

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN

Present: Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 35/SB/2015**

Munindra Kumar Goyal aged about 62 years S/o Late Sri Brahm Sarup Goyal, R/o 60/46/2, Saraswati Soni Marg, Dehradun (retired Assistant Accounts Officer, UPCL).

.....Petitioner.

**VERSUS**

1. State of Uttarakhand through its Principal Secretary, Department of Energy, Subhash Road, Dehradun.
2. Uttarakhand Power Corporation Ltd., through its Managing Director Gabbar Singh Bhawan, Kaonli Road, Dehradun.
3. Chief Engineer Level-I (Commercial) Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kaonli Road, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiyal, Ld. P.O.  
for the respondent No.1.  
Sri S.M. Jain &  
Smt. Shashi Yogeshwar, Counsel  
for Respondent Nos. 2 & 3.

**JUDGMENT**

**DATED: OCTOBER 05, 2016.**

**(HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN(A))**

1. The petitioner has filed the present claim petition for seeking following relief:-
  - (a) The impugned order be kindly held against fundamental, constitutional and civil rights of the petitioner, illegal, against rules, contractual obligations, orders and principles of natural justice and the same be kindly quashed and set aside.

- (b) The petitioner be kindly held entitled to get his salary for the period 24.06.2014 to 06.12.2014 and respondent No.2 be kindly ordered and directed to pay to the petitioner the aforesaid sum of Rs.1,92,280/- together with interest @ 12% per annum on Rs.1,74,800/- from 07.10.2015 till the actual date of payment to the petitioner.
- (c) Any other relief, in addition to or in modification of above, as this Hon'ble Tribunal deems fit and proper, be kindly granted to the petitioner against the respondent Nos. 2 & 3.
- (d) Rs 15,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents jointly and severally."

2.1 The relevant facts in brief are that the petitioner is a retired employee of the Uttarakhand Power Corporation Limited (UPCL). After the retirement from the post of Assistant Accounts Officer, the petitioner vide office memorandum dated 23.07.2013 (Annexure: A2) was re-employed for 11 months on contract basis. The office memorandum issued for re-employing the petitioner on 23.07.2013 is reproduced below:-

"" दिनांक: 23.07.2013

कार्यालय ज्ञाप

एतद्वारा कारपोरेशन कार्यहित में सक्षम समिति की अनुशंसाओं के आधार पर कारपोरेशन के कार्यालय ज्ञाप संख्या 9298 – निदे० (मा०सं०)/उपाकालि दिनांक 11.12.2012 में निहित शर्तों एवं प्रतिबन्धों के अधीन श्री मनीन्द्र कुमार गोयल, सहायक लेखाधिकारी (सेवानिवृत्त) को दिनांक 24.07.2013 से दिनांक 23.05.2014 (दिनांक 24.07.2013 के कार्यालय ज्ञाप दिनांक संशोधित तिथि 23.06.2014) तक मात्र 11 माह हेतु कार्यालय मुख्य अभियन्ता (वाणिज्य), उपा०का०लि०, ऊर्जा भवन, देहरादून में अनुबन्ध के आधार पर पुर्नकार्योजित किये जाने की वित्तीय एवं प्रशासनिक अनुज्ञा निम्न शर्तों एवं प्रतिबन्धों के अधीन प्रदान की जाती है:-

1. संविदा पर उक्त तैनाती का कार्यकाल को-टर्मिनस आधार पर होगा यह कार्यकाल बिना किसी पूर्व सूचना के भी समाप्त किया जा सकता है।

2. श्री गोयल, सहायक लेखाधिकारी (सेवानिवृत्त), को इस अवधि में कारपोरेशन के कार्यालय ज्ञाप संख्या 9298-निदे0(मा0सं0)/उपाकालि दिनांक 11.12.2012 में निहित मानदेय अनुमन्य होगा।
3. यह कि सम्बन्धित कार्मिक स्वास्थ्य के दृष्टिकोण से स्वस्थ हो।

प्रबन्ध निदेशक

पत्रांक:- 6574 निद0(मा0सं0)/उपाकालि/तददिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. निजी सचिव, प्रबन्ध निदेशक, उ0पा0का0लि0, ऊर्जा भवन, देहरादून।
2. निजी सचिव, निदेशक (मा0सं0/वित्त/ परिचालन/ परियोजना /वाणिज्य), उ0पा0का0लि0, ऊर्जा भवन, देहरादून।
3. अधिशासी निदेशक(वाणिज्य), उ0पा0का0लि0 ऊर्जा भवन, देहरादून।
4. मुख्य अभियन्ता (वाणिज्य), उ0पा0का0लि0, ऊर्जा भवन, देहरादून।
5. अधीक्षण अभियन्ता (वाणिज्य), उ0पा0का0लि0, ऊर्जा भवन, देहरादून।
6. श्री मुनीन्द्र कुमार गोयल, सहायक लेखाधिकारी (सेवानिवृत्त), उ0पा0का0लि0, ऊर्जा भवन, देहरादून।
7. समस्त अनुभाग, मानव संसाधन उ0पा0का0लि0, ऊर्जा भवन, देहरादून।
8. सम्बन्धित अधिकारी / कार्यालय ज्ञापन पंजिका / कट फाईल।

