

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 88/DB/2018

Gayur Ali, Fireman, Police Line, Pauri Garhwal.

.....Petitioner

VERSUS

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 Garhwal, Uttarakhand.

.....Respondents

Present: Sri Sanjay Negi, Ld. Counsel
for the petitioner
Sri V.P.Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: JULY 31, 2019

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

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

“(i) To quash the impugned order No.PF-01/2003 dated 20.02.2014 (Annexure; A-1) passed by S.P. Pauri Garhwal by which 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, and the order

No. DG-Eight 4/2018(4) dated Nov. 2018 passed by D.G. Police Agnishaman Avam Evam Apat Sewa Uttarakhand by which appeal of petitioner was rejected.

(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 (total 3647 days.)

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

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

2. Briefly stated, the petitioner was initially appointed as Fireman in district Pauri Garhwal from where, after taking leave only for two days, he remained absent from duty for about 136 days, without getting any further leave sanctioned. As he did not join his duty, after leave sanction period, inspite of the notice, hence, a preliminary inquiry was conducted about his absence and he was found guilty in that inquiry. The departmental inquiry was initiated against the petitioner after framing the charges, but the petitioner did not participate in the inquiry. Consequently, the statements of witnesses were recorded and he was found guilty of absence from duty.

3. The disciplinary authority, S.P., Pauri Garhwal after coming to the conclusion on the basis of the inquiry that the petitioner should not be retained in service, passed his dismissal order dated 22.09.2003 after considering his reply to the show cause notice. In the mean time, the petitioner remained suspended w.e.f. 18.11.2002 and was removed from service on the ground of misconduct.

4. Aggrieved by the order of dismissal, the departmental appeal was preferred by the petitioner, which was decided against him. Thereafter, he submitted a review petition/ memorandum, which was disposed of and rejected. Revision to the superior authority was also dismissed. Thereafter, a claim petition No. 41/2012 was filed before this Tribunal.

5. The above claim petition was decided by this Tribunal vide order dated 13.06.2013, by which dismissal order was set aside, with the direction to the disciplinary authority to pass any other lesser punishment, having due regard of the nature and circumstances of the case and gravity of the offence, in the light of the observations made in the judgment and further, with the direction that fresh notice be issued to the petitioner and it should be decided as to whether the absence from duty was willful or not.

6. In compliance of the order of the Tribunal, the petitioner was reinstated in the service on 02.09.2013 and a lesser punishment of censure entry was passed on 17.12.2013. For the period of dismissal from service w.e.f. 22.09.2003 to 18.09.2013, total 3647 days, the show cause notice was issued and after considering his reply to show cause notice, the same was not found satisfactory. Accordingly, vide order dated 20.02.2014, the period of dismissal till reinstatement i.e. 22.09.2003 to 18.09.2013 (total 3647 days) was regularized as leave without pay, on the principles of "No work no Pay", and counting that period for pension and other purposes was allowed.

7. Aggrieved by the order dated 20.02.2014, the petitioner preferred a departmental appeal (Annexure: A-4) before respondent No. 3, which was kept pending, hence, another claim petition No. 59/DB/2018 was filed by the petitioner before this Tribunal and the same was decided vide order dated 26.09.2018, with the direction to the respondent No. 3 to decide the pending departmental appeal of the petitioner in accordance with law, at the earliest.

8. In compliance of the same, the impugned order No. DG-8-4/2018(4) dated November, 2018 (Annexure: A-1) was passed, in which it was decided that on the principles of "No work no pay", nothing more is to be paid and the appeal was dismissed. Thereafter, petitioner approached this Tribunal for the relief, sought as above.

9. Petition was opposed by the respondents on the ground that the petitioner, who proceeded on leave, after taking two days Causal Leave on 10 & 11.09.2002, was duty bound to report back, but he remained absent from duty from 12.09.2002 to 24.01.2003, without assigning any reasons for his absence. The petitioner again remained absent w.e.f. 04.03.2003 till the date of his reinstatement in service. He never given any application with documentary proof, regarding illness of his wife, son or of his own, neither respondents were informed by the petitioner in this regard. The absence of the petitioner was not justified hence, he was legally dismissed from service. In compliance of the order of the court, he was granted lesser punishment and he was reinstated into service and suspension allowance for the suspension period was also paid. There was no order to pay the back wages by the court in the earlier petition. The employer cannot be saddled with the liability to pay back wages to the employee, when there is nothing to indicate that the employer was at fault or was responsible for the delay in reinstatement. The order of reinstatement was delayed for the reasons that the workman had filed claim petition in a wrong forum. The employer cannot be put at fault and their departmental appeal was also decided as per direction of the court. As the petitioner was found guilty of willful absence, hence, on the principles of 'No work no pay', the appeal was also dismissed and he was not paid the back wages accordingly.

10. The petitioner through his rejoinder affidavit, reiterated the facts of the petition and contended that he was prevented from performing his duty on account of wrongful dismissal hence, he is entitled for back wages.

11. We have heard both the sides and perused the record.

12. In the first round of litigation, in claim petition No. 41/2012, the dismissal order of the petitioner was set aside, on the basis of procedural lacuna as well as harshness, with the direction to pass some other lesser punishment. The court nowhere passed any direction,

exonerating the petitioner from misconduct of absence and only direction was issued to decide the fact, whether his absence was willful or not.

13. After issue of the show cause notice, the disciplinary authority had decided that the absence was willful because of the reasons that the petitioner while proceeding on leave, moved an application only for two days and there was no application for further leave, after two days. He was duty bound to join on duty or to move for further leave, which was never done in the present case and the petitioner remained absent for 136 days. The preliminary inquiry was conducted, but he did not participate in the inquiry. Being a member of the disciplinary force, the petitioner was duty bound to contact his employer and to get his leave sanctioned. The period of absence was not found justified by the disciplinary authority and on that basis, the petitioner was found guilty of misconduct. Even, by this Tribunal, in its previous judgment dated 13.06.2013 did not exonerate the petitioner completely from the guilt, rather passed a direction to pass some lesser punishment, having due regard of the nature and the circumstances of the case and gravity of the offence. Accordingly, the censure entry was passed and allowance for suspension period was also paid, but finding the absence willful, on the principle of 'no work no pay', the back wages were not paid.

14. In the departmental appeal, the petitioner's contention was duly considered and appeal was dismissed.

15. This court cannot go into the subjective satisfaction of the disciplinary authority. The petitioner cannot get the benefit of the case laws, as cited by him for the reasons that in the earlier judgment of the Tribunal, his guilt of misconduct was not totally exonerated and petitioner was held guilty till today, for the willful misconduct of absence. Hence, he cannot take the benefit of the case laws, referred by him. The services of the petitioner for the dismissal period were regularized, but on the basis of 'no work no pay', he was not paid the

back wages. He was given due opportunity with a show cause notice in this respect and non-payment of back wages on the principle of 'No work No Pay' is not a punishment.

16. The petitioner has not challenged the alternative punishment of censure entry and accordingly, the petition is not maintainable for the reliefs as sought above, because he has been granted other benefit of the service and alternate punishment has been passed, considering all these circumstances of the matter.

17. We do not find any ground to interfere in the punishment order, and the relief sought by the petitioner for seeking back wages, cannot be allowed in this case. The claim petition deserves to be dismissed.

ORDER

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

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JULY 31, 2019
DEHRADUN
KNP