

**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. 53/DB/2016

Rakesh Mohan, 214, Adarsh Gram Rishikesh, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Medical, Health and Family Welfare, Uttarakhand Sachivalya, Subhash Road, Dehradun.
2. Secretary, Medical, Health and Family Welfare, State of Uttarakhand, Uttarakhand Sachivalya, Subhash Road, Dehradun.
3. Additional Secretary Medical, Health and Family Welfare, Medical Anubhag-2, Secretariat, Subhash Road, Dehradun.
4. Director General, Medical, Health and Family Welfare Uttarakhand, Sahastradhara Road, Dehradun.

.....Respondents.

Present: Sri B.B.Naithani, Ld. Counsel
for the petitioner

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: FEBRUARY 06, 2018

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

1. The petitioner has filed the present claim petition for seeking the following relief:-

“a) That impugned order No. 380/XXVIII-2/09/(49)2007 dated 31.12.2015 which has been passed dehors the rules and without authority by a stranger to the reference petition may kindly be quashed.

and

b) That the respondent may be directed to treat the petitioner present on duty w.e.f. 29.06.2007 to 23.04.2015 during which period petitioner remained in wait for necessary orders after the petitioner first placed his joining report before the respondent no. 4 on 29.06.2007 according to above said S.R. 110 and when the petitioner again placed his joining report on 24.04.2015 at Distt. Hospital Chamoli in compliance of order no. 09.04.2015 passed by respondent no. 1 and by which the petitioner was for the first time posted at Distt. Hospital Chamoli in compliance of order dated 16.04.2014 passed by this Hon’ble Tribunal.

and

c) That the respondents may be directed to make the payment of duty pay w.e.f. 29.06.2007 to 23.04.2015 during which period the petitioner remained waiting for orders of posting as per provision of S.R. 110 F.H.B. Vol. II to IV.

and

d) That the respondents may further be directed to make the payment of leave salary for the period w.e.f. 09.05.2006 to 28.05.2006 for which earned leaves had already been sanctioned.

and

e) That the respondents may further be directed to sanction earned leave for the period 29.05.2006 to 10.09.2006 for which the petitioner had already applied through his applications and for this sanction there had been more than sufficient number of earned leave at his credit according Form 11-C of service book.

and

f) That the respondents may further be directed to sanction leaves on medical ground w.e.f. 11.09.2006 to 25.06.2007 for which period the copies of Medical Certificates duly counter signed by Regional Medical Board have been filed here with this

petition and the same had already been submitted to the authority with initial joining on duty.

and

g) That the respondents may also be directed to make payment of suitable sum of money to the petitioner to compensate for the agony and mental tension caused to the petitioner without any fault on his part for the last seven years continuously by the respondents by not performing duty bonafidely and as responsible Authority vested with power to deal the above said matter.

and

h) To issue any other direction or order which this Hon'ble Tribunal deem fit and proper in the circumstances explained here in above paragraphs."

2. The petitioner is a Senior Medical Officer in the Department of Medical, Health and Family Welfare, Government of Uttarakhand.

3. The petitioner was suspended on 27.07.2007, departmental inquiry was conducted against him and finally his services were terminated by order dated 12.07.2011.

4. The petitioner filed a claim petition No. 30/2012 Rakesh Mohan Vs. State of Uttarakhand and others against the order of termination of his service before this Tribunal.

5. The Tribunal disposed of the petition by passing the following order on 16.04.2014:-

"For the reasons stated above, the claim petition is liable to be succeeded and is hereby allowed. The impugned order dated 12.07.2011 (Annexure No. A-1) by which the services of the petitioner have been terminated, order dated 27.07.2007 (Annexure-A-12) and order dated 8.4.2011 (Annexure-A-25) passed by respondent No. 6, Secretary Uttarakhand, Public Service Commission are hereby quashed. The charge sheet framed are

