

**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. 93/2009

Ran Pal Singh, (Constable, 202), S/o Sri Shishpal Singh, R/o
Village, Madauna, Jafarabad, District: Buland Shahar, U.P.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary (Home), Civil Secretariat, Dehradun,
2. Additional Director General of Police (Admin.), Police Headquarters, Dehradun,
3. Deputy Inspector General of Police, Garhwal Region, Pauri, Uttarakhand,
4. Senior Superintendent of Police, 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 22.11.1996 passed by the S.S.P, Dehradun by which the petitioner was dismissed from the service.

2. The petitioner had challenged the abovementioned order before the Hon'ble High Court of Allahabad by way of writ petition, which was transferred to the Hon'ble High Court of Uttarakhand after creation of the State. This writ petition was dismissed on 7.11.2006 on the ground of availability of alternative remedy. Thereafter, the petitioner presented a claim petition no. 130/2007, Ran Pal Singh vs. State of Uttarakhand before this Tribunal, which was disposed of at the stage of admission itself on 13.5.2008 with a direction to the respondents to decide the revision of the petitioner. In view of the direction of this Tribunal, the respondents had decided the revision of the petitioner vide order dated 15.5.2009 and thereafter, the petitioner had preferred this petition.

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 filed on behalf of the petitioner carefully.

5. It has been contended on behalf of the respondents that the petitioner had been dismissed from the service before the creation of the State of Uttarakhand and at that time the petitioner was in the service of the State of U.P.

and not in the service of the 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 in pursuance of the judgment passed by this Tribunal, the revision of the petitioner has been disposed of by an authority belonging to the State of Uttarakhand and after the creation of the State of Uttarakhand had admitted the petitioner to be its employee and therefore, the petition is maintainable before this Tribunal.

6. We have carefully considered the rival contentions raised by the parties. In this case, the respondents have disposed of the revision preferred by the petitioner in pursuance of the direction of this Tribunal, but simply because the revision has been disposed of by an authority belonging to the State of Uttarakhand does not mean that the petitioner had been employee of the State of Uttarakhand. In fact, the petitioner was dismissed from the service before the creation of the State of Uttarakhand. He had never been an employee of State of Uttarakhand, therefore, he cannot be treated to be public servant belonging to State of Uttarakhand.

7. It has further been contended that once the writ petition was decided by the Hon'ble High Court of Uttarakhand on the ground of availability of alternative remedy, the jurisdiction vests in this Tribunal. We are not convinced with the above contention. The Hon'ble High Court has not considered the point of jurisdiction in the writ petition. The writ petition was decided only on the ground of availability of alternative ground, so the petitioner cannot take any benefit on this ground. The petitioner has referred the principle laid down by the Hon'ble Supreme Court in Bihar State Electricity Board & Another vs. Ram Deo Prasad Singh & Others, 2011(12) SCC, 632. We have gone through the above noted case carefully and find that the principle laid down in the above noted case are not applicable in the present case, so the petitioner is not entitled for any benefit on this ground. On the other hand, the Hon'ble Supreme Court in State of Uttarakhand & others vs. Umakant Joshi, 2012(1) U.D., 583 and Hon'ble High Court of Uttarakhand in writ petition no. (S/B) 33 of 2007, State of Uttarakhand & others vs. Public Services Tribunal & others has clearly laid down that in cases where the impugned order has been passed by the State of U.P. only that State is competent to redress the grievances of the employee, therefore, this petition is not maintainable before this Tribunal.

8. The learned counsel for the petitioner has also referred to Section 12 of the Uttarakhand Public Services

Tribunal Act, 1976, which contains the transitory provisions and is quoted below:

“12. Transitory provisions:(1) Any reference of claims, applications or other incidental or ancillary proceedings pending before any Tribunal constituted under Section 3 of the Principal Act, as it stood immediately before the commencement of this Act (hereinafter referred to as the old Tribunal) shall, upon constitution of the Tribunal under Section 3 of the Principal Act as amended by this Act, stand transferred to such newly constituted Tribunal which shall thereupon hear and decide the cases in the same manner as if they were referred to it under Section 4 of the Principal Act or were matters arising out of such claims, as the case may be.

Explanation- It shall be lawful for such newly constituted Tribunal to commence the proceeding from the stage at which the case was so transferred the proceeding from the stage at which the case was so transferred and to deal with any pleading presented or evidence produced before such transfer as if the same were presented or produced before itself.

(2) Any reference of claims, applications or documents addressed to any of the old Tribunals received by the newly constituted Tribunal shall be entertained and disposed of by the newly constituted tribunal as if it were addressed to it.

(3) All applications for certificate under subsection (7) of Section 5 of the Principal Act as it stood immediate before the commencement of this Act, pending on the date of such commencement shall stand abated.

(4) Any certificate under sub-section (70 of Section 5 of the Principal Act as it stood immediately before the commencement of this Act, issued by any of the old Tribunal shall continue to be valid and enforceable notwithstanding that such old tribunal is no more in existence.

(5) Subject to the provisions of sub-section (4) all orders of the old Tribunals shall be executed in accordance with the provisions of the Principal Act as amended by this Act as if such orders were passed by the newly constituted Tribunal.”

But this provision does not relate to the present controversy as it relates to the cases, which were pending at the time of enactment of the Act.

9. 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.

10. 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