

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U. D. Chaube

-----Member (A)

CLAIM PETITION NO. 22/N.B./D.B./2013

Virendra Kumar Dubey, S/o Late Sri Ram Krishna Dubey, R/o Village
Udaishahpur, Post Amargarh, District Pratapgarh (U.P.)

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Uttarakhand Transport Corporation, Dehradun.
2. Chairman, Uttarakhand Transport Corporation, Dehradun.
3. General Manager (Administration), Uttarakhand Transport Corporation, Dehradun.
4. Regional Manager, Uttarakhand Transport Corporation, Tanakpur Depot.
5. Assistant General Manager (Enquiry Officer), Uttarakhand Transport Corporation, Pithoragarh Depot.

.....Respondents

Present: Sri S. S. Yadav, Advocate
for the petitioner.

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

Sri Ashish Joshi, Advocate
for the respondent nos. 2 to 5.

JUDGMENT**DATED: NOVEMBER 09, 2016****(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. The petitioner has prayed for the following relief:

“(i) to issue an order or direction quashing the impugned order dated 30.06.2008 passed by respondent no. 4 and order dated 09.10.2009 passed by respondent no. 3 and order dated 28.02.2011 passed by respondent no. 2 (Annexure No. 1,3 & 4)

(ii) to issue an order or direction to the respondent no. 4 to reinstate the petitioner in service giving some minor punishment with warning in future.

(iii) to issue an order or direction in the tune of case of Alok William Vs. Uttarakhand Transport Corporation and others in claim petition no. 31/NB/2010 decided by learned Public Services Tribunal Nainital on 15-05-2013 reason is matter is a identical to the present case.

(iv) to issue any other order or direction which this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.

(v) award the cost of the claim petition against the contesting respondents”

2. The admitted facts to the parties on the basis of pleadings are that petitioner was Conductor in Uttarakhand Transport Corporation. It is alleged that he remained absent from duties from 27.1.2005 to 13.07.2005 and did not get any leave sanctioned for that period. A charge sheet was prepared on 16.05.2005 and was sent through registered post to the petitioner, which was returned with the remark of the postal department dated 24.5.2005, whereas the

address written in the envelop was correct as per the claimant's service record as well as in the present claim petition. The petitioner deliberately not received the registry.

3. Thereafter, disciplinary authority, vide order dated 07.06.2005 (Annexure CA-2 of the counter affidavit) appointed Assistant Regional Manager (ARM), Pithorgarh as enquiry officer who sent various letters to the petitioner to appear and participate in the enquiry proceedings, but the petitioner did not appear before the enquiry officer. The fact also reveals that a communication sent on 17.06.2005 through registered post, did return back and letters were also sent through R.M.(Tanakpur) on 01.07.2005 and through S.S.P, Pithoragarh, on 07.07.2005.

4. It is stated that letter dated 19.6.2006 was also sent to the petitioner by the Enquiry Officer stating that several dates were fixed for enquiry proceedings and notices were already sent to him and petitioner was given one more opportunity to appear before the enquiry officer on 27.6.2006 for presenting his case. This letter dated 19.6.2006 was personally received by the petitioner on 21.06.2006 as evident from Annexure-CA-6 of the Counter Affidavit. The petitioner was again given a last opportunity vide letter dated 08.08.2006 to appear on 22.08.2006 and it was specifically mentioned in the letter that if he will not appear on the said date, the proceeding will be completed ex-parte, but inspite of the communication and opportunity given by the Enquiry Officer, the petitioner did not appear before the Enquiry Officer. After completing the enquiry, the Enquiry Officer submitted its enquiry report on 21.4.2007 finding the charge proved against the petitioner.

5. After receipt of enquiry report, show cause notice dated 29.9.2007 was issued by the Disciplinary Authority. On 29.10.2007, another reminder in the shape of show cause notice was again issued,

which was received by the petitioner on 30.11.2007 as evident from Annexure CA-8, but inspite of personal service, petitioner did not appear to show cause before the Disciplinary Authority. The Disciplinary Authority again wrote a letter dated 22.2.2008 and lastly letter dated 12.03.2008, was again sent affording opportunity to submit his reply, to the show cause notice within three days. Even after receipt of notice, the petitioner never appeared before the Disciplinary Authority. Hence, after considering the enquiry report and all the facts, the petitioner was finally punished vide order dated 30.06.2008 and he was terminated from services.

