

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 31/SB/2014**

Mashhad Raza Zaidi (Retd. Conductor in Uttarakhand Transport Corporation) aged about 62 years S/o Shri Habaidul Hasan, R/o House No. 546/350 Sarfaraz Ganj, Hardoi Road, Lucknow.

**Legal heirs of the petitioner (Deceased)**

1/2. Shajar Fatima age 26 years.

1/3. Nisha Fatima aged 23 years ( both daughters of Mashhad Raza Zaidi)  
All R/o House No. 546/350 Sarfaraz Ganj, Hardoi Road, Lucknow.

.....Petitioners

**Versus**

1. State of Uttarakhand through its Secretary, Transport, Department Transport, Subhash Road, Dehradun.
2. Uttarakhand Transport Corporation through its Managing Director, Dehradun.
3. General Manager, Uttarakhand Transport Corporation, Dehradun.
4. Regional Manager (Operations), Uttarakhand Transport Corporation, 66, Gandhi Road, Dehradun.

.....Respondents.

Present: Sri J.P.Kansal Ld. Counsel  
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.  
for the respondent No.1

Sri Indrajeet Singh, Counsel  
for Respondent Nos. 2, 3 & 4.

**JUDGMENT**

**DATED: DECEMBER 15, 2017**

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

1. The petitioner has filed this petition for the relief in following words:-

“(a) That the above impugned order (Annexure-A 1) and Annexure A 22 be kingly held wrong, illegal, against law, rules and principles of natural

justice and accordingly the same be kindly quashed and set aside with all consequential benefits to the petitioner;

(b) that the respondents be kindly ordered and directed to pay to the petitioner balance amount of pay, allowance and other consequential benefits for the period of his suspension as also to pay retiral benefits and monthly pension, which had been admissible to the petitioner if he would have been on duty together with interest thereon @ 12% per annum from the date of accrual till the actual date of payment to the petitioner;

(c) any other relief, in addition to , modification or substitution of the above relief, which the Hon'ble Tribunal deem fit and proper in the circumstances of the case and facts on record, be kindly allowed to the petitioner against the respondents; and

(d) Rs.20,000/- as costs of this petition be allowed to the petitioner against the respondents”.

2. As per the contention of the petitioner, before March 1989, when he was on duty as Conductor on the bus, coming from Delhi to Kotdwar, Sri R.S. Verma , Transport Inspector with a boy boarded the bus carrying a television set and some other commercial luggage. Petitioner asked Sri Verma to buy tickets for the boy and the luggage, as he was having no family pass, but he got annoyed and threatened him to get the petitioner suspended and to face dire consequences.
3. According to the petitioner on 11.03.1989 while he was on duty on Bus No. URM 3214 from Najibabad to Lansdown route, said Sri Verma checked the bus and found everything in order but on account of prior enmity with the petitioner, he abused and misbehaved with the petitioner and threatened him to make a false report of short booking of the luggage and get him suspended. On 16.03.1989 petitioner was suspended on a totally false and baseless allegation by the Depot Manager, Kotdwar. On 29.04.1989 petitioner was served with a charge sheet by the Regional Manager, Dehradun comprising of three charges to which petitioner replied and after conducting the inquiry, the petitioner was held guilty of charges and was dismissed from service on 02.06.1990.
4. Above the dismissal order was challenged by the petitioner before the Uttar Pradesh Public Services Tribunal and his petition was allowed in April 1998 with all consequential benefits but with a liberty to the respondents to hold

a fresh inquiry. The respondents appealed against the judgment of the Tribunal before the Hon'ble Allahabad High Court by way of writ petition which was dismissed by the Hon'le Court vide order dated 24.08.1998. On the basis of the judgment passed by the Hon'ble Court, Respondent No.4 ordered a fresh inquiry in the matter in December, 1998 and also ordered that the petitioner shall remain suspended meanwhile. No fresh charge sheet was issued but a new inquiry officer was appointed before whom no fresh evidence was adduced. In his findings, the inquiry officer has held that the charges are not proved against the petitioner but the disciplinary authority did not agree with the finding of the inquiry officer and issued a show cause notice to the petitioner to explain as to why the remaining amount of salary of the petitioner for suspension period be not forfeited and he be not removed from the service. In October, 2002 the petitioner submitted his reply to the show cause notice.

