

**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. 59/DB/2018

Gayur Ali, Fireman, Police Line, Pauri Gahrwal

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Home Uttarakhand Sachivalaya, Subhash Road, Dehradun.
2. Director General of Police, Agnishaman & Apat Sewa Uttarakhand, Subhash Road, Dehradun.
3. Deputy Director General, Agnishaman & Apat Sewa Uttarakhand, Dehradun.
4. Director General of Police, Garhwal Range, Uttarakhand, Dehradun.
5. Superintendent of Police, District Pauri, Uttarakhand

.....Respondents.

Present: Sri Sanjay Negi, Counsel for the petitioner.

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

JUDGMENT

DATED: SEPTEMBER 26, 2018

Justice U.C.Dhyani (Oral)

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

- “ (i) To quash the impugned orders of “Parininda” dated 17.12.2013 and order No. P.F. 01/2003 dated 20.02.2014 (AnnexureA-1) passed by the S.P. Pauri, Garhwal by which the leave of the petitioner was sanctioned without salary on the basis of “No work, No pay” basis

and counting of termination period for pay increment, promotion, pension etc.

- (ii) To release the salary of the petitioner for the period during which his services remain terminated i.e., from 22.09.2003 to 18.09.2013.
- (iii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To award the cost of this petition to the petitioner.”

2. Brief facts, giving rise to present claim petition, are as follows:

The petitioner was a Fireman under the Fire Service Act 1944 & U.P. Fire Service (Recruitment and Conditions Service) Rules 1945 and he was posted as such in the Headquarter District Pauri, Uttarakhand from where he remained absent from duties. It is the allegation in the charge sheet that he remained absent for 136 days. A preliminary enquiry was conducted against the petitioner about his absence from duties. The petitioner was found guilty in the preliminary enquiry and a departmental enquiry was initiated against him after framing the charges. The petitioner did not participate in the enquiry and the enquiry officer recorded the statement of the witnesses and found him guilty of absence from duties. Thereafter, S.P., Pauri being the departmental authority, came to the conclusion that the petitioner should not be retained in the department and he should be dismissed from service. A show cause notice to this effect was issued to the petitioner. Meanwhile, he was also suspended for the same by S.P., Pauri on 18.11.2002. The petitioner did not reply to the show cause notice and the disciplinary authority came to the conclusion that the petitioner is guilty of the charge of misconduct and he was removed from service.

Feeling aggrieved with the same, the petitioner preferred an appeal before the appellate authority. The appellate authority also dismissed the appeal and thereafter, he submitted a review petition/memorandum against the appeal to the Government, which was sent to the appellate authority, who in turn, sent it to the S.P., who relegated the same to Additional S.P., who disposed of the same by rejecting the memorandum. Petitioner also preferred a revision before the competent authority, which was dismissed. Feeling aggrieved by all the orders, the petitioner has preferred claim petition No. 41/2012.

3. Aforesaid claim petition was decided by this Tribunal, on 13.06.2013, as follows:

“On the careful consideration we allow the claim petition and set aside the impugned order dated 22.09.2003 (Annexure-1), appellate order dated 31.01.2004 (Annexure-15), order dated 29.11.2004 (Annexure 17) and the revisional order dated 14.01.2012 (Annexure-2) and direct the disciplinary authority i.e. S.P. Pauri that he will award any of the lesser punishment having due regard of the nature and the circumstances of the case and gravity of the offence in the light of the observations made herein and further with the direction that while issuing a fresh show cause notice to the petitioner, he will also hold that as to whether the absence was wilful or not and thereafter he will send a show cause notice as provided under Article 311 and the Rules and Regulations made under the Police Act and pass the suitable orders in the light of the observations made above. This matter should be disposed of as expeditiously as possible, preferably within a period of 6 months from the date of the presentation of the copy of this order before the respondents. The respondents are directed to pay the subsistence allowance for the period from the date suspension order was passed till the date of his dismissal from service.”

4. Thereafter, in compliance of orders of the Tribunal, a fresh punishment order was passed by S.P.,Pauri Garhwal (Respondent No.5), on 20.02.2014, after conducting inquiry, which has been brought on record as Annexure: A 1.

5. It is the submission of Ld. Counsel for the petitioner that being aggrieved against the order passed by S.P.,Pauri Garhwal, on 20.02.2014 (Annexure: A 1), petitioner preferred a departmental appeal, copy of which has been brought on record as Annexure: A 4, which departmental appeal is pending consideration of respondent No.3, which needs to be expedited. Ld. A.P.O. has no objection, if a direction is given

to respondent No.3 to expedite the hearing of the departmental appeal and to bring it to its logical conclusion.

6. The innocuous prayer of Ld. Counsel for the petitioner is worth accepting in the given facts of the case

7. The claim petition is, accordingly, disposed of at the admission stage, by directing respondent No.3 to decide the pending departmental appeal of the petitioner, in accordance with law, at an earliest possible, but not later than six weeks of presentation of certified copy of this order before the authority concerned, along with a copy of the memo of appeal.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 26, 2018
DEHRADUN

VM