

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 109/NB/DB/2023

Smt. Kamla Chand, aged about 63 years, W/o Late Kundan Singh Chand,
R/o Village Aarukhan, Post Office Patwadangar, District Nainital.

.....Petitioner

Vs.

1. State of Uttarakhand, through Secretary, Medical Health & Family Welfare, Government of Uttarakhand, Secretariat Complex, Subhash Road, Dehradun.
2. Director, Medical Health & Family Welfare, Uttarakhand, Dehradun.
3. Director, Pension Evam Lekha Hakdari/Accounts Establishment, Uttarakhand, Dehradun.
4. Chief Medical Officer, Nainital.
5. Medical Officer, Community Health Centre, Bhowali, District Nainital.

.....Respondents

Present: Sri B.S.Negi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: OCTOBER 17, 2024

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

“In view of the facts and circumstances, as mentioned above, the petitioner prays that this Hon'ble Tribunal may, graciously, be pleased to:-

(a) issue order or direction, directing the respondents to grant the family pension as well as to pay the entire service dues of her late husband, Kundan Singh Chand, with interest to the petitioner.

(b) issue any other suitable order or direction in favour of petitioner, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

(c) award cost of claim petition in favour of petitioner.”

2. Brief facts of the case are that the husband of petitioner, Late Kundan Singh Chand, was appointed in the respondent department on 1-9-1987 as class 4th employee, and was posted at P.H.C., Patwadangar, District Nainital. During the service tenure, the petitioner's husband was transferred to different places as per the direction of his higher authorities, and lastly, he was working as class 4th employee at C.H.C., Padampuri, District Nainital. Since his initial appointment, i.e. 1987 to the year 2008, the entire service career of the husband of petitioner was satisfactory; and there was no complaint whatsoever against him. In the year 2008, when the husband of petitioner was sincerely discharging his duties, his health suddenly started deteriorating, for which he underwent treatment under the supervision of the doctor concerned. The health of the petitioner's husband started deteriorating, then the husband of petitioner requested his higher authorities that he may be given voluntary retirement.

3. On the request of the petitioner's husband, the respondents directed the husband of petitioner to appear before the Regional Medical Board, for which the husband of petitioner appeared before the Medical Board on 28-7-2015, in which the Medical Board opined that the husband of petitioner is not fit for the government duties. Thereafter, the husband of petitioner moved

an application before the respondents, requesting therein that he may be given voluntary retirement from the department. The Chief Medical Officer, Nainital also directed the In-charge Medical Officer, C.H.C., Bhowali/ P.H.C., Padampuri, District Nainital to send the relevant papers of the petitioner's husband.

4. The proceedings of voluntary retirement of petitioner's husband from the department were going on; but unfortunately, on 22-1-2017, the husband of petitioner died, leaving behind the petitioner and his children. The son of petitioner applied for suitable appointment under the provisions of Dying in Harness Rules, and in the year 2018, the petitioner's son was appointed in the department under the provisions of Dying in Harness Rules. The husband of petitioner was regular employee of respondent department, who died during his active services; but till date, the respondents are not paying the entire service dues, like G.P.F., G.I.S., Gratuity, Encashment, as well as Family Pension to the petitioner.

5. During the pendency of his application for voluntary retirement, he died on 22-1-2017. The petitioner moved so many representations to the respondents, requesting therein that she may be given family pension as well as pay the entire service benefit of her late husband; but till date, no positive action has been taken by the respondents in this regard. The husband of petitioner was permanent employee of the respondent department. His service was pensionable. It is expedient and necessary in the interest of justice that this Hon'ble Tribunal may, graciously, be pleased to direct the respondents to grant the family pension as well as to pay the entire service dues of her late husband, Kundan Singh Chand, with interest to the petitioner.

