

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

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

Hon'ble Mr. A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 44/DB/2019

Gagan maithani aged about 29 years presently posted as Sub- Inspector Gairsain,
District Chamoli.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, (Home) Civil Secretariat, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttarakhand, Dehradun.
3. Superintendent of Police, Chamoli.

.....Respondents.

Present: Sri Shashank Pandey, Counsel for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: APRIL 22, 2019

Justice U.C.Dhyani (Oral)

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

- “(i) Issue an order or direction to quash the order dated 27.12.2018, *vide* which the petitioner has been punished for ‘No Work No Pay’ for 4 days.
- (ii) Issue any order or direction to quash order dated 15.02.2019 by which the appeal of the petitioner has been rejected.
- (iii) Issue any other order or direction which the Hon'ble Court deems fit and proper.
- (iv) Award the cost of claim petition to the petitioner.”

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

While the petitioner was posted as Sub Inspector in P.S. Gairsain, District Chamoli, he proceeded on five days' casual leave on 27.10.2018. He was stated to be indisposed. On 02.11.2018, petitioner got himself checked in Community Health Center, Pokhari, where he was found to be suffering from fever because of dysentery. The medical officer advised him for certain pathological investigations and also advised him rest for four days. Copy of medical certificate of the petitioner has been brought on record as Annexure: A-3. After pathological investigation, the petitioner was further advised bed rest. He immediately informed Respondent No.3 on telephone and also in his office at Gairsain. Senior Medical Officer, District Chamoli issued a medical certificate to show that the petitioner was advised complete bed rest and proper treatment from 02.11.2018 to 05.11.2018. On 06.11.2018, petitioner was found fit to resume his duties. Copy of medical fitness certificate of the petitioner has been brought on record as Annexure: A-4 to the petition. When petitioner reached Police Station, Gairsain on 06.11.2018, an explanation was sought for by Respondent No.3 for his absence. Copy of joining report dated 06.11.2018 of the petitioner has been brought on record as Annexure: A-5 to the petition. *Vide* order dated 27.12.2018 (Annexure: A-1) salary of the petitioner for four days' was with held on the principle of 'no work no pay'. Aggrieved against the same, the petitioner filed departmental appeal before the appellate authority, who failed to notice that neither the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 nor the Uttarakhand Police Act, 2007 prescribe for any punishment of 'no work no pay'. The appeal of the petitioner was dismissed *vide* order dated 15.02.2018(Copy: Annexure A-2).

Aggrieved against the order of disciplinary authority/ appointing authority, which was affirmed by the appellate authority, present claim petition has been filed by the petitioner.

3. It is the submission of Ld. Counsel for the petitioner that leave is due to the petitioner, and a direction be given to Respondent No.3 to grant him leave, if such leave is out- standing in his account. Even if no leave is due in his account, special casual leave, to the extent the same can be given, may be granted to him, because he was given fitness certificate on

06.11.2018 and also appeared on the same day to join his duties, but was directed to give explanation for his absence.

4. Since the petitioner gave his joining on 06.11.2018 at P.S., Gairsain, therefore, ends of justice will be met if Respondent No.3 is directed to grant him, available leave in his account, in the peculiar facts of the case.
5. Claim petition is, accordingly, disposed of at the admission stage, by directing Respondent No.3, to grant leave to the petitioner, available in his account. Medical Leave may be sanctioned, as per Medical Officer's Certificate, if such number of leave is available in his account. Since he gave joining on 06.11.2018, but was directed to furnish explanation for his absence, Casual Leave may be granted to him for rest of the period. If no Casual Leave is due in his account, Special Casual Leave may be given to him, as per Rules. If Respondent No.3 thinks that no Casual Leave/ Special Casual Leave could be given, under the rules, the said respondent may consider sanctioning him Earned Leave for the period of absence, as deemed proper.
6. Needless to say that the decision so taken, shall be communicated to the petitioner within four weeks of presentation of certified copy of this order before Respondent No.3.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 22, 2019
DEHRADUN

VM