

**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. 28/SB/2018**

Sarla Singh D/o Late Shri Ram Shankar R/o 1077/2, Vyomprasth, G.M.S. Road,  
Dehradun.

.....Petitioner

**VS.**

1. State of Uttarakhand through Secretary, Medical Education, Government of Uttarakhand, Dehradun.
2. State of Uttarakhand through Secretary, Medical health and Family Welfare, Government of Uttarakhand, Dehradun.
3. Director General, Medical health and Family Welfare Department, Dehradun.
4. Director, Medical Education, Directorate, 107, Chandar Nagar, Dehradun.
5. Principal, State School of Nursing, Dehradun.
6. Incharge, Medical Officer Community Health Centre Vikasnagar, Dehradun.

.....Respondents.

Present: Smt. Sanjana Madan, Counsel  
for the petitioner.

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

**JUDGMENT**

**DATED: AUGUST 31, 2018**

**Justice U.C.Dhyani(Oral)**

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

“(i) The impugned order dated 20.03.2018 should be quashed/ set aside with the speaking order that the petitioner should be merged for the post of tutor in the State School of Nursing, Chander Nagar, Dehradun, with all consequential benefits.

(ii) Any other relief which the Hon’ble Court deems fit and proper be also awarded to the petitioner.”

2. Briefly put, facts of the claim petition, are as follows:

The petitioner was appointed as Staff Nurse in Health Department in Lucknow, *vide* letter dated 28.06.1999. She was given charge of St.Mary’s Hospital, Mussoorie as Staff Nurse. She joined her duty on 13.07.1999. Petitioner worked at different places, as also at Community Health Centre, Vikas Nagar, Dehradun. She was attached as Tutor in State School of Nursing at Dehradun on 26.12.2011. She was promoted from the post of Staff Nurse to the post of ‘Sister’. On 4.6.2016, respondent No. 5 issued general notice that all those tutors, who want merger from Health Department to Medical Education Department, should give their application to respondent No.5. Accordingly, petitioner presented an application to respondent No.5 on 13.06.2016 after having obtained ‘no objection’. In other words, after receiving ‘no objection’ letter, petitioner filled up the option for continuation of her service in Medical Education Department on 28.06.2016, which was duly signed by respondent No.5. Respondent No.5 was never in good terms with the petitioner. During the process of merger, respondent No.6 issued a letter on 10.08.2016 demanding ‘confidential report’ of the petitioner from respondent No.5. In compliance thereof, A.C.Rs. of 11 years were submitted to the office of respondent No.5 on 03.09.2016, but the A.C.Rs. were not forwarded to respondent No.3. Petitioner received a letter dated 28.11.2016, on 30.11.2016, informing her, that she was relieved from State School of Nursing with immediate effect. Aggrieved with the same, petitioner approached this Tribunal by filing a claim petition. Her claim petition was allowed on 06.02.2018 by directing her to give fresh representation

to respondent No.4, who should decide her representation in accordance with Absorption Rules, 2016. Instead of deciding her representation, respondent No.4 constituted a committee, which committee gave finding that the petitioner is not fit for teaching and cannot be merged with department of Medical Education.

It is pointed out, in the pleadings, that contents of para 3 of the impugned order does not come within the ambit of Absorption Rules, 2016. The committee constituted under the orders of respondent No.4, framed baseless allegations against the petitioner. Para 5 of the impugned order states that many complaints were filed against the petitioner pertaining to her conduct. Said allegations are the results of bias of respondent No.5 against her. During course of her duty, she worked as Tutor in State School of Nursing, where no disciplinary action was taken against her. No departmental proceeding was ever held against the petitioner.

