

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 19/DB/2021

Dr. Bipin Bihari, aged about 58 years, Beej Utpadan Adhikari/Project Officer,
Project Office Uttarakhand Seeds and Tarai Development Corporation Limited,
Kisan Bhavan, Ground Floor, Ring Road, Nehrugram, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Horticulture, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Seeds and Tarai Development Corporation Limited, Pant Nagar, Post Office Haldi, District Udham Singh Nagar.
3. Director, Department of Horticulture and Food Processing Directorate, Uttarakhand, Udhyaan Bhavan, Chaubatiya, Ranikhet, Almora.

.....Respondents

Present: Ms. Anupama Gautam (online) and
Sri A.S.Bisht, Advocates, for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents (online)

JUDGMENT

DATED: JANUARY 09, 2023

Per: Mr. Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:

"a. That the order dated 29.04.2017, passed by respondent no.3 and followed by the order dated 27.02.2020 passed by the respondent no.1, be set aside allowing the repatriation of the petitioner to his parent department of Horticulture and Food Processing keeping his seniority therein intact.

b. Full cost of the petition.

c. Any other relief to which the petitioner is found entitled may very kindly be granted."

2. Brief facts of the case are that the petitioner was appointed as direct recruit employee of Group -II on 28.04.1990 in the Horticulture Department. Uttarakhand Seeds and Tarai Development Corporation Ltd. (Respondent no.2) advertised various posts on deputation or on appointment basis. The petitioner applied for the post of Seed Production Officer (*Beej Utpadan Adhikari*) and joined this post on 14.12.2004. Before joining this post, he requested the District Horticulture Officer, Udham Singh Nagar vide his letter dated 07.12.2004 to relieve him on the basis of lien for joining in the Uttarakhand Beej Evam Tarai Vikas Nigam (hereinafter referred to as 'the Corporation'). District Horticulture Officer, Udham Singh Nagar relieved him vide his order dated 13.12.2004 on the basis of his application dated 07.12.2004. The papers filed before this Tribunal show that the petitioner entered into a contract dated 14.12.2004 with the respondent corporation whose format is for appointment/promotion/regularization and which mentions the applicability of general Service Rules of the Corporation and retirement from the service of the Corporation after attaining the age of 58 years. There is no mention of deputation in this contract and no terms of deputation have been subsequently issued. The petitioner's application dated 07.12.2004 for relieving, mentions that he wanted to be relieved on the basis of lien, implying thereby that he wanted to retain his lien in the Horticulture Department.

3. The respondent no. 3 issued a letter dated 12.01.2009 to the District Horticulture Officer, Udham Singh Nagar stating that the petitioner has been appointed in the corporation and is not working there on deputation. If he wants to return to the department, he will have to deposit his pensionary contribution/leave contribution otherwise action for terminating his lien in the department can be undertaken. The petitioner enquired about the amount required to be deposited vide his letter dated 23.05.2009 but no reply has been received by him. The respondent no. 3 issued a letter dated 6th August, 2009 to him stating that if he wants to return to the Department, he should ensure his joining in the Department within two months of the receipt of this letter,

otherwise action for terminating his lien shall be taken. On the petitioner's request, the respondent no. 2 issued a certificate dated 03.06.2014 stating that the petitioner is working in the respondent corporation from 14.12.2004 on lien. The petitioner's name continued to be mentioned in the seniority list of the respondent department and as such his name was mentioned in the seniority list of 2014 of the Horticulture Department, implying thereby that the department was accepting his lien to have continued till that time.

4. The petitioner requested vide his letter dated 25.10.2016 to respondent no. 3 for his repatriation to the parent department but the respondent no.3 vide the impugned order dated 29.04.2017 has held that since the petitioner is working on lien in the respondent corporation from 14.12.2004 according to the certificate dated 03.06.2014 of respondent no. 2 and the petitioner has not obtained the approval of the Govt. through the Directorate for staying on deputation for long time, the lien of the petitioner in the Horticulture Department is not maintainable and, therefore, his representation for repatriation to the parent department is not acceptable and accordingly, the lien of the petitioner in the Horticulture Department has been terminated with immediate effect. The petitioner requested respondent no. 3 vide his letter dated 13.05.2017 for reviewing this order and also requested respondent no. 1 to allow him to return to the Department but vide the impugned letter dated 27.02.2020, the respondent no. 1 has written to Director, Horticulture that there is no justification/occasion for reconsideration in the matter.

