

**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. 76/DB/2019

Om Prakash , S/o Late Sri Subhash Lal, present posted as Range Officer, Paukhal Range, Paukhal, New Tehri.

.....Petitioner.

vs.

1. State of Uttarakhand through Principal Secretary, Forest, Civil Secretariat, Dehradun.
2. Principal Chief Conservator of Forest (HoFF), Uttarakhand, Rajpur Road, Dheradun.
3. Conservator of Forest, Bhagirathi Circle, Uttarakhand, Muni-ki-Reti, Rishikesh, Tehri Garhwal.
4. Divisional Forest Officer, Tehri Forest Division, New Tehri.
5. Smt. Puja Payal, Range Officer, Tehri Forest Division, New Tehri.

.....Respondents.

Present: Sri Shashank Pandey, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for State of Uttarakhand.

JUDGMENT

DATED: JUNE 28, 2019

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks following reliefs:

“(a) To issue order or direction to call for records and to set aside/quash the order dated 07.06.2019 vide which the respondent no. 5 has been given posted as the range officer of Paukhal Range.

(b) To issue order or direction to treat the petitioner same as other range officers working in the department as is the spirit of G.O. dated 21.12.2016.

(c) To give any other relief that this Hon’ble court deems fit and proper in the circumstances of the case.

(d) To give cost of the petition to the petitioner.”

2. Facts, giving rise to present claim petition, are as follows:

Petitioner was appointed as Forester in 2000. *Vide* order dated 04.12.2003, petitioner was given posting as Assistant Development Officer, Forest (for short, ADO), which post is equivalent to Deputy Range Officer. In the year 2005 and 2006, cadre of ADO was declared as dying cadre. To accommodate the employees working on the post of ADOs, the Government of Uttarakhand framed Rules known as “Uttarakhand Absorption on the Post of Forest Range Officers Rules, 2011 (for short, Rules of 2011), *vide* which it was decided that ADO, Forest, working in the State of Uttarakhand, would be accommodated against the direct recruitment quota on the post of Range Officer. These Rules were challenged in Hon’ble High Court of Uttarakhand at Nainital, who quashed the aforesaid Rules and directed respondent no.2 to adjust all the ADOs, Forest, on the post of Deputy Ranger and fix their seniority on the post of Deputy Ranger by calculating time spent on the post of ADO. Intra-Court appeal was thereafter filed by the aggrieved as also the State Govt before Division Bench of Hon’ble High Court, who granted stay *vide* order dated 12.03.2013 against the judgment and order dated 01.08.2012, passed by Ld. Single Judge. Since then the petitioner had been working as ADO, Forest and discharging the duties of Range Officer. *Vide* Govt. Order dated 21.12.2016, the Govt. created 10 ex-cadre posts in the pay scale of Rs.9300-34800/- grade pay Rs.4800/-. The G.O. also provided that the rights, responsibilities and other conditions of service of such ex-cadre Range Officers would be at par with the Range Officers working on

regular posts. The G.O. also provided that the ex-cadre posts would automatically come to an end with promotion/ retirement/ death of the person working on that post.

Vide order dated 10.05.2018, the petitioner was given charge of Paukhal Range of Tehri Forest Division. After a month, another Range Officer was posted in the range *vide* order dated 19.06.2018. Petitioner immediately made a representation against such posting, on 21.06.2018. Respondent No.2 interfered in the posting of one Sri Virendra Singh Rawat and permitted the petitioner to continue on the post of Range Officer- ex-cadre, Paukhal Range, *vide* office order dated 21.06.2018. Ms. Pooja Payal, respondent no.5, Range Officer, Balganga Range, Tehri, was on maternity leave. When she returned from such leave, she has been posted as Range Officer, Paukhal Range, *vide* impugned order dated 07.06.2019, (Annexure: A-1). Such posting was given to respondent no.5 on her representation dated 27.05.2019, given to respondent no.2. Petitioner is aggrieved with order dated 07.06.2019, Annexure: A-1 and, therefore, he has filed present claim petition.

3. Ld. A.P.O., at the very outset challenged the maintainability of present claim petition arguing that the same is barred by *proviso* to Section 4(1) of the U.P. Public Services (Tribunal) Act, 1976, which is applicable to State of Uttarakhand. The *proviso* reads as under:

“Provided that no reference shall, subject to terms of any contract, be made in respect of a claim arising out the transfer of a public servant.”

4. Ld. Counsel for the petitioner, on the other hand, submitted that the posting of respondent no.5 is under challenge, which is not a transfer order. Copies of Annexure: A-1 were given to the petitioner as well as respondent no.5 and accordingly, respondent no.5 has joined as Range Officer, Paukhal Range of Tehri Forest Division. As per the information given by Ld. Counsel for the petitioner, the petitioner has handed over the charge of Range Officer, Paukhal Range of Tehri Forest

Division and has given joining in the Forest Division, Tehri Forest Division.

5. We would not detain ourselves into the question whether it is a transfer order or posting order of private respondent. We proceed on the assumption that it is not a transfer order, and therefore, this Tribunal has jurisdiction to look into the matter.
6. The order impugned was passed after obtaining approval of respondent no.2. It was respondent no.2, who had intervened earlier on 21.06.2018 on the representation of the petitioner. This Tribunal is, therefore of the opinion that it will be in the fitness of things if the petitioner is directed to move a representation to respondent no.1, ventilating his grievances, with a copy to respondent no.2. It is provided that if a representation is given to respondent no.1, the same shall be decided by the said respondent with a reasoned and speaking order, in accordance with law, at an earliest possible, but not later than four weeks of presentation of certified copy of this order, along with representation.
7. Order accordingly.
8. The claim petition is, accordingly, disposed of, at the admission stage itself. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 28, 2019
DEHRADUN

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