

**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. 28/DB/2017

Bharat Singh Rawat, S/o Late Sri Kunwar Singh Rawat, aged about 54 years, presently posted as Office Assistant Grade-I, Office of the Assistant General Manager, I.S.B.T. B-Depot, Dehradun, R/o Village & P.O. Nakraunda, P.O. Gularghati, near Keshar Memorial Academy, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Transport, Uttarakhand, Subhash Road, Dehradun.
2. General Manager (Karmik), 1, Raj Vihar, Chakrata Road, Dehradun. U.K.S.R.T.C.
3. Divisional Manager (Operation), Office of Divisional Manager (Operation), 66-Gandhi Road, Dehradun (UKSRTC).

.....Respondents.

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner

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

Sri Indrajeet Singh, Ld. Counsel
for the respondents No. 2 & 3

JUDGMENT

DATE: AUGUST 01, 2018

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this petition for the following reliefs:-

“(i) To quash the impugned order dated 12.01.2017 (Annexure: A-1) by which representation of the petitioner was rejected by the respondent No. 1 and dated 23.01.2016 (Annexure: A2) passed by the respondent no. 2, by which benefit of 3rd ACP was

cancelled. Further, the respondents No. 1 & 2 be directed to allow the benefit of 3rd ACP to the petitioner w.e.f. 01.05.2015.

(ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) To award cost of this petition to the petitioner."

2. Briefly stated, the facts are that the petitioner was appointed as Conductor on 01.05.1989 in the respondent department. During his service, the ACP were granted to him on the basis of 6th Pay Commission and according to the petitioner, he completed 26 years of his service on 01.05.2015. As per the G.O. dated 08.03.2011 and G.O. dated 01.07.2013, a provision was made that the First, Second and Third ACP will be granted to the employees after completion of 10, 16 and 26 years of continuous and satisfactory service.

3. The petitioner was absent from duty from 08.01.2000 to 31.12.2001 hence, a disciplinary proceeding was conducted against him and vide order dated 21.09.2007, he was punished with a punishment for stoppage of two increments with cumulative effect and the period of his absence was treated as 'Rajsat'. Vide order dated 30.06.2009, the above punishment order was modified and the same was substituted with stoppage of one increment without cumulative effect and the period of absence from 08.01.2000 to 31.12.2001 was treated as leave without pay.

4. Petitioner was granted promotion from Conductor to the post of Office Assistant Grade-II on 26.10.2009 and was further promoted to the post of Office Assistant Grade-I in December 2013 and the benefit of second ACP was provided to him on 01.01.2009. According to the petitioner, the Finance Controller issued a letter dated 23.07.2010 in which it was stated that the sanctioned leave will have no effect for granting the increments and ACP.

5. The petitioner has also submitted that as per the G.O. dated 08.03.2011, it was provided that all types of leave, such as deputation/

study leave and other leave sanctioned by the competent authority, will be treated as satisfactory service of the employees and hence, according to the petitioner, he is entitled for 3rd ACP on completion of 26 years of service. He was granted 3rd ACP on 01.05.2015 but later on vide order dated 23.01.2016, such ACP was cancelled. The petitioner submitted the representation before the respondents against the impugned order dated 23.1.2016, mentioning all the facts but vide order dated 12.01.2017, respondents passed an order that the leave from 08.01.2000 to 31.12.2001 will not be treated as satisfactory service. The petitioner has submitted that the impugned orders dated 23.1.2016 and 12.01.2017 are liable to be set aside hence, this petition was filed for the relief, sought as above.

6. The petition was opposed by the respondents with the contention that the petitioner was absent from duty w.e.f. 08.01.2000 to 31.12.2001 without any intimation/leave application. He was given full opportunity to defend himself during the inquiry and he was found guilty for absenting himself from duty and was punished with the punishment of withholding of increment for two years with cumulative effect and forfeiture of his pay for the period of his absence. However, the punishment was modified by the appellate authority vide order dated 30.06.2009 and withholding of one annual increment without cumulative effect, leave without pay for the period from 08.01.2000 to 31.12.2001 was sanctioned for the period of his unauthorized absence from duty. According to the respondents, the petitioner was granted First ACP w.e.f. 02.05.2002 and Second ACP w.e.f. 01.01.2009 under the relevant scheme of the Government, but he was erroneously granted 3rd ACP w.e.f. 01.05.2015 vide Divisional Manager (Operation) order no. 2406 dated 04.08.2015.

