

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 03/T/DB/2013
(OLD NO. 1686 OF 1996)**

R.K.Bhardwaj, S/o Shri Chandra Gopal Bhardwaj, Removed Assistant Storekeeper in Electricity Garhwal Division Srinagar, Garhwal, R/o Village & Post. Khubhanpur, District Haridwar.

.....Petitioner

VERSUS

1. State of U.P. through Secretary, Energy, Govt. of U.P., Lucknow,
2. U.P. Power Transmission Corporation Ltd, Shakti Bhawan, 14 Ashok Marg, Lucknow, U.P.
3. Chief Engineer Electricity Civil Transmission, U.P. Power Transmission Corporation Ltd. 8/10, Indira Nagar, Lucknow, U.P.
4. State of Uttarakhand through Principal Secretary/Secretary, Energy, Govt. of Uttarakhand, Dehradun,
5. Uttarakhand Power Corporation Ltd. through its Managing Director, Urja Bhawan, Dehradun
6. Director (H.R.), Uttarakhand Power Corporation Ltd., Urja Bhawan, Dehradun,
7. Deputy General Manager, Industrial Relation & Office Management, Uttarakhand Power Corporation Ltd, State of Uttarakhand, Urja Bhawan, Dehradun,

8. Executive Engineer, Uttarakhand Power Transmission Corporation Ltd. Civil Construction Division, Roorkee.

.....Respondents

Present: Sri M.C.Pant, Counsel,
for the petitioner
Sri U.C.Dhaundiyal, A.P.O.
for the respondent No. 4
Sri R.Baranwal, Counsel
for the respondents No. 2 & 3
Sri S.M.Jain, Counsel
for the respondents No. 5 to 7

JUDGMENT

DATE: SEPTEMBER 09, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

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

“(1) To quash the impugned order of punishment dated 24.06.1994 and appellate order dated 01.11.1994 contained in Annexure A-1 and A-2 to the claim petition with all the consequential benefits.

(1A) To quash the impugned order dated 19.10.2012 (contained at Annexure No. A-17) along with its effect and operation also after calling the entire records from the respondents.

(1B) To direct the respondents to treat the petitioner in service with all arrears, salary and other benefits of service had it been the impugned order were never in existence.

(1C) To award damages and compensation in tune of Rs. 25 Lakhs or any such amount which the Hon’ble Court may deem fit and proper in the circumstances of the case and the same be recovered from those erring officers who were the

instrumental to the aforesaid act for which the petitioner has suffered a lot or to pass such order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(2) Any other relief which this Hon'ble Tribunal deems just and proper in the circumstances of the case including cost of the petition."

2. The relevant facts in brief are that the petitioner was appointed on the post of Assistant Store Keeper in Uttar Pradesh State Electricity Board in 1974.

3. The petitioner was placed under suspension in the year 1981; the charge sheet was issued to him on 9.08.1982; the supplementary charge sheet was also issued on 13.09.1985; the petitioner submitted reply to these charge sheets on 30.03.1988; the inquiry was conducted and the inquiry report was submitted on 23.06.1992; show cause notice was served to the petitioner on 30.11.1993; he replied to the show cause notice on 16.05.1994; and vide punishment order dated 24.06.1994, the petitioner was removed from the service (Annexure: A-1). The petitioner preferred a departmental appeal against the removal order on 7.08.1994 and the same was rejected on 01.11.1994 (Annexure: A-2).

4. The petitioner preferred a writ petition No. 37168 of 1994 before the Hon'ble High Court at Allahabad which was dismissed on 9.11.1995 on the ground of alternative remedy available before the U.P. Public Services Tribunal (Annexure: A-10).

5. Thereafter, the petitioner filed a claim petition before the U.P. Public Services Tribunal, Lucknow in 1996. The Tribunal of Uttar Pradesh dismissed the petition in default in 2006. The

petitioner filed a restoration application before the U.P. Public Services Tribunal in 2012 which was allowed and the case was restored on 11.01.2013.

