

**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. 32/DB/2021

Shri Swapnil Nautiyal, age about 22 years, s/o Late Sri Madan Mohan Nautiyal, r/o Village Kholi Girigaon, Patti Idwalsyu, District Pauri Garhwal, present address: 125 Ashok Vihar, Lane No. 1, Ajabpur Kalan, Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through its Secretary (Finance), Govt. of Uttarakhand, Subhash Road, Dehradun.
2. The District Magistrate, Pauri.
3. Chief Treasury Officer, Treasury, Dehradun.
4. The Director, Treasury, Pension and Haqdari, 23 Laxmi Road, Dehradun.
5. Smt. Sunita Nautiyal, w/o Late Sri Madan Mohan Nautiyal, c/o Shri Pradeep Bahuguna Majri Mafi, Post Office IIP, Dehradun.
6. Km.Anshita Nautiyal, d/o Late Sri Madan Mohan Nautiyal, age 17 years, through her mother and natural guardian Smt. Lata Nautiyal alias Lata Khanna w/o Sri Ashok Khanna, r/o Village and Post Office Jaura Sauda Saroli, Vaya Raipur, District Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for Respondents.

JUDGMENT

DATED: APRIL 01, 2021

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks to direct the respondents to give compassionate appointment to the petitioner consequent upon the death of his father, Late Sri Madan Kumar Nautiyal.

2. At the very outset, Ld. A.P.O. objected that the petitioner does not come within the definition of 'public servant', in view of Section 2(b) of the U.P. Public Services (Tribunal) Act, 1976 (for short, the Act), and therefore the claim is not maintainable before this Tribunal.

3. As per sub-section (1) of Section 4 of the Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

[Emphasis supplied]

4. 'Public servant' has been defined under Section 2(b) of the Act, as follows:

2(b) "Public Servant" means every person in the service or pay of

- (i) The State Government; or
- (ii) A local authority not being a Cantonment Board; or
- (iii) Any other corporation owned or controlled by the State Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty per cent of paid up share capital is held by the State Government) but does not include-
 - (1) A person in the pay or service of any other company; or
 - (2) A member of the All India Services or other Central Services.

Petitioner, admittedly, is not a public servant, as defined under Section 2(b) of the Act.

5. Legal representative of a deceased public servant can, however, make a reference to the Tribunal for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to services due to such public servant. Petitioner is claiming himself to be a legal representative (son) of Late Sri Madan Kumar Nautiyal, who passed away on 16.02.2019. Petitioner, therefore, is entitled to make a reference of claim to

the Tribunal for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to services due to Late Sri Madan Kumar Nautiyal, which the petitioner has done in another claim petition, which is pending adjudication of this Tribunal. This is the second claim petition filed by the petitioner, in which he seeks compassionate appointment, consequent upon the death of his father (a public servant). The question is— can he do so before this Tribunal? Whether such petition for compassionate appointment should be admitted?

6. It will be profitable to reproduce second proviso to sub-section (1) of Section 4 of the Act, even at the cost of repetition, herein below for convenience:

“Provided further that in the case of the death of a public servant, his legal representative, and where there are two or more such representatives, all of them jointly, may make a reference to the Tribunal for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to services due to such public servant.”

Second proviso to sub-section (1) of Section 4 of the Act, therefore, deals with reference for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to services due to such public servant. **Compassionate appointment of the legal representative is not a pecuniary benefit relating to the services due to the deceased public servant.**

7. In view of above discussion, present claim petition is not maintainable before this Tribunal and that being so, should not be admitted in view of Section-4(3) of the U.P. Public Services (Tribunal) Act (No. XVII of 1976). The reference is not fit for adjudication and is, therefore, not admitted.

8. The reference is thus summarily rejected under sub-section (3) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to the State of Uttarakhand).

9. At this stage of dictation, Ld. Counsel for the petitioner, relying upon the decision of Hon'ble apex Court in Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC (L&S) 930, stated that the petitioner wants to move application for employment under Dying in Harness Rules.

10. It is made clear that rejection of reference shall not come in the way of the petitioner from approaching appropriate authority for his employment under Dying in Harness Rules.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: APRIL 01, 2021
DEHRADUN

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