5. According to the petitioner he had no knowledge about the facts of the inquiry. On 31.01.2012, after attaining the age of superannuation from service, he was not paid the remaining amount of salary nor retiral benefits on the ground that same will be settled after result in the disciplinary inquiry. After waiting for a long time, petitioner sought information from Public Information Officer in 2013 about the disciplinary case and payment of his dues, and he was informed through a letter dated 07.06.2013, that the disciplinary proceedings were already decided on 03.10.2007.
6. Thereafter, the petitioner sought further information from the Information Officer and for the first time he received the copy of the impugned order passed in the inquiry. The petitioner preferred an appeal in September, 2013 against that order and thereafter sent reminder for decision of the appeal. Petitioner also sent notice under Section 4(6) of the U.P. Public Services (Tribunal) Act, 1976 but no decision on the appeal was communicated to the petitioner, hence, present claim petition was filed.
7. Pending the petition, after death of the petitioner, his legal heirs were impleaded as parties to the petition for the relief of retiral benefits and other dues accrued to the petitioner (deceased). Petition was also amended to the effect that petitioner (deceased) was first informed that the retiral benefits and monthly pension will be settled after decision in the disciplinary proceedings and upon request of settlement of dues, the respondents have alleged that the petitioner had never retired rather his resignation from

service was accepted vide order dated 08.07.2008 (Annexure- 22). It was also alleged that the petitioner never tendered his resignation from service and the impugned order Annexure-22 is against law, rules and principles of natural justice and is liable to be quashed and the petitioner be deemed retired from service on 31.01.2012.

8. The petition has been opposed by the respondents with the contention that the petitioner (now deceased), when posted at Kotdwar Depot in 1989, was surprisingly checked by Sri Verma, Inspector (Transport) and found that 47.5 passengers (47 full tickets and 1 half ticket ) and heavy goods were loaded in the bus. Upon enquiry about the heavy goods, Conductor did not tell to whom the goods belong and none of the passengers claimed to be the owner of the goods. When the Inspector tried to write the inspection note on the way bill, the Conductor snatched the way bill and tried to throw the inspector from the bus and threatened to shoot him, hence, the Transport Inspector failed to complete the inspection of the bus.
9. Thereafter, on the same day, near Derakhal also, the bus was checked by Sri K.S.Mehar, Transport Superintendent who found the way bill badly torn and upon inquiry, the petitioner (Conductor) snatched the way bill from him and took away the bus without getting it checked. The way bill was also not deposited by him in time, hence F.I.R. was also lodged. In the disciplinary proceeding against the petitioner, his reply to the charge sheet was found unsatisfactory and inquiry by an independent person Sri H.S.Saxena, I.F.S. (Retired) was completed. Thereafter, a show cause notice was issued to the petitioner and after finding his reply to the show cause notice unsatisfactory, he was removed from the service vide order dated 02.06.1990.
10. According to the respondents, after the decision of the claim petition filed by the petitioner before the U.P. Public Services Tribunal, a fresh inquiry as per rules was conducted and the inquiry officer did not find the charges proved in the absence of relevant record, but the disciplinary authority disagreed with his finding and issued a show cause notice as to why he should not be removed from service. An order was also passed provisionally reinstating the petitioner into service subject to the outcome of the final decision in the inquiry by forfeiting the pay of the suspension period.
11. The disciplinary authority on receipt of reply to the show cause notice in the disciplinary proceedings ( initiated afresh), finally reinstated the petitioner in

the service by forfeiting his pay for the period of suspension vide order dated 03.10.2007. According to the respondents, the petitioner had submitted resignation and applied for voluntary retirement from service due to ill health and his inability to work. He was intimated by registered letter dated 19.06.2008 that retirement can only be considered after rendering 20 years of clean/ unblemished service on completion of 45 years of age. Since he had not completed 20 years of clean/ unblemished service, hence his voluntary retirement was not accepted and he was directed to join his duties with the order that if he does not join his duties within 7 days, his application of voluntary retirement will be treated as his resignation letter and resignation will be accepted accordingly. Since the petitioner did not join his duties even after 19 days, therefore, his resignation was accepted vide order dated 08.07.2008 (Annexure-22) and his name was struck down from the strength of Uttarakhand Transport Corporation.

12. According to the respondents the petitioner has concealed the material facts in his petition and after acceptance of his resignation on 08.07.2008, he was not a member of service and no retiral benefits can be granted to him. His claim is time barred also. If he had any grievance, he would have moved petition in the year 2008, whereas he has approached the Tribunal after a long time. He had knowledge of all the orders and whole disciplinary proceedings were completed after giving him full opportunity of hearing and very lenient view was taken against the petitioner and he was reinstated in the service without back wages of suspension period but he did not report on his duty and remained absent throughout. After acceptance of his resignation he ceased to be an employee of respondents' department, hence his petition deserves to be dismissed and he is not entitled for any retiral benefits and other dues.
13. The petitioner has filed rejoinder affidavit reiterating the same facts as alleged in his claim petition. The legal heirs of the petitioner have denied the fact that they were having knowledge of the acceptance of the resignation of the petitioner by the respondents.
14. We have heard both the parties and perused the entire record carefully.
15. The basic questions to be decided in the present petition are; (i) whether the application for voluntary retirement was rightly decided by the respondents treating the same as his resignation vide order dated 08.07.2008 (Annexure: A 22) ? and (ii) whether the impugned order Annexure: A 1 was passed as per

the relevant rules whereby the Disciplinary Authority differed with the findings recorded by the inquiry officer and issued show cause notice and thereafter passed the order withholding the payment for the period of suspension ?