5. According to the Counter Affidavit filed on behalf of the respondents no. 1 and 3, the petitioner was not duly relieved by the competent authority, which was respondent no. 3, for joining the respondent corporation; instead he was relieved by the District Horticulture Officer, Udham Singh Nagar. After joining the respondent corporation, the petitioner has been continuously working under the respondent no. 2. The detailed speaking and reasoned order dated 29.04.2017 vide which the representation of the petitioner to return to the Horticulture Department has been rejected, is not punitive in nature. The

petitioner did not challenge this order well within time before this Tribunal hence, claim petition is barred in view of Section 5(1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976. The petitioner has challenged the order dated 27.02.2020 which was a simple communication letter to inform the petitioner that his request to come back in the Horticulture Department has already been decided vide order dated 29.04.2017. Merely filing of un-statutory representation does not cover the limitation gap envisaged in limitation clause 5(1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976. It is settled proposition of law that a government employee does not retain lien with two departments simultaneously. As the petitioner has been appointed afresh to the post under respondent no. 2, he could not retain the lien with respondent no. 3.

6. Counter Affidavit filed on behalf of the respondent no. 2 mainly states that the petitioner continues to be on lien with the answering respondent and has at no time been absorbed as an employee of the answering respondent. The impugned orders do not relate to the answering respondent and the petitioner is not entitled to any relief as against the answering respondent.

7. This Tribunal vide its order dated 08.08.2022 sought certain clarification and production of certain documents from the parties. The papers subsequently filed show that petitioner vide his letter dated 30.09.2009 has requested the respondent no. 3 in response to his letter dated 06.08.2009 that due to his son studying in Pant Nagar and the petitioner's medical issues, it is not possible for him to join the department and it is requested that his lien may further be extended at least for additional period of five years. Further Counter Affidavit has been filed on behalf of respondents no. 1 and 3 stating that due to wrong examination of facts and clerical error, the name of the petitioner continued in the seniority list of the department. However, no information has been provided by the respondents to the following query of this Tribunal made in the order dated 08.08.2022:

“(4) The impugned office memorandum dated 29.04.2017 of respondent no. 3 (Annexure A-2) states that vide letter dated 17.05.2004, the petitioner was sent on deputation who was provided appointment by letter dated 26.10.2004 of respondent no.2 through direct recruitment. According to this office memorandum, the lien of the petitioner has been abolished with the immediate effect in the Horticulture Department. Horticulture Department had placed him in their seniority list of 2014 meaning thereby that the department was accepting his lien to have continued till that time. After 2014, was some correspondence initiated by the department of Horticulture with the petitioner about his lien or did respondent no. 3 issue him a notice to join the department failing which his lien with the department will be terminated?”

8. We have heard learned Counsel for the parties and perused the record.

9. Our observations are as below:

(i) The lien of the petitioner has been terminated by the respondent no. 3 vide the impugned order dated 29.04.2017. Though there is no provision of statutory appeal or review against such an order, the petitioner requested respondent no. 3 for review of this order vide his letter dated 13.05.2017 and the Director, Horticulture (respondent no.3) referred this matter to respondent no. 1 who sought further information from the respondent no. 2 and 3 and then issued the impugned order dated 27.02.2020. As such, it is clear that action on the request of the petitioner for reviewing the order dated 29.04.2017 was on going by the respondents and after rejection of the petitioner’s request by impugned order dated 27.02.2020 by the Govt., the petitioner has filed the claim petition within one year of the same. Therefore, the Tribunal holds that the claim petition is not barred by limitation.

(ii) The Tribunal holds that the petitioner was appointed in the respondent corporation by way of direct recruitment as there is no mention of deputation in his appointment letter or contract signed with respondent corporation and there is no further correspondence from any side about the terms of deputation. However, the petitioner requested District Horticulture Officer, Udham Singh Nagar to relieve him while maintaining his lien in the department as is normally done in case of a person who is going on deputation. The District Horticulture Officer relieved the petitioner, though he was not competent for

the same. Subsequently the Directorate, Horticulture wrote to the petitioner vide letter dated 12.01.2009 that in case he wanted to return to the parent department, he will have to deposit his pensionary contribution and leave contribution otherwise his lien will be terminated. Vide letter dated 06.08.2009 of the Directorate of Horticulture, the petitioner was asked to join the department to avoid termination of his lien in the department. Vide his letter dated 30.09.2009, petitioner wrote to respondent no. 3 expressing his inability to join the department due to his personal circumstances and requested for extension of his lien for atleast further five years.

