

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

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A) (*virtually*)

CLAIM PETITION NO. 11/DB/2022

Sushil Kumar Sharma aged about 49 years, s/o Sri Om Prakash Sharma, dismissed Conductor, Uttarakhand Transport Corporation, Haridwar Depot., r/o village Bhurpur, Budhpur, Bagpath, U.P.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary , Transport, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation, H.Q., UCS Sadan, Vishnu Vihar, Deepnagar Road, Ajabpur Kalan, Dehradun.
3. Regional Manager (Operation) Uttarakhand Transport Corporation, 66 Gandhi Road, Dehradun.
4. Assistant General Manager, Uttarakhand Transport Corporation, Srinagar Depot., Pauri Garhwal.

....Respondents.

Present: Sri L.K.Maithani, Advocate, for the petitioner.

Sri V.P.Devrani, A.P.O., for the Respondent No. 1.

Sri Vaibhav Jain, Advocate, for Respondents No. 2, 3 & 4.

JUDGMENT

DATED: MARCH 27, 2025

Justice U.C.Dhyani (Oral)

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

“i) To quash the impugned punishment order dated 27.11.2019 of respondent No. 4 (Annexure No. A-1), Impugned appellate order dated 11.02.2021 of respondent No. 3 (Annexure No. A-2) and Impugned revisional order dated 21.10.2021 (Annexure No. A-3) with its effect and operation declaring the same as null and void in the eyes of law.

ii) To issue an order or direction to the respondents to reinstate the petitioner in service with continuity of service and with all consequential benefit.

iii) To quash the suspension order dated 12.03.2019 and issue an order or direction to the respondents to pay the remaining salary and allowances of suspension period to the petitioner.

iv) To issue an order or direction to the respondent to return the recovered amount of Rs.10,150/- to the petitioner with interest.

v) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.

vi) To award the cost of petition.”

2.1 Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

2.2 Vehicle No. UK 07PA 3072 was being plied on 01.02.2019 from Haridwar to Pushkar by the Uttarakhand Transport Corporation (for short, Respondent Corporation). Petitioner was working as Conductor in Haridwar Depot on that date. On 02.02.2019, at 02:38 AM, Sri Anand Pal and Sri Sunil Kumar Gupta, Assistant Transport Inspectors, Regional Enforcement Squad, Dehradun, gave signal to stop the vehicle at Kunda Police Check Post, near Jaipur, but the vehicle did not stop there. There was sufficient light near Police Check post. There was no difficulty for the Driver to identify the enforcement squad, even then the Driver did not stop the vehicle. It appears that the Driver and Conductor were involved in corruption, therefore, the bus was not stopped. The Inspecting Squad inspected five other vehicles at the same place, including the one, Bus No. 3071. Preliminary enquiry was conducted, in which it was found that the Conductor prepared tickets of 29 passengers through E- ticketing machine, within two minutes & five seconds. In the preliminary enquiry, both the Driver and Conductor were found involved in corrupt practices. Conductor's services were placed under suspension. Charge sheet was issued to him. Sri Sandeep Kumar, Driver, was removed from service

after forfeiting his security in favour of Respondent Corporation *vide* order No. 954 dated 12.03.2019.

2.3 Assistant General Manager, Haridwar Depot. served charge sheet on the delinquent petitioner under the relevant Rules and sub-rules of *the Uttarakhand Parivahan Nigam (Adhikariyon se Bhinn) Sewa Viniymawali, 2015.*

2.4 The delinquent petitioner was directed to file replies within 15 days of service of charge sheet.

2.5 Delinquent petitioner gave his replies on 29.04.1919. Refuting the charges levelled against him, he submitted that there was no substantial evidence against him and there was no question of his involvement in corruption. He was not hand in glove with the Driver of the Bus. According to the delinquent Conductor neither any financial loss was caused to the Respondent Corporation nor its image was tarnished by the act of the petitioner-Conductor.

2.6 During the course of the enquiry, Conductor, under suspension, was transferred to Sri Nagar Depot. Regular enquiry was instituted against him. The Assistant General Manager, Rural Depot. Was appointed as enquiry officer, who after conducting enquiry, found the delinquent Conductor (petitioner) guilty of the imputations/ charges levelled against him.