6. Prior to the filing of present claim petition before this Hon'ble Tribunal, the petitioner approached before the Hon'ble High Court of Uttarakhand at Nainital by way of writ petition no. 1074/2023 'Smt. Kamla Chand V/s State of Uttarakhand & others', in which the

Hon'ble High Court, vide judgment & order dated 5-7-2023, gave liberty to the petitioner to approach before this Hon'ble Tribunal.

7. C.A./W.S. has been filed on behalf of the respondents stating therein that the petitioner's husband late Shri Kundan Singh Chand died on 22.01.2017. The petitioner has filed the petition in question before the Hon'ble Tribunal almost 8 years after the death of her husband. Before this, the petitioner presented his representation to the answering respondents on 26.03.2018 and in the said representation, it had clearly stated that if the dues of my husband Late Shri Kundan Singh Chand is not paid to me and the pension is not settled, then I will have to be forced to have to approach the Court. After the above representation, the petitioner again submitted a representation to the respondent no. 03 on 28.09.2020 but its copy was not given to the respondent. The petitioner again sent an application on 02.06.2023 to the Medical Officer Incharge, Community Health Center Bhowali with the request to pay the dues of her husband. According to the service book of the petitioner's husband Late Shri Kundan Singh Chand, there was zero leave in his medical leave account in the year 2008 and 300 days leave was left in his accrued leave account, but he was without leave from the month of June 2008 till 20.12.2009. He was absent from his services unauthorisedly without application/prior notice and no information or leave application was submitted by him during the said period. After that, from January 2010 till the date of his death i.e.. 22.01.2017, he was absent unauthorisedly. No information or leave application was submitted by him during the said period. The total absence period of Late Shri Kundan Singh Chand is 08 years 05 months. A total of 300 days of accrued leave deposited in the leave account and extraordinary leave of maximum 5 years can be approved by the appointing authority. Even after approving the said leave, there remains leave of approximately 02 years and 07 months which is not possible to be approved at the level of appointing authority.

8. On the basis of Article 455 of Government Order No. 4495 (S) XXVII-A-47/44 dated 05.10.1958 of the Uttar Pradesh Pension Rules, the certificate of ineligibility for government services issued by the Divisional Medical Council to Late Shri Kundan Singh Chand on that basis, he can be retired from the date of issue. If any employee does not withdraw his voluntary retirement application for a period, then it is assumed that he has taken voluntary retirement. Therefore, on the basis of departmental rules, the petitioner's late husband should have been considered retired with effect from 11.11.2016, but due to this fact not being revealed in time by the then departmental employees and officers, the petitioner's son, Mr. Rohit Kumar, was given the post of supernumerary dependent of the deceased. The appointment was given under the rules and the petitioner also deliberately did not take any action regarding the pension dues of her husband before this petition and filed this petition almost 5 years after the appointment of her son, which was deliberately delayed.

9. The petitioner has filed the petition before the Tribunal with delay of , almost 08 years after the date of death of her husband, and the time limit for filing the petition before the Tribunal is given under Section 5 (b) (i) of the Uttar Pradesh Public Service Tribunal Act 1978, according to which, a time limit of one year is prescribed to challenge any order before the Tribunal In this regard, U.P. Para 5(b)(i) of Public Services (Tribunal) Act 1976 is as under:

“5(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to reference under section 4 as if a reference were a suit filed in civil court so, however that.

(i) notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year.

Hence, the claim petition is not maintainable being time barred.

10. During the absence of the petitioner's late husband, no application for medical leave or information about illness was given to

the department. After 18 months of unauthorized absence, the medical certificate was submitted by Late Shri Kundan Singh Chand on 21st December, 2009, after which he was appointed as per Chief Medical Officer, Nainital's letter number T-5/2009-10/6287 dated 21st December, 2009. Records related to illness were ordered to be submitted to the Chief Medical Officer, Nainital through proper channel. After which, the medical certificate of about 18 months (555 days) from 06.06.2008 to 20.12.2009 was presented by Late Shri Kundan Singh Chand. But probably this leave was not approved due to the medical leave account of the employee being zero. When he appeared before the Medical Board on 28.07.2015, he was declared ineligible for government service, after which the concerned employee applied for voluntary retirement through an undated application. Along with this, it has also been clarified through the affidavit given by Late Kundan Singh Chand on 05.04.2016 that Late Kundan Singh Chand had been absent from his services in the department since the year 2010 and was seeking voluntary retirement.