6. U.P. Public Services Tribunal, Lucknow vide its order dated 11.1.2013 also transferred the claim petition to the Uttarakhand Public Services Tribunal, Dehradun under Section 91 of the U.P. Reorganization Act, 2000 on the ground that the petitioner was removed from service on the allegations of irregularity committed during the period of his posting in Electricity District Construction Division, Srinagar, District Pauri Garhwal and at the time of passing of punishment order, the petitioner was posted at Roorkee which became parts of the new State of Uttarakhand after the reorganization of the U.P. State.

7. Learned counsel for the respondent Nos. 5 to 7 raised a preliminary issue that the claim petition is not maintainable before this Tribunal as the cause of action arose before the creation of the State of Uttarakhand as well as the Uttarakhand Power Corporation. Learned counsel for the petitioner refuted the contention and contended that in view of Section 91 of the U.P. Reorganization Act, 2000, this petition is maintainable only before this Tribunal.

8. We also found it appropriate that before going into the merits of the petition, it would be proper to decide the question of maintainability of the claim petition before this Tribunal.

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

10. It has been contended on behalf of the respondents No. 5 to 7 that the petitioner was removed from service on 24.06.1994

(Annexure:A-1) and at that time, the petitioner was in the service of the State of Uttar Pradesh and not in the service of the State of Uttarakhand. The petitioner had never been an employee of the State of Uttarakhand and, therefore, he cannot be treated a public servant in Uttarakhand as per the provision contained in Section 2(b) of the Uttarakhand Public Services Tribunal Act. This Tribunal can adjudicate upon only in respect of those employees who are public servants of the State of Uttarakhand. As the petitioner has never been in the service of the State of Uttarakhand, he cannot be treated to be a public servant in Uttarakhand and this Tribunal therefore, is not competent to decide the matter because the Tribunal has no jurisdiction to take up a matter of a person who is not a public servant in Uttarakhand.

11. On the other hand, it has been contended by the learned counsel for the petitioner that the petitioner had preferred this claim petition before the U.P. State Public Services Tribunal from where it has been transferred to this Tribunal on 11.1.2013 under Section 91 of the U.P. Reorganization Act, 2000. Therefore, the petition is maintainable before this Tribunal.

12. We have carefully considered the rival contentions made by the parties. It would be appropriate to look at the Section 91 of the U.P. Reorganization Act, 2000, which reads as under:

“91. Transfer of pending proceedings.-(1) Every proceeding pending immediately before the appointed day before a court (other than High Court), tribunal, authority or officer in any area which on that day falls within the State of Uttar Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of Uttaranchal State, stand transferred to the

corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1) it shall be referred to the High Court at Allahabad and the decision of that High Court shall be final.

(3) In this section-

(a) "proceeding" includes any suit, case or appeal; and

(b) "corresponding court, tribunal, authority or officer" in the State of Uttaranchal means-

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Uttar Pradesh to be the corresponding court, tribunal, authority or officer."

13. We have carefully examined the provision of Section 91 of the U.P. Reorganization Act, 2000 above. We find that the provision of Section 91 would have been applicable, had the matter related to the State of Uttarakhand been pending before the Uttar Pradesh Public Services Tribunal, Lucknow, but in our opinion, the matter was not at all related to the State of Uttarakhand as the petitioner had already been removed from the service on 24.06.1994 before the creation of the State of Uttarakhand. In such a situation, the grievance of the petitioner is concerned to the State of U.P. only and not to the State of Uttarakhand as the petitioner has never been in the employment of the State of Uttarakhand, therefore, we are of the view that the provisions of Section 91 of

the U.P. Reorganization Act, 2000 are not applicable in the present case. Moreover, the cause of action arose before the creation of the State of Uttarakhand, so even if, this petition was pending before the Uttar Pradesh Public Services Tribunal, Lucknow, it cannot be treated as pending on the date of the creation of the State of Uttarakhand for the purpose of conferring jurisdiction to the Uttarakhand Public Services Tribunal as only the Uttar Pradesh State is competent to decide the matter of the petitioner who was removed from the service in 1994 before the State of Uttarakhand was borne. According to Section 91(3)(b)(i) of the U.P. Reorganization Act (as shown in para 12 above), the Uttarakhand Public Services Tribunal is not the corresponding tribunal as the petitioner could not have instituted a petition in Uttarakhand Public Services Tribunal (after the appointed day) as he was not in the service of Uttarakhand State and he was not the public servant of Uttarakhand because his services were already terminated on 24.06.1994 before creation of the State of Uttarakhand.

