

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

Through video conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.77/NB/DB/2021

Sri Jagdish Chandra, aged about 55 years, s/o Late Sri Kishan Lal, presently posted as In-Charge Executive Officer, Nagar Palika Parishad, Bazpur, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Urban Development, Secretariat, Dehradun, District Dehradun, Uttarakhand.
2. Director, Urban Development Directorate, Dehradun, District Dehradun, Uttarakhand.
3. Commissioner, Kumaon Division, Nainital.
4. District Magistrate, District Udham Singh Nagar.
5. Nagar Palika Parishad, Bazpur, District Udham Singh Nagar through its Chairman.
6. Smt. Lata Arya, Tax Superintendent, Nagar Nigam, Rudrapur, District Udham Singh Nagar.

.....Respondents.

Present: Sri D.S.Patni, Senior Advocate, assisted by
Sri Dharmendra Bharthwal, Advocate, for the Petitioner
Sri Kishor Kumar, A.P.O., for the Respondents No. 1 to 5
No representation for respondent no. 6

JUDGMENT

DATED: NOVEMBER 11, 2021

Justice U.C.Dhyani (Oral)

Reliefs sought

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

- a) *To set aside the impugned order dated 05.08.2021 (contained as Annexure No. 1 to this application, whereby the applicant has been sent back to his original place of posting) passed by Respondent No. 1/Secretary, Urban Development Department, Government of Uttarakhand, and order dated 05.08.2021 passed by Respondent No. 1/Secretary, Urban Development Department, Government of Uttarakhand (contained as Annexure No. 2 to this application, whereby Respondent no. 6 has been appointed as Executive Officer of Nagar Palika Parishad Bazpur) and may kindly permit the applicant to continue working as Executive Officer, Nagar Palika Parishad Bazpur, District Udham Singh Nagar, and;*
- b) *To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- c) *Award cost of the application in favour of the applicant.*

Backdrop

2. Writ Petition (SS) No. 1022 of 2021 was initially filed by the petitioner, before the Hon'ble High Court of Uttarakhand at Nainital, who, *vide* order dated 07.09.2021 permitted the petitioner to withdraw the writ petition, so as to prefer claim petition before this Tribunal, and at the same time directed that the effect of the impugned order shall remain in abeyance for a period of 07 working days. When claim petition was filed before this Tribunal, whereas, mandatory time period for filing objections to the interim relief was given to the respondents, the interim relief as granted by the Hon'ble High Court in Writ Petition (S/S) No. 1022 of 2021 was allowed to continue, in the peculiar facts of the case, and in the interest of justice.

3. This Tribunal *vide* order dated 04.10.2021, considered it proper to decide the claim petition finally, instead of deciding the interim relief application. We, therefore, proceeded to hear the final arguments, after pleadings were exchanged.

The Office Memorandum dated 05.08.2021 (Annexure: A1) issued by the Urban Development Department, Govt. of Uttarakhand, is in the teeth of present claim petition. To borrow the words of Hon'ble High Court,

“It is the case of the petitioner that having (been) appointed on deputation as Sanitary Inspector in the Nagar Palika Parishad, Tanakpur, District Champawat, in the year 1997, the petitioner has suddenly been repatriated on 05.08.2021, despite having served the department for more than 24 years. It is also the case of the petitioner that many similarly situated persons were absorbed in the department.

.....

Learned State Counsel would submit that petitioner was merely given charge of the Executive Officer, he was merely a Sanitary Inspector; the petitioner has no lien as an Executive Officer, he is Sanitary Inspector.

.....

In a nutshell, it is the case of the petitioner that in the year 1997, he was taken on deputation as Sanitary Inspector and now he has been repatriated after so many years without affording any opportunity and many more persons junior to him have already been absorbed.

Having heard, this Court is of the view that definitely, as an interim measure, the effect and operation of the impugned order dated 05.08.2021 may be stayed till the next date of listing.

Order accordingly.”

4. As per impugned order dated 05.08.2021 (Annexure: A1), Sri Jagdish Chandra, Incharge Executive Officer, Nagar Palika Parishad, Bazpur was repatriated to Nagar Palika Parishad, Gadarpur on his original post with immediate effect. The order impugned was passed by the Secretary,

Incharge, Urban Development Department, Govt. of Uttarakhand, which has been challenged by the claim petitioner in present claim petition.

Respondents' version

5. Counter Affidavit has been filed on behalf of the respondents. Learned A.P.O. has vehemently opposed the maintainability of the claim petition, *inter-alia* on the grounds that the petitioner could be repatriated to his parent department, at any point of time and that he is not a 'public servant'.