7. Respondents have also contended that on scrutiny of the order in the Head Office of the Transport Corporation, it was found that the 3rd ACP w.e.f. 01.05.2015 has been granted erroneously, because

during the period w.e.f. 08.01.2000 to 31.12.2001, the petitioner absented himself from duty and he was punished for unauthorized absence and the period from 08.01.2000 to 31.12.2001 could not be counted as satisfactory service, while counting required 26 years of satisfactory service as per the concerned G.O. Hence, vide order No. 1660 dated 23.1.2016, the order dated 01.05.2015 for granting 3rd ACP was cancelled and the period of unauthorized absence was excluded from continuing of required 26 years of satisfactory service for granting 3rd ACP. Petitioner's appeal against that order was rightly dismissed. He is not entitled for any relief and the present petition deserves to be dismissed.

8. Petitioner filed rejoinder affidavit and the same averments were reiterated as were stated in the claim petition.

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

10. It is an admitted fact that for grant of ACP, the relevant G.Os. are of 08.03.2011 (Annexure: A7) and 01.07.2013 (Annexure: A8). There is no dispute about grant of First and Second ACP to the petitioner. As per the concerned G.O., 3rd ACP could be granted after completion of 26 years of "continuous and satisfactory service". It is also an admitted fact that the petitioner was unauthorizedly absent from his duties approximately for a period of two years w.e.f. 08.01.200 to 31.12.2001, for which disciplinary proceeding was started against him and he was punished after the inquiry with the punishment of stoppage of two increments with cumulative effect without payment of salary for that period. However, that punishment was later on modified for withholding of one increment without cumulative effect and the period of absence was treated as "leave without pay".

11. The petitioner was granted 3rd ACP w.e.f. 01.05.2015 vide Divisional Manager Office Order No. 2406 dated 04.08.2015 which was later on scrutinized in the headquarters of Uttarakhand Transport

Corporation and they found that the period of absence from 08.01.2000 to 31.12.2001 of the petitioner was erroneously counted for the required 26 years of "continuous and satisfactory service" and it was held that the petitioner has absented himself from duties and this period of absence cannot be counted for granting of ACP. Accordingly, vide order dated 23.01.2016, the previous order for granting 3rd ACP was cancelled.

12. Learned counsel for the petitioner has argued that the period of absence from duty w.e.f. 08.01.2000 to 31.12.2001 was a "sanctioned leave without pay" and it was covered under the proviso of para 2(iv) of G.O. dated 08.03.2011 which reads as under:-

“2(vi) ए०सी०पी० की व्यवस्था के अन्तर्गत वित्तीय स्तरान्तर हेतु नियमित संतोषजनक सेवा की गणना में प्रतिनियुक्ति/वाह्य सेवा, अध्ययन अवकाश तथा सक्षम स्तर से स्वीकृत सभी प्रकार के अवकाश की अवधि को सम्मिलित किया जायेगा।”

Hence, according to the petitioner, the said period from 08.1.2000 to 31.12.2001 cannot be excluded to count his continuous and satisfactory service. Whereas, the respondents have argued that the leave without pay is not such leave which is covered under the provisions of the G.O. dated 08.03.2011 because of the reasons that to count continuous and satisfactory service, the term "any other leave sanctioned from appropriate level" does not cover the "leave without pay" which was granted, as a part of punishment.

13. It has been argued that "all other leave granted by appropriate level" must be of such kind of leave which are of like nature as mentioned in that G.O. and leave without pay granted as a punishment is not covered therein.

14. Learned counsel for the respondents has argued that the word "all such kinds of leave" will be read with the words deputation/outside study leave when the employee must be working somewhere as a part of his duty but in the present case, the petitioner

had not rendered any kind of service anywhere and his absence was treated as a 'leave period', just to avoid the break in his service and it was by way of punishment.

15. We agree with this argument and hold that it was not a kind of any such leave, which was sanctioned before proceeding on leave and the petitioner was unauthorizedly absent from duty and treating this period as 'leave without pay', the continuity of his service was not broken but as the petitioner was absent from duty from all places and he has rendered no service at all, hence, this period of absence w.e.f. 08.01.2000 to 31.12.2001 cannot be treated as a "satisfactory service" by the petitioner, because he was punished for unauthorized absence of this period after a disciplinary proceeding and leave without pay was a part of punishment. Accordingly, the period from 08.1.2000 to 31.12.2001, which was treated as "leave without pay", as a part of punishment cannot be treated as a "satisfactory service" for granting the ACP as there was no service rendered by him at all.

16. In view of the above, the court finds that the impugned orders dated 12.01.2017 (Annexure: A-1) and order dated 23.01.2016 (Annexure: A2) passed by the respondents suffer from no infirmity and the petition deserves to be dismissed.

ORDER

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

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: AUGUST 01, 2018
DEHRADUN

KNP