2.7 The allowance, which was given to the petitioner during the suspension period, was forfeited and show cause notice was given to him for terminating his services. Petitioner sought 15 days' additional time to submit his reply, which request was accepted by the officer concerned. Petitioner submitted his reply to the 2nd show cause notice on 15.10.2019, alleging that the enquiry conducted by the enquiry officer was bad in the eye of law, therefore, 2nd show cause notice should be withdrawn/ cancelled.

2.8 The disciplinary authority, after considering the enquiry report and reply of the petitioner, did not find substance in the explanation submitted by the delinquent petitioner. He was awarded

major penalty. Petitioner was dismissed from service after forfeiting his salary during suspension period and after deducting a sum of Rs.1015 X 10=10150/- from his salary.

2.9 Feeling aggrieved with the same, petitioner sought legal remedies at departmental levels, but he could not get any relief. All the documents have been filed by him in this claim petition. The Tribunal need not reproduce the contents of those documents, for, they are already part of record. Only those facts and evidences are being mentioned which are relevant for the purpose of deciding present claim petition.

3. Claim petition has been contested on behalf of respondents. Sri Sanjay Kumar Gupta, Divisional Manager (Operation) Uttarakhand Transport Corporation, Dehradun, has filed Counter Affidavit on behalf of Respondent Corporation.

3.1 It is submitted in the C.A. that during the aforesaid incident on 02.02.2019 at around 2:30 AM, at a police check post between Jaipur to Kunda, Shri Anand Pal and Sushil Kumar Gupta, Assistant Transport Inspector, Divisional Enforcement Party Dehradun, tried to stop the said bus at Check Post for inspection, but the bus was not stopped, inspite of the fact that, at that time, there was ample light and clear visibility for driver/conductor to recognize the officials and stop the bus for inspection.

3.2 Due to said deliberate omission of driver and conductor of said bus, and sensing the act of corruption, the Assistant Regional Manager of Haridwar depot., conducted preliminary enquiry. In the said enquiry it was found that after observing the signal by the aforesaid inspectors, to stop the vehicle, conductor of the bus (petitioner) within a span of two minutes five seconds, issued 29 tickets from the electronic vending ticket machine. Copy of said preliminary report is enclosed as Annexure 2.

3.3 On the basis of complaint made by the checking squad against the petitioner and the driver of the said bus, a preliminary

enquiry was conducted, wherein the driver and conductor of bus no. UK07 PA 3072 were found collectively involved in the act of corruption.

3.4. *Vide* order no. 959 dated 12.3.2019 petitioner was suspended with immediate effect and it was directed to issue separate charge sheet to petitioner. *Vide* order no. 954 dated 12.3.2019 the driver of the said bus Sandeep Kumar was removed from his services and security amount of the petitioner deposited with the Corporation was forfeited.

3.5 After conducting regular enquiry, petitioner was dismissed from service *vide* order dated 27.11.2019, forfeiting remaining salary of his suspension period and amount of Rs.10150 was also recovered from the pay of the petitioner. Thereafter departmental appeal and revision filed by the petitioner before the appropriate authorities were also rejected.

3.6 Ld. Counsel for the Respondent Corporation submitted that petitioner was awarded punishment after going through entire facts and law.

4. Rejoinder Affidavit has been filed by the petitioner, reiterating the facts, which were mentioned in the claim petition.

5. Ld. Counsel for the petitioner submitted that no punishment was given to the Driver, who did not stop the bus. It may be noted here that the case of the Driver is not before this Tribunal, who is deciding the case of the Conductor (petitioner) only. Even if the Driver was not punished for the selfsame misdeed, the petitioner-Conductor is not entitled to get any punishment out of any inaction by the Respondent Corporation against the Driver. One wrongdoer cannot complain as to why no action has been taken against another wrongdoer.