Counter Affidavit

6.1 In the Counter Affidavit, which has been filed by Sri Vinod Kumar Suman, Secretary Incharge, Urban Development Department, Secretariat, Dehradun, it has been averred that *vide* impugned order dated 05.08.2021, the petitioner has been reverted to his original post on which he was appointed on 26.10.1988 as Sanitary Inspector, Nagar Palika Parishad, Gadarpur on temporary basis (daily wager). It has further been stated in the Counter Affidavit that in the erstwhile State of U.P., Nagar Palika, Gadarpur, *vide* order dated 26.10.1988, hired the services of the applicant on the post of Sanitary Inspector on daily wage with the sole intention to look after sanitary arrangements. The same was done by the Executive Officer, Gadarpur in anticipation of the approval of the State Govt. The order dated 26.10.1988 was issued by the Executive Officer which indicates that appointment of the petitioner was temporary. The post of Sanitary Inspector is a centralized post and its appointing authority is the State Govt. When the appointment was made, there was no post of Sanitary Inspector in Nagar Palika Parishad, Gadarpur.

6.2 Further, the required qualification for the post of Sanitary Inspector at that time, was a degree in B.Sc. and 01 year diploma from State Health Institute. The petitioner did not possess the requisite qualification, therefore, it cannot be inferred that the appointment of the petitioner in the year 1988 was a regular appointment. The guidelines were

issued for filling vacant posts of Group C & D in Nagar Palika Parishad on deputation. *Vide* G.O. dated 12.03.1997, it was clearly indicated therein that only regularized employees shall be appointed on deputation. The Commissioner, Kumaon Division, in utter violation of the aforesaid clause of the said G.O. took the petitioner on deputation *vide* order dated 22.09.1997, even when he was not eligible for being taken on deputation. In other words, the petitioner's taking on deputation, who was Sanitary Inspector (Daily-wager), was wrong.

6.3 In May, 2015, while petitioner was discharging his duties as Sanitary Inspector, Nagar Palika, Nainital on deputation, regular selections were made and *vide* G.O. dated 05.10.2015, one Sri Kuldeep Kumar was appointed as Sanitary Inspector, Nagar Palika Parishad, Nainital. The deputation of the petitioner as Sanitary Inspector, therefore, automatically came to an end. But, still, the petitioner continued to hold the charge of Sanitary Inspector, Nagar Palika Parishad, Nainital on deputation until 03.01.2017. All the employees who were merged in the Urban Development Department as Executive Officer/Assistant Accountant/Junior Clerk *vide* order dated 24.12.2016, were regular employees in their parent department and the petitioner cannot claim parity with those employees as his appointment till date has not been regularized. Petitioner's case for regularization was duly placed for consideration before the Selection Committee in view of the Regularization Rules, 2013. Such Committee's meeting, as held on 26.08.2014, rejected the case of regularization of the petitioner on the ground that he does not possess the necessary qualification for the post of Sanitary Inspector.

6.4 In exercise of the power granted by the respondent no.1, the respondent no. 2 issued the order dated 17.10.2017 repatriating the petitioner to his original post of Sanitary Inspector, Nagar Palika Parishad, Gadarpur. When the order dated 17.10.2017 was challenged before the Hon'ble High Court in Writ Petition (SS) No. 2983/2017, the Hon'ble High Court *vide* interim order dated 24.10.2017 only directed the respondents to

consider the case of the petitioner for continuing him on the post of Executive Officer. It will be pertinent to reproduce interim order dated 24.10.2017 passed by the Hon'ble High Court in WPSS NO. 2983/2017, as below (as quoted in Annexure CA-6):

".....In the mean time, if work & posts are available, the competent authority may consider petitioner's claim for continuing on the post of Executive Officer."

6.5 It is in compliance of the interim order of the Hon'ble High Court that respondent no. 2 permitted the petitioner *vide* order dated 11.12.2017 to continue as Incharge Executive Officer. As per para 13 of the C.A., the said action of the respondent no. 2 to permit the petitioner to continue as Incharge Executive Officer was 'not as per law'. Ms. Lata Arya, private respondent, is a regular employee and, therefore, she is fit and eligible to hold the charge. In para 17 of the Counter Affidavit, it has been stated that "As far as the question of haste is concerned, it is imperative to state that in the instant matter decision was taken long back in December, 2017 that it is not prudent to permit the applicant to continue with the charge as Executive Officer, however the said order could not be implemented due to the pendency of the WPSS No. 2983/2017 but now after waiting for almost 04 years, taking into account the fact that in the said writ petition no order has been passed to the extent of staying the repatriation of the applicant, the respondent no. 1 has issued the impugned order." Relevant documents have also been filed along with the Counter Affidavit.

R.A.

7. Rejoinder Affidavit has also been filed on behalf of the petitioner reiterating the facts contained in the claim petition and contradicting the pleas taken in the Counter Affidavit.

