

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, BENCH AT NAINITAL**

Present: Hon'ble Justice J. C. S. Rawat

&
Hon'ble U. D. Chaube

..... Chairman
..... Member (A)

CLAIM PETITION NO. 14/N.B./2011

Mohan Ram Arya, S/o Late Sri Moti Ram,
R/o Raj Bhawan Compound, Tallital,
District Nainital

.....Petitioner

VERSUS

1. Commissioner and Secretary, Board of Revenue,
U.P., Lucknow.
2. Commissioner, Kumaon Division, Nainital.
3. State of Uttarakhand through Chief Secretary,
Government of Uttarakhand, Dehradun.
4. Tara Dutt Joshi, S/o Not known,
Stenographer to District Magistrate, Nainital.
5. Chief Revenue Commissioner, Uttarakhand.

..... Respondents

Present: Sri Alok Mehra, Advocate
for the petitioner.

Sri V.P. Devrani, A.P.O
for the respondents.

ORDER**DATE: 19-03-2013**

The petitioner has filed this petition for seeking the following relief, as below:-

- a) Issue an order or direction for quashing the impugned order dated 16-10-2000 (annexure no. 1) passed by respondent no. 1.
- b) Issue a direction restraining the respondents from interfering with the functioning of the petitioner as Personal Assistant to the Commissioner.
- c) Issue a direction to the respondents to pay the salary for the post of Personal Assistant to the petitioner regularly from month to month as and when it falls due.
- d) Issue any other order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.
- e) To award the cost of the petition in favour of the petitioner.

2. We have heard both the parties.

3. Learned A.P.O. appearing on behalf of the State contended that the petitioner is seeking quashment of order dated 16-10-2000 by which

the promotion of the petitioner has been cancelled by Board of Revenue. Learned A.P.O. further pointed out that the State of Uttarakhand and the Hon'ble High Court was established on 09-11-2000 after creation of State under the Uttar Pradesh Reorganization Act, 2000. The orders which have been assailed by the petitioner pertains to the period when there was an undivided State of Uttar Pradesh. The counsel for the respondents has relied upon decision of State of Uttarakhand and another vs. Umakant Joshi 2012 (1) U.D., 583, in which in para-11 it has been observed by Hon'ble Supreme Court:-

“11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R. K. Khare to Class-I posts with effect from 16-11-1989 by the Government of Uttar Pradesh, the case of respondent No. 1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23-1-1999. Once the order of punishment was set aside, respondent No. 1 became entitled to be considered for promotion to Class-I post with effect from 16-11-989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttarakhand (now the State of Uttarakhand), which was formed on 9-11-2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9-11-2000 did not have the jurisdiction to entertain the writ petition filed by respondent No. 1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16-11-1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R. K. Khare with effect

from 16-11-989 and other officers, who were promoted to Class-I post vide order dated 22-1-2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion to respondent No. 1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent no. 1.”

The above quoted observation of the Hon’ble Supreme Court clearly supports the contention of learned counsel of the State (A.P.O.).

3. In view of the above, the learned counsel for the petitioner seeks permission to withdraw the petition to file it before the appropriate forum, Tribunal or Court and he further seeks liberty to file a fresh petition before appropriate forum on the same cause of action.

4. Prayer is allowed. The claim petition is hereby dismissed as withdrawn with the liberty to file a fresh petition before the appropriate forum. No orders as to costs.

Interim order dated 28-12-2011 is hereby vacated.

Sd/-

U.D. Chaube
Member (A)

Sd/-

Justice J.C.S. Rawat
Chairman

DATE: 19-03-2013

B. Kumar