11. The affidavit submitted by the concerned employee dated 05.04.2016, he himself has clarified that he had been absent from his services in the department since the year 2010, hence it would not be appropriate to consider the said employee in active service. On 22.12.2009, after remaining unauthorizedly absent for 18 months, notice was given by the Chief Medical Officer, Nainital to take action related to termination of service in case of such recurrence in future. After the death of Late Shri Kundan Singh Chand, the reason for delay in payment of his pending dues is as follows:-

1. स्व० श्री कुंदन सिंह चन्द की सेवा पुस्तिका के अनुसार उनके वर्ष 2008 में चिकित्सा अवकाश लेखे में शून्य अवकाश है तथा उपार्जित अवकाश लेखे में 300 दिनों का अवकाश शेष है, परन्तु वह वर्ष 2008 माह जून से दिनांक 20.12.2009 तक बिना अवकाश आवेदन/पूर्व सूचना के अपनी सेवाओं से अनाधिकृत रूप से अनुपस्थित चल रहे थे एवं तत्पश्चात माह जनवरी 2010

से मृत्यु के दि० 22.01.2017 तक कुल 08 वर्ष 05 माह तक अनाधिकृत रूप से अनुपस्थित चल रहे थे, उक्त अवधि में उनके द्वारा किसी भी प्रकार की सूचना अथवा अवकाश आवेदन प्रस्तुत नहीं किया गया था।

2. स्व०श्री कुंदन सिंह चन्द की कुल अनुपस्थिति अवधि 08 वर्ष 05 माह है। नियुक्ति प्राधिकृता द्वारा अवकाश लेखे में जमा कुल 300 दिन उपार्जित अवकाश तथा अधिकतम 5 वर्ष के असाधारण अवकाश स्वीकृत किया जा सकता हैं। उक्त अवकाश स्वीकृत करने के उपरान्त भी लगभग 02 वर्ष 07 माह का अवकाश अवशेष रहता है जिसे नियुक्ति प्राधिकृता के स्तर से स्वीकृत किया जाना संभव नहीं है।

3. उत्तर प्रदेश पेशन नियमावली के शासनादेश सं० 4495 (एस) XXVII-A-47/44 दि० 05.10.1958 अनुच्छेद 455 के आधार पर स्व० श्री कुंदन सिंह चन्द को मण्डलीय चिकित्सा परिषद द्वारा निर्गत राजकीय सेवाओं हेतु अयोग्य प्रमाण-पत्र के आधार पर उस प्रमाण-पत्र को जारी किए जाने की तिथिसे सेवानिवृत्त किया सकता है। महानिदेशालय के पत्रांक 3 प/मृ०आ०/32/2017/13634 दि० 11 जून 2018 के द्वारा स्व० श्री कुन्दन सिंह चन्द के पुत्र श्री रोहित सिंह चन्द्र की नियुक्ति समूह ग कनिष्ठ सहायक (अधिसंख्यक) के पद पर की गई है।

12. On the basis of the above, the petition of the petitioner deserves to be rejected without any reason. The present petition filed by the petitioner is based on false and misleading facts, due to which, claim petition is liable to be dismissed.