Documents filed in support

8. The order dated 05.08.2021 is the impugned order (Annexure: A1). Smt. Lata Arya, Tax Superintendant, Nagar Nigam, Rudrapur was transferred and posted as Incharge Executive Officer, Nagar Palika

Parishad, Bazpur, in place of the petitioner (Annexure: A2). *Vide* order dated 26.10.1988, issued by the Nagar Palika, Gadarpur (Annexure: A3), the petitioner was posted as temporary Sanitary Inspector, on probation, for a period of 6 months, but on a full-time pay scale. *Vide* order dated 11.03.1997, a decision was taken by the Government to take on deputation only regular employees/officers and daily wagers, *ad hoc*, part time employees were not to be taken on deputation (Annexure: A4). *Vide* order dated 22.09.1997, the petitioner, a Sanitary Inspector (posted locally in Nagar Palika Parishad, Gadarpur) was sent on deputation on the vacant post of Sanitary Inspector in Nagar Palika Parishad, Tanakpur, Champawat (Annexure: A5). *Vide* order dated 05.09.1998, the petitioner was directed to work as Executive Officer, Nagar Palika, Didihat for two days in a week in addition to his work as Sanitary and Food Inspector in Nagar Palika Parishad, Pithoragarh. Experience certificate was issued by the Chairman, Nagar Palika Parishad, Tanakpur on 15.03.2000 in respect of the petitioner. *Vide* order dated 18.06.1999, the petitioner, a Sanitary Inspector, was directed to work as Incharge Executive Officer, in Nagar Palika Parishad, Tanakpur. *Vide* order dated 03.08.2000, the petitioner, a Sanitary Inspector, was directed to work as Executive Officer, Ram Nagar, in addition to his duties. *Vide* order dated 29.02.2008 of Administrator, Nagar Palika, Nainital, the petitioner, a Sanitary Inspector, was directed to work as Executive Engineer, Nagar Palika Parishad, Nainital. *Vide* order dated 17.04.2015, the petitioner, a Sanitary Inspector in Nagar Palika Parishad, Almora, was directed to work as Executive Officer, Gangolihat, for two days in a week, in addition to his duties (Annexure: A6 Colly.). *Vide* order dated 03.01.2017, the petitioner, a Sanitary Inspector, Nagar Palika Parishad, Nainital, was made Incharge, Executive Officer in Nagar Panchayat, Rudrapur. It was also ordered that pay of the petitioner shall be drawn as against the post of Executive Officer, Nagar Panchayat, Gularbhoj (Annexure: A7). *Vide* order dated 24.12.2016, some Project Officers/Assistant Project Officers etc. were adjusted as Executive Officer, Nagar Panchayat. *Vide* Office Memorandum dated 10.03.2003, some of the

Executive Officers etc. were posted temporarily on deputation in different Nagar Panchayats (Annexure: A8 Colly). *Vide* Office Memorandum dated 24.12.20016, some of the employees were absorbed under 'one time settlement' as Executive Officer, Nagar Panchayat (Annexure: A9). *Vide* Office Memorandum dated 05.08.2021 (Annexure: A10), the petitioner was directed to join at his new place of posting and submit joining report to the Govt. *Vide* Office Memorandum dated 20.07.2021, some orders were issued in respect of other officials. *Vide* O.M. dated 20.07.2021, some other officials (not the petitioner) were posted, on deputation at different places in the State (Annexure: A11).

Whether petitioner is not a public servant?

9.1 The words "public servant" has been defined in Section 2(b) of the Uttar Pradesh Public Services (Tribunal) Act, 1976, as follows:

"(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;"

The words "service matter" has also been defined in Section 2(bb) in the following manner:

"(bb) "service matter" means a matter relating to the conditions of service of a public servant."

9.2 This Tribunal has made a mention of various documents filed on behalf of the parties. Learned A.P.O. submitted that a writ petition for regularization of the petitioner is pending before the Hon'ble High Court. According to him, since petitioner is not a regularly appointed official, therefore, he is not covered under the definition of "public servant". The

Tribunal is unable to agree with the submission of learned A.P.O. that since the petitioner is not a regularly appointed person, as his writ petition for regularization is pending before the Hon'ble High Court, therefore, he is not covered by the definition of 'public servant'. It is true that services of the petitioner have not been regularized by the respondent department but the fact remains that, on a perusal of the documents brought on record, he has been receiving regular salary of Sanitary Inspector or of the Executive Officer in one Nagar Palika Parishad or another. The claim petition of the petitioner, therefore, is maintainable before this Tribunal.

Legal rights of a deputationist

10. This fact is under no dispute that the petitioner was on deputation with Nagar Palika Parishad, Bazpur and his parent department is Nagar Palika Parishad, Gadarpur.

11. In para 32 of the decision of Union of India and others vs. V.Ramakrishnan and another, 2005 (8) SCC 394, Hon'ble Supreme Court has observed as under:

"32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post haste manner also indicates malice."

