

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice J. C. S. Rawat

----- Chairman

&

Hon'ble Sri U. D. Chaube

----- Member (A)

CLAIM PETITION NO. 37/NB/DB/2009

Narendra Singh, aged about 55 years,
Son of Late Saran Singh
Presently posted as Naib Tehsildar, Survey,
District-Udham Singh Nagar.

.....Petitioner/Claimant

VERSUS

1. Chief Revenue Commissioner,
State of Uttarakhand, Dehradun.
2. District Magistrate, Udham Singh Nagar.
3. Assistant Record Officer, Udham Singh Nagar.
4. State of Uttarakhand through Secretary, Revenue.
5. The State of Uttar Pradesh through Secretary,
Revenue, Government of Uttar Pradesh, Lucknow.
6. The Board of Revenue, Uttar Pradesh.

.....Respondents

Present : Sri Sandeep Kothari, Advocate for the petitioner.
None for the respondents

JUDGMENT

DATE : 12th February, 2015

DELIVERED BY HON'BLE SRI U. D. CHAUBE

This claim petition has been filed against the order of the Board of Revenue of Uttar Pradesh dated 27.12.2000 and subsequent order dated 22.01.2001 passed by the Assistant Record Officer of Udham Singh Nagar a District of Uttarakhand.

2. The brief facts of the case are that the petitioner Narendra Singh was appointed as Survey Kanoongo in District Hardoi on 16.06.1978 and thereafter served at different places in the capacity of Survey Kanoongo. The petitioner/claimant was promoted to the post of Survey Naib Tehsildar on 20th November, 1990 on a leave vacancy of a Naib Tehsildar M.P. Jain in Unnao District of Uttar Pradesh. Then the petitioner/claimant was transferred to Mathura and thereafter to Dehradun and ultimately he was transferred to District Udham Singh Nagar where he joined on 2nd August, 1996 in the capacity of Survey Naib Tehsildar where he had been serving till 2011. During his posting in the District of Udham Singh

Nagar an adverse report regarding some irregularities in his work were sent to the Board of Revenue, Uttar Pradesh which in turn directed vide a D.O. Letter dated 27.12.2000 that the petitioner was not appointed on regular basis on the post of Naib Tehsildar as per the Naib Tehsildar Service Rules and his original post is Survey Kanoongo. Hence, if the claimant is not working under the orders of Hon'ble Court, he be reverted to his original post and then the departmental proceedings be instituted against him at the level of the Collector (the Collector is ex-officio the Record Officer of the District). This order of the Board of Revenue was endorsed by the Collector to the R.A./A.R.O./A.D.M. (Nazul) in pursuance of which the Assistant Record Officer of District Udham Singh Nagar issued an order on 22.01.2001 reverting the petitioner to the post of Survey Kanoongo and departmental proceeding was proposed against him. Feeling aggrieved by the said orders, the petitioner approached the Hon'ble High Court of Uttarakhand at Nainital where a writ petition was instituted bearing number 56 (S/S) of 2001. The writ petition was dismissed on 10th September, 2008 on the ground of alternative remedy with a direction to the petitioner to approach the State Public Services Tribunal if he so desires. The petitioner further filed a review application before the Hon'ble High Court which was rejected on 22nd October, 2008. However, it was mentioned in the order dated 22-10-2008 that if there is any interim order passed by the Hon'ble High Court in the writ petition that shall continue till the disposal of

the claim petition by the Tribunal. Thereafter, the petitioner/claimant filed a claim petition before the Uttarakhand Public Services Tribunal which was registered as 37/NB/2009. The petitioner has averred in the claim petition that he was promoted vide order dated 20.11.1990 passed by the Board of Revenue, State of U.P. and the said promotion order was communicated to him vide order dated 30.11.1990 by the Assistant Record Officer of District Unnao in U.P. After serving for more than ten years on the post of Survey Naib Tehsildar the petitioner/claimant has been reverted to the post of Survey Kanoongo vide order dated 22.01.2001 passed by the Assistant Record Officer, Udham Singh Nagar respondent No. 3, without affording any opportunity of hearing and in violation of principle of natural justice. The promotion order dated 20.11.1990 was passed by the Board of Revenue while the respondent No. 3 Assistant Record Officer by passing the impugned reversion order dated 22.01.2001 has travelled beyond the jurisdiction and such order is nullity in the eyes of law and cannot sustain. The petitioner/claimant could not be reverted after serving for more than ten years on the post of Survey Naib Tehsildar without recourse to due procedure of law and providing sufficient opportunity of hearing. It appears that the respondents had acted on the basis of fraudulent complaint said to have been filed by a fictitious person and passed the impugned order without application of mind; the above perusal of the impugned reversion order depicts that the same be

