

**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)

CLAIM PETITION NO. 16/NB/SB/2021

Nalin Pant, aged about 42 years, s/o Late Sri Kailash Chandra Pant, r/o Village-Dhanauli, Post and Tehsil- Berinag, District Pithoragarh.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Energy, Secretariat Complex, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Dehradun.
3. Executive Engineer, Power Distribution Block, District Bageshwar.

.....Respondents

Present: Sri Nandan Arya, Advocate for the Petitioner.

Sri Kishor Kumar, A.P.O., for the Respondent No. 1

Sri Bhagwat Mehra, Advocate, for the Respondents no. 2 & 3.

JUDGMENT

DATED: SEPTEMBER 23, 2021

Justice U.C.Dhyani (Oral)

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

- i) *To direct the respondents to release the dues as well as retiral benefits of the deceased Late Dipin Pant brother of the petitioner from the date when the brother of the petitioner Late Dipin Pant died on 24.02.2016 along with 18 % interest from the department of the respondents.*

ii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

iii) To award the cost of the petition in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.

2. Brief facts of the present claim petition are as follows:

Brother of the petitioner was appointed in the respondent department under the Dying in Harness Rules, as their father died during the service period on 15.03.2002. The petitioner was initially appointed on the post of Assistant Clerk at Champawat in Uttarakhand Power Corporation Ltd. Subsequent thereto, he was transferred to District Bageshwar in the office of the Executive Engineer, Power Distribution Block, where he died.

3. It is the submission of learned Counsel for the petitioner that petitioner is not praying for family pension. He is not praying for any employment under the Dying in Harness Rules either. Deceased Dipin Pant was unmarried. His parents predeceased him. Petitioner, who is the brother of Late Dipin Pant, is the only legal representative of the deceased Dipin Pant.

4. Sri Nandan Arya, learned Counsel for the petitioner, therefore, submitted that a direction by issued to the respondents to release dues as well as retiral benefits of Late Dipin Pant to the petitioner along with interest from the date (i.e. 24.02.2016) when petitioner' brother died.

5. Counter Affidavit has been filed on behalf of the respondents No. 2 & 3. Such Counter Affidavit filed on behalf of respondents No. 2 & 3 has been adopted by learned A.P.O., who is representing respondent no. 1.

5.1 In the W.S. filed on behalf of respondents No. 2 & 3, it has been stated that Deceased Dipin Pant was appointed on compassionate ground in the Corporation on 26.07.2002 as Office Assistant. During his service period, upto his death on 23.02.2016, his performance in the Corporation was not satisfactory.

5.2 According to Counter Affidavit, petitioner has made a false statement on oath that his son Master Rakshit Pant was recorded as a nominee of Late Sri Dipin Pant in the service record. No documentary evidence has been filed in support thereof. Late Dipin Pant never nominated any person as his nominee in his service record, either at the time of his entry into service or at a later stage. Annexure-CA1 has been filed in support thereof.

5.3 Counter Affidavit further stated that petitioner's son, Master Rakshit died on 24.08.2017. Petitioner himself, *vide* representation dated 25.05.2016, i.e., more than a year before the death of Master Rakshit on 24.08.2017, requested respondent no. 3 for release of retiral dues in his favour. Petitioner never contended that his son was the nominee of the deceased.

5.4 It was also stated in the C.A. that the document dated 31.03.2016 (Annexure-A4) cannot be treated as succession certificate issued in favour of the petitioner by a competent court of law. It is not succession certificate issued under the Succession Act. Annexure- A1 is only an extract of family register. It cannot thus be said that the petitioner is sole legal heir in interest of the deceased. The same does not disclose the details of other family members, who might stake their claim in future.

6. It is the submission of Sri Kishor Kumar, learned A.P.O. as well as Sri Bhagwat Mehra, learned Counsel for the respondents No. 2 & 3 that there is no nominee of deceased, Dipin Pant in service book. Petitioner is the elder brother of Late Dipin Pant, who is above 18 years of age and therefore, was not dependent upon him. Nowhere it was stated by Dipin Pant, during his life time, that petitioner is his nominee. Sri Kishor Kumar and Sri Bhagwat Mehra also pointed out that no succession certificate has been filed by the petitioner. In the absence of nominee in the service book of Late Dipin Pant, it is not safe to release reitral dues in favour of the petitioner.

7. Sri Nandan Arya, learned Counsel for the petitioner, on the other hand, submitted that petitioner has filed family member's certificate (page

27, Annexure-A4) to show that the petitioner is the sole claimant to get dues and reitral dues of Late Dipin Pant. It is also submitted that it is the right of the petitioner, being sole survivor, to get the dues and reitral dues of his brother Late Dipin Pant.

8. On 20.09.2021, this Tribunal requested Sri Bhagwat Mehra, learned Counsel for the respondents No.2 & 3 to apprise the Court about the quantum of dues and retiral dues of Late Dipin Pant. Today, Sri Mehra, on seeking instructions from the department, submitted that such sum may be too meager. Exact amount could not be known so far. Sri Mehra clarified that no amount of Gratuity or Group Insurance was due to Late Dipin Pant.

9. Family members' certificate dated 31.03.2021 (Annexure-A4) has been issued by the Sub Divisional Magistrate on 31.03.2016. Such certificate is based upon a report of Naib Tehsildar dated 19.03.2016 and report of Tehsildar, Berinag dated 30.03.2016. It certifies that Late Dipin Pant s/o late Sri Kailash Chandra Pant, village Dhanauli, Post and Tehsil, Berinag, District Pithoragarh died on 23.02.2016. Sri Nalin Pant, aged 36 years, son of Late Sri Kailash Chandra Pant is the brother of deceased Dipin Pant. The name of any other family member in the said certificate has not been mentioned to exclude the possibility of any other person staking claim for the dues of late Dipin Pant.

10. Claim Petition is disposed of by directing the respondents no. 2 & 3 to release admissible dues, if any, to the petitioner along with admissible interest, till the date of actual payment, on petitioner's filing an undertaking in the form of affidavit that in case any other person also stakes his/her claim for dues/retiral dues of deceased Dipin Pant, it will be petitioner's responsibility to return such amount as may be due to such other person.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 23, 2021

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KNP