

**(2022) 08 UK CK 0034**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 232 Of 2013 (S/S)????**

H.N. Srivastava

APPELLANT

Vs

General Manager (Administration) Uttarakhand And Others

RESPONDENT

**Date of Decision : 01-08-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Uttar Pradesh State Transport Corporation Employees (Other Than Officers) Service Regulations, 1981 — Regulation 62, 62(6), 63, 63(4)

**Citation : (2022) 08 UK CK 0034**

**Hon'ble Judges : Sharad Kumar Sharma, J**

**Bench : Single Bench**

**Advocate : Kurban Ali, Lubhna Jahan, Shobhit Joshi, Ashish Joshi**

**Final Decision : Partly Allowed**

## Judgement

Sharad Kumar Sharma, J

1. Heard learned counsel for the parties.
2. Brief facts of the case are that the petitioner contends that he was inducted with the respondents into the services as a clerk as back as on 04.10.1982. Owing to his service credentials being unblemished the petitioner was later on promoted as a senior clerk by the order passed by the competent authority i.e. The Regional Officer of Uttarakhand Transport Corporation, Tanakpur Depot District Champawat. In the seniority list of senior clerk, which was then issued by the respondents-department, the name of the petitioner figures at serial number 10. But the controversy started germinating, when respondent no.2 has passed the suspension order; as against the petitioner; on the ground that petitioner was levelled with an allegation of misconduct of insubordination of not following the orders passed by the superior authorities and he was not performing his duties, to the office to which he was attached. The order of suspension of 19.08.2011, was isolatedly based upon the said ground.

3. The respondents counsel submitted that the nature of allegations levelled, in the order of suspension will fall to be under Sub Clause (6) of Clause 62 of the Uttar Pradesh State Transport Corporation Employees (Other Than Officers) Service Regulations 1981, as it would be applicable to the Uttarakhand Transport Corporation, owing to its adoption after creation of the State of Uttarakhand under the provisions of the U.P. Reorganization Act.

4. The proceedings as a consequence of the order of suspension of 19.08.2011, was carried by the petitioner before this Court by filing a writ petition being Writ Petition No.1270 of 2011 (S/S). But however the suspension, order could not find favour by the writ courts under Article 226 of the Constitution of India, as the writ petition was disposed of with the direction to the respondents to complete the inquiry within one month, for the reason being that the petitioner was about to attained the age of superannuation on 31.12.2011.

5. In compliance of the judgment of this Court dated 03.11.2011, the petitioner was said to be charge sheeted and as many as six charges were levelled against the petitioner, which were replied by the petitioner by submitting a reply to the said effect on 19.10.2011, denying the gravamen of the charges levelled against him. The Inquiry Officer thus appointed, that is the Assistant General Manager (Finance) Uttarakhand Transport Corporation exonerated the petitioner from the five charges, and found him guilty only to a limited extent of preparing the duty Slip No.34 dated 05.08.2011, despite of having the requisite information; and as a consequence thereto, he was punished with the orders of recording an adverse entry in the service book and was condemned as per the penalties contemplated under Regulation 63 of the Regulation of 1981.

6. As against the order of recording of the adverse entry, which formed to be one of the minor penalties, which could be imposed upon an Erring Officer, as per the service rules, the petitioner preferred a representation on 07.12.2011, which was decided by the appellate authority by an order of 20.04.2012, partially in favour of the petitioner and as a consequence thereto the principle order of punishment was modified, to the extent that the punishment, as now it was imposed by the order of 08.12.2011, which was to the effect that a show cause was issued to the effect as to why the subsistence allowance payable to the petitioner when he was during the period of suspension may not be withheld and consequently he was reinstated into his services recording the adverse entry, in the service record. The relevant inference drawn by the disciplinary authority is extracted hereunder:-

7. The petitioner's appeal against this order of 08.12.2011, it had found favour by the order of the General Manager, Administration, the Appellate Authority, who while modifying the punishment Order No.1962 dated 08.12.2021, has only limited the order of punishment of withholdment of the subsistence allowance for the period of suspension i.e. the period when the petitioner remained suspended after having being placed under suspension with effect from 19.08.2011, till he had attained the age of superannuation on 31.12.2011 or at the most till passing

of the order of punishment dated 08.12.2011.

8. The issue would be as to whether at all the impugned order under challenge, in the present writ petition of issuing a direction for punishment of withholdment of subsistence allowance during the suspension period, as mentioned in the impugned order could at all be imposed.