16. For the first point, Ld. Counsel for the petitioner has argued that petitioner never submitted his resignation from the service and his application for voluntary retirement was illegally treated as his resignation. Ld. Counsel for the petitioner has cited the law laid down by the Hon'ble High Court of Madras in the case of **M.S. Munivenkatappa Vs. State Bank of India and another 2007(5) SLR 410** whereby the Hon'ble High Court referring to the various decisions of the Hon'ble Supreme Court has laid down that the application for voluntary retirement by an employee cannot be treated as his resignation and doctrine of waiver is not applicable against fundamental rights, such employee will be treated to be illegally removed from service and he can challenge his illegal removal. It was also held that, it is for the respondents to accept or reject the request of the petitioner for voluntary retirement and respondents cannot choose to treat the application as that of his resignation and proceed further. Where there is no request from the petitioner to treat his voluntary retirement application to that of resignation, the employer has no jurisdiction to treat his application as one of resignation. In the present case, the petitioner had applied for voluntary retirement and his request for voluntary retirement was not accepted in view of the fact that he had not completed the 20 years of unblemished service and he was issued a notice to report on duty within 7 days otherwise his voluntary retirement application will be treated as his resignation and after a period of 19 days of such notice, his voluntary retirement application was treated as his resignation and vide order dated 08.07.2008, so called resignation was accepted and the petitioner was removed from the panel of the service of the respondents.
17. As per the manuals of the Uttar Pradesh Road Transport Corporation Employees Service Regulations, 1981, the resignation can be accepted as per Regulation 30 and the provision of compulsory and voluntary retirement is mentioned in Regulation 38, which says that an employee may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of 45 years or after he has completed the qualifying service of 20 years. As per the said Regulation 38, on retirement the employee will be entitled for

other retiral benefits available as per rules. In the present case the contention of the respondents has been that the petitioner was removed from service on acceptance of his resignation (application for voluntary retirement), hence, he was not on the panel of the Corporation, accordingly, he is not entitled for any benefit on superannuation. This Court is of the view that the impugned order dated 08.07.2008 (Annexure: A 22) is not as per law because the petitioner never tendered his resignation from service and his application for voluntary retirement cannot be treated as his resignation. Hence, impugned order dated 08.07.2008 (Annexure: A 22) deserves to be set aside with the effect that petitioner will be deemed to continue in service accordingly.

18. The another point raised by the respondents is, that the petitioner was charge sheeted and was punished after inquiry vide order dated 03.10.2007 (Annexure: A 1). The facts reveal that, on certain charges, the petitioner was removed from service and his termination order was challenged before the U.P. Public Services Tribunal and the Hon'ble High Court, and he was ordered to be reinstated into service with liberty to the respondents to initiate a fresh inquiry on the same charges. Thereafter, the disciplinary authority conducted a fresh inquiry through another inquiry officer who did not find the petitioner guilty of the charges, but the disciplinary authority disagreeing with the findings of the inquiry officer, issued a show cause notice and after considering the reply of the petitioner, passed the impugned order whereby the petitioner was finally reinstated into the service withholding the dues of the suspension period.
19. Ld. Counsel for the petitioner has challenged this punishment on the ground that the disciplinary authority did not issue any notice to the petitioner before recording his final conclusion differing with the finding of the inquiry officer and show cause notice was given merely for proposed punishment, hence, the proceedings are vitiated. Ld. Counsel for the petitioner has relied upon the law laid down by the Hon'ble Apex Court in **Lav Nigam Vs. Chairman, M.D., ITI Ltd. and another 2007(5) SLR 263** wherein it was held that, where the disciplinary authority differs with the view taken by the inquiry officer and no notice is given to the delinquent before the disciplinary authority records his final conclusion differing with the finding of the inquiry officer and show cause notice is given merely for the proposed punishment of removal from service, then all the proceedings are vitiated.

Referring to the other decisions of the Hon'ble Apex Court, it was also held that as per the principles of natural justice, where the disciplinary authority disagrees with the findings of the inquiry officer on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before he records his findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. It was also held by the Honble Apex Court that, if no notice at all was given before the disciplinary authority recorded its final conclusions differing with the findings of fact of the inquiry officer and the show cause notice was merely a show cause against the proposed punishment, the Hon'ble Apex Court allowed the appeal and the judgment of the Hon'ble High Court was set aside on such ground.

