

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Through Audio Conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman(A)

REVIEW PETITION NO. 01/NB/DB/2021

Managing Director, Uttarakhand Seeds and Tarai Development Corporation Ltd.
Pantnagar, P.O. Haldi, District Udham Singh Nagar, Uttarakhand (Respondent
No. 2 in Execution Petition No. 02/NB/DB/2021).

.....Review applicant

In

EXECUTION PETITION NO. 02/NB/DB/2021

[Arising out of judgment dated 23.11.2020, passed in
Claim Petition No. 77/NB/DB/2020, Sudesh Kumar
Sharma vs. State of Uttarakhand & others]

Sudesh Kumar Sharma, aged about 62 years, s/o Late Sri Laxmi Chand Sharma,
s/o Mahulla-Aalapur, Ward No. 03, Near Primary School, Chidi Wali Gali, Bajpur,
District-Udham Singh Nagar, Uttarakhand.

.....Petitioner-executioner

vs.

1. State of Uttarakhand through Secretary, Agriculture, Civil Secretariat,
Dehradun, district Dehradun.
2. Managing Director, Uttarakhand Seeds and Tarai Development Corporation
Limited, Pantnagar, P.O.-Haldi District- Udham Singh Nagar, Uttarakhand.

.....Respondents

Present: Sri N.S.Pundir, Advocate for Review Applicant (Respondent No. 2).
Sri Piyush Tiwari, Advocate, for the Petitioner-executioner
Sri Kishor Kumar, A.P.O., for the Respondent No. 1.

JUDGMENT

DATED: AUGUST 06, 2021

Justice U.C.Dhyani (Oral)

Chronology of events, leading to the filing of Review Petition by
Respondent No. 2 (Managing Director, Uttarakhand Seeds and Tarai
Development Corporation Ltd.), is as follows:

(i) A Claim Petition No. 77/NB/DB/2020 was filed by the petitioner Sri Sudesh Kumar Sharma for grant of ACP to him. The same was decided by this Tribunal on 23.11.2020, as under:

“Hence, the petition is hereby decided and disposed of at the admission stage, with the direction to the respondent No. 2 to decide the pending representation of the petitioner (relating to grant of ACP) with a reasoned order, within a period of two months from the date of presentation of copy of the order of the Court.

It is also clarified that the petitioner will have liberty to file claim petition, on the basis of fresh cause of action, if any, which may arise upon the decision on his representation.

The petition stands disposed of accordingly.”

(ii) When order dated 23.11.2020 was not complied with, Execution Petition No. 02/NB/DB/2021, Sudesh Kumar Sharma vs. State & others was filed by the petitioner-executioner for the following reliefs:

“It is therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to direct the respondents to execute the judgment and order dated 23.11.2020 passed by this Tribunal in Claim Petition No. 77/NB/DB/2020, Sudesh Kumar Sharma vs. State of Uttarakhand & another in that respondent No.2 will decide the pending representation dated 27.10.2020, relating to grant of ACP with a reasoned order and pay all outstanding amount on account of arrears of ACP as per the eligibility of petitioner, otherwise, the petitioner will suffer irreparable loss and injury which cannot be compensated at any cost.”

2. A Review Petition No. 01/NB/DB/2021 along with delay condonation application has been filed on behalf of applicant-respondent No.2, Managing Director, Uttarakhand Seeds and Tarai Development Corporation Ltd., for condoning the delay of 339 days in filing present review petition on 11.07.2021.

3. Delay condonation application is not objected to by learned Counsel for the Respondents. The order sought to be reviewed, was passed ex-parte without notice to the review applicant. Review applicant had knowledge of the order, only when notice on execution application was issued to it. The

delay in filing the review application is, therefore, condoned, in the given facts of the case.

4. Today, we have heard learned Counsel for the parties on review application, for reviewing the order dated 23.11.2020.

5. The grounds taken by the review applicant in his review petition, are as follows:

- (a) *Vide* ex-parte judgment and order dated 23.11.2020 passed by this Tribunal in Claim Petition No.77/NB/DB/2020, this Tribunal finally disposed of the claim petition with the direction to the respondent No. 2 to decide the pending representation of the petitioner (relating to grant of ACP) with a reasoned order within a period of two months from the date of presentation of copy of the order.
- (b) The Tribunal has neither issued the notice to the answering respondent No. 2 nor has heard it before issuing ex-parte judgment and order dated 23.11.2020.
- (c) **As per clause 5 of memorandum of articles of association of Uttarakhand Seeds and Tarai Development Corporation as well as Section 2(b) of the U.P. Public Services Tribunal Act, 1976, the petitioner being in service of Uttarakhand Seeds and Tarai Development Corporation Ltd., in which share holding of State of Uttarakhand is less than 50% of paid up share capital and as such, is not a 'public servant'.**
- (d) This law has been settled by this Hon'ble Tribunal *vide* judgment and order dated 21.08.2012, in Claim Petition No. 44 of 2003 (Ram Swaroop @ S.K. Gautam vs. U.P. Seeds and Tarai Development Corporation Ltd. and another), whereby it has been held that the Tribunal has no jurisdiction to entertain the petition against U.P. Seeds and Tarai Development Corporation.

(e) As per Rule 16 of the U.P. Public Services Tribunal (Procedure) Rules, 1992, the ex-parte judgment and order dated 23.11.2020 is liable to be recalled and set aside.

6. The word 'public servant' has been defined in section 2(b) of the U.P. Public Services (Tribunal) Act, 1976, as below:

*"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.

[Emphasis supplied]

7. No objections have been filed against the review application. Fact that the petitioner is not a 'public servant', has not been rebutted.

8. Learned Counsel for the petitioner-executioner fairly conceded that the petitioner does not come within the definition of 'public servant', in view of grounds (c) and (d) taken in the review application. The same should, therefore, be allowed.

9. The Review Petition is allowed. The order dated 23.11.2020, passed in Claim petition No. 77/NB/DB/2020 is set aside and as a consequence thereof, Execution Application No. 02/NB/DB/2021 stands dismissed.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 06, 2021
DEHRADUN
KNP