

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

Present: Sri V. K. Maheshwari ----- Vice Chairman (J)

&

Sri U. D. Chaube ----- Member (A)

CLAIM PETITION NO. 16/N.B./2011

Sunil Kumar Bhatnagar, S/o Late Sri Harish Chand Bhatnagar,
R/o Mohalla Nawabpura, House No. 123, Moradabad.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Transport Department, Dehradun
2. Uttarakhand Transport Corporation through its Chairman Division Manager, Uttarakhand Transport Corporation, Tanakpur, District Champawat
3. General Manager (Administration), Uttarakhand Transport Corporation 117, Indra Nagar, Dehradun.

.....Respondents

Present: Sri Amar Nath Sharma, Counsel
for the petitioner.

Sri V.P. Devrani, A.P.O. for the
respondent no. 1.

Mrs. Seem Sah, Advocate
for respondent no 2 & 3.

JUDGMENT**DATE: 10-04-2013****DELIVERED BY SRI V.K.MAHESHWARI, VICE- CHAIRMAN (J)**

1. The petitioner has challenged the impugned order of removal from the service dated 6.8.2008 and orders passed on appeal and revision dated 15.9.2009 and 30.7.2010 respectively.
2. The facts in brief are that the petitioner was a Conductor in the Uttarakhand Road Transport Corporation Lohaghat Depot. The petitioner was deputed on Bus No. 4659 and this vehicle had a trip from Delhi to Dharchula on 16.2.2005. Rs. 14,900/- were collected by the petitioner by the sale of passengers tickets, which was expected to be deposited on 16.2.2005 by 9 O'clock. The petitioner did not deposit the above mentioned amount on 16.2.2005, but deposited after a delay of one day i.e. on 17.2.2005. Consequently, departmental proceedings were initiated against the petitioner and charges were framed on 01.4.2005 and after conducting the departmental enquiry, the petitioner was removed from service by the impugned order dated 6.8.2008. The appeal and revision preferred against the order of removal were also dismissed. Hence this petition.
3. The petitioner has challenged the impugned orders on the following three grounds:
 - a. That adequate, proper and sufficient opportunity has not been afforded to the petitioner for making his defence in the departmental enquiry.
 - b. That the petitioner did not commit any misconduct as he deposited the cash at the earliest possible opportunity.

- c. That the punishment of removal for the alleged delinquency is harsh.
4. The petition has been opposed on behalf of the respondents and it has been stated that petitioner intentionally and deliberately did not deposit the cash with the department which he received by sale of passengers tickets on 16.2.2005. The petitioner deposited this amount on 17.2.2005 after delay of one day, which amounts to misconduct. It is further stated that adequate opportunity of hearing was provided to the petitioner for making his defence, but petitioner deliberately did not participate in the departmental proceedings and he cannot be permitted to contend that opportunity of hearing was not provided to him. It has further been stated that petitioner is habitual of doing delinquent acts for which he had been punished several times in past. It is also stated that the punishment is not harsh, which has been passed after considering every aspects. Appeal and revision have rightly been dismissed. No injustice is caused to the petitioner. Therefore, the petition is liable to be dismissed and the petitioner is not entitled for any relief.
5. A rejoinder affidavit has also been filed reiterating mostly the facts stated in the main petition.
6. We have heard both the parties and perused the evidence available on record.
7. First of all, it has been contended on behalf of the petitioner that adequate, proper and sufficient opportunity of hearing has not been provided to him in the departmental enquiry. Therefore, the enquiry report cannot be held justified and no action can be based on such a report. The record reveals that the petitioner did not participate in the enquiry, but it is clear from the report itself that several opportunities

were given to the petitioner for defending himself, but the petitioner did not participate in the enquiry, It is pertinent to mention in this regard that the petitioner has categorically stated that on each date of the enquiry the petitioner would sent him on duty, therefore, it was not possible for him to participate in the enquiry. There is no reply regarding this fact. In case, the petitioner was deputed on duty on the date of enquiry how it could be possible for him to participate in the enquiry. This aspect has not been considered by the punishing authority, appellate authority or revisional authority so it cannot be said that sufficient opportunity of hearing was provided to the petitioner. There is another aspect of the matter also i.e. even if the petitioner did not participate in the enquiry, it was essential for the department to prove its allegation against petitioner. It was also essential for the enquiry officer to look into as to whether allegations against the petitioner were proved. Simply on the ground that the petitioner did not participate in the enquiry, he cannot be held guilty unless sufficient material was available on record to prove the misconduct of the petitioner. But inquiry report reveals that the petitioner has been held guilty merely on the ground that he did not participate in the departmental enquiry. This is not sufficient to hold the petitioner guilty. In fact, the allegations must have also been proved. Moreover, it is admitted that the amount of sale of tickets supposed to be deposited on 16.2.2005 was deposited on next day i.e. 17.2.2005. The petitioner has submitted his explanation that due to illness, he was not able to deposit the amount on 16.2.2005. One day delay in depositing the amount, if it is bona fide cannot be treated as misconduct. Several other allegations were also levelled against the petitioner there is nothing in report as to whether any of these allegation was proved and if so by what evidence. Therefore, the

enquiry report suffers with material illegality. The punishing authority had also issued show-cause notice to the petitioner before passing the impugned order. In response, to show-cause notice the petitioner had submitted his reply stating that due to illness he could not deposit the amount on 16.2.2005 and he deposited the amount on 17.2.2005. In support of his version of illness the petitioner had also filed a medical certificate, but the punishing authority without considering the version of the illness of the petitioner had passed the impugned order simply on the ground that the petitioner did not participate in the enquiry which has been treated as misconduct. Merely non-participation in the departmental enquiry does not amount to misconduct, therefore, on this ground the impugned order cannot be held justified. Moreover, as the medical certificate of the petitioner was not considered that's why also the impugned order suffers with illegality.

8. It is further contended on behalf of the petitioner that even on assumption of misconduct the punishment is too harsh. We also agree with the contention of the petitioner. In the present case, there was delay in depositing the amount of less than 24 hours and punishment of removal seems to be unreasonably harsh.
9. It has further been contended that appellate authority and revisional authority have taken the past conduct of the petitioner into consideration which is not justified. We agree with the contention of the petitioner. Without affording opportunity to the petitioner it is not justified to take into consideration the past conduct of the petitioner. Therefore, the appellate as well as revisional order also suffers with material illegality.
10. On the basis of above discussion, we are of the view that the principles of natural justice have been violated in the present case. In

fact, the alleged allegation hardly comes within the purview of misconduct. Moreover, the punishment is unreasonably harsh. Therefore, the impugned orders of the punishment, appeal and revision are liable to be quashed. The petitioner is entitled to be reinstated in service. Now, the question is whether the petitioner is entitled for back wages or not? On the basis of no work no pay we are of the opinion that the petitioner is not entitled for the back salary. However, we would like to make clear that the period in which the petitioner was not in service shall not be treated as a break in the service for the purpose of fixation of pay after reinstatement and for the purpose of superannuation.

ORDER

The petition is allowed. Impugned orders of punishment, appeal and revision are hereby quashed. The respondents are directed to reinstate the petitioner in service immediately. The petitioner shall not be entitled for the salary or allowances for the period during which he did not remain in service, however, the said period shall not be treated as break in service for the purposes of fixation of pay and superannuation. No order as to costs.

Sd/-

U. D. Chaube
Member (A)

Sd/-

V. K. Maheshwari
Vice-Chairman (J)

Date: **10-04-2013**

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