

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube

-----Member (A)

CLAIM PETITION NO. 22/NB/DB/2015

Vedpal Singh, S/o Sri Asha Ram, Presently posted as Agriculture Assistant Group-I, fodder cadre, posted at Almora Office at Chief District Veterinary Officer, Vikas Khand Almora, District Almora.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Animal Husbandry, Dehradun office at Civil Secretariat, Dehradun.
2. Director Animal Husbandry, Uttarakhand, Office at C-28 Sector-I, Defense Colony, Dehradun, District Dehradun.
3. Project Director, Central Sheep & Wool Research Institute, Pashulok, Office at Pashulok Rishikesh, District Dehradun.

.....Respondents

Present: Sri Parikshit Saini, Ld. Counsel
for the petitioner

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: DECEMBER 08, 2016

(Hon'ble Mr. Ram Singh, Vice Chairman (J))

1. The petitioner has asked for the relief to quash the orders dated 31.05.2011 and 15.06.2011 passed by the respondent No. 3 (Annexure No. 1 and 2) by which the salary of the petitioner for the

suspension period was released after deducting 171 days of his Earned Leave on his request.

2. Briefly stated facts are that the petitioner, working on the post of Research Assistant, Agriculture in the office of respondent no.3 in 2010, was suspended on 10.11.2010, when an FIR was lodged against him by one of his colleague, Rajkumar with the allegation that on 3.11.2010, the petitioner, alongwith some other employee Nathiram of his department, tried to remove some bags of manure, the government property, from the store.

3. According to petitioner without initiating any departmental enquiry, suspension was invoked only on the basis of the FIR and vide order dated 11.11.2010 (Annexure No. 6), the petitioner was attached to the office of Chief Veterinary Officer, Dehradun. The petitioner's suspension was revoked on 28.4.2011 by respondent no. 2, from the date of suspension as nothing was revealed in the enquiry and he again joined his duties on 02.05.2011. For the period w.e.f. 12.11.2010 to 01.5.2011, petitioner was not paid any subsistence allowance and on demand of his salary and allowances, he was asked to submit his application for medical leave, which he submitted on 20.5.2011. As the petitioner remained under suspension for 171 days and his medical leave was not found due, hence, by deducting Earned Leave of 171 days, his salary was released by the respondent no. 3 vide order dated 31.05.2011. The petitioner submitted his representation dated 01.06.2011 to respondent no. 3 for payment of salary for the suspension period, then respondent no. 3 passed order dated 15.6.2011 stating that as no medical leave was available in the account of the petitioner, hence, as regard to the payment of salary, earned leave for 171 days shall be deducted and the leave was sanctioned accordingly.

4. The petitioner challenged the order dated 31.05.2011 and 15.06.2011 by way of several representations to the respondents alleging that his earned leave has been deducted illegally and as he was not paid any allowance for the period of suspension, for which leave cannot be deducted and a request was made to credit the deducted earned leave to his Earned leave account. Facing inaction on the part of the department, the petitioner approached the Hon'ble High Court by filing a writ petition bearing no. 1635 of 2013 (SS) challenging the impugned order dated 31.05.2011 and 15.6.2011, but his petition was dismissed by the Hon'ble High Court vide order dated 22.10.2013 on the ground of alternative remedy. Hence, the petitioner has approached this Tribunal on 4.6.2015 for the aforesaid relief.

5. The petition has been opposed by the respondents inter-alia on the ground of delay as well as on its merit and it has been submitted by the respondents that petitioner, who was suspended on 10.11.2010 in contemplation of departmental enquiry, was attached to the office of Chief Veterinary Officer, Dehradun during his suspension and he was specifically asked to report there, but he did not join his place of attachment and without any prior information or sanction of any leave, remained absent unauthorizedly from his duty for 171 days w.e.f. 12.11.2010 to 01.05.2011. After completion of enquiry, when he was reinstated on 28.4.2011, he failed to produce any certificate to the fact that he was not engaged in any kind of work or business during his suspension period. He never reported on duty in the office of Chief Veterinary Officer, Dehradun and after revocation of his suspension, when he joined his duty, he himself moved a leave application for the period w.e.f. 12.11.2010 to 01.05.2011 for 171 days with the request to sanction medical leave, but in his leave account, no medical leave was due, hence, again on request of the petitioner and on his written leave application, the respondent, sympathetically treated his absence as leave and after regularizing his period of absence, earned leave was

sanctioned to him (Annexure: CA-1) and the payment of salary was made accordingly. Without any basis, the petitioner challenged that order before the Hon'ble High Court after a period of more than two years. When his petition was decided by the Hon'ble High Court vide order dated 22.10.2013 with a direction to him to approach the Tribunal, he did not come before the Tribunal in time immediately and he approached the Tribunal on 04.06.2015, beyond the prescribed time limit. Hence, his petition is hopelessly time barred and deserves to be dismissed.

6. It is also submitted by the respondents that the representation of the petitioner was rightly disposed off by the respondent no. 3 and petitioner is not legally entitled to claim the salary of suspension period, nor for any subsistence allowance because of his unauthorized absence from the department. The order of attachment was personally received by the petitioner on 11.11.2010, but he never reported at the place of attachment i.e. the office of Chief Veterinary Officer, Dehradun. The respondents were very kind enough to give him the benefit of continuity in service. The petitioner was not entitled for any subsistence allowance unless he remained on duty at his place of attachment. The petitioner was apprised with all the orders, and the earned leave was sanctioned only on his written requests. The petition deserves to be dismissed.

