

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

CLAIM PETITION NO. 191/T/2002

Narendra Kumar, S/o Sri Kashi Ram, R/o Village and Post
Office, Bhaurapura, District Muzaffarnagar,

.....Petitioner

VERSUS

1. Director General of Police, U.P., Lucknow,
2. Deputy Inspector General (Police) Garhwal Region,
Dehradun,
3. Senior Superintendent of Police, Dehradun

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

ORDER

DATE: MARCH 03, 2014

1. This petition was filed before the U.P. Public Services Tribunal, Lucknow in the year 1999. After the creation of the State of Uttarakhand, the petition was transferred to this Tribunal. The petitioner has challenged the

order dated 16.1.1998 passed by S.S.P, Dehradun by which the petitioner has been dismissed from the post of Constable.

2. First of all, the Counsel appearing for the respondents have challenged this petition on the ground of maintainability of this petition before this Tribunal. We are also of the view that before going to the merits of the petition, it is proper to decide the question of maintainability of this petition before this Tribunal.

3. We have heard both the parties at length and perused the written submissions submitted on behalf of the petitioner.

4. It has been contended on behalf of the respondents that the impugned order has been passed before the creation of the State of Uttarakhand and at that time the petitioner was in the service of the State of U.P. and not in the service of the State of Uttarakhand. The petitioner had never been the employee of the state of Uttarakhand and as per the provisions contained in Section-2(b) of Uttarakhand Public Services Tribunal Act, 1976 only those persons are entitled to prefer the petition before this Tribunal who are public servants i.e. employee of the State of Uttarakhand. As the petitioner has never been in the service of the State of Uttarakhand, he can not be treated to be public servant as per the provisions mentioned above; therefore he is not entitled to prefer this petition before this Tribunal. On the other hand, it has been contended that the petitioner had preferred this petition before the U.P. State Public services Tribunal from where it has been transferred to this Tribunal as per the

provisions of Section 91 of the U.P. Reorganization Act, 2000. Therefore, this petition is maintainable before this Tribunal.

5. We have carefully considered the rival contentions raised by the parties. In fact, the provisions of Section 91 of the Reorganization Act would have been applicable had the matter related to the State of Uttarakhand been pending before the Public Services Tribunal, Uttar Pradesh, but in our opinion, the matter was not at all related to the State of Uttarakhand as the petitioner had already been dismissed from the service before the creation of the State of Uttarakhand. In case, the petitioner has any grievance regarding the service conditions that are concerned to the State of U.P. only and not to the State of Uttarakhand as the petitioner has never been in the employment of the State of Uttarakhand, therefore, provisions of Section 91 of U.P. Reorganization Act are not attracted in the present case. The learned counsel relies upon the principle laid down by the Hon'ble Supreme Court in Bihar State Electricity Board and another Vs. Ram Deo Prasad Singh and others, (2011)12 S.C.C., 632, but in our opinion this principle is not applicable in the present case as no cause of action had ever arisen in the State of Uttarakhand.

6. As regards the contention of the respondents is concerned, it is clear from the record that the petitioner was employee of the State of U.P. and the grievance to the petitioner, if any, is against the State of U.P. only. The petitioner had never been the employee of the State of

Uttarakhand and therefore, no cause of action arises to the petitioner against the State of Uttarakhand. The similar principle has been laid down by the Hon'ble Supreme Court in State of Uttarakhand & another vs. Umakant Joshi 2012(1) U.D. 583. Hon'ble High Court of Uttarakhand has also laid down the similar principle in State of Uttarakhand & others Vs. Public Services Tribunal & others in W.P. (S/B) No. 33 of 2007 and it has been held that in case any public servant has never been an employee of the State of Uttarakhand, in that case the Uttarakhand Public Services Tribunal does not have any jurisdiction to entertain the petition. As the petitioner had not been the employee of the State of Uttarakhand, therefore the present petition does not lie before this Tribunal. Moreover, the present petition cannot even be treated as a pending proceeding on the date of coming into force the U.P. Reorganization Act, 2000. This petition could have been treated to be pending had the matter in dispute been involved regarding the State of Uttarakhand. In fact, the petitioner had been dismissed before the creation of the State of Uttarakhand, therefore, the cause of action arose before the creation of this State, so even if, this petition was pending before the Public Services Tribunal, Uttar Pradesh at the time of creation of the State of Uttarakhand, it cannot be treated as pending on the date of creation of the State for the purpose of conferring jurisdiction to this Tribunal and no benefit can be extended to the petitioner. The principle laid down by Hon'ble High Court in W.P. (S/B) No. 33 of 2007 (Supra), are applicable to the present case. More over as stated above, the Hon'ble Supreme court in Umakant Joshi's case has clearly laid down that in cases

the cause of action arose in the State of U.P, only that State is competent to pass any order or to redress the grievance of any employee and not the new State. Applying the above principles, it further becomes clear that this petition is not maintainable before this Tribunal. Thus, the contention of the respondents appears to be reasonable.

7. It has also been contended on behalf of the petitioner that according to provisions of Section 91 of U.P. Reorganization Act, 2000, the authority vests with the Hon'ble High Court of Allahabad for determination of the point of jurisdiction once the petition stands transferred in Uttarakhand, but we don not find any force in the contention as the matter has been settled by the Hon'ble High Court of Uttarakhand and the Hon'ble Supreme Court.

8. The provisions of Section 12 of Uttarakhand Public Services Tribunal Act has also been referred, but these provisions are transitory provisions which were meant for the cases which were pending in another court at the time of enactment of the aforesaid Act and these provisions have no relevance for the present controversy.

9. In the light of the discussion made above, we are of the considered opinion that the petition is not maintainable before this Tribunal for adjudicating the matter in controversy involved in this petition. So, we have no option except to return the petition to the petitioner. At the same time, we also want to make an observation that the petitioner

has been pursuing this petition before this Tribunal bonafidely and there is no fault on his part.

10. Let the petition be returned to the petitioner for presentation before the proper court, authority or forum.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: MARCH 03, 2014
DEHRADUN

KNP