

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

REVIEW PETITION NO. 01/DB/2015
(ARISING OUT OF THE JUDGMENT DATED 23.01.2015 PASSED
IN CLAIM PETITION NO. 13/DB/2014)

Mohd. Aslam, Additional Statistical Officer (Retd.), S/o Late
Sri Makbul Ahmed, R/o 145, Van Vihar, Shimla Bypass Road,
Mehuwala Mafi, Dehradun

.....Petitioner

VERSUS

1. Chief Conservator of Forest, Human Resources
Development and Personnel Management, Uttarakhand, 85
Rajpur Road, Dehradun,
2. Principal Chief Conservator of Forest, Uttarakhand, 85
Rajpur Road, Dehradun.
3. State of Uttarakhand through Principal Secretary, Forest and
Environment, Secretariat, Dehradun.
4. Secretary, Uttarakhand Public Service Commission,
Gurukul Kangri, Haridwar,
5. Director/Conservator of Forest, Rajaji National Park,
Dehradun,
6. Sri Arvind Kumar Verma, Office of Chief Conservator of
Forest, Parchar Evam Prasar, Vasant Vihar, Dehradun,

7. Sri Gorakh Nath, Office of Chief Conservator of Forest, N.T.F.C., 85, Rajpur Road, Dehradun,
8. Sri Om Kailash Tyagi, Office of Conservator of Forest, Shiwalik Circle, Dehradun,
9. Sri Ajay Maheshwari, Office of Chief Conservator of Forest, Planning Work, Nainital.

.....Respondents

Present: Petitioner in person
Sri U.C. Dhaundiyal, A.P.O.
for the respondents No. 1 to 5
None for the other respondents

JUDGMENT

DATE: AUGUST 28, 2015

1. This is an application for review of the judgment dated 23.01.2015 passed by this bench of Tribunal in Claim Petition No 13/DB/2014 Mohd. Aslam Vs. State of Uttarakhand and others.

2. The facts giving rise to this petition are that the petitioner after joining the Department of Forest to the post of Investigator-cum-Computer in February 1981, retired on 31.03.2013 on attaining the age of superannuation from the post of Additional Statistical Officer.

3. The petitioner had preferred the Claim Petition No. 13/DB/2014 seeking the following reliefs:-

“(1) यह कि याची के अंतिम प्रत्यावेदन दिनांक 01-03-2013 संलग्नक सं0-ए-1 के अनुसार अन्य संवर्गों के कार्मिकों की भांति शासनादेशों के अनुसार याची की भी पद रिक्ति के दिनांक 09.11.2000 से सांख्यकीय सहायक/अपर सांख्यकीय

अधिकारी पद पर पदोन्नति/नोशनल पदोन्नति एवं समस्त सेवा हित लाभ ब्याज सहित प्रदान करने की कृपा की जाय एवं शासनादेश दिनांकित 23 जून, 2003 के पैरा-21 के अनुसार नोशनल पदोन्नति का लाभ देते हुए पद रिक्ति के दिनांक 20 दिसम्बर 2006 से सांख्यकीय अधिकारी के पद पर पदोन्नति/नोशनल पदोन्नति एवं समस्त हित लाभ ब्याज सहित प्रदान करने की कृपा की जायें।

(2)– यह कि उत्तराखण्ड लोक सेवा आयोग, गुरुकुल कांगड़ी हरिद्वार के पत्रांक 144/03/डी0पी0सी0/सेवा-2/2012-2013 दिनांकित 17-10-2013 से चयन समिति द्वारा पदोन्नति हेतु चयन एवं वन एवं पर्यावरण अनुभाग-1 के पत्र दिनांकित 19 नवम्बर 2013 द्वारा की गयी पदोन्नतियां नियम विरुद्ध, विधि विरुद्ध, मनमानी, अनुचित, अवैध एवं शून्य, माननीय सर्वोच्च न्यायालय की व्यवस्थाओं के विपरीत एवं असंवैधानिक तथा द्वेष भावना से प्रेरित घोषित करते हुए निरस्त करने की कृपा की जायें।