Although in Para 6 of the impugned order, it has been stated that one of the tutors has made a complaint on 14.08.2015 against the petitioner, for alleged misbehaviour with various authorities, but it was pointed out, in the pleadings, that no action was ever taken on such complaint against her. All the allegations of misbehaviour are the result of bias of respondent No.5 against the petitioner. Respondent No.5, the then Principal, wanted to settle personal score with the petitioner and, therefore, petitioner was not found eligible for the post of Tutor in State School of Nursing. Petitioner is fully qualified and fulfills all the eligibility criteria for the post. For the process of merger, no recommendation of anybody is required. Respondents No. 4 & 5 have not acted in accordance with Absorption Rules, 2016 and had taken the excuse of alleged misconduct and misbehaviour of the petitioner for not considering her merger on the post of Tutor in State School of Nursing, Dehradun. Allegations of misbehaviour were never mentioned in ACRs of the petitioner. The petitioner was, therefore, compelled to file present claim petition.

3. W.S./C.A. has been filed on behalf of respondents. It has been averred in such C.A. that petitioner was appointed as Midwife in Medical and Health Department of U.P., under Hill Sub Cadre, *vide* letter dated 28.06.1999. Petitioner reported for duties as Midwife at Government Medical Hospital, Mussoorie under the control of C.M.O., Dehradun on 13.07.1999. The hospital was run and controlled by Medical Health Department. Petitioner has worked as Midwife in various hospitals under the management and control of Medical Health Department of Uttarakhand. Petitioner has also undergone the Post Basic B.Sc. Nursing Course at the expenses of Government in the year 2010-11. She was attached to the post of Tutor at Government Nursing School, Dehradun, *vide* order dated 23.11.2011. Principal, State School of Nursing, Dehradun made several complaints against the petitioner, including the complaints which have been brought on record as Annexure Nos. CA-1 and CA-2. Petitioner filed a complaint on 29.09.2016 to the Scheduled Caste Commission against Director Medical Education and Principal of State School of Nursing, Dehradun. The representation of the petitioner has been disposed of by respondent No.4 in the best interest of students, institution and teaching atmosphere of the nursing college. Petitioner is an employee of Medical Health Department and was only attached to the State School of Nursing, which is under the Department of Medical Education. ACRs. of the petitioner for eleven years have been signed by the same person and have been given even for that period when she was on training. Smt. Hansi Negi, the then Principal of State School of Nursing has retired on 31.01.2018. The impugned order was passed on 20.03.2018 and, therefore, there is no question of bias against the petitioner. Petitioner was not found suitable for merger, keeping in view the services rendered during the period of attachment coupled with her misbehaviour with her colleagues and students. According to C.A./W.S., petition is liable to be dismissed.

4. The genesis of present claim petition may be traced back to filing of earlier claim petition (being claim petition No. 04/SB/2017) by the petitioner before this Tribunal. There is hardly anything new in the present claim petition, for, every point raised herein, has been dealt with by the Division Bench of this Tribunal while deciding claim petition No. 04/SB/17 on 06.02.2018.

5. Before giving some additional inputs, relevant for the decision of present claim petition, it will be useful to reproduce material facts, points raised and the decision thereon in earlier claim petition, herein below for convenience:

2. The petitioner was initially appointed on the post of Staff Nurse in the Department of Medical and Health under the CMO, Dehradun in 1999. The petitioner was posted at Community Health Centre, Vikas Nagar, Dehradun in 2004. Thereafter, she was attached to the Government State Nursing School, Dehradun on the post of Tutor in 2011.

3. The Medical Education Department of the Government of Uttarakhand under the proviso to article 309 of the Constitution framed the Absorption Rules, 2016 on 02.05.2016 to absorb (apart from other staff) tutors who were attached to the State School of Nursing, Dehradun in the Nursing Teachers Service Cadre in the Medical Education Department. In pursuant to the absorption rules, the principal of State School of Nursing, Dehradun invited applications on 04.06.2016 from those who were interested in absorption. The petitioner applied for absorption on 28.06.2016 and submitted the option form to the respondent No. 4. The respondent No. 3 issued the "No Objection Certificate" for absorption of the petitioner on 03.10.2016. The respondent No. 5 asked respondent No. 6 to send the ACRs of the petitioner for last 10 years on 10.08.2016. The respondent No. 6 sent the ACRs of the petitioner for 11 years (2001-02 to 2011-12) to