punitive and stigmatic in nature and could not have been passed without recourse to due procedure of law. The order passed by the Board of Revenue of U.P. is patently erroneous inasmuch as the said order has been passed considering the recommendation made on 29.02.2000 with respect to inquiry into certain records and as such it necessarily reflects that the order passed by the Board of Revenue is not simplicitor that being stigmatic and punitive inasmuch as while passing the order of reversion of the petitioner to his original post simultaneously the orders have been passed to initiate departmental proceedings against the claimant/petitioner. The endorsement made by the District Magistrate dated 18.01.2001, whereby directed to initiate the disciplinary proceedings after complying the due process of law, but this order had been overlooked and without complying the procedure of law the petitioner had been reverted by passing a stigmatic and punitive order dated 22.01.2001 which is liable to be quashed. The claimant/petitioner has sought to quash order of the Board of Revenue, U.P. dated 27.12.2000 and the order of Assistant Record Officer of Udham Singh Nagar, Uttarakhand dated 22.01.2001.

3. The respondents have denied and have averred that the petitioner was promoted to the post of Survey Naib Tehsildar by way of stopgap arrangement, which was made temporarily. In the letter of promotion dated 30.11.1990 it was specifically

mentioned that the appointment/promotion on the post of Naib Tehsildar is temporary and shall automatically come to an end on joining of the Naib Tehsildar M.P. Jain and the petitioner will be reverted back to the original post held by him and the said appointment can be terminated without any notice. That subsequently by the Board of Revenue vide its letter dated 27.12.2000 directed the Record Officer/District Magistrate, Udham Singh Nagar to revert back the petitioner to his original post. In the said letter it was clearly mentioned that the petitioner is not appointed on the post of Naib Tehsildar as per the Service Rules and as such is not a regularly appointed Naib Tehsildar. It was also mentioned that there has been some departmental proceedings against the petitioner regarding the maintenance of revenue records of village Kankatta, Tehsil Gadarpur, District Udham Singh Nagar, copy of the said letter annexed as C.A.-1. That by the impugned order the petitioner was informed that he was being reverted back to the original post of Survey Kanoongo held by him. The petitioner does not hold the qualification of being a Naib Tehsildar as per relevant Service Rules. The grievance of the petitioner is untenable under law and the claim petition is devoid of any substance and merit and liable to be dismissed. In the month of July 2011 the petitioner having joined his services in the Department in the State of Uttar Pradesh, the petition of the petitioner is not liable to be heard by the Hon'ble Uttarakhand State Public Services Tribunal. Hence, the petition of the petitioner is to be heard by

the U.P. State Public Services Tribunal and the same is thus now beyond jurisdiction. In view of the facts and circumstances of the case, the petition of the petitioner has become infructuous and is hence now not maintainable and is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the record. The prime issue before us arises whether the Uttarakhand Public Services Tribunal can issue orders against the Board of Revenue, Uttar Pradesh, more so after the services of the petitioner have been transferred to the State of Uttar Pradesh and the claimant/petitioner has been relieved for Uttar Pradesh vide relieving orders of the Collector/R.O. of Udham Singh Nagar dated 06th July, 2011. The said order reads as follows:-

“प्रेषक,
जिलाधिकारी/अभिलेख अधिकारी,
ऊधम सिंह नगर।

सेवा मं,
आयुक्त एवं सचिव,
राजस्व परिषद, उत्तर प्रदेश,
अनुभाग-9, लखनऊ।

पत्रांक : 5435/स0अ0अ0-व0लि0/दिनांक 06 जुलाई 2011

विषय – शा0 सं0 847/XVIII (1)/11-5(60)/2011 दिनांक 04 जुलाई, 2011 के क्रम में सर्वे कार्मिकों को उ0प्र0 अवमुक्त किये जाने के सम्बन्ध में।

महादय,

कृपया उपरोक्त विषयक शा० सं० 847/XVIII (1)/11-5(60)/2011 दिनांक 04 जुलाई, 2011 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा सर्वे कार्मिकों को उ०प्र० अवमुक्त किये जाने हेतु निर्देश प्राप्त हैं।

अतः उक्त शासनादेश के अनुपालन में निम्नोक्त सर्वे कार्मिकों को निम्न शर्तों के अधीन उ०प्र० राज्य हेतु कार्यमुक्त किया जाता है:-