(शरद कृष्ण)  
निदेशक (मानव संसाधन)''

2.2 The re-employment of the petitioner was governed by the terms and conditions laid down under the office memorandum dated 11.12.2012 (Annexure: A 3). The following two conditions of this memorandum are relevant to the case of the petitioner:-

शर्त संख्या- 2 "पुर्नकार्योजन सेवा निवृत्ति उपरान्त अधिकतम 11माह की अवधि के लिए ही किया जायेगा।"

शर्त संख्या- 3 "61 वर्ष की आयु पूर्ण होने के पश्चात सेवा निवृत्त कार्मिकों को किसी भी स्थिति में पुर्ननियोजित नहीं किया जायेगा।"

2.3 The term of the re-employment of the petitioner ended on 23.06.2014. On the note side of the relevant file, the Chief Engineer recommended the extension of re-employment of the petitioner from 24.06.2014 till further orders on same terms and conditions to the

Managing Director (M.D.). The M.D. wrote on the file “Agreed as proposed” (Annexure: A 5).

2.4 The petitioner has contended that on the basis of the approval of the M.D. on the proposal of extension, he worked from 24.06.2014 to 06.12.2014 but he has not been paid salary for this period. The petitioner requested to the Chief Engineer to pay the salary for the said period on 17.12.2014 (Annexure: A 6).

2.5 The Chief Engineer, in reply to the letter of the petitioner dated 17.12.2014, informed the petitioner on 15.01.2015 (Annexure: A 1) that no order for the extension of re-employment has been issued. The said letter of the Chief Engineer dated 15.01.2015 is reproduced below:-

“पत्रांक 144 /मु0आ0 स्तर-1 /उपाकालि / (वा0) दिनांक 15.01.2015

विषय:- दिनांक 24.06.2014 से 06.12.2014 तक की अवधि के भुगतान के सम्बन्ध में।

श्री मुनीन्द्र कुमार गोयल  
सहायक लेखाधिकारी (सेवानिवृत्त),  
60/46/2, सरस्वती सोनी मार्ग,  
लक्ष्मण चौक, देहरादून।

कृपया उपरोक्त विषयक अपने पत्र दिनांक 17.12.2014 का सन्दर्भ ग्रहण करें। इस सम्बन्ध में निगम के आदेश संख्या 6574 / निदे0(मा0सं0)/उपाकालि दिनांक 23.07.2013 का पुनः अवलोकन करें ताकि स्वतः स्पष्ट है तथा इसके उपरान्त आपको पुनः कार्योजित किये जाने हेतु कोई अन्य आदेश निर्गत नहीं किये गये हैं। अतः आपके द्वारा दिया गया उपरोक्त प्रार्थना पत्र उचित नहीं है।

(एस0के0 टम्टा)  
मुख्य अभियन्ता , स्तर -1(वाणिज्य)”

2.6 Aggrieved by the above letter dated 15.01.2015 and for non-payment of salary from 24.06.2014 to 06.12.2014, the petitioner has filed this claim petition.

3. The main grounds on the basis of which the petitioner has filed the petition are the non-payment of salary for the period from 24.06.2014

to 06.12.2014 in spite of work done by him during this period; the Managing Director of the UPCL (the competent authority) had approved the extension of his re-employment; and the communication of the respondents (Annexure: A 1) denying payment of the salary to the petitioner, is against fundamental, constitutional, contractual and civil rights of the petitioner.

4. Respondent Nos. 2 & 3 have opposed the claim petition and it has been stated in their joint written statement that the petitioner was given the re-employment after his retirement for a fixed period of 11 months only from 24.07.2013 to 23.06.2014. It has been further contended that the recommendation of Respondent No.3 for extension of the re-employment of the petitioner is merely a routine note on the file and no order of the extension of re-employment was issued by the UPCL in respect of the petitioner. The notings in the file are internal matter of the UPCL and notings are neither enforceable in law nor these give any right to the petitioner. Respondents have also contended that according to the policy of the UPCL and terms and conditions of the contract dated 11.12.2012 (Annexure: A 3), re-employment can be given only for a maximum period of 11 months and it cannot continue beyond the age of 61 years. The re-employment was given to the petitioner (Annexure: A 2) under these conditions only. Since the petitioner had attained the age of 61 years and the petitioner had completed the period of 11 months, he was not entitled to get extension beyond 23.06.2014 according to the terms and conditions of re-employment as per O.M. dated 11.12.2012. the claim of the petitioner for salary (with interest ) without any order of the extension of the re-employment is devoid of merit and the petition is, therefore, liable to be dismissed.
5. The petitioner has also filed the rejoinder affidavit and in it, the same averments have been reiterated and elaborated which were stated in the claim petition. The respondents have also filed the additional written statement against the rejoinder of the petitioner.

