

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

**CLAIM PETITION NO. 127/2009**

Manzoor Hasam, S/o Sri Nanu Khan, R/o Village, Manikpur,  
District Muzaffarnagar, U.P.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Home, Civil Secretariat, Dehradun,
2. Deputy Inspector General of P.A.C, Meerut, U.P.,
3. Commandant, 40<sup>th</sup> Bn. P.A.C. Hardwar, U.K.,
4. Deputy Inspector General of P.A.C., Dehradun.

.....Respondents

Present: Sri M.C.Pant, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondents

**ORDER**

**DATE: MARCH 03, 2014**

1. This petition has been preferred against the order dated 20.5.2000 passed by the Company Commander 40<sup>th</sup> Bn. Hardwar by which the petitioner has been terminated from the service from the post of Constable.

2. The petitioner had challenged the impugned order of termination of service on the ground of insufficiency of minimum required qualification before the Hon'ble High Court of Allahabad by way of writ petition. That writ petition was transferred to the Hon'ble High Court of Uttarakhand after the creation of the State of Uttarakhand, but was dismissed on 21.5.2008 on the ground of availability of the alternative remedy before the Tribunal. The petitioner had also preferred a review of the above judgment of the Hon'ble High Court, but that was also dismissed on 16.9.2009. Thereafter, the petitioner had filed this petition before this Tribunal.

3. First of all, the Counsel appearing for the respondents have challenged this petition on the ground of maintainability of this petition before this Tribunal. We are also of the view that before going to the merits of the petition, it is proper to decide the question of maintainability of this petition before this Tribunal.

4. We have heard both the parties at length and perused the written submissions submitted on behalf of the petitioner.

5. It has been contended on behalf of the respondents that the impugned order has been passed and at that time, the petitioner was in the service of the State of U.P. and not in the service of State of Uttarakhand. The petitioner had never been the employee of the State of Uttarakhand and as per the

provisions contained in Section-2(b) of Uttarakhand Public Services Tribunal Act, 1976 only those persons are entitled to prefer the petition before the Tribunal who are public servants i.e. employee of the State of Uttarakhand. As the petitioner has never been in the service of the State of Uttarakhand, he can not be treated to be public servant as per the provisions mentioned above; therefore he is not entitled to prefer this petition before this Tribunal. On the other hand, it has been contended that the petitioner had preferred this petition before the Hon'ble High Court of Allahabad from where it has been transferred to Hon'ble High Court of Uttarakhand as per the provisions of Section 91 of the U.P. Reorganization Act, 2000. After the decision in above writ petition, this petition is maintainable before this Tribunal.

6. We have carefully considered the rival contentions raised by the parties. In fact, the provisions of Section 91 of the U.P. Reorganization Act, 2000 would have been applicable had the matter related to the State of Uttarakhand been pending before the Public Services Tribunal, Uttar Pradesh, but in our opinion, the matter was not at all related to the State of Uttarakhand as the petitioner had already been dismissed from the service before the creation of the State of Uttarakhand. In case, the petitioner has any grievance regarding the service conditions that is concerned to the State of U.P. only and not to the State of Uttarakhand as the petitioner has never been in the employment of the State of Uttarakhand, therefore, provisions of Section 91 of U.P. Reorganization Act, 2000 are not attracted in the present case. Learned counsel relies upon the principle laid down by

the Hon'ble Supreme Court in Bihar State Electricity Board and another Vs. Ram Deo Prasad Singh and others, (2011)12 S.C.C., 632, but in our opinion, this principle is not applicable in the present case as no cause of action had ever arisen in the State of Uttarakhand.

7. As regards the contention of the respondents is concerned, it is clear from the record that the petitioner was employee of the State of U.P. and the grievance to the petitioner, if any, is against the State of U.P. only. The petitioner had never been the employee of the State of Uttarakhand and therefore, no cause of action arises to the petitioner against the State of Uttarakhand. The similar principle has been laid down by the Hon'ble Supreme Court in State of Uttarakhand & another Vs. Umakant Joshi 2012(1) U.D. 583. Hon'ble High Court of Uttarakhand has also laid down the similar principle in State of Uttarakhand & others Vs. Public Services Tribunal & others in W.P. (S/B) No. 33 of 2007 and it has been held that in case any public servant has never been an employee of the State of Uttarakhand, the Uttarakhand Public Services Tribunal does not have any jurisdiction to entertain the petition. As the petitioner had not been the employee of the State of Uttarakhand, therefore, the present petition does not lie before this Tribunal. In fact, the petitioner had been terminated before the creation of the State of Uttarakhand, therefore, the cause of action arose before the creation of this State. The principle laid down by the Hon'ble High Court in W.P. (S/B) No. 33 of 2007 (Supra) and the Hon'ble Supreme Court of India in Umakant Joshi's case clearly laid down

that in cases the cause of action arose in the State of U.P., in those cases only that State is competent to pass any order or to redress the grievance of any employee and not the new State. Applying the above principles, it becomes clear that this petition is not maintainable before this Tribunal. Thus, the contention of the respondents appears to be reasonable.

8. It has also been contended on behalf of the petitioner that according to provisions of Section 91 of U.P. Reorganization Act, 2000, the authority vests with the Hon'ble High Court of Allahabad for determination of the point of jurisdiction once the petition stands transferred in Uttarakhand, but we do not find any force in the contention as the matter has been settled by the Hon'ble High Court of Uttarakhand and the Hon'ble Supreme Court.

9. The provisions of Section 12 of Uttarakhand Public Services Tribunal Act has also been referred, but these provisions are transitory provisions which were meant for the cases which were pending in another court at the time of enactment of the aforesaid Act and these provisions have no relevance for the present controversy.

10. In the light of the discussion made above, we are of the considered opinion that the petition is not maintainable before this Tribunal for adjudicating the matter in controversy involved in this petition. So, we have no option except to return the petition to the petitioner. At the same time, we also want to make an observation that the

petitioner has been pursuing this petition before this Tribunal bonafidely and there is no fault on his part.

11. Let the petition be returned to the petitioner for presentation before the proper court, authority or forum.

*Sd/-*

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

*Sd/-*

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: MARCH 03, 2014  
DEHRADUN

KNP