Vide*

order dated 28.04.2017 (Annexure: A 5), Respondent No.5 reinstated the petitioner into service and *vide* order dated 21.08.2017 (Annexure: A 6), the salary of the petitioner was determined. It was indicated in Annexure: A 6 that the salary of the petitioner from 11.03.2008 to 28.04.2017 (dismissal period) shall be determined later on. It was also indicated in order dated 11.10.2017 of Respondent No.5(Annexure: A 7), that his salary for the dismissal period (11.03.2008 to 28.04.2017) shall be determined subsequently, but the arrears will not be given.

4. Petitioner moved a representation on 15.11.2019 ( Annexure: A 9) for the following:

- (i) His salary for the period 11.03.2008 to 29.04.2017 be determined,
- (ii) seniority be given to him from 11.10.2001 (the date of initial appointment) and (iii) he was appointed in Civil Police, therefore, he be transferred from Armed Police to Civil Police.

It is submitted by Ld. Counsel for the petitioner that the said representation of the petitioner has not been decided so far.

5. So far as the determination of salary for the period of dismissal is concerned, this Tribunal is of the view that the first prayer of the petitioner should be decided in terms of Paras 54-A and 54-B, Financial Handbook, Vol. 2 to 4, which reads as below:

**54-A** (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty

days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularized in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

**54-B (1)** When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

(3).....

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant it may, after giving him an opportunity to make his representation [within 60 days from the date on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such [amount (not being the whole)] of such pay and allowances as it may determine”

6. The above noted provisions of Financial Handbook (*supra*) provide for the situation which the petitioner is faced with in present claim petition. The competent authority shall, therefore, consider and

make a specific order regarding pay and allowances to be paid to the petitioner for the period prayed for by him in his representation and present claim petition.

7. So far as second prayer for determining seniority of the petitioner is concerned, this fact is under no dispute that petitioner's representation has not been decided and his seniority has not been determined as yet, therefore, a direction is given to the concerned Police Authority to determine the seniority of the petitioner in accordance with law, at an earliest possible and without unreasonable delay.
8. The third prayer of the petitioner, in his representation, is for transferring him to Civil Police. According to him, he was appointed in Civil Police, but is working in Armed Police as of now. Ld. Counsel for the petitioner has placed a decision rendered by Hon'ble High Court of Uttarakhand in WPSS No. 239 of 2018, which reads as below:

“By means of the present writ petition, the petitioner seeks the following prayer, among others:

“Issue a writ, order or direction in the nature of mandamus commanding the directing the respondent State authorities to consider the transfer of the services of the petitioner from District Armed Police, Nainital to Civil Police of State of Uttarakhand inasmuch as similarly situated Constables of 2005 Batch of District Armed Police have already been transferred to District Civil Police Branch Nainital vide order dated 9th January 2018 passed by the SSP, Nainital.”

It is the submission of the learned counsel for the petitioner that the controversy in hand is covered by decisions rendered by Coordinate Benches of this Court vide order dated 16.09.2010 passed in WPSS No. 1098 of 2009 and order dated 19.12.2011 passed in WPSS No. 1320 of 2011. Learned counsel for the respondents-State fairly submitted that the controversy in hand is covered by the aforesaid decisions of this Court. Present writ petition should meet the same fate as was met by WPSS No. 1098 of 2009 and WPSS No. 1320 of 2011. The writ petition is accordingly decided in terms of order dated 16.09.2010 passed in WPSS No. 1098 of 2009 and order dated 19.12.2011 passed in WPSS No. 1320 of 2011. Respondent no. 3 is directed to pass an appropriate order in the light of the above. Urgency Application (IA No. 1158 of 2018) also stands disposed of.”

9. It is the submission of Ld. Counsel for the petitioner that petitioner was appointed in Civil Police but has been asked to work in Armed Police. His batch mates (of 2001 Police batch) are working in

Civil Police. Regulation 525 of the Police Regulations is pertinent in this respect and is quoted herein below for convenience:

“525. Constables of less than two years’ service may be transferred by the Superintendent of Police from the armed to the civil police or vice versa. Foot police constables may be transferred to the mounted police at their own request. Any civil police constables of more than two and less than ten years’ service may be transferred to the armed police and vice versa by the Superintendent for a period not exceeding six months in any one year. All armed police constables of over two years’ service and civil police constables of over two and under ten years’ service may be transferred to the other branch of the force for any period with the permission of the Deputy Inspector General. In all other cases the transfer of police officers from one branch of the force to another or from the police service of other Provinces to the Uttar Pradesh Police requires the sanction of the Inspector General.”

10. Respondent No. 2 is, therefore, requested to take a decision on transfer of the petitioner from Armed Police to Civil Police, in accordance with law, at an earliest possible, without unreasonable delay.
11. Last but not the least, the petitioner was demoted for a period of one year on minimum salary of the post of Constable. His grievance is that he is not being given full salary even after completion of one year. Respondents are therefore, requested to consider such grievance of the petitioner at the earliest and without unreasonable delay, in accordance with law, under intimation to the petitioner.
12. Claim petition thus stands disposed. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: SEPTEMBER 29, 2021*  
*DEHRADUN*

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