void-ab-initio, are hereby quashed. It would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law, if the disciplinary authority desires so, after initiating a proper enquiry and framing of the charges against the petitioner. The enquiry would be disposed of expeditiously preferably within a period of eight months from the date of filing of the copy of this order. We will also like to observe at the time of the framing of the charges, the departmental authority will go through the entire record and the relevant matters related to the enquiry and will frame charges afresh, if the respondents desire so. The petitioner would be reinstated and the respondents would be at liberty, if they feel that the petitioner is liable to be suspended in accordance with law, they may suspend him immediately after joining of services. The question regarding the payment of salary from the period of termination to the period of reinstatement would be decided by the competent authority at the appropriate time during the enquiry or after the enquiry as the law permits them. Whereas the question of salary and to grant leave is concerned, the matter would be considered by the appropriate authority in accordance with rules at the time of the conclusion or after the enquiry. No order as to costs.”

6. In pursuant to the order of the Tribunal, the petitioner was reinstated by the Principal Secretary, Medical, Health and Family Welfare, Govt. of Uttarakhand vide order dated 30.01.2015 (Annexure: A17). After his reinstatement, the petitioner was posted as Senior Medical Officer, Chamoli by the Principal Secretary, Medical, Health and Family Welfare, Govt. of Uttarakhnad vide order dated 09.04.2015 (Annexure: A18). Thereafter, the petitioner joined at Chamoli on 23.04.2015.

7. Learned A.P.O. has stated at bar that after the order of the Tribunal dated 16.04.2014, the respondents decided not to conduct a fresh inquiry against the petitioner.

8. The Tribunal in its order dated 16.04.2014 had also stated that *“The question regarding the payment of salary from the period of termination to the period of reinstatement would be decided by the competent authority at the appropriate time during the enquiry or after the enquiry as the law permits them. Whereas the question of salary and to grant leave is concerned, the matter would be considered by the appropriate authority in accordance with rules at the time of the conclusion or after the enquiry”*.

9. In pursuant to the order of the Tribunal, the respondent No. 3 issued an “office memorandum” regarding “salary” and “leave” of the petitioner on 31.12.2015 (Annexure: A1) which reads as under:-

“उत्तराखण्ड शासन
चिकित्सा अनुभाग-2
संख्या:380/XXVIII-2/09(49)2007
देहरादून: दिनांक 31 दिसम्बर, 2015

कार्यालय ज्ञाप

महानिदेशक, चिकित्सा, स्वास्थ्य एवं परिवार कल्याण, उत्तराखण्ड, देहरादून के पत्र संख्या- 20प/लो0से0अ0/5/2/2015/28226, दिनांक 30.11.2015 के क्रम में, डा0 राकेश मोहन, वरिष्ठ चिकित्साधिकारी (फिजीशियन), जिला चिकित्सालय, गोपेश्वर, चमोली की दिनांक 29.05.2006 से 22.04.2015 तक की अनुपस्थिति अवधि को वित्तीय हस्त पुस्तिका खण्ड- II (भाग 2 से 4) के मूल नियम-81ख एवं सहायक नियम- 157ए के प्राविधानानुसार, उनके अवकाश लेखा में उपलब्ध अवकाश के आधार पर निम्नवत् समायोजित करने की अनुमति एतद्द्वारा प्रदान की जाती है:-

- a) दिनांक 11.09.2006 से 30.05.2007 तक कुल 263 दिन का चिकित्सा अवकाश।
 - b) दिनांक 12.07.2011 से 12.07.2014 तक कुल 03 वर्ष का असाधारण/अवैतनिक अवकाश।
 - c) दिनांक 13.07.2014 से 09.11.2014 तक कुल 120 दिन का उपार्जित अवकाश।
 - d) दिनांक 10.11.2014 से 07.12.2014 तक कुल 28 दिन का उपार्जित अवकाश।
- 2- डा0 राकेश मोहन की सेवा से अनुपस्थिति अवधि दिनांक 29.05.2006 से 10.09.2006 तक, दिनांक 31.05.2007 से 11.07.2011 तक एवं दिनांक 08.12.2014 से 22.04.2015 तक को सेवा में व्यवधान के रूप में स्वीकृत किया जाता है।
- 3- सेवा में व्यवधान की उपरोक्त अवधि हेतु डा0 राकेश मोहन को किसी प्रकार का वित्तीय एवं सेवा सम्बन्धी लाभ देय नहीं होगा।
- 4- उक्त आदेश निर्देश याचिका संख्या- **Execution/02/D.B/2015** डा0 राकेश मोहन बनाम उत्तराखण्ड राज्य व अन्य में मा0 अधिकरण द्वारा दिनांक 16.04.2014 को पारित आदेशों के क्रम में निर्गत किये जा रहे हैं।

