

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 09/DB/2014

Manoj Kumar Shrivastava S/o Shri Shiv Mohan Lal Shrivastava aged about 43 years, presently posted as D.I.O. Haridwar, 12-A Gangotri Street, Vishnu Garden, Haridwar.

.....Petitioner

VERSUS

1. State of Uttarakhand, through Principal Secretary Information, Civil Secretariat, Dehradun.
2. Director General, Information & Public Relation Department, Government of Uttarakhand, Dehradun.
3. Executive Director, Information & Public Relation Department, Government of Uttarakhand, Dehradun.
4. Shri Yogesh Mishra, Asst. Director, S/o Late Sita Ram Mishra C/o Director General, Information & Public Relation Department, Government of Uttarakhand, Dehradun.
5. Bhagwan Prasad Ghildiyal, Asst. Director C/o Director General, Information & Public Relation Department, Government of Uttarakhand, Dehradun.
6. Padma Dutt Pandey, Asst. Director C/o Director General, Information & Public Relation Department, Government of Uttarakhand, Dehradun.
7. Malkeshwar Prasad Kelkhuri, Asst. Director C/o Director General, Information & Public Relation Department, Government of Uttarakhand, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Ld. Counsel
for the petitioner.
Sri V.P.Devrani, Ld. A.P.O.
for the respondents No. 1, 2 & 3
Sri M.C.Pant, Ld. Counsel
for the respondents No. 4 to 7

JUDGMENT**DATED: MARCH 29, 2019****Hon'ble Mr. Ram Singh, Vice Chairman (J)**

1. The petitioner has filed this petition for the following reliefs:-

i. To Issue order or direction quashing the order dated 25.09.2001 enclosed collectively as Annexure 1 to this claim petition by declaring them as illegal orders.

ii. To issue order or direction to the respondent authorities to take appropriate action in accordance with law amidst the facts and circumstances of the present case.

iii. Any other relief that the Hon'ble Tribunal may deem fit and proper.

iv. Cost of petition to the petitioner."

2. The facts, as per the pleadings are that petitioner is directly recruited officer in the Information Department, whereas, private respondents No. 4 to 7 were appointed/promoted/merged/absorbed in the Information Department on *ad hoc* basis on 07.06.2001 and subsequently on 25.09.2001, they were regularized. As per the contention of the petition, regularization of private respondents was against the rules because no Selection Committee was constituted; the appointments were not made by the appointing authority; the reservation policy was not implemented; the Public Service Commission was not consulted and when the respondents were absorbed, they did not fulfill the requisite qualification of being translator or sub-editor and their illegal appointment/absorption/ promotion is in violation of Article 14 & 16 of the Constitution of India. Hence, by way of this petition, quashing of the order dated 25.09.2001 has been sought.

3. The record also reveals that the petitioner (Manoj Kumar Srivastava) and another person, Sri Ravi Bijarniya (directly recruited), previously filed a claim petition No. 77 of 2011 before this Tribunal, challenging the appointments of the private respondents, including others also, on the similar ground and challenged the seniority list dated

30.08.2011, settled by the respondents. Although, all the grounds, raised in this petition, were agitated in the previous petition in detail and, the appointment/absorption were said to be illegal and *dehors* the rules, but the quashing of appointment/ regularization/absorption of the private respondents was not sought and only, the quashing of the seniority list was prayed for.

4. The petition was decided by this Tribunal on 16.05.2012 after considering all the points, raised in this petition, and it was specifically held that it does not seem proper and justified to disturb the regularization of the private respondents after a period of 10 years or to hold their regularization/absorption against the provisions of any rule. Hence, the points raised by the petitioner, was discussed in detail, by this Court on its merit and the petition was dismissed.

5. The record further reveals that the judgment of this Tribunal was further challenged before the Hon'ble High Court in writ petition No.(S/B) 156 of 2012, Nitin Upadhyay & another vs. State of Uttarakhand & others and the Hon'ble High Court vide its judgment dated 28.11.2013, dismissed the writ petition and the judgment of the Tribunal was upheld and it was specifically held that the petitioner, neither before Tribunal nor before the Hon'ble High Court, challenged the regularization of the private respondents. On being regularized, private respondents became Government employees and also became entitled to the benefit of service. Hence, petition was dismissed. Special Leave petition moved against the judgment of the Hon'ble High Court, was also dismissed by the Hon'ble Supreme Court vide order dated 03.02.2014.

6. Now, the petitioner along with the delay condonation application, further moved this petition on the same facts, seeking the relief of quashing the regularization order dated 25.09.2001 of the private respondents.

7. This petition has been opposed by the State as well as by private respondents on the ground that it is barred by Limitation and

also by the principles of Constructive *res-judicata*, as such issue could already be raised and decided in previous petition and also on the ground that the question has already been decided by this Tribunal hence, it cannot be agitated again now. All the points, raised in this petition, were impliedly present in the previous petition No. 77 of 2011 and the petitioner at his own sweet will, waived his right to challenge the same in such petition, therefore, this claim petition is barred by the principles of estoppel. All the contentions and pleadings raised before this Tribunal, were considered and decided vide Judgment dated 16.05.2012 and as the grounds in this petition, were the same hence, this petition is the abuse of process of the court. The grounds raised now, have no legal force, as the judgment of the Tribunal was upheld upto the level of the Hon'ble Supreme Court. The judgment of the Hon'ble Court did not give any opportunity of fresh cause of action to the petitioner to litigate. The petitioner, by wrong interpretation of the judgment of the Hon'ble High Court, is trying to review the judgment of the Tribunal dated 16.05.2012, which has already been upheld by the Hon'ble High Court. The claim petition has no merit and deserves to be dismissed.

8. We have heard both the sides and perused the record.

9. In previous claim petition No. 77 of 2011, before this Tribunal, all the points raised in relation to the regularization, were also raised, they were broadly discussed and decided vide judgment dated 16.05.2012 and it was found that on account of peculiar circumstances, it was not proper to interfere in their matter. Although, in that petition, the regularization as well as seniority, both were challenged and both were discussed, but as the petitioner himself did not seek the relief of quashing of any regularization order, hence, now they are not entitled for the same, as they are estopped and their petition is barred by principles of constructive *res-judicata*. We find no considerable ground to allow their petition. Such grounds were also considered by the Hon'ble High Court in its judgment dated 28.11.2013 and the writ

petition of the petitioner was also dismissed on the ground that the petitioner has not challenged the regularization of the private respondents even though, they have raised all the points.

10. This court finds that by interpreting the judgment of the Hon'ble High Court, the petitioner has now come up before the court to challenge the action of the government, done in 2001 after a lapse of almost 13 years. We agree with the argument of the respondents that petitioner by circumventing the judgment of the Hon'ble High Court, is trying to review the judgment dated 16.05.2012, which has been affirmed by the Hon'ble Superior Court too. All the points of this claim petition, were impliedly present in the previous claim petition No. 77/2011 and now petitioner is barred to seek the same relief, which is barred by principles of constructive *res-judicata* and he is estopped to claim the same. He cannot be permitted to take the help of the previous litigation, for seeking the condonation of delay because of the reasons that no sufficient ground for delay condonation, has been shown by the petitioner.

11. Even though, in all the circumstances, this court is of the view that the issue has already been decided by this Court vide judgment dated 16.05.2012. The petition is barred by the principles of *Constructive Res-judicata* and petitioner is estopped from filing this petition and seeking such relief after a long delay. It is simply abuse of process of the court. The claim petition deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: MARCH 29, 2019
DEHRADUN
KNP