13. The petitioner has filed R.A. denying the contents of the C.A./W.S. filed on behalf of the respondents. It has been stated that the husband of petitioner was regular employee of respondents; but unfortunately, during his active service, he has died, and after the death of her late husband, the petitioner is continuously requesting the respondents to release all services dues, including family pension, in her favour, but since long, no positive action has been taken in this regard, and due to inaction on the part of respondents, the petitioner is suffering great hardship. The service dues and pensionary benefits are legitimate rights of petitioner, which is still

pending unpaid to the petitioner. The petitioner is waiting for the positive decision of respondents, for which the petitioner is highly obliged. The son of petitioner was appointed under the provisions of Dying in Harness Rules as per law. The allegations levelled against the petitioner and her son are baseless and not tenable in the eyes of law. There is no delay on the part of petitioner; if any delay, that is on the part of respondents, for which the petitioner cannot be penalized. It is clarified that on the request of petitioner's husband, the respondents directed the husband of petitioner to appear before Regional Medical Board, for which the husband of petitioner appeared before the Medical Board on 28-7-2015, in which Medical Board opined that the husband of petitioner is not fit for government duties. Thereafter, the husband of petitioner requested his higher authorities that he may be given voluntary retirement.

14. Supplementary Affidavit has also been filed on behalf of the petitioner stating therein that in the year 2018 the son of petitioner applied for suitable appointment under the provisions of dying in harness rules and accordingly the petitioner's son was appointed in the department under dying in harness rules and since then he is continuously discharging his duties in the respondent department. Now during the pendency of aforesaid claim petition it came into the knowledge of the applicant that the respondent department initiated a departmental proceeding against the appointment of son of petitioner, in fact the appointment of the son of the petitioner was made as per law and only to save their skin for delay in releasing the family pension to the petitioner in a pressure tactics the respondents initiated the departmental inquiry of son of the petitioner and in the name of inquiry the respondents can cancel the appointment of son of the petitioner, which is not just and proper in the eyes of law.

15. We have heard learned Counsel for the parties and perused the record carefully.

16. In the written submission, the petitioner has stated that the husband of petitioner appeared before the Medical Board on 28.7.2015 in which Medical Board opined that husband of petitioner is not fit for Government duties. The husband of petitioner moved an application before the respondent for voluntary retirement in which the CMO Nainital directed the Incharge Medical Officer, CHC Bhowali/PHC, Padampur to send the relevant papers of the petitioner's husband. The letter dated 11.11.2016 is already annexed as Annexure No.4 in claim petition in which the CMO Nainital annexed the application of petitioner's husband for necessary action but till the date of death of Late Kundan Singh Chand, the voluntary retirement application was not decided. Unfortunately during the pendency of the application for voluntary retirement and during his active service, the husband of petitioner died on 22.1.2017.

17. After the death of Late Kundan Singh Chand, the son of the petitioner got appointment in the department and since then sincerely discharging his duties. As per law the son of the petitioner was appointed in the department under the provision of dying in harness rules and the petitioner is fully entitled for getting the family pension and retiral dues of her late husband. In this regard the law provides that if an employee moved an application for voluntary retirement, then it will be necessary to decide the same either "accepted" or "rejected". In this regard the law laid down by the Hon'ble Apex Court in the case of State of U.P. and others Vs Achal Singh reported in (2018) 17 SCC, 578 that the voluntary retirement is not automatically accepted, it will only be implemented if it is accepted or rejected and in absence of same, it will be treated that there has been no order passed by the concerned department.

18. The identical matters came up before Hon'ble High Court of Uttarakhand at Nainital in Writ Petition No.3088/2018 (S/S) in which the Hon'ble High Court held that the relationship of Master and Servant continued between petitioner's husband and respondent till

death of petitioner's husband. Mere submission of applicant for voluntary retirement does not amount to severance of relationship of Master and Servant. The said relationship is served only when the prayer for voluntary retirement is accepted. After the death of Late Kundan Singh Chand the petitioner being a wife is continuously requesting the respondents to release her family pension as well as service dues but no action has been taken by the respondents, when no action was taken by the respondents the petitioner was left with no option but to approach before the Hon'ble Tribunal for her genuine grievances for this there is no fault on the part of petitioner and if any fault or delay i.e. on the part of respondents for which the petitioner cannot be penalized, further the family pension is continuous/ recurring cause of action, the Hon'ble High Court as well as Hon'ble Apex Court also held in catena of judgment that the pensionary benefit is continuous/ recurring cause of action, thus the petitioner is fully entitled for the family pension with service dues of her late husband with interest.