(बी0आर0 टम्टा)
अपर सचिव।”

10. The petitioner is not satisfied by the order (Annexure: A1) above and, therefore, has filed the present claim petition.

11. The main grounds on the basis of which the claim petition has been filed by the petitioner are that the impugned order dated 31.12.2015 has been issued by respondent No. 3 without authority and the respondents have not complied with the Fundamental Rule (FR) 54A, FR 73 and Subsidiary Rule (S.R) 110 (Financial Hand Book Volume 2 Part 2 to 4).

12. Respondent Nos. 1 to 3 and respondent No. 4 have opposed the claim petition and in their separate but identical written statements have stated that the “salary” and “leave” issues of the petitioner have been decided rightly under FR 81B and SR 157A vide office memorandum dated 31.12.2015. It has further been submitted that the Additional Secretary (respondent no. 3) is authorized to issue office memorandum on behalf of the Government as per gazette notification dated 10.07.2001 (R-6 to the W.S.).

13. Petitioner has also filed the rejoinder affidavits against the W.S. of respondent Nos. 1 to 3 and the W.S. of the respondent No. 4 which have the same contents and the same averments have been reiterated in rejoinder affidavits which are stated in the claim petition.

14. We have heard learned counsel for the petitioner and learned A.P.O. on behalf of the respondents and perused the record.

15. Learned counsel for the petitioner and learned A.P.O. have submitted the same arguments at the time of hearing which have been mentioned in paragraphs 11 and 12 of this order.

16. The petitioner has referred the following rules:-

(i) **FR 54A**

This Rule deals with the payment of “salary” when the termination order of service is quashed by the court.

(ii) **FR 73**

This Rule deals with the case when an employee is absent after his leave period is over.

(iii) **SR 110**

This Rule says that an employee should report on duty after availing leave and wait for orders.

17. The respondents have referred the following rules:-

(i) **FR 81B**

This Rule prescribes the maximum period of leave which can be availed by an employee.

(ii) **SR 157 A**

This Rule deals with the calculation of earned leave and medical leave and conditions for sanction of these leave.

18.1 The perusal of OM dated 31.12.2015 reveals that the major part of leave/break in service which have been sanctioned/mentioned in the OM are related to the period from 27.07.2007 (date of suspension) to 30.01.2015 (date of re-instatement).

18.2 As has been mentioned earlier that the petitioner was suspended on 27.07.2007 and the departmental inquiry was conducted against him and he was finally terminated from service on 12.07.2011. The petitioner filed a claim petition against the punishment order and the termination order was quashed by the Tribunal on 16.04.2014 and the Tribunal directed to reinstate the petitioner with the liberty to the disciplinary authority to conduct the inquiry afresh, if he so desires. The disciplinary authority reinstated the petitioner but chose not to conduct any inquiry

against the petitioner. Under such circumstances, the competent authority had to decide the issue of “salary” to the petitioner for the period from the date of petitioner’s suspension to the date of his reinstatement.