7. The petitioner has filed rejoinder affidavit reiterating the same facts as have been stated in the main petition.

8. We have heard learned counsel for the parties and perused the record.

9. After considering the petition, evidence produced by the petitioner and the counter submitted by the respondents and the available record, we are not inclined to interfere in the matter because of the reasons that the petitioner after his suspension was specifically

directed to register his presence in the office of Chief Veterinary Officer, Dehradun and this order dated 11.11.2010 (Annexure: 6) was specifically received by the petitioner but he never reported to his place of attachment and he unauthorizedly became absent from all the offices of the respondents. The respondent no. 2 specifically wrote a reminder letter to the petitioner on 07.1.2011 (Annexure: CA-R-4) that vide order dated 10.11.2010, he was attached to the office of Chief Veterinary Officer, Dehradun and it has also been informed by the Chief Veterinary Officer, Dehradun that you have still not reported to his office and you are unauthorizedly absent from duty and due to this reason, the petitioner is not entitled for any subsistence allowance. By this letter, the petitioner was specifically directed to report his presence immediately at the place of attachment and to submit his explanation. The Chief Veterinary Officer, Dehradun also wrote a letter dated 15.01.2011 (Annexure: CA-R2) to inform him that his leave application is being returned to him because of the reasons that the petitioner never reported his joining in his office. This is sufficient proof to show that the petitioner, after his suspension became absent from his duty and he remained absent till he reported his joining on 2.5.2011 (Annexure: CA-R5) in compliance of revocation of suspension on 28.4.2011. The contention of the respondents is correct that after the date of communication of the suspension on 11.11.2010, the petitioner never reported for his duty either at his original place of posting or at his place of attachment and his absence from duty is proved. The petitioner had not been able to prove that after receipt of suspension order/attachment order dated 10.11.2010 and 11.11.2010, he reported his presence at his place of attachment or in the office of respondent.

10. The government employee can claim the subsistence allowance during his suspension period only on the conditions when he presents himself for his duty and he is not relieved from his duty. The

effect of suspension is that the employer does not take any work from him and accordingly he is paid subsistence allowance but in this case, the petitioner totally absented himself from his duty. Hence, his contention for entitlement for subsistence allowance cannot be accepted and when a government employee remained absent from his duty either during his suspension period or in normal period, his absence shall be treated as unauthorized and may result into break in his service, if any kind of leave is not sanctioned to him. The record reveals that the petitioner himself moved an application for medical leave on 11.5.2011 (Annexure: CA-R1) with the request that on account of ill-health, he could not present himself on duty and a request was made that in case of non-availability of medical leave in his account, he be sanctioned the earned leave w.e.f. 12.11.2010 to 01.05.2011. A further letter was written on 31.05.2011 (Annexure: 1) by the Project Director, respondent no. 3 to the respondent no. 2, Director Animal Husbandry stating the fact that after 11.11.2010, the petitioner was under suspension and was absent for a period w.e.f. 12.11.2010 to 01.05.2011 for 171 days and after revocation of his suspension vide order dated 28.4.2011, he reported his joining on 2.5.2011 and he has moved an application for earned leave for 171 days along with some medical certificates justifying his absence. Hence, a recommendation was sent to sanction the leave out of his earned leave account of 300 days. Although, the respondent no. 3, the appointing authority was authorized to sanction, but he has written this letter because of the reasons that the period of absence was more than four months. This letter was replied by the office of the respondent no. 2 stating the fact that respondent no. 3 himself is authorized to sanction such leave (Annexure: CA-R3). Thereafter, respondent no. 3 passed the impugned order dated 15.6.2011 and the earned leave with full salary was granted for the period of absence w.e.f. 12.11.2010 to 1.5.2011. The court is of the view that the

respondents accepted the request of the petitioner. The petitioner was not entitled for any salary or subsistence allowance because of his unauthorized absence from his duty during his suspension period and he can claim for subsistence allowance only, if he had reported at his place of attachment and his illegal absence without any leave, might have resulted into his break of service. With all reasons, the petitioner himself has moved an application for leave and asked for the salary. The respondents were kind enough to exonerate his absence after granting him leave, and after granting him earned leave, his full salary was released and he was saved from break in his service.

11. Learned counsel for the petitioner has argued that as per law, for the suspension period, leave cannot be sanctioned and the respondent was bound to pay him the subsistence allowance. If the argument of learned counsel for the petitioner is accepted then the petitioner will not be entitled for any kind of salary or subsistence allowance and he has to suffer break in service because of his unauthorized and illegal absence from reporting on his duty. A suspended employee has no right to remain absent from his duty and simultaneously asking for subsistence allowance. The court is of the view that the respondents were having a very sympathetic and kind attitude towards the petitioner by considering his ground sufficient for the period of his absence and by granting earned leave and payment of full salary, the petitioner was saved from the consequence of break in service. The petitioner cannot claim fruits for his bad conduct. He cannot say that he will not report on duty and he should be paid salary/subsistence allowance for that period. The impugned order passed by the respondent is fully justified and needs no interference.

12. The petition of the petitioner was also opposed by the respondents on the ground of delay. We are of the view that the petitioner without any sufficient ground had approached to this

Tribunal and he had filed this claim petition after a long delay, which is not justified. This issue was kept to be considered on merit at the time of final disposal. The petitioner had approached the Hon'ble High Court by filing a writ petition bearing no. 1635 of 2013 (SS) and the Hon'ble High Court vide order dated 22.10.2013 was pleased to direct the petitioner to approach to this Tribunal as an alternative remedy. He should have come up immediately to this Tribunal in 2013, but he approached this Tribunal only after 4.6.2015, after a long delay of more than 15 months. Hence, the court is of the view that the petition is also time barred.

13. Considering all these facts, the petition, devoid of merit, deserves to be dismissed.

ORDER

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

(U.D.CHAUBE)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: DECEMBER 08, 2016
NAINITAL

KNP