

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 73/2010

1. Khushal Singh Rana, S/o Sri Jhuna Singh, R/o Village & P.O. Uttroun, District Uttarkashi,
2. Vikram Singh Negi, S/o Late Sri Munshi Singh Negi, R/o Village and P.O. Dharkot-Dharmandal, Tehri Garhwal,
3. Nagendra Dutt Semwal, S/o Late Sri P.D.Semwal, R/o Village and P.O., Mukhem, Patti Upli Ramoli via Lambgaon, Tehri Garhwal.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Forest, Civil Secretariat, Uttarakhand, Dehradun,
2. Divisional Forest Officer, Uttarkashi Forest Division, Kotbangla, Uttarkashi,
3. Conservator of Forest, Bhagirathi Circle, Uttarakhand, Munikireti.
4. Principal Chief Conservator of Forest, Uttarakhand, Dehradun.

.....Respondents

Present: Sri V.P.Sharma, Counsel
for the petitioners

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

JUDGMENT**DATE: AUGUST 05, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. This claim petition has been filed for seeking the following relief:

“ a. To give Selection Grade of Rs. 465-615 from 1st July 1982 to Petitioner No. 1 & 2 and from 1st November 1982 to the petitioner No. 3 as on that day he completes 12 years in service.

b. To give next grade of 1200-2040 to be given after 16 years from 1st July 1988 for petitioners No. 1 & 2 and 1st November 1988 for petitioner No. 3 along with consequential benefits.

c. To give any other relief as the Hon'ble Court may deem fit.”

2. The facts in brief are that the petitioners were appointed as 'rasin mohirris' in the Forest Department in 1962, 1963 and 1970 respectively.

3. The main contention of the petitioners is that they were entitled to the Selection Grade as per Government Orders with effect from 1982 and the next higher grade with effect from 1988 which were not given to them in spite of several representations. In 2003 (Annexure: 1), a partial relief was granted to the petitioners but they were not satisfied and through this claim petition, they have sought relief as above.

4. Respondents No.1 to 4 have filed a joint written statement and opposed the claim petition. It has been stated in the w.s. that the petitioners are not entitled to the relief sought as per Rules.

5. The petitioners have also filed the rejoinder and in it the same points have been reiterated which were stated in the claim petition.

6. We have heard both the parties and perused the record carefully.

7. On behalf of the respondents, learned A.P.O. has raised the issue of maintainability of the claim petition on the ground of jurisdiction of this Tribunal.

8. We are also of the view that before going to the merit of the petition, it is proper to decide the question of maintainability of this petition before this Tribunal.

9. We find that the petitioner No. 1 retired on 31.3.1999 and the petitioner No. 2 retired on 31.10.2000. It is, therefore, clear that petitioners No. 1 and 2 both retired before the creation of Uttarakhand State.

10. In the light of para 9 above, we are of the view that the petitioners No.1 and 2 were in the service of the State of Uttar Pradesh and not in the service of the State of Uttarakhand. The petitioners No. 1 and 2 had never been the employee of the State of Uttarakhand and, therefore, they cannot be treated a public servant in Uttarakhand as defined under Section 2(b) of the Public Services (Tribunal) Act, 1976.

11. The petitioner No. 3 retired on 30.09.2001.

12. We also find that the grievances of the petitioners No.1 to 3 relate to the period prior to the creation of the State of Uttarakhand as they have claimed to get Selection Grade w.e.f. 1982 and next higher grade w.e.f. 1988. It is, therefore, clear that

the grievances of the petitioners are against the State of Uttar Pradesh only.

13. In the light of para 12 above, we are of the view that total cause of action arose in the State of Uttar Pradesh and no part of the cause of action has arisen in the State of Uttarakhand and therefore, the petitioners are not entitled to prefer the claim petition before this Tribunal.

14. We are of the opinion that since the orders of Selection Grade etc. were passed by the State of Uttar Pradesh, only that State is competent to redress the grievances of the petitioners. This Tribunal has no jurisdiction and competence to adjudicate upon the issue in question.