6. I have heard learned counsels for both the parties and also perused the record.
7. The main issue in the petition is to decide whether the re-employment of the petitioner was extended beyond 23.06.2014 and consequently whether he is entitled for salary from 24.06.2014 to 06.12.2014. Learned Counsel for the petitioner has argued that the Managing Director of the UPCL, who was the competent authority, had approved the extension of the petitioner from 24.06.2014 till further orders (Annexure : A 5) and pursuant to this, the petitioner worked in the organization from 24.06.2014 to 06.12.2014 and, therefore, the petitioner is entitled to get salary (with interest) for the said period which was denied to him by the letter of the respondents dated 15.01.2015 (Annexure: A 1). Learned counsel for Respondent Nos. 2 & 3 has refuted the arguments and contended that the petitioner was not given any extension beyond 23.06.2014. The contention of the learned counsel for respondents is that the M.D. of the UPCL had agreed to the recommendation of the Chief Engineer for extension on the note side of the file. Neither the order of extension for re-employment of the petitioner was issued by the UPCL nor the petitioner was conveyed that extension had been given to him and, therefore, the petitioner is not entitled to get any salary which has been claimed by him for the period from 24.06.2014 to 06.12.2014.
8. It is not in dispute that the extension for re-employment of the petitioner was "agreed" by the M.D. of the UPCL (the competent authority) on the note side of the file and no order was issued and communicated to the petitioner. It is a well settled principle of law that mere "noting" does not confer any right to a person unless order is issued and communicated to him. The benefit of "noting" on file can be taken by any party only when the decision taken on noting is communicated to that party. Even in the case where the competent authority records a decision on the file and the order is not issued and

communicated, such noting and decision of the competent authority has no value, until and unless the order is issued and communicated to the person concerned. In order to confer an enforceable right, it is necessary that the order must be issued and communicated as mere decision on file is not enough.

9. **The Hon'ble Supreme Court in the case of Laxminarayan R. Bhattad Vs. State of Maharashtra 2003(5) SCC 413** has held, " The correspondences exchanged between the parties also do not show that the minutes drawn fructified in and order conferring any legal right upon the appellant. By reason of the endorsement in the note-sheet no policy decision had been taken. It is now well known that a right created under an order of a statutory authority must be communicated so as to confer an enforceable right." **Hon'ble Apex Court in the case of Sethi Auto Service Station and Another Vs. Delhi Development Authority and others 2009 (1) SCC 180** has held, " It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order..... Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order affecting the rights of the parties, only when it reaches the final order is communicated to the person concerned." In the case of **State of Uttaranchal and Another Vs. Sunil Kumar Vaish and Others 2011(8) SCC670**, the **Hon'ble Supreme Court** held that, "A noting recorded in the file is merely a noting simpliciter and noting more.....A noting or even a decision recorded in the file can always be reviewed/reversed/ overruled or overturned and the Court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."
10. In the case in hand, the extension of re-employment of the petitioner is recorded in the file only. No order for further re-employment of the petitioner beyond 23.06.2014 was issued and communicated to the petitioner. According to the settled position of law, mere decision on the note-sheet does not confer any right to the petitioner. The

petitioner, therefore, does not get an enforceable legal right. Under these circumstances, I am of the opinion that the decision of the competent authority on the note side of the file does not provide any right to the petitioner to claim the salary for the period from 24.06.2014 to 06.12.2014 as the order of extension for re-employment of the petitioner was not issued and not communicated to the petitioner.

11. The Ld. Counsel for the petitioner has referred to the case of **Hon'ble Supreme Court, Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others (2014) 1 SCC (L&S) 1 (Para-51)** and argued that the petitioner has rendered the services and, therefore, he cannot be deprived of his salary. Denial of pay for the service rendered tantamounts to forced labour which is impermissible. The facts and circumstances of the above case of the Hon'ble Supreme Court are entirely different than the case in hand. While in the above case, the Hon'ble Supreme Court held that asking someone to work and when his appointment is nullified by the Court, neither the employer can recover the amount nor the Court can direct for recovery of the same, in the present case, the issue involved is of decision in file only without issue of any order or without its communication. Therefore, the above referred case is of no help to the petitioner.
12. For the reasons stated above, I do not find any merit in the claim petition and the same is liable to be dismissed.

### **ORDER**

The claim petition is hereby dismissed. No order as to costs.

**(D.K.KOTIA)**  
VICE CHAIRMAN(A)

DATED: OCTOBER 05, 2016  
DEHRADUN