respondent No. 5 on 03.09.2016. The ACRs of the petitioner for the years 2012-13 to 2015-16 (attachment period) were also available. The contention of the petitioner is that in spite of her eligibility and fulfillment of all the conditions of Absorption Rules, 2016, the petitioner was not absorbed on the post of Tutor in the State School of Nursing, Dehradun by respondent No. 3 vide order dated 28.11.2016. Respondent No. 3 in his order dated 28.11.2016 has stated that the petitioner was not found suitable for absorption due to non-availability of ACRs of the petitioner for 5-10 years. The petitioner also submitted representations dated 02.01.2016 and 16.02.2017 against the order dated 28.11.2016 to the respondent No. 3 but the same remained undecided. The petitioner has, therefore, filed this claim petition praying for her absorption in the Department of Medical Education.

8. Learned counsel for the petitioner in her arguments has raised the same points which are stated in paragraph 3 of this order. Learned A.P.O. on behalf of the respondents has raised the points that the petitioner was found unsuitable for absorption because of unavailability of ACRs of the petitioner and her case was not recommended by the competent authority.

9.1 For the absorption of tutors (and others) in the Medical Education Department, the State Government framed the Absorption Rules, 2016 (Annexure: A 19). Rule 4 of the Absorption Rules, 2016 provides the qualification for eligibility of Tutor for absorption. Admittedly, the petitioner fulfils the qualification for eligibility.

9.2 It has also been prescribed under Rule-4 of the Absorption Rules that the tutor for absorption must be attached to the Nursing Teachers Service Cadre of Medical Education Department upto 30.11.2015. Admittedly, the petitioner was attached from 2011 and

continued to be attached upto 30.11.2015 and thereafter also the petitioner continued to be attached upto 28.11.2016.

9.3 It is also admitted that the petitioner applied for absorption and submitted the Option Form on 28.06.2016 for absorption in accordance with Rule-8 of the Absorption Rules, 2016.

9.4 Rule-9 of the Absorption Rules provides that for absorption in Medical Education Department, it will be essential that the "No Objection Certificate" is issued by the Department of Medical, Health and Family Welfare. Admittedly, the petitioner was issued the NOC by the Director General Medical, Health and Family Welfare on 03.10.2016.

9.5 Apart from the conditions mentioned in paragraphs 9.1 to 9.4, there is no other condition/requirement to be fulfilled by the petitioner for absorption under the Absorption Rules, 2016.

10. The perusal of record reveals that in spite of the fact that the petitioner fulfilled all the conditions prescribed under Absorption Rules, 2016, the petitioner was not absorbed in the Medical Education Department.

12. The Director Medical Education has stated two reasons for rejection of absorption application of the petitioner. The first reason is that there was no recommendation of the competent authority for absorption. Neither in the above letter dated 28.11.2016 nor in the written statement filed by the Director, Medical Education (respondent No.4) nor at the time of hearing, it has been made clear as to who was the competent authority to recommend the absorption. The perusal of Absorption Rules, 2016 reveals that there is no provision for recommendation by any competent authority for absorption of the petitioner. On the contrary, perusal of

Absorption Rules, 2016 and the available record reveals that the petitioner fulfils all the conditions laid down in Absorption Rules as has been mentioned in paragraphs 9.1 to 9.5 of this order. There is, of course, condition of NOC by the Medical, Health and Family Welfare Department which admittedly was issued for the absorption of the petitioner.