(3)– यह कि याचिका पर हुआ समस्त व्यय याची को प्रदान करने की कृपा की जायें।

(4)– यह कि अन्य कोई त्वरित व लाभकारी उपचार जो माननीय न्यायाधिकरण याचिका के विचारोपरांत उचित एवं लाभकारी समझें उसे भी याची को प्रदान करने की कृपा की जाये।”

4. After hearing both the parties the above mentioned claim petition was decided on 23.1.2015 with the following observations:-

“The petition is partly allowed. The State Government is directed to send the matter back to the Commission to reconsider the candidature and suitability of the petitioner for promotion to the post of Statistical Officer providing the Commission all necessary details in the light of findings of the Tribunal in this order for suitable

recommendation by the Commission and thereafter, pass an appropriate order in respect of the petitioner. The State Government will complete this exercise within two months from the date certified copy of this order is produced before the respondents No. 2 and 3. It is, however, made clear that since the petitioner has already retired on 31.3.2013, the promotion of the persons as per order dated 19.11.2013 (Annexure:A3) will remain unaffected. No order as to costs.”

5. Feeling aggrieved by the decision of this Tribunal, the petitioner had preferred this Review Petition on the following grounds:-

- (i) That the petitioner had retired on attaining the age of superannuation from the post of Addl. Statistical Officer on 31.03.2013.
- (ii) That 13 posts of Statistical Assistant later on re-designated as Additional Statistical Officer were allocated to the State of Uttarakhand on the day of its creation i.e. on 9.11.2000.
- (ii) That out of these 13 posts, 12 officials were working/ allocated/promoted on these posts and one post was vacant right from the day of creation of the State of Uttarakhand i.e. on 9.11.2000. It is further stated that Sri Girish Chandra Bisht, Sri Pooran Chandra Lahoni and Sri Mohan Chandra Pant did not join the State of Uttarakhand even after their allocation, thus, there were four vacancies in the cadre of Statistical Assistant on 09.11.2000.

- (iii) That one Sri Dinesh Chandra Pandey, Statistical Assistant had also retired on 30.11.2000. Therefore, there were two vacancies for promotion in the year 2001-02. It is further stated that Sri Bhuwan Chandra Pandey was promoted in 2001-02 and Sri Sushil Kumar Lamiyan was promoted in 2003-04. Sri Godhan Singh Kalkoti had retired on 31.07.2005. Thus, on 20.12.2006, total 08 posts of Statistical Assistants had fallen vacant.
- (iv) That the petitioner being eligible, was entitled for promotion to the aforesaid post since the date of vacancy i.e. on 9.11.2000.
- (v) That, had the petitioner been promoted to the aforesaid post on due date, the petitioner would have become entitled for next promotion after a period of five years.
- (vi) That in accordance with the provisions of Article 16 (1) of the Constitution of India, it is the fundamental right of the petitioner for being considered for promotion on the date of vacancy, but petitioner was not considered on due date in spite of his eligibility. The petitioner was senior most and was also within the zone of consideration.
- (vii) That the respondents had misled the Court by stating that there was no vacancy in the cadre before 20.11.2006. The promotion of the petitioner was deliberately delayed. In fact, the petitioner was promoted w.e.f. 11.06.2007 to the post of Additional Statistical Officer. The Fundamental Rights of the petitioner were violated because of non-consideration for his promotion.

(viii) That Govt. of Uttarakhand had also made notional promotions from the date of vacancy in other cadres in accordance with the Govt. Order No. 902-XXX(2)/2012-55(47)/2004 dated 05.09.2012. So, the reliance by this Tribunal on the Govt. Order dated 11.06.2003 is not proper. In this regard, the Govt. Order No. 902-XXX(2)/2012-55(47)/2004 dated 05.09.2012 has been reproduced as below:

“3. इसके अतिरिक्त शासन द्वारा यह भी निर्णय लिया गया है कि माह जुलाई एवं अगस्त 2012 के दौरान सेवानिवृत्त हुए प्रोन्नति हेतु पात्र कार्मिकों को भी जुलाई 2012 से नोशनल प्रोन्नति प्रदान की जायेगी।