[Emphasis supplied]

Audi Alteram partem & requirement of speaking order

12. In para 4 of the C.A., deponent has stated the following:

“It is imperative to clarify that *vide* impugned order dated 05.08.2021 the applicant has been reverted to his original post on which he was appointed on 26.10.1988 i.e. Sanitary Inspector (daily wager), Nagar Palika Parishad, Gadarpur, on purely temporarily basis for a period of 6 months on daily wages.”

If it is case of reversion, then, undoubtedly, the petitioner ought to have been given reasonable opportunity of hearing before passing the order. The same has not been done.

If it is considered to be a case of repatriation, then also, principles of natural justice required that since the petitioner is being repatriated to his parent department after 24 years, therefore, due opportunity of hearing should be given to him before passing such order. The same has, admittedly, not been done.

13. In para 6 of the Counter Affidavit, deponent–respondent no. 1 has stated that, petitioner’s engagement, by the then Executive Officer, Nagar Palika Parishad, Gadarpur, *sans* the approval of the Govt., was bad in the eyes of law. In para 7, it has been stated that taking the petitioner on deputation by the Commissioner, Kumaon Division, was in utter violation of clause 2 of the G.O. dated 12.03.1997. In para 10 of the Counter Affidavit, it has been indicated that as per order dated 22.09.1997, petitioner’s deputation *ipso facto* came to an end inasmuch as regular selection on the post occupied by him was made. In para 11 of the Counter Affidavit, it has been mentioned that till date petitioner has not been regularized. In para 12 of the Counter Affidavit, it has been indicated that *vide* order dated 17.10.2017, respondent no. 2 issued an order repatriating the petitioner to his original post, Sanitary Inspector, Nagar Palika Parishad, Gadarpur. In para 13 of the Counter Affidavit, it has been mentioned that continuance of the petitioner as Incharge Executive Engineer, *vide* order dated 11.12.2017

was 'not as per law'. It has been indicated in para 17 of the Counter Affidavit that the decision was taken long back in December, 2017 that it will not be prudent to permit the petitioner to continue as Incharge Executive Officer, but the said order could not be implemented due to pendency of the writ petition before the Hon'ble High Court. All these facts and reasons have although been mentioned in the Counter Affidavit, but were not put to the petitioner, as to why he should not be repatriated as Sanitary Inspector, to his parent department.

14. Neither were the above noted facts put to the petitioner, nor any opportunity of hearing was given to him before passing the impugned order. Further, if it was a case of reversion, as stated in para 4 of the Counter Affidavit, then certainly, the petitioner required prior notice and opportunity of hearing. If it is not reversion and only repatriation after 24 long years, then also some reasons were desired to be assigned, after giving notice to the petitioner.

15. Only respondent department could tell why such inconsistent orders, as have been filed by the parties in this claim petition, were passed, from time to time. Petitioner was, no doubt, engaged as Sanitary Inspector purely on temporary basis for a period of six months on daily wages but subsequently, an impression was given to him that he was a regular employee rising from the post of Sanitary Inspector to Executive Officer of Nagar Palika Parishad/Nagar Panchayats, by issuing various inconsistent orders.

16. The deponent, while filing Counter Affidavit, has himself criticized earlier orders in a bid to justify the present one (Annexure: A1). In a nutshell, what this Tribunal wants to emphasise is that when so many things were mentioned in the Counter Affidavit, the same could have been put to the petitioner before repatriating him to his original post of Sanitary Inspector in the parent department after a prolonged gap of 24 years, which order seems to be punitive or stigmatic, which has civil consequences.

17. The rule of '*audi alteram partem*' "is not confined to the conduct of the strictly legal Tribunals, but is applicable to every Tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals." [(1874) L.R. 9 EX.190,196]

The application of principles of natural justice may vary in relation to the subject matter, to which they are applied, but the principles remain the same.

"It is one of the first principles of nature justice that no man shall be condemned without being heard. We do not say whether the...decision was right or wrong. We say only that he has not heard the petitioner." [(1850) 16 Q.B. 162, 171]

The impugned order therefore, suffers from two vices - (i) no opportunity of hearing and, (ii) non-speaking order.

Conclusion

18. Impugned order dated 05.08.2021 (Annexure: A1) cannot sustain in the eyes of law and should, therefore, be set aside, leaving it open to the respondent authorities to give the petitioner an opportunity of hearing and then pass a speaking order, in accordance with law.

19. **Order** accordingly.

20. It is made clear that this Tribunal has confined its discussion only to the controversy in hand. The Tribunal has not discussed anything on the point of regularization of the petitioner, for, the Hon'ble High Court is already seized with the matter.

21. Claim petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 11, 2021
DEHRADUN.
KNP