*(Emphasis supplied)*

13. The second reason which has been mentioned by the Director, Medical Education for rejection of petitioner's absorption in the letter dated 28.11.2016 is non-availability of petitioner's ACRs of 5-10 years. This reason is also beyond the conditions prescribed under the Absorption Rules, 2016. There is no mention of ACRs in the Absorption Rules, 2016 for the absorption. The condition of issuing "No Objection Certificate" by the Medical and Health Department for absorption has only been prescribed under Rule-9 of the Absorption Rules, 2016 and admittedly, the same has been fulfilled by the petitioner as the Director General, Medical, Health and Family Welfare issued the NOC for absorption of the petitioner in Medical Education Department on 03.10.2016. However, the petitioner has stated in the claim petition that her ACRs for the years 2001-02 to 2015-16 were available and there is no adverse ACR and the same has not been denied by the respondent in the written statement. In any case, as has been mentioned earlier, the Absorption Rules, 2016 do not provide any condition related to ACR. The Absorption Rules only provide the condition of NOC by the Medical, Health and Family Welfare Department which has been fulfilled by the petitioner.

14. For the reasons stated above, the rejection of absorption application of the petitioner is not in accordance with the Absorption Rules and, therefore, the



order of respondent No. 3 dated 28.11.2016 is liable to be set aside and the petition deserves to be allowed.

#### ORDER

The petition is hereby allowed. The order of the respondent No. 4 dated 28.11.2016 by which the petitioner is not found suitable for absorption is set aside. The case is remanded to respondent No. 4 for considering the absorption of the petitioner afresh in accordance with the Absorption Rules, 2016 and pass a reasoned order within a period of six weeks from today. No order as to costs”

6. The focal point of the response of the respondents, through C.A./W.S. in present claim petition, is that the petitioner was not found suitable for merger keeping in view the services rendered by her during the period of attachment along with her behavior with her colleagues and students. She is also stated to have been found wanting in maintaining punctuality, and, therefore, she was not found suitable for merger as Tutor in State School of Nursing, Dehradun in the larger interest of students and administration of the School.
7. The solution to problem, as stated above, can be traced back to the decision of earlier claim petition filed by the petitioner. The reply is only to be found in the decision of claim petition No. 04/SB/18.
8. The question in a nutshell, which is to be answered by us is – whether the petitioner is entitled to merger? Short reply to the question is – if the conditions of merger are fulfilled, services of the petitioner should be merged.
9. The next question, which arises for consideration of this Tribunal is— what are the conditions of merger, according to Absorption Rules?
10. **Rule 9 of Absorption Rules, 2016, as notified in Official Gazette on 02.06.2016, stipulates that ‘No Objection’ of Medical Health and**

**Family Welfare Department will be necessary for absorption. Such 'no objection' certificate has, admittedly, been issued by Medical Health and Family Welfare Department (in favour of the petitioner). Respondents have not been able to show as to which Rule of the Rules of 2016 has not been complied with, or in other words, the respondents have not been able to indicate as to how the petitioner's case is not covered for absorption under the relevant Rules.**

11. A perusal of the impugned order, therefore, suggests that services of the petitioner have been refused only on extraneous consideration. Her case is wholly covered under the Absorption Rules, 2016. The impugned order does not say under which Rule, petitioner's case, for merger, is not covered or in other words, which condition of the Absorption Rules is not fulfilled by the petitioner. W.S./C.A., on the other hand, highlights that merger cannot be processed in a mechanical way. The allegations raised by the respondents are not reflected in the ACRs of the petitioner. If ACRs are defective, as projected by respondent No.4 in Para 27 of the C.A./W.S., the respondents alone are to blame for the same. The Rules nowhere depict that the behavior and conduct of an aspirant of merger, should be spoken good. The same is to be reflected through ACRs and there is nothing adverse in the ACRs of the petitioner, to deny her absorption in State School of Nursing, Dehradun.
12. In any case, we do not see anything adverse on record against the petitioner, which comes in her way of absorption with State School of Nursing, Dehradun. We, therefore, are of the view that the claim petition should be allowed.
13. The claim petition is allowed. The order impugned dated 20.03.2018, Annexure: A 1, is hereby set aside. A direction is given to respondent No.4 for merger of services of the petitioner in the Department of Medical Education for State School of Nursing, within a

period of four weeks of presentation of certified copy of this order before the said respondent. No order as to costs.

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

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: AUGUST 31, 2018*  
*DEHRADUN*  
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