14. In our view, the termination of the petitioner on 24.06.1994 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) decided on 28.05.2012:**

“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 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 ”

15. 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 entitle 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.”

16. In the case of **State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna (S/B) No. 71/2013 decided on 27.7.2013, the Hon’ble High Court at Nainital** has also held that after reorganization of the State, if the Government Servant 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. 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

below 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.”

17. The counsel for the petitioner has referred to the case Bihar State Electricity Board and another vs. Ram Deo Prasad Singh and others (2011)12 Supreme Court Cases, 632, decided on 8.09.2011. We find that after that the Hon'ble Supreme Court in State of Uttarkahand and another Vs. Uma Kant Joshi (Supra) decided on 28.05.2012 has clearly laid down the principle that for the matter decided by the Uttar Pradesh State before creation of the Uttarakhand State, the exercise can be undertaken only by the State

of Uttar Pradesh and not by the State of Uttarakhand. In the case at hand, since the petitioner was removed from the service on 24.06.1994 before creation of the State of Uttarakhand, no cause of action had ever arisen in the State of Uttarakhand. Since the cause of action arose in the State of Uttar Pradesh, only the State of Uttar Pradesh is competent to pass any order or to redress the grievance of any employee and not the new State of Uttarakhand which came into existence on 9.11.2000. Thus, the matter relating to jurisdiction with reference to the cause of action has been set at rest by the Hon'ble Supreme Court in State of Uttarakhand and another Vs. Umakant Joshi (Supra).

18. The petitioner has also referred the case State of Bihar and others Vs. Ashok Kumar Singh and others (2015)1 Supreme Court Cases(L&S) 304. We have carefully gone through this case and find that the facts and circumstances and the legal issue in above case is entirely different and it is not applicable in the case at hand. The petitioner has also referred the case of the Hon'ble High Court, Lucknow Bench, Usman Ali Versus U.P. State Public Services Tribunal, Lucknow and others, No. 225 of 2015. We find that in view of facts and circumstances of the case at hand, it is of no help to the petitioner in the light of the judgments of the Hon'ble Supreme Court and the Hon'ble High Court at Uttarakhand discussed earlier in this order.

19. In view of the reasons stated in para 13 and the principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court at Nainital as stated in the preceding paragraphs, we reach the following conclusions in respect of the case in hand:-

- (i) The services of the petitioner were terminated by the Government of Uttar Pradesh on 24.06.1994 before the creation of the State of Uttarakhand and therefore, the petitioner has never been a public servant of the Government of Uttarakhand.
- (ii) 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 as the State of Uttarakhand came into existence on 9.11.2000.
- (iii) The provisions of Section 91 of the U.P. Reorganization Act are not applicable as the matter related to the State of Uttarakhand was not pending before the Uttar Pradesh Public Services Tribunal, Lucknow as the petitioner had already been removed from the service on 24.6.1994 before the creation of the State of Uttarkhand.
- (iv) Since the termination order has been passed by the State of Uttar Pradesh, only that State is competent to redress the grievances of the petitioner.
- (v) This Tribunal has no jurisdiction and competence to adjudicate upon the issue of the termination of the petitioner on 24.6.1994.
- (vi) The petition against the termination of the petitioner is, therefore, not maintainable before this Tribunal.

20. Let the petition be returned to the petitioner for presentation before the appropriate authority, if so advised.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: SEPTEMBER 09, 2015

DEHRADUN

KNP