

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

CLAIM PETITION NO. 07/SB/2020

1. Dinesh Singh Negi, s/o Late Sri Soban Singh Negi, aged about 43 years, r/o Race Course, Police Line, Dehradun and two others.
2. Manoj Singh Adhikari, s/o Late Sri Kunwar Singh Adhikari, aged about 32 years, r/o 68/1 Near Dhobi Chowk, Race Course, Dehradun.
3. Himanshu Upadhyay, s/o Late Sri Prem Ballabh Upadhyay, aged about 34 years, r/o Vaibhav Vihar Nawada, Dehradun.

.....Petitioners

VS.

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun.
2. Director General of Police, Uttarakhand, Dehradun.
3. Presiding Officer/ Superintendent of Police (Rural), Dehradun.
4. Senior Superintendent of Police Dehradun.
5. Inspector General, Garhwal Region, Uttarakhand.

.....Respondents

Present: Sri Shashank Pandey, Advocate, for the petitioner.(online)
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: JUNE 26, 2024

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioners seek the following reliefs:

“a. To issue order or direction to quash/set aside the charge- sheet dated 28.11.2019.

b. To issue order or direction to quash/ set aside the Enquiry proceedings that were stated pursuant to Charge-sheet dated 06.04.2019 and has been

continuing in spite the earlier Charge-Sheet was quashed and a new Charge-Sheet was given on 28.11.2019.

c. To issue order or direction to quash the Suspension Order dated 09.04.2019.

d. To direct the respondents to permit the Petitioners to discharge their duties.

e. To direct the respondents to give difference of suspension allowance and salary for the period the petitioners have remained suspended.

f. To direct the respondents to give increased subsistence allowance @75% to the petitioners as they have already been suspended for more than 6 months.

g. To give the cost of the petition to the petitioners.

h. To give any other relief this Hon'ble court may deem fit and proper in the circumstance of the case."

2. Ld. A.P.O. has placed copy of order dated 09.10.2020, passed by Hon'ble High Court of Uttarakhand in WPSB No. 230/2020, which (order) reads as under:

"Shri Shashank Pandey, learned counsel for the petitioner.

Shri B.P.S. Mer, learned brief holder for the State of Uttarakhand.

There is no objection by the respondents to the impleadment application. Hence, impleadment application (CLMA No. 6672 of 2020) is allowed. Petitioner to amend the cause title and file amended petition within one week.

Heard learned counsels.

Issue rule nisi.

The interim relief is for a direction to the respondents not to continue the departmental proceedings.

The departmental proceedings have been initiated against the petitioner and proceedings are in progress. The Tribunal dismissed the plea. Hence, we do not find any ground to stay the same. We make it clear that the respondents are at liberty to proceed with the departmental proceedings. However, the result of the departmental proceedings will be subject to further orders of this Court.

Interim relief application (CLMA No. 6527 of 2020) is disposed off accordingly.

Post for hearing in the usual course.

(R.C. Khulbe, J.)

(Ravi Malimath)
A.C.J."

[Emphasis supplied]

3. Hon'ble High Court, in the penultimate paragraph of order dated 09.10.2020 (as excerpted above), has given liberty to the respondents to proceed with the departmental proceedings (against the petitioners).

However, the result of the departmental proceedings will be subject to further orders of the Hon'ble Court.

4. Ld. Counsel for the petitioners fairly conceded that Reliefs- a & b are not to be looked into by this Tribunal, in view of the above mentioned order of the Hon'ble High Court, who is seized with the matter.

5. Ld. Counsel for the petitioners, however, prayed that a direction be given to the respondents to give difference of suspension allowance and salary for the period the petitioners remained suspended (Relief-e). He further prayed that a direction be given to the respondents to give increased subsistence allowance @ 75% to the petitioners, as they have been suspended for more than six months. (Relief- f).

6. Ld. A.P.O. submitted that an affidavit of Sri Swatantra Kumar Singh, the then S.P., Rural, District Dehradun, has been filed on 01.03.2021, indicating that subsistence allowance of the petitioners was increased from 50% to 75% with immediate effect *vide* office order dated 18.01.2021.

7. So far as determination of salary of the petitioners for the period of suspension is concerned, this Tribunal is of the view that this prayer of the petitioners should be considered in terms of Para 54-B, Financial Handbook, Vol. 2 to 4, which reads as below:

“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).....

[Emphasis supplied]

The above noted provision of Financial Handbook (*supra*) provides for a situation which the petitioners are 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 petitioners for the period

prayed for by them in present claim petition, as expeditiously as possible (relief 'e').

8. It may further be noted here that an application for interim relief was filed by the petitioners to direct the respondents to forthwith increase the suspension allowance from 50% to 75%. Such application for interim relief was given on 04.01.2021. Ld. A.P.O. was given time to file objections against the same. Affidavit of S.P., Rural, Dehradun was filed on 01.03.2021 to indicate that 75% salary is now being paid to the petitioners as subsistence allowance during suspension period. Affidavit of Sri Swatantra Kumar Singh, S.P. Rural, Dehradun was taken on record. Order regarding raising subsistence allowance to 75% was issued on 18.01.2021.

9. But, Ld. Counsel for the petitioners submitted that the petitioners were suspended on 09.04.2019. As per Government Order, the subsistence allowance was to be increased to 75% after six months. The subsistence allowance has been raised after more than one year (approximately 1 year 3 months). Hence the same requires reconsideration by the competent authority, who should take decision in the light of relevant G.Os.

10 Respondents are, accordingly, directed to reconsider the same, as per relevant G.Os., at the earliest, without unreasonable delay. (relief 'f')

11. Ld. Counsel for the parties submitted that the claim petition may thus be disposed of. They submitted that the aforesaid direction may be given by Single Bench of the Tribunal.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 26, 2024.
DEHRADUN

VM