6. A departmental appeal was filed against the termination order, which was also rejected vide order dated 09.10.2009 against which revision also met the same fate. This petition has been filed by the petitioner with the submission that he could not appear for his duties due to his personal problems on account of his wife's pregnancy, death of his son, marriage of his real sister and death of his grandmother. He has also submitted that he was unable to resume his duty due to bonafide reasons and awarding of punishment of termination is very harsh and is against the provisions of the Constitution. He was not afforded proper opportunity of hearing and the punishment order is in violation of principles of natural justice. Hence, prayer has been made to set aside the termination order dated 30.06.2008 passed by respondent no. 4, appellate order dated 9.10.2009 passed by respondent no. 3 and order dated 28.02.2011 passed by respondent no. 2 in revision with the request to reinstate him in service after awarding some minor punishment and to grant some other appropriate relief, which the court may deem fit.

7. The respondents have opposed the petition on the ground that the petitioner became absent from his duty without any permission as per rules. He has never submitted any application

before proceeding on leave and without sanctioned of leave, he remained absent. In spite of notices and several communications, petitioner neither appeared for duty nor participated in the enquiry. He was given several opportunities of hearing, service of notices was personally made upon him and after enquiry report, he did not appear before the disciplinary authority to show cause on the point of sentence. The order of Disciplinary Authority as well as Appellate and Revisional Authority are correct, for which appropriate procedure and principles of natural justice were followed. The petitioner had been a habitual absentee from duty on some earlier occasion also and he was also punished on earlier occasions vide order dated 16.1.1995, 3.12.1996, 29.09.1998, 31.12.1998, 10.01.2000, 28.01.2000, 11.01.2001, 09.07.2001, 16.07.2003, 18.12.2003 and 31.10.2007. The service record of the petitioner is not good and he has been rightly removed from the service. There is no illegality and infirmity in the punishment order dated 30.06.2008, appellate order dated 09.10.2010 and revisional order dated 28.02.2011. Hence the petition deserves to be dismissed.

8. A rejoinder affidavit has been filed by the petitioner reiterating the same facts as have already been mentioned in the claim petition.

9. We have heard both the sides and perused the record.

10. After hearing both the parties and careful consideration of the material placed before the court, we are of the view that the petitioner's claim is not sustainable because of the reasons mentioned below.

11. Admittedly, the petitioner was a public servant in the respondent corporation. The service of the petitioner are governed by concerned Regulations which provides that before proceeding on leave, he is required to get the leave sanctioned. Even if, in case of

urgency, he has to inform his department along with the leave application. Without any information, the petitioner remained absent from duty from 27.1.2005 to 13.7.2005 almost more than five and half months, which is a very long period. He himself was bound to inform the department whatsoever the necessity of the petitioner for his absence from duty may be. If he was in the dire need of leave, he should have moved application for leave to his department, which was not done and when the communication was sent by his department on his registered address in his service record, he did not turn up. By registered communication, he was informed about the start of disciplinary proceedings against him. The contention of the petitioner regarding non-receipt of any notice does not benefit him because of the reasons that it was well within his knowledge that he is a public servant and he is bound to attend his duty regularly and if he was unable to attend the duty, he should prior get his leave sanctioned and his absence, without leave will definitely lead to disciplinary proceedings against him. He cannot claim that the department did not inform him before start of this disciplinary proceeding.

12. A charge sheet was prepared on 16.6.2005 and the same was sent for his communication on his registered postal address which is mentioned in his petition too and that postal envelop was returned back with the remark of the postal department dated 24.05.2005 (Annexure: CA-1). The remark of employee of postal department clarifies that recipient was avoiding the service. As per the provision of law, deliberately not receiving registered post is presumed to be a sufficient service of the charge sheet. In these circumstances, the petitioner cannot take the plea that service of charge sheet was not made upon him.

13. After service of the charge sheet, the petitioner did not reply the same. The enquiry officer issued several communications to the

petitioner with a direction to appear in the enquiry proceeding and submit his defence. The communication dated 17.6.2005 through registered post did not return back. The communications were also sent by registered post through S.S.P., Pithoragarh on 17.7.2005, through R.M(Tanakpur) on 11.7.2005. The record reveals that Enquiry Officer had also written a letter dated 19.06.2006 to the petitioner mentioning that in the enquiry against him several dates have been fixed and he had not appeared inspite of notices and it was also informed that 27.6.2006 has been fixed for his opportunity of hearing and to produce his defence. The letter dated 19.6.2006 was personally received by the petitioner on 21.6.2006, but he did not appear. The Enquiry Officer was further kind enough for him that on 8.8.2006, he had also written a letter giving him last opportunity to appear on 22.8.2006 and it was specifically mentioned that if he will not appear on the said date, ex-parte proceeding will be initiated against him, but this last opportunity was also not availed by the petitioner.