9. It has been argued by the learned counsel for the petitioner, that the modification of the punishment order dated 08.12.2011, by the impugned order of 20.04.2012 by the appellate authority confining the punishment order limited to the extent that imposition of punishment of withholdment of the subsistence allowance during the suspension period from 19.08.2011 till 08.12.2011; would be bad for the reason being, that as contended by the learned counsel for the revisionist that when the Regulations of 1981, as it was framed by the U.P. State Government, it was issued in the exercise of its powers under the Uttar Pradesh Government Roadways Department Deputation with Corporation, Government Order No.3414 dated 05.07.1972. The Regulations framed therein, which was published in the Gazette on 19.06.1981, will take the shape of subordinate legislation governing the service conditions of Group C and D employees, who were working with the Statutory Corporation of the State. His argument is that when the subordinate legislature governing the service conditions of an employee of Statutory Corporation, consciously in Regulation 63, had not provided withholdment of a subsistence allowance, as to be one of the penalties, which could be at all imposed on an employee, who erred at law or had conducted himself into any of the misconduct as it has been provided under Regulation 62, the subsistence allowance cannot be withheld.

10. In order to answer the arguments as it has been extended by the learned counsel for the petitioner, as to what has been discussed above, the learned counsel for the respondents submitted that the action taken by the impugned appellate order would fall to be under Sub Clause (4) of Regulation 63 and will constitute to be the part of the minor penalties, which could be imposed under the Regulation of 1981, what he interprets is about the impact of Sub Regulation 4 of Regulation 63 of the Regulations of 1981, which is extracted hereunder:-

"(4) Recovery from pay or deposit at his credit the whole or the part of pecuniary loss caused to the Corporation by negligence or breach of order;

11. He submits that the use of terminology of "recovery from pay or deposit to his credit", would include within itself the aspect of withholdment of subsistence allowance during the period of suspension of an employee.

12. With all due reverence at my command, I am not in agreement with the tenacity of argument extended by the counsel for the respondents, because recovering an amount would invite within itself a pre-condition, that there has had to be a prior remittance of an amount, if there is no remittance of an amount or monetary benefit, the recovery thereafter if it is resorted to it will not fall to be under Sub Clause (4) of Regulation 63 of the Regulations. This Court is of the

view that the subsistence allowance during the suspension period, once it is not included in the description of penalty provided under Regulation 63 of the Regulations, in that eventuality, the spirit and purpose of withholdment of subsistence allowance, during the suspension period will not fall to be within the parameters of any of the classes of punishments, as described under Regulation 63 of the Regulations of 1981. Once if it is not contained under Regulation 63 of the Regulations as to be one of the penalties, which could be imposed, its implication cannot be widened by the respondents by their own interpretation given to Sub Regulation (4) to Regulation 63 of the Regulations, bringing the act of withholdment of the subsistence allowance, as to be an act of recovery of pay or deposit, which has been made in the credit of an employee.

13. Hence, this Court is of the view that once the amount was not disbursed to the employee and as a consequence thereto, after the disbursement which could have been recovered under Sub Regulation (4) of Regulation 63 of the Regulations, it will not include within itself the aspect of withholdment, which is the sole prerogative, which has been exercised by the employer contrary to the penalties provided under Regulation 63 of the Regulations of 1981.

14. In that eventuality, the impugned order passed by the Appellate Authority respondent no.1 on 20.04.2012 by modifying the principal order of punishment dated 08.12.2011, limiting it to the withholdment of the subsistence allowance would be bad in the eyes of law, because until and unless the right of an employer of imposing a penalty by way of withholdment of subsistence allowance, is brought within the purview of Regulation 63 of the Regulation of 1981 dealing with nature of penalties for misconduct, it could not have been imposed by the appellate authority of punishment while scrutinizing the principal order of punishment dated 08.02.2011.

15. Hence the impugned order is faulted of since without there being legislative competence, the order being outside the purview of the penalties contained under the Regulations of 1981. Hence, the impugned order of 20.04.2012 limited to the extent of withholdment of the subsistence allowance payable during the suspension period from 19.08.2011 till 08.12.2011 would be bad. The impugned order is quashed to that extent. The respondents are directed to remit the withheld subsistence allowance for the aforesaid period, to the petitioner within a period of two months from the receipt of the certified copy of this order. But so far as the aspect pertaining to the grant of notional promotion is concerned, since the petitioner remained under suspension and when he had preferred the earlier writ petition against the order of suspension, was never addressed by the court on merits and it was disposed of only with a direction to conclude the inquiry it means that the set of allegations, which was levelled therein pertaining to his act falling under Sub Clause (6) of Regulation 62 of the Regulation of 1981, the relief no.2 cannot be granted to the petitioner. Hence, the writ petition would stand partly allowed, so far it relates to questioning the order dated 20.04.2012 limited to the ambit and extent as it has been observed above.