5. इस शासनादेश में उल्लिखित किये गये निर्णय के सम्बन्ध में यदि पूर्व में निर्गत किसी शासनादेश/व्यवस्था से असंगति आती है तो ऐसे पूर्व शासनादेश/व्यवस्था उस सीमा तक अतिक्रमण समझे जायेंगे।

6. अनुरोध है कि कृपया शासन के उक्त निर्णय का अनुपालन सुनिश्चित कराने का कष्ट करें।”

(ix) That Mr. D.B.S.Khati, Chief Conservator of Forest, Human Resource Development and Personnel Management, Dehradun was responsible for promoting the petitioner, but the petitioner had made several complaints of misappropriation of the fund of the Government on 23.1.2014, that is why the petitioner was maliciously ignored.

(x) That it has also been stated that one Sri Sharma was promoted notionally even after his retirement.

6. In the light of the above, the judgment passed by this Tribunal deserves to be reviewed and following reliefs have been sought by the petitioner in this Review Petition:

“(1) यह कि याची के अंतिम प्रत्यावेदन दिनांक 01-03-2013 संलग्नक सं0-ए-1 अ के अनुसार अन्य संवर्गों के कार्मिकों की भांति शासनादेशों के अनुसार याची की भी पद रिक्ति के दिनांक 09-11-2000 से सांख्यकीय सहायक/अपर सांख्यकीय अधिकारी पद पर पदोन्नति/नोशनल पदोन्नति एवं समस्त सेवा हित लाभ मय ब्याज सहित प्रदान करने की कृपा की जाय एवं शासनादेश दिनांक 23 जून 2003 के पैरा-21 के अनुसार नोशनल पदोन्नति का लाभ देते हुए पद रिक्ति के दिनांक 20 दिसम्बर 2006 से सांख्यकीय अधिकारी के पद पर पदोन्नति/नोशनल पदोन्नति एवं समस्त हित लाभ मय ब्याज सहित प्रदान करने की कृपा की जायें।

(2) यह कि उत्तराखण्ड लोक सेवा आयोग गुरुकुल कांगड़ी हरिद्वार के पत्रांक 144/03/डी0पी0सी0/सेवा-2/2012-2013 दिनांक 17-10-2013 से चयन समिति द्वारा पदोन्नति हेतु चयन एवं वन एवं पर्यावरण अनुभाग-1 के पत्र दिनांक 19 नवम्बर 2013 द्वारा की गयी पदोन्नतियां नियम विरुद्ध, विधि विरुद्ध, मनमानी, अनुचित, अवैध एवं शून्य, माननीय सर्वोच्च न्यायालय की व्यवस्थाओं के विपरीत एवं असंवैधानिक तथा द्वेष भावना से प्रेरित घोषित करते हुए निरस्त करने की कृपा की जायें।

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(5) यह कि प्रतिवादी सं0 1 से 4 तक के विधि विरुद्ध एवं द्वेष भावना से किये गये कार्य से याची को मानसिक आघात लगा, अत्याधिक मानसिक पीडा एवं कष्ट व परेशानी उठानी पड़ी, याची के आत्म सम्मान को ठेंस पहुंची, तथा हर्जा-खर्चा हुआ। अतः न्याय हित में आवश्यक है कि जो व्यक्ति/अधिकारी विधि विरुद्ध एवं द्वेष भावना से कार्य कर याची को हानि पहुंचाने के लिए जिम्मेदार/उत्तरदायी हैं उनकी जिम्मेदारी निर्धारित करने की कृपा की जाय।”

7. Learned A.P.O. appeared on behalf of the respondents No. 1 to 5. Notices were also sent to other respondents, but none had appeared on their behalf.