क० सं०	कार्मिक का नाम	पदनाम
(1)	(2)	(3)
1.	श्री फुरकान अहमद	सर्वे लेखपाल
2.	" मो० इल्यास	सर्वे लेखपाल
3.	" मो० अहसन	सर्वे लेखपाल
4.	" नरेन्द्र सिंह	सर्वे नायब तहसीलदार

- (1) शासन द्वारा उ०प्र० से सर्वेक्षण इकाईयों के विधिवत् आवंटन का अनुरोध किया गया है। अतः यदि उ०प्र० व उत्तराखण्ड राज्य के मध्य इस बीच इन कार्मिकों के आवंटन के सम्बन्ध में अन्तिम निर्णय ले लिया जाता है तो अन्तिम आवंटन के अनुसार कार्यवाही की जायेगी।
- (2) कार्यमुक्त होने की तिथि से वेतन आदि के भुगतान का दायित्व सर्वेक्षण इकाई ऊधम सिंह नगर/राज्य सरकार का नहीं होगा। इस तिथि के बाद इन कार्मिकों के वेतन का आहरण बिना शासन की अनुमति के नहीं किया जायेगा।

सम्बन्धित कार्मिकों को निर्देशित किया जाता है कि वह अपना चार्ज (अभिलेख आदि) श्री लालता प्रसाद, सर्वे नायब तहसीलदार को सौंप कर तत्काल कार्यमुक्त हों।

भवदीय

(डॉ० बी०बी० आर० सी० पुरुषोत्तम)
जिलाधिकारी/अभिलेख अधिकारी,
ऊधम सिंह नगर।”

The aforesaid order reveals that the claimant/petitioner had not been allocated the State of Uttarakhand and secondly he has been relieved for rendering his services under the State of Uttar Pradesh. The impugned orders which have been challenged by the claimant/petitioner are the letter of the Board of Revenue, Uttar Pradesh dated 27.12.2000 and in compliance of the said letter dated 27.12.2000 an office order issued by Assistant Record Officer of Udham Singh Nagar dated 22.01.2001. Perusing the orders dated 27.12.2000 of the Board of Revenue, U.P. and dated 22.01.2001 of the A.R.O. Udham Singh Nagar, the leading order is the former one i.e. of the Board of Revenue, U.P. dated 27.12.2000. The claimant/petitioner has sought for quashing of the order of the Board of Revenue through an amendment application filed on 30.04.2013.

5. Going through the service profile of the petitioner in terms of Section 73 of the Uttar Pradesh Reorganization Act, 2000,

the petitioner was, serving in connection with the affairs of the State of Uttar Pradesh immediately before the appointed day i.e. 09.11.2000; hence on and from the appointed day the petitioner shall be deemed to be provisionally continuing to serve in connection with the affairs of the State of Uttar Pradesh unless he is required by general or special order of the Central Government to serve provisionally with the affairs of the State of Uttaranchal now Uttarakhand. The learned counsel for the petitioner could not demonstrate to us whether the petitioner had ever submitted his option for allotment of his services to the State of Uttaranchal nor the petitioner could file any document to the effect that he has been tentatively or finally allotted the State of Uttarakhand. Moreover, the petitioner has been relieved for the State of Uttar Pradesh on 6th July, 2011. The Hon'ble High Court of Uttarakhand in the case of State of U.P. and another Vs. Vinod Kumar Bahuguna in Writ Petition No. 71 (S/B) of 2013 has held as under:-

“The State of Uttar Pradesh as well as the State of Uttarakhand were made parties to the claim petition. The Tribunal held that the State of U.P. is required to decide the pending matters regarding grant of voluntary retirement and consequential benefits, including sanction of leave to her.

We are of the view that the Tribunal at Uttarakhand had no power or jurisdiction to issue orders as have been issued by it by the impugned order dated 17th February, 2009 passed on

claim petition number 13 of 2002 against the State of Uttar Pradesh. We accordingly, allow the writ petition and set aside the order of the Public Services Tribunal, Uttarakhand impugned in the writ petition with liberty to Mr. Vinod Kumar Bahuguna, the husband of Smt. Pushpa Bahuguna, to approach the Tribunal at Lucknow or the Allahabad High Court as he may be advised pertaining to settlement of all claims of his wife, namely Dr. Smt. Pushpa Bahuguna who is since deceased.”