19. Learned Counsel for the petitioner has further argued that the petitioner has approached the department for releasing pension and other retiral benefits, but of no avail and thereby, approached the Hon'ble High Court and subsequently, to this Tribunal. The husband of the petitioner has served the department with full devotion but his health did not permit him to work with full devotion and he remained on leave for long period in 2010 and subsequently, till his death. He underwent the medical examination by the department and subsequent to that, he applied for Voluntary Retirement. The department has not passed any order on the request of Voluntary Retirement and in the meantime, petitioner's husband died. After the death of the petitioner's husband, her son got appointment on compassionate ground. The petitioner applied for payment of family pension and other retiral benefits in respect of her deceased husband. The department now is pressing hard that her son to be removed from service as her husband would be considered as

compulsorily retired on the date being declared medically unfit. Para 27 of the judgment of the Hon'ble Supreme Court rendered in State of U.P. and others Vs Achal Singh (supra), is quoted below:

“27. In our considered opinion, under Rule 56 as applicable in the State of Uttar Pradesh, notice of voluntary retirement does not come into effect automatically on the expiry of the three months, period. Under the Rule in question, the appointing authority has to accept the notice for voluntary retirement or it can be refused on permissible grounds.”

The department did not take any decision on the request of the petitioner and she is entitled to get the family pension and other retiral benefits.

20. Learned A.P.O. has pleaded that the husband of the petitioner remained absent from duties for 8 years and five months. As the Leave Rules applicable in the case of Govt. employees, the maximum period of leave of 5 years continuously can be granted. In the case of the husband of the petitioner, he had 300 earned leave to his account only and if 5 years is added to that, the maximum admissible leave still falls short by two years seven months. The benefit of the retiral dues is not possible without regularizing the service of two years and seven months. The process for payment of pensionary benefit is going on and will be done after scrutinizing the documents & removal of shortcomings.

21. On the basis of the above discussion, we reach to the conclusion that that the department did not take any action on continuous absence of husband of the petitioner from the duty. There was no proposal to retire him compulsorily or remove him from service. Even after long absence, when he was declared medically unfit, the action to retire him was not taken. The department did not take any action on the application for seeking Voluntary Retirement also. So, the lapse on the part of the respondents can be explained by them only. Our attention has also been drawn on behalf of the petitioner towards that principle laid down by the Hon'ble

Supreme Court in State of Uttar Pradesh and others vs. Achal Singh (2018) 17 SCC 578. The Hon'ble Supreme Court has held that "whether voluntary retirement is automatic or an order is required to be passed depends on phraseology used in particular rule under which retirement is to be ordered or voluntary retirement sought- Under R.56 voluntary retirement is not automatic on expiry of notice period and appointing authority has to accept notice for voluntary retirement which can be refused on grounds of public interest."

22. In view of aforesaid judgment of the Hon'ble Supreme Court, it is clear that Hon'ble Apex Court has laid down the law that if an employee moved an application for voluntary retirement, then it will be necessary to decide the same either "accept" or "reject". Even after receiving papers for pension, the department has not taken any action to resolve the matter. Due to death of petitioner's husband on 22.01.2017, no action can be taken against deceased person, because matter has been abated. The family pension to the petitioner with all retiral benefits has to be paid within stipulated period. The claim petition of the petitioner is liable to be allowed and the petitioner is entitled to be paid family pension and other retiral benefits accordingly.

ORDER

The claim petition is allowed. The respondents are hereby directed to grant the family pension as well as to pay the entire service dues of her late husband, Kundan Singh Chand, with interest to the petitioner, within three months from the date of presentation of certified copy of this judgment/order. No order as to costs.

(A.S.RAWAT)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: OCTOBER 17, 2024
DEHRADUN.
KNP