14. The petitioner in his petition has not given any reason as to why he did not participate in the enquiry inspite of service of notice. Learned counsel for the petitioner during his argument has made a submission that he could not participate in the enquiry because of the reasons that after resuming his duty on 13.7.2005, he was not granted leave to appear and participate before the Enquiry Officer. This argument is without any evidence because there is no evidence on record to show that he had asked for any leave from his controlling officer and he had rejected the same. The argument of the petitioner is without any evidence. Had he asked for any leave from his controlling officer to participate in the enquiry, there was no reason for not granting the same. This shows that neither petitioner wanted to participate in the enquiry nor he asked for any leave from his controlling officer and the Enquiry Officer was compelled to complete

the enquiry ex-parte and the absence of the petitioner from his duty, without any leave was sufficiently and prima-facie proved. The Enquiry Officer submitted his report dated 21.4.2007 finding the petitioner guilty for the misconduct mentioning that the charges are proved.

15. The record also reveals that petitioner was given a show cause notice on 29.09.2007 and 29.10.2007. He received this communication on 30.11.2007 as evident from Annexure: CA-8 and after personal service of this show cause notice, the petitioner did not appear before the Disciplinary Authority to make his submission on the point of sentence. The Disciplinary Authority again sent a letter dated 22.2.2008 mentioning all the facts that show cause notices have been received by him, but he had not replied till date. By letter dated 12.3.2008, the petitioner was again given an opportunity to submit reply against show cause notice within three days, but the petitioner did not respond to the same. Finally, the Disciplinary Authority was compelled to pass the punishment order by which his services were terminated and it was found that petitioner was unauthorizedly absent from duty w.e.f. 27.1.2005 to 13.7.2005 and not submitted his defence in enquiry and sufficient ground was found to remove him from the services. The removal order dated 30.6.2008 was also considered by the appellate authority and petitioner was also given opportunity of hearing by the appellate authority and the order passed in appeal dated 9.10.2009 rejecting his appeal is a reasoned order. Similarly, revisional order dated 28.2.2011 was also passed mentioning that after going through the record of enquiry proceedings and earlier record of the petitioner, it was found that the petitioner was a habitual absentee from duty. He had been punished for similar reasons, for about 10 to 11 times in past.

16. The court is of the view that the absence from duty without any permission and grant of leave is admitted to the petitioner.

Service of charge sheet was sufficiently made upon him in the eye of law and when the petitioner did not submit any reply, the enquiry officer was appointed. The Enquiry Officer has afforded more than sufficient opportunity of hearing to the petitioner, which he did not avail. After show cause notice on the basis of enquiry report, the disciplinary authority also afforded sufficient opportunity to him, but he did not appear. There has been no legal lacuna in conducting the whole disciplinary proceedings and awarding the sentence. The principles of natural justice and proper procedure was completely followed.

17. Hence the punishment order, appellate order and revisional order were properly passed and have no legal defects.

18. The petitioner in his petition has also mentioned that instead of dismissal from service, the petitioner should have been awarded lesser punishment as in some other cases, the Tribunal has also decided likewise. We have gone through the judgment dated 14.05.2013 passed by Tribunal in Claim Petition No. 31/NB/2010, Alok William Vs. Uttarakhand Transport Corporation & others as mentioned by him. The facts of that case were different from the case in hand because in that case, service of charge sheet and other communication of show cause notice were not completed and opportunity of hearing was not given, but in this case, sufficient service of charge sheet was made, sufficient opportunity was given by the Enquiry Officers and the communication was personally received by the petitioner and the date of hearing was communicated to him. One more opportunity after last date was also granted by the Enquiry Officer. Similarly, disciplinary authority also personally communicated him and after the date fixed for hearing, one more opportunity was given to petitioner for presenting his submission, but the petitioner did not avail the same. However, previous conduct of the petitioner

had been referred in the Counter Affidavit, but it was not taken in count, while passing the sentence. The reasons for absence, which the petitioner has explained, are not so continuous and sufficient to justify his absence and inaction for not communicating to his controlling authority and are not justified. The petitioner is not entitled for any relief on the basis of the lines made in another case decided by the Tribunal because in that case, the opportunity was not granted, while in this case full opportunity was granted by the controlling officer, enquiry officer and disciplinary authority.

19. Considering all these facts, circumstances, pleadings and record of enquiry, the court is of the view that the petitioner's claim is not sustainable and the impugned order dated 30.6.2008, appellate order dated 09.10.2009 and order in revision dated 28.02.2011 do not suffer from any infirmity. Hence following order has been passed.

ORDER

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

(U.D.CHAUBE)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: NOVEMBER 09, 2016
NAINITAL

KNP