6. In pith and substance, the petitioner's case is that he was promoted vide order dated 20-11-1990 by the Board of Revenue, State of Uttar Pradesh and said order was communicated to him by the Assistant Record Officer of District Unnao in U.P. The petitioner has further claimed that the petitioner was reverted by the Board of Revenue vide its letter dated 27-12-2000 by which the Record Officer/District Magistrate, Udham Singh Nagar was directed to revert back the petitioner to his original post. In compliance of the said letter dated 27.12.2000 an office order was issued by Assistant Record Officer of Udham Singh Nagar dated 22-01-2001. This clearly reveals that leading order was the letter of the Board of Revenue dated 27-12-2000 and order of the Assistant Record Officer dated 22-01-2001 was a consequential order of the letter of the Board of Revenue. The petitioner has challenged this order on the ground that he had been reverted back to the

original post held by him after serving for more than 10 years on the post of Survey Naib Tehsildar and he had been reverted back without affording any opportunity. He has further challenged this order on the ground that impugned order is not simplicitor and it reflects being stigmatic and punitive. If this Tribunal interferes with the above order it will amount to quash the order passed by the Board of Revenue on 27-12-2000 and a direction would have to be issued to the State of Uttar Pradesh as well as the Board of Revenue, U.P. If the Tribunal allows the petition it will also affect the seniority of a regularly appointed Naib Tehsildar in the State of U.P. who had been regularly appointed after the appointment of the petitioner as Naib Tehsildars. In that case, if the impugned seniority would have to be drawn by the State of U.P., the persons who have been regularly appointed according to rules as alleged by the respondents would be the necessary parties to the claim petition and also their seniority would be affected by the effect of the petitioner's claim petition. In such situation, we have to analyse what is the legal position in this respect. The petitioner has made the State of U.P. as well as Board of Revenue, U.P. as the parties to the claim petition and has also sought the relief against them. In the case of **State of Uttarakhand and another Vs. Umakant Joshi (2013) 1 S.C.C. (L & S) 36** has held:-

“26. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class II officers

including Shri R.K. Khare to Class I posts with effect from 16-11-1989 by the Government of Uttar Pradesh, the case of Respondent 1 was not considered because of the adverse remarks recorded in his annual confidential report and the punishment imposed vide Order dated 23-1-1999. Once the order of punishment was set aside, Respondent 1 became entitled to be considered for promotion to Class I post with effect from 16-11-1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9-11-2000.

27. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9-11-2000 did not have the jurisdiction to entertain the writ petition filed by Respondent 1 for issue of a mandamus to the State Government to promote him to Class I post with effect from 16-11-1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R. K. Khare with effect from 16-11-1989 and other officers, who were promoted to Class I post vide Order dated 22-1-2001 with retrospective effect.”

7. In view of the above, the High Court of Uttarakhand and the Uttarakhand Public Services Tribunal did not have the jurisdiction to entertain the writ petition filed by Umakant Joshi for issue of a mandamus to State Government of U.P. as the issue raised in the writ petition involved examination of the legality of the decision taken by the Board of Revenue, U.P. and Government of Uttar Pradesh.

8. Herein as well as we see that the main impugned order on which the entire field of claim petition moves is the order passed by the Board of Revenue, Uttar Pradesh dated 27th December, 2000. Hence, the legality of this order cannot be examined before the Public Services Tribunal of Uttarakhand more so when the claimant/petitioner has been relieved for Uttar Pradesh serving at present in Uttar Pradesh and having not allotted the services under the State of Uttarakhand. As such, the petitioner is not a public servant of Uttarakhand u/s 2 (b) and (bb) read with Section 4 of U.P. Public Services Tribunal Act applicable to Uttarakhand. He is an employee of State of U.P. in view of the above Sections of the Act and he is also challenging the act of Board of Revenue, U.P. and State Government of U.P. In view of Section 2 (b) read with 4 of U.P. Public Services Tribunal Act, the claim petition is maintainable before the U.P. Public Services Tribunal only.

9. In view of the above, the claim petition, being without jurisdiction is liable to be dismissed with a liberty to the petitioner to approach the Uttar Pradesh Public Services Tribunal, if he so advised.

ORDER

The claim petition is hereby dismissed for being without jurisdiction with a liberty to the petitioner to present his matter before the U.P. Public Services Tribunal, if he so advised.

Sd/-

JUSTICE J.C.S. RAWAT
CHAIRMAN

Sd/-

U.D. CHAUBE
MEMBER (A)

DATE: 12-02-2015
NAINITAL