6. A story was put forward on behalf of the petitioner before the enquiry officer during enquiry, as also before this Tribunal. The story is like this: "when the bus reached near Dhaulakuan (Haridwar-Pushkar Road), there was a jam. The bus reached two kilometers before Kunda. A private bus was standing along with passengers, driver and conductor. They stopped their Bus No. 3072. The passengers of the

private bus requested the bus Driver of Bus No. 3072 to accommodate the stranded passengers in their bus. According to the petitioner, there were only eight passengers in his bus. He accommodated all the stranded passengers of the private bus in his bus. They asked the petitioner to give the ticket from Kunda to Jaipur, as they have already paid fare up to Kunda.” It appears to be a cooked up story, and an afterthought, for, firstly, why the private bus owner will take fare from the passengers up to Kunda only. Had he premonition that the bus will get dysfunctional beyond Kunda, why any passenger of the said private bus was not examined by the delinquent petitioner before the enquiry officer? What was the number of the private bus? Story of private bus has been cooked up because private bus has, normally, no record before the public authorities. Story of ‘Jam(crowd)’ has been projected because, otherwise, it would be questioned as to why the bus was stopped this time, when they did not stop the bus earlier.

7. The Conductor asked the passengers that they will have to take tickets from Achrol as Kunda is not his stoppage. Passengers insisted to prepare tickets only from Kunda, which was the usual practice in private buses. The Conductor asked the passengers to take ticket from Achrol or else they should go to Jaipur by any other bus. With great difficulty the stranded passengers of the private bus started taking tickets from Achrol to Jaipur. According to the petitioner, neither the driver nor he saw or recognize the enforcement squad stopping the bus.

8. Another excuse taken by the petitioner was that the statement of the Driver was not taken before him in the preliminary enquiry. It may be noted here that the preliminary enquiry is a fact finding enquiry. It is not necessary for the preliminary enquiry officer to take the statement of the delinquent in such preliminary enquiry. It is also not necessary for the enquiry officer to involve the delinquent while conducting the preliminary enquiry. Yes, the delinquent employee must be given due opportunity and should be involved while conducting the regular/ final enquiry.

9. The story put forward by the petitioner appears to be a figment of imagination. It is clearly an afterthought. Standard of proof, in

departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present case is adjudged from the aforesaid yardstick, this Tribunal finds no reason to interfere in the inference drawn by the Disciplinary Authority.

10. No effort was made by the petitioner to adduce evidence of any stranded passenger of private bus in evidence to indicate that mechanical fault developed in the private bus. The stranded passengers along with driver and conductor of that bus requested present petitioner to accommodate them in his bus. No such evidence has been given before the disciplinary authority. It appears that the petitioner has prepared tickets of 29 passengers from Achrol to Jaipur within two minutes only when he noticed that members of enforcement squad are on the Haridwar-Pushkar Road. He issued tickets in a huff, which was obvious for a person like him. It was natural for him to prepare the tickets of 29 passengers, who were gratuitous passengers for the Corporation, but from whom the petitioner had taken money (fare) for him, to be shared with driver. *Res ipsa loquitur*. Facts speak for themselves. Driver and conductor were clearly in league with each other. Corporation was put to loss, because of his misconduct. Image of the Corporation was tarnished. Corporation also suffered pecuniary loss. It may only be a tip of the iceberg. Burden of proof is on the party who asserts some facts. Raid by the Squad has been admitted, although indirectly. When the delinquent employee (petitioner) has projected a story, the burden was on whom to establish such fact. No evidence, what to talk of cogent evidence, has been offered to show that a private bus developed mechanical fault and its passengers were accommodated in petitioner's bus. Driver, Conductor or any passenger of private bus could have been examined in support of petitioner's version, but none has been examined. Probably, because it is a concocted story. Whereas the respondent department has been able to establish its case, the delinquent has not been able to make a dent/ create inroads in it.

11. Having considered the evidence and attenuating circumstances, the Tribunal finds that there is no illegality in conducting the enquiry and thereafter, in awarding punishment by the disciplinary authority or other superior authority. No interference is called for in the same.

12. No other issue has been pressed nor arise.

13. Claim petition is devoid of merits and is dismissed. Costs easy.

14. Liberty is, however, given to the petitioner to file review against the forfeiture of his salary or remaining salary of the suspension period, purely in the interest of justice. If such application for review, on the limited ground, is filed, competent authority is directed to consider the same, as expeditiously as possible, as per law.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)
(virtual)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 27, 2025
DEHRADUN

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