(iii) No document has been filed before us to throw light on the action taken by the respondent no. 3 on the letter of the petitioner dated 30.09.2009. It is clear that the department acquiesced to continue his lien in the department and as such petitioner's name continued to be shown in the seniority list of 2014.

(iv) The petitioner made a request/representation to return to the department vide his letter dated 25.10.2016. Respondent no. 3 passed impugned order dated 29.04.2017 holding the representation of the petitioner to be not acceptable and vide this order, the lien of the petitioner in the Horticulture Department has been terminated with immediate effect. The lien of the petitioner in the department has been terminated mainly on two grounds-

(i) The petitioner has not obtained the approval of the Govt. through Directorate for staying for a long period on deputation.

(ii) The petitioner has acquired lien in the respondent corporation w.e.f. 14.12.2004 due to which his lien in the Horticulture Department is not maintainable.

(v). In the impugned order dated 29.04.2017, the Rule 9(13) and 14 'Ka' of the U.P. Fundamental Rules have been referred. Rule 9(13) is extracted as below:

“9(13) Lien means the title of a government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively.”

Rule 14 reads as below:

“ 14. (a) The lien of a government servant on a permanent post which he holds substantively shall be suspended if he is appointed in a substantive capacity:

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne, or

(3) provisionally, to a post on which another government servant would hold a lien had his lien not been suspended under this rule.

(b) The Government may, at their option, suspend the lien of a government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or, in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a government servant's lien on a tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

(d) If a government servant's lien is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the government servant appointed to hold it substantively shall acquire a lien on it; provided that the arrangements shall be reversed as soon as the suspended lien revives.

Notes - (1) This clause applies also if the post concerned is a post in a selection grade of a cadre.

(2) When a post is filled substantively under this clause, the appointment will be termed a provisional appointment; the government servant appointed will hold a provisional lien on the post; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

(e) A government servant's lien which has been suspended under clause (a) of this rule shall revive as soon as he ceases to hold lien on a post of the nature specified in sub-clause (1), (2) or (3) of that clause.

(f) A government servant's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India, or on foreign service, or to hold a post in another cadre, provided that a suspended lien shall not revive because the government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India, or on foreign service or to hold a post in

another cadre and the total period of absence on duty will not fall short of three years, or that he will hold substantively a post of the nature specified in sub-clause (1), (2) or (3) of clause (a).

Orders of the Governor regarding Rule 14

When it is known that a government servant on transfer to a post outside his cadre is due to retire on superannuation pension within three years of his transfer, his lien on the permanent post cannot be suspended.

14A. (a) A government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of clause (a) of rule 14, the suspended lien may not, except on the written request of the government servant concerned, be terminated while the government servant remains in Government service.

14B. Subject to the provisions of rule 15, the Government may transfer to another permanent post in the same cadre the lien of a government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended."

The above Rule 9(13) defines the lien and the Rule 14 talks about suspension of lien. It is understandable that when the petitioner joined the respondent corporation, his lien in the Horticulture Department could be deemed to have been suspended which should have again revived after his joining the parent department. When the petitioner made his request to join the department vide his representation dated 25.10.2016, his lien in the department had not been terminated. Therefore, at that time, proper action on the part of the department would have been to allow him to join the department where his lien was deemed to have been suspended which would have revived on his joining. Alongwith this, the department could take any other action like asking for deposit of pensionary contribution and leave contribution but abrupt termination of the petitioner's lien in the department was not warranted.

(vi) The department could have asked the petitioner to resign from his post in the department, if it was not agreeable/permmissible to send him on deputation to the respondent corporation. If the petitioner had not been properly relieved to join the respondent corporation, the department should have taken the notice, issued to the petitioner vide letter dated 06.08.2019 to join the department failing which his lien shall be terminated, to its logical

conclusion by further correspondence with him to ensure his joining by a specified date, failing which, his lien in the department would have been terminated, instead of further remaining silent in the matter till the petitioner made a request for returning to the department in 2016. Since the petitioner made a request for returning to the department before termination of his lien in the department, it was incumbent on the department to accept his joining and to take suitable decision about the period of his service with respondent corporation, either treating it to be deputation in consultation with respondent no. 2 or authorised leave for service elsewhere for which pensionary contribution/ leave contribution etc. could be got deposited from the petitioner.

10. In view of the above, the impugned order dated 29.04.2017 and 27.02.2020 are set aside and respondents no. 1 and 3 are directed to allow the petitioner to join the Directorate of Horticulture. The claim petition is accordingly, disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: JANUARY 09, 2023
DEHRADUN.
KNP