20. Ld. Counsel for the petitioner has submitted that the only reason for differing with the finding of the inquiry officer mentioned in Annexure: A 1 was written in the following words: -

“आरोपी का कथन मान्य नहीं है, क्योंकि आरोपी परिचालक को निलम्बित करना तथा आरोप पत्र जारी किया जाना कुछ न कुछ कारण हो रहा होगा वरना ऐसा कोई कारण नहीं था कि जो उसे बेकसूर निलम्बित किया गया तथा आरोप पत्र जारी किया गया जिसके लिये वह दोषी है तथा दण्ड का भी पात्र है, परन्तु परिचालक की लम्बी सेवा अवधि एवं नजदीकी सेवा निवृत्ति को मद्देनजर रखते हुए कारण बताओ नोटिस में प्रस्तावित दण्ड को शिथिल किया जाता है ।

अतएव श्री मशहद रजा जैदी, परिचालक पर्वतीय डिपो देहरादून का दण्ड स्वरूप निलम्बन काल का अवशेष वेतन राजसात करते हुए प्रकरण का अन्तिम निस्तारण किया जाता है तथा परिचालक को अन्तिम रूप से सेवा में बहाल किया जाता है ।”

21. Ld. Counsel for the petitioner has also argued that no cogent reason was mentioned by the disciplinary authority. The respondents have argued that this Court cannot change the subjective satisfaction of the disciplinary authority. We agree to this extent that the petitioner was not given an opportunity to make his submission against the ground of difference recorded by the disciplinary authority. Although, the petitioner was reinstated into service but his pay for the suspension period was withheld. Ld. Counsel for the respondents has argued that this decision can be taken separately by the respondents. We are of the view that this Court cannot



interfere into the subjective satisfaction of the disciplinary authority on this point.

22. The heirs of the petitioner in their petition have claimed the retiral benefits on the assumption that the petitioner's removal from service was illegal and he will be deemed into service till his age of superannuation because in the meantime he was never dismissed from service as per law. We agree with this contention and the impugned order dated 08.07.2008 (Annexure: A 22) deserves to be set aside. Petitioner will be deemed to continue in service till his age of superannuation in 2012.
23. Ld. Counsel for the petitioner has also argued that he be given pay and dues for the interim period whereas the respondents have argued that after the order of reinstatement and after filing his application for voluntary retirement, petitioner never reported on duty and he remained absent from his duties voluntarily. In spite of several notices, he never reported on his duty. He was having knowledge of all such notices and he came for the first time to the Court in 2014 after a period of about six years. According to the respondents, the petitioner voluntarily absented himself from rendering service to the respondents. Ld. Counsel for the petitioner has relied upon the law laid down by the Hon'ble Punjab And Haryana High Court in **Pawan Kumar Garg Vs. Haryana Dairy Development Cooperative Federation Limited 2015(6) SLR 149** wherein it has been held that where on account of wrongful termination petitioner was prevented to work till the age of his superannuation, he was entitled for full wages for the interim period. The facts of the case in hand are totally different from the case cited before us. In that case the petitioner continuously reported for duty on service and from the very first day of his termination, he was requesting to allow him to work, whereas, in this case petitioner remained voluntarily absent in spite of the notices issued by the employer to report on duty. On this ground, the petitioner cannot be allowed to take benefits of his own fault. He never presented himself to join his duty and kept mum for at least eight years after the impugned order of removal was passed by the respondents. On account of 'no work no pay', he is not entitled for any back wages. Till the date of his superannuation as per his date of birth in the service record, he will be deemed to be in service and will be deemed to retire from the service of the respondents as per rules, hence he is entitled only for retiral benefits as per law.

24. Ld. Counsel for the respondents has argued that petitioner voluntarily absented from his duties, hence, he was liable to be removed by the department by conducting disciplinary proceedings. The department was free to initiate any such inquiry or proceeding as per law on account of absence of his employee from duty in his service tenure, but as the petitioner has died, no such disciplinary proceeding can be started now in any case. Whatever the effect of his absence from duty on service may be, the respondents are free to decide it as per law. After considering this situation, heirs of the petitioner are entitled to claim retiral benefits, if any, as per law accrued/ admissible to them.
25. In view of the above, the petition deserves to be allowed partly and the impugned order dated 08.07.2008 (Annexure: A 22) is liable to be set aside. Petitioner/ legal heirs are entitled only for the retiral benefits, if any, as per law, without back wages of pay for the service period before retirement.

**ORDER**

The claim petition is partly allowed. The impugned order dated 08.07.2008 (Annexure: A 22) is hereby set aside. Respondents are directed to decide the issue of retiral benefits accrued to the legal heirs of the petitioner and pay the same, if any, within a period of six months from the date of the judgment. No order as to costs.

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

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: DECEMBER 15, 2017*  
*DEHRADUN*

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