

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

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 34/DB/2016

Bhagchand s/o Late Shri K.L. Tamta aged about 32 years presently posted as Constable (Civil Police) ROP Damta P.S. Purola, Uttarkahsi.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Civil Secretariat, Dehradun.
2. The Director General of Police, Uttarakhand, Police Headquqrters, Dehradun.
3. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey &
Sri Nishant Chaturvedi, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents

JUDGMENT

DATED: MAY 03, 2018

Justice U.C.Dhyani (Oral)

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

“ (i) To issue order or direction quashing the order dated 20.08.2015 denying the back wages to the petitioner for the period 18.11.2009 to 19.02.2011..

(ii) To issue an order or direction directing the respondents to pay to the petitioner back wages from 18.11.2009 to 19.02.2011 along with an interest of 18% per annum from the date of representation, i.e., 19.05.2015 till the actual date of payment.

(iii) To give any other relief that the Hon’ble Court would deem fit..

(iv) To give cost to the petitioner.”

2. Facts in brief, giving rise to the present claim petition, are as follows:

In the year 2009, petitioner was posted as Constable at P.S. Rishikesh, District Dehradun. On 07.11.2009, the petitioner was sent to Police Line, Dehradun. Allegedly, petitioner, instead of joining at Police Line, Dehradun, went to Panchkula, Haryana along with three other Police Personnel, without informing the department. On 10.11.2009, the petitioner was arrested along with his companions by the Police of P.S. Raipur, Rani Police Station, District Panchkula, Haryana, inasmuch as they were found travelling in a stolen Maruti Alto Motor Car and Platina Bajaj Motorcycle. The petitioner along with others was arrested and sent to Central Jail, Ambala on 11.11.2009. Copy of FIR has been enclosed as Annexure: A 2 to the Claim Petition. On 12.11.2009 petitioner’s services were suspended w.e.f. 08.11.2009, for unauthorized absence from work. Suspension order has been brought on record as Annexure: A 3 to Claim Petition. His services were terminated *vide* order dated 18.11.2009. Order for termination from service has been brought on record as Annexure: A 4 to the petition. On 25.11.2009 petitioner was released on bail. Petitioner appealed against the service termination order dated 18.11.2009 *vide* appeal dated 11.01.2010, copy of which has been brought on record as Annexure: A 5. Such appeal was dismissed *vide* order dated 09.07.2010 (Copy Annexure: A 6).

Petitioner moved a representation, against the same on 26.10.2010 (Annexure: A 7). Said representation was allowed *vide* order dated 19.02.2011 , whereby order of termination of services dated 18.11.2009 and order dated 09.07.2010 were set aside. However, it was directed that the petitioner will not be entitled to back wages from the date his services were terminated. It was directed *vide* order dated 19.02.2011(Copy Annexure: A 8) that a departmental inquiry shall be conducted against the petitioner. Petitioner was served with a charge sheet dated 07.03.2011 (Annexure: A 9). Petitioner requested *vide* letter dated 22.03.2011 (Annexure: A 10) to keep the departmental inquiry in abeyance till the criminal case pending against him is decided. Such request of the petitioner was rejected *vide* letter dated 24.03.2011 (Annexure: A 11). Inquiry officer, *vide* order dated 19.05.2011, recommended two punishments, namely, the petitioner be placed in the minimum pay scale for two years and he shall not be given pay from 07. 11.2009 till 18.11.2009 for unauthorized absence from duty. Inquiry officer's report has been enclosed as Annexure: A 12 to the petition. On 24.05.2011, the petitioner was served with a show cause notice, whereby he was asked to reply only with regard to the punishment, wherein it was recommended that the petitioner be placed in the minimum pay scale for two years. Copy of show cause notice dated 24.05.2011 has been enclosed as Annexure: A 13 to the petition. Petitioner was awarded two punishments *vide* order dated 24.06.2011, whereby he was placed in the minimum pay scale for two years and was denied wages for the period 07.11.2009 to 18.11.2009 (copy Annexure: A 14).

In the meanwhile, petitioner was acquitted, in the criminal case, of the charges levelled against him, *vide* judgment and order dated 13.01.2015, passed by Additional C.J.M., Panchkula, [copy of the judgment: Annexure- A 15]. Petitioner has sent a letter to respondent No.3 on 19.05.2015, requesting the authority concerned for giving

him back wages for the period 18.11.2009 to 19.02.2011, for the reason that he was not gainfully employed anywhere, during the period he was removed from service. *Vide* order dated 20.08.2015, respondent No.3 rejected the request of the petitioner citing the reason that the petitioner was acquitted, not on merits, but on giving him benefit of doubt. Hence, present claim petition.

3. Order dated 20.08.2015, denying the petitioner back wages, for the period 18.11.2009 to 19.02.2011 is under the teeth of present claim petitioner, who has also prayed for interest from the date of his representation till the date of actual payment.
4. Although various legal provisions have also been cited in the claim petition, but this court does not feel it necessary to deal with those legal submissions, inasmuch as they relate to the earlier orders passed by the department against the petitioner. At present, this court will only focus on the validity or otherwise of order dated 20.08.2015.
5. A perusal of Annexure: A 1 will indicate that the petitioner has been denied back-wages w.e.f. 18.11.2009 to 19.02.2011 only on the ground that the petitioner has been exonerated of the charges levelled against him by Addl. Chief Judicial Magistrate, Panchkula, giving him benefit of doubt. According to Annexure: A 1, it was not a clear acquittal and the petitioner was acquitted only on technical ground.
6. Now let us see what is the law on the point?
7. Rules 54 and 54-A (apart from Rule 54-B) of the U.P. Fundamental Rules contained in Financial Handbook Vol. II, Parts II to IV hold the field. It is necessary to deal with the essentials of Rule 54 and Rule 54-A of the U.P. Fundamental Rules herein below for convenience:-

“54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated

but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of noncompliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held], the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after

considering the representation, if any, submitted by him in that connection, within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

NOTE—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.

(6) The payment of allowances under sub-rule (2) of sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of his removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE—Where the Government servant does not report for duty within reasonable time after the issue of the orders of reinstatement after dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge.

[Emphasis supplied]

54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment

during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE—Where the Government servant does not report for duty with-in reasonable time after the issue of the orders of reinstatement after the dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge”.

[Emphasis supplied]

8. The above mentioned provisions in the Financial Handbook would indicate that the controversy in hand could only have been resolved by resorting to the aforesaid Fundamental Rules, and not by any other mode. It was not proper, in the humble opinion of this Court, on the part of DIG/ SSP, Dehradun, to have simply said that back-wages are not admissible to the petitioner on the ground that he has not earned a clear acquittal. The authority concerned ought to have given notice to the Government servant (delinquent)/ petitioner of the quantum proposed and only after considering the representation, if any, submitted by him in that connection, appropriate orders ought to have been passed.
9. Since order dated 20.08.2015, (Annexure; A 1) has not been passed after giving notice to the petitioner, therefore, it seems that provisions contained in the U.P. Fundamental Rules have been observed by breach. Irresistible conclusion would, therefore, be that the order dated 20.08.2015 cannot be allowed to sustain and should be set aside.
10. Order dated 20.08.2015 is, therefore, set aside. Matter is remitted back to the authority concerned to pass a fresh order, in accordance with law, keeping in view the observations, made by this Court, in the body of this judgment, contained hereinabove. This should be done as quickly as possible.
11. The claim petition stands disposed of. No order as to costs.

12. It is made clear that this Court has not gone into other aspects of the case.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 03, 2018
DEHRADUN

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