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

9. It has been contended on behalf of the petitioner that the Tribunal has committed a manifest error by not directing the respondents for making promotion of the petitioner to the post of Statistical Assistant/Additional Statistical Officer w.e.f. 9.11.2000 and thereafter, to the post of Statistical Officer after a period of five years w.e.f. 20.12.2006. The petitioner had further pointed out that there were four vacancies on 09.11.2000 and four other vacancies were accrued till 20.12.2006 and it has been contended that the Tribunal was wrong in not taking into account all these vacancies. In the light of the contention of the petitioner, we have to see as to whether there was any error on the face of the record for reviewing the judgment. In this regard, it transpires from the record that the matter of vacancy as well as the promotion of the petitioner was elaborately discussed in the main petition. Even the relevant Govt. Order No. Personnel Section-2 No.737/Karmik-2/2003, Dehradun dated 11.06.2003 was reproduced. The contention of the petitioner that the abovementioned Govt. Order is not applicable as the Govt. of Uttarakhand had issued new Govt. Order in the year 2012 (Supra), but after considering all the aspects, the bench was of the view that in regards to the case in hand, only the provisions of Govt. Order of 2003 only were applicable. As all the contestations raised by the

petitioner were dealt and discussed in the main petition, therefore, it cannot be said that there was any manifest error in the application of the Govt. Order of 2003. There is no point for application for Govt. Order of the year 2012. Apart from it, the Uttar Pradesh Statistical Service Rules, 1982 as amended in 1985 were also considered in the light of the relevant decisions of the Hon'ble Apex Court and the Tribunal had reached to the following conclusion:

“In view of the above discussion in paragraphs 8 to 13, we are of the clear view that the petitioner is not entitled to get promotion on the post of ‘Additional Statistical Officer’ from the date of vacancy even if vacancies existed and further promotion on the post of ‘Statistical Officer’ from 20.12.2006. We therefore, do not find it relevant to ascertain whether vacancies of Additional Statistical Officer were available on 09.11.2000 or not.”

10. From the above discussion, it becomes clear that the Tribunal had drawn a reasonable and justifiable conclusion after considering all the relevant facts, circumstances of the case and having considered the relevant Service Rules as well as judgment of the Hon'ble Apex Court.

11. As the decision of the Tribunal is a well considered decision and it cannot be said that there was any error or mistake in the judgment passed by this Tribunal. In fact, the scope of review is very limited and only any manifest error, which is apparent on the very face of record can only be corrected in review. The Tribunal cannot act as an Appellate Court for the reappraisal or re-appreciation of its own

judgment in the proceedings of review. Even if, for the sake of argument, it is assumed that there is any shortcoming in the judgment of the Tribunal or the Tribunal failed to appreciate the facts or law in correct perspective, even then it cannot be corrected in the proceedings of review. It can only be done by the Higher Court. So, we are of the considered view that there is no apparent error, which can be corrected in review. We do not find any force in the review and we are of the considered view that the Tribunal has passed the order taking into account all relevant facts and law.

12. It has further been contended on behalf of the petitioner that the petitioner had made complaint against Mr. D.B.S.Khati, Chief Conservator of Forest, Human Resources and Personnel, therefore, the petitioner was ignored deliberately and maliciously from promotion. In support of this contention, some photocopies of some telephone bills have been filed and our attention has been drawn towards the judgment passed by the Hon'ble Supreme Court in **State of Andhra Pradesh and others Vs. Govardhanlal Pitti (AIR) 2003 Supreme Court, 1941**. Hon'ble Supreme Court in the aforesaid judgment has elaborated the word malice as follows:

“The legal meaning of malice is “ill-will or spite towards a party and any indirect or improper motive in taking an action.” This is sometimes described as malice in fact “Legal malice” or “malice in law” means something done without lawful excuse. In other words, it is an act done wrongfully and wilfully without reasonable or probable cause, and not

necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object.”

13. We have given a considerable thought to this aspect also, but there is no occasion for us for consideration in this review application as to whether there was any ill-will or biasness on the part of the respondents towards the petitioner/applicant. As this contention was raised earlier and the Tribunal had also given thought to it. In these circumstances, this cannot be reconsidered in review. So, we do not find any force in this argument also.

14. On the basis of the above discussion, we are of the definite opinion that there is no force in the application for review, resultantly; the application for review is liable to be dismissed.

ORDER

The Application for Review is dismissed. No order as to costs.

D.K.KOTIA
VICE CHAIRMAN (A)

V.K.MAHESHWARI
VICE CHAIRMAN(J)

DATE: AUGUST 28, 2015

DEHRADUN

KNP