15. In our view, the issue regarding Selection Grade to be given (or not to be given) is entirely an issue of the State of Uttar Pradesh as at that time the State of Uttarakhand had not come into existence. It would be quite relevant to reproduce Para 11 of the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3984 of 2012, State of Uttarakhand and another Vs. Uma Kant Joshi (and two others civil appeals) 2012 (1) UD 583(Division Bench of Hon'ble G.S.Singhvi and Hon'ble Sudhansu Jyoti Mukhopadhaya):

“We have considered the respective submission. 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 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (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 6 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 16.11.1989 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 of 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 ”

16. Hon’ble High Court at Nainital has also dealt with a case where the employee had retired before the creation of Uttarakhand State. In this case also the Hon’ble High Court decided that the Uttarakhand Public Services Tribunal cannot adjudicate the claims of the employee as he was not public servant of the State of Uttarakhand. The Hon’ble High Court in

this writ petition No.(S/B) 33 of 2007, State of Uttarakhand and others Vs. Public Services Tribunal Uttarakhand & others decided on 01.05.2012 has laid down as follows:

“The private respondent was Store Keeper at ITI Piran Kaliyar, an institution, owned, controlled and managed by the State Government. He retired from his service on 31st July, 2000. There is no dispute that ITI, Piran Kaliyar is situated within the territory, which became the territory of the State of Uttarakhand, after the State of Uttarakhand was created by bifurcating a part of the State of Uttar Pradesh, by and under the Uttar Pradesh Reorganization Act, 2000. However, that bifurcation took place on 9th November, 2000, much prior thereto, the respondent retired. The respondent therefore, did not retire from ITI Piran Kaliyar, when the same came under the authority, management and control of the State of Uttarakhand. Because the respondent was not paid his dues, which became due and payable to him on his retirement, he approached the Public Services Tribunal, Uttarakhand, which was constituted after adoption of U.P. Public Services (Tribunal) Act, 1976. While the U.P. Public Services (Tribunal) Act, 1976 authorizes establishment of a Tribunal, the said Act was extended to the State of Uttar Pradesh and, accordingly, one Tribunal under the said Act could be established in any part of State of Uttar Pradesh. Accordingly, such a Tribunal was established at Lucknow. When the said Act was adopted by the State of Uttarakhand, it was made clear that the adopted Act will stand extended to the State of Uttarakhand and in terms of the adopted Act, the State of Uttarakhand too shall also be entitled to establish a Tribunal in the State of Uttarakhand.

Public Servant in terms of the adopted Act, thus means a person in the pay or service of the State Government of Uttarakhand. The respondent was never in the pay or in the service of State of Uttarakhand. In the circumstances, the private respondent could not approach the Tribunal, constituted by the State of Uttarakhand, after adopting the said Act. Private respondent having been an employee of the State of Uttar Pradesh and, having retired from the services of the Uttar Pradesh, could only approach the Public Services Tribunal established by the State of Uttar Pradesh under the 1976 Act, which is situate at Lucknow.”

17. In the case of State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna (S/B) No. 71/2013, the Hon’ble High Court at Nainital has also held that due to reorganization of the State, if the Government Servant only serves in Uttarakhand and he has some grievances with the erstwhile undivided State of U.P., the employee can file the claim petition before the Uttar Pradesh Tribunal or before the Hon’ble High Court at Allahabad, who had the jurisdiction at the time of the accrual of the cause of action. If the claim petition is filed in Uttarakhand Tribunal, no direction can be given or order can be passed by the Uttarakhand Tribunal against the State of Uttar Pradesh. It would be appropriate to reproduce the relevant part of the order of Hon’ble High Court in this case:

“.....Thereafter, with a large number of claims, she came before the Public Services Tribunal, Uttarakhand. The State of Uttar Pradesh as well as the State of Uttarakhand were made parties to the claim petition. The Tribunal held that the State of U.P. is required to decide the pending matters regarding grant of

voluntary retirement and consequential benefits, including sanction of leave to her.

We are of the view that the Tribunal at Uttarakhand had no power or jurisdiction to issue orders as have been issued by it by the impugned order dated 17th February, 2009 passed on Claim Petition No. 13 of 2002 against the State of Uttar Pradesh. We, accordingly, allow the writ petition and set aside the order of the Public Services Tribunal, Uttarakhand impugned in the writ petition with liberty to Mr. Vinod Kumar Bahuguna, the husband of Smt. Pushpa Bahuguna, to approach the Tribunal at Lucknow or the Allahabad High Court as he may be advised pertaining to settlement of all claims of his wife, namely, Dr. Smt. Pushpa Bahuguna, who is since deceased."

18. In the light of discussion above, we are of the considered opinion that the claim is not maintainable before this Tribunal. We have, therefore, no option except to return the petition to the petitioners. At the same time, we would also like to make an observation that the petitioners pursued this petition before this Tribunal bonafidely and there is no fault on their part.

19. Let the petition be returned to the petitioners for presentation before appropriate Tribunal.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN(A)

DATE: AUGUST 05, 2015
DEHRADUN.

KNP