18.3 We have perused the rules as mentioned by the petitioner and respondents and find that the relevant rule regarding deciding the issue of “salary” to be paid to the petitioner from suspension till reinstatement is FR 54A. Rule 54 A(1) reads as under:-

“54-क (एक) जहाँ किसी सरकारी सेवक का पदच्युत किया जाना, हटाया जाना या अनिवार्यतः सेवानिवृत्त किया जाना न्यायालय द्वारा केवल इस आधार पर अपास्त कर दिया जाये कि संविधान के अनुच्छेद 311 के खण्ड (1) या खण्ड (2) की अपेक्षाओं का अनुपालन नहीं किया गया है, और जहाँ उसे गुणावगुण के आधार पर दोषमुक्त न किया जाये और कोई अग्रेतर जाँच किये जाने का प्रस्ताव न हो, वहाँ सरकारी सेवक को नियम 54 के उपनियम (7) के अधीन रहते हुए, वेतन और भत्ते की ऐसी राशि (जो सम्पूर्ण राशि न हो) दी जायेगी जिसके लिए वह हकदार होता यदि वह पदच्युत न किया गया होता, हटाया न गया होता या अनिवार्यतः सेवा निवृत्त न किया गया होता या, यथास्थिति, इस प्रकार पदच्युत किये जाने, हटाये जाने या अनिवार्यतः सेवानिवृत्त किये जाने के पूर्व निलम्बित न किया गया होता जैसा सक्षम प्राधिकारी सरकारी सेवक को प्रस्तावित राशि की सूचना देने के पश्चात् और सरकारी सेवक द्वारा ऐसी अवधि के भीतर (जो कि किसी दशा में नोटिस दिये जाने के दिनांक से साठ दिन से अधिक नहीं होगी) जैसी नोटिस में विनिर्दिष्ट की जाये, राशि के सम्बन्ध में प्रस्तुत अभ्यावेदन, यदि कोई हो, पर विचार करने के पश्चात् अवधारित करें।”

18.4 Perusal of FR 54A reveals that the respondents have not decided the issue of “salary” of the petitioner from 27.07.2007 to 09.04.2015 vide office memorandum dated 31.12.2015 (Annexure: A1) in accordance with FR 54A and other relevant FRs or SRs. We are of the view that the respondents have erred and, therefore, the impugned order dated 31.12.2015 (Annexure: A1) is not in accordance with the rules and the same cannot sustain. The matter deserved to be remanded to decide the “salary” of the petitioner according to FR 54A and other relevant rules by the competent

authority after a notice to the petitioner and after considering his reply to the notice, if any.

19. The petitioner has also claimed Earned Leave from 29.05.2006 to 10.09.2006 and Medical Leave from 11.09.2006 to 25.06.2007. It would be fair and just that applications of the EL and ML are decided by the competent authority by passing a reasoned order in accordance with the relevant rules and the decision is communicated to the petitioner.

20. The petitioner has also prayed that the EL from 09.05.2006 to 28.05.2006 was sanctioned to the petitioner but the payment of salary for this period has not been made to him. It would be appropriate to direct the respondents to make payment of salary to the petitioner for the period from 09.05.2006 to 28.05.2006 for the E.L. already sanctioned by the respondents.

21. For the reasons stated above, the impugned order dated 31.12.2015 (Annexure: A1) is liable to be set aside and the case deserves to be remanded to the respondents and, therefore, following order is passed.

ORDER

- (i) The impugned order dated 31.12.2015 (Annexure: A1) is hereby set aside.
- (ii) The issue of "salary" of the petitioner from 22.07.2007 to 30.1.2015 (from the date of suspension to the date of reinstatement) shall be decided by the competent authority according to the Fundamental Rule (FR) 54A and other relevant rules within a period of three months from today.
- (iii) The applications of the petitioner for Earned Leave and Medical Leave for his other periods of absence other than in (ii) above will be decided in accordance with the relevant rules

and a reasoned order shall be passed by the competent authority in this regard within a period of three months from today.

(iv) The salary from 09.05.2006 to 28.05.2006 for the period for which Earned Leave has already been sanctioned shall be paid to the petitioner (if not already paid) by the respondents within a period of one month from today.

No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 06, 2018
DEHRADUN

KNP