

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

Present : Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D. K. Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 13/NB/DB/2017

Ram Avtar Sharma, S/o Sri Phool Chandra Sharma, R/o Village Sharifpur, Post Office-Singhpur Sani, Police Station Nakhasha, District Moradabad.

Legal heirs of the petitioner (Deceased)

- 1/1. Smt. Sunita Sharma W/o Late Ram Avtar Sharma
- 1/2 . Smt. Neetu Sharma, D/o Late Ram Avtar Sharma
- 1/3. Smt. Nikki Sharma, D/o Late Ram Avtar Sharma
- 1/4. Km. Preeti Sharma D/o Late Ram Avtar Sharma
- 1/5. Deepak Sharma, S/o Late Ram Avtar Sharma

.....**Petitioners**

VERSUS

1. State of U.P. through Secretary, Home Department, Secretariat, Govt. of Uttar Pradesh, Lucknow.
2. Dy. Inspector General of Police, Kumaun Region, Nainital.
3. Senior Superintendent of Police, Nainital.

.....**Respondents**

Present: Sri Bhagwat Mehra, Ld. Counsel
for the petitioners.

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT**DATE: JANUARY 10, 2018****(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. The facts giving rise to this petition are that Late Sri Ram Avtar Sharma, of whom successors were impleaded during the pendency of the litigation, was appointed as Constable in U.P. Police on 28.07.1969. In the year 1991, while posted at Khatima, a place in the then Nainital District of erstwhile State of U.P., he became absent from duty on 08.02.1991. According to the petitioner, he was getting his treatment of mental illness in Delhi and his wife informed the department for the same. Sri Ram Avtar Sharma (Deceased petitioner) resumed his duty on 26.12.1993 after a long absence of 1052 days. On account of his unauthorized absence, a departmental enquiry was initiated and on completion of necessary departmental enquiry, SSP, Nainital removed/dismitted him from the services vide order dated 13.12.1994. The petitioner, Ram Avtar Sharma filed departmental appeal before the Deputy Inspector General of Police, Kumoun Region, Nainital. His appeal was partly allowed on 28.03.1995 and the order of his reinstatement into service was passed, but he was punished with reversion for two years on minimum pay scale of constable with non-payment of salary alongwith its arrears, and petitioner was directed to resume his duty forthwith.

2. In compliance of above order dated 28.03.1995 passed in appeal by the Deputy Inspector General of Police, petitioner, Ram Avtar Sharma never joined his duty. As per contention of the respondents, notice was also served on him to resume his duty but he remained absent from duty throughout his life.

3. Petitioner, Ram Avtar Sharma without joining his service on reverted minimum pay scale as per order of Appellate Authority, filed a claim petition bearing no. 247 of 1996, Ram Avtar Sharma Vs. State of U.P. & others before U.P. Public Services Tribunal. His disciplinary authority, on account of his failure of resuming duty, started a disciplinary enquiry and a notice was issued to him but petitioner did not participate in the enquiry, hence, every stages of enquiry was completed ex-parte and on account of unauthorized absence from duty, the services of the petitioner were again terminated vide order dated 02.11.1996. The record reveals that pending his claim petition bearing no. 247 of 1996 before U.P. Public Services Tribunal, without resuming his duty, petitioner died on 07.05.2006. A substitution application by his legal heirs was moved in the petition before the U.P. Public Services Tribunal and after having knowledge of the dismissal order dated 2.11.1996, another amendment application was also moved with the prayer to set aside the said order dated 2.11.1996.

4. The present claimants, i.e. legal heirs of Constable, Late Sri Ram Avtar Sharma, were substituted by the Tribunal in U.P. vide order dated 17.11.2006.

5. The U.P. Public Services Tribunal decided the petition on 16.7.2010 and the reference claim petition was dismissed. However, legal heirs of the deceased petitioner, were granted opportunity to move before the appropriate authority for due benefits, if any, admissible under rules or to seek other appropriate remedy if permissible in law. Against the order of the Tribunal, the legal heirs of the petitioner filed a writ petition bearing no. 32513 of 2012, Smt. Sunita Sharma & others Vs. State of U.P. & others before the Hon'ble High Court of Allahabad whereby the petition

was decided vide order dated 09.07.2012 and the Hon'ble Court observed that as the services of deceased Ram Avtar Sharma were terminated in District Nainital and departmental appeal was also filed at Nainital, hence whatever relief is permissible, it can be granted to the petitioner by Uttarakhand authorities and it was also held that writ petition, if any, may be filed before the Uttarakhand High Court for any such relief for which petitioners may be entitled, independently of the last para of the order of Tribunal dated 16.07.2010 and the petition was dismissed on the ground of jurisdiction.

6. Thereafter, a writ petition bearing no. 1460 of 2012 was filed and heard before the Hon'ble High Court of Uttarakhand and the Hon'ble Court vide order dated 05.05.2017 has held that when the matter was finally decided by the U.P. Public Services Tribunal on 16.7.2010, the subsequent development i.e. removal of the petitioner vide order dated 2.11.1996 was not considered and decided by the U.P. Public Services Tribunal in its order dated 16.7.2010 and that removal order dated 2.11.1996 was required to be addressed and adjudicated by the U.P. State Public Services Tribunal, hence, writ petition was allowed and order dated 16.7.2010 of U.P. Public Services Tribunal was set aside and the Hon'ble High Court remitted the matter to this Tribunal for deciding the matter afresh, by taking into consideration the removal order dated 2.11.1996. The Hon'ble High Court of Uttarakhand also directed the U.P. Public Services Tribunal to transmit the record, to this Tribunal in Uttarakhand.

7. Accordingly, in compliance of the order of the Hon'ble High Court, this matter was taken up for hearing. The petitioners (i.e. now legal heirs of deceased, Ram Avtar Sharma) as well as State of

Uttarakhand and State of U.P. were informed and their counsels appeared before the court and after receipt of the record from the U.P. Public Services Tribunal, this matter was taken up for hearing.

8. On behalf of State of Uttarakhand and U.P., Assistant Presenting Officer appeared and filed objections on the ground of jurisdiction of this Tribunal and also on merit. Petitioners/claimants suitably amended his petition, so as to challenge the order of dismissal dated 02.11.1996.

9. Respondents through their Supplementary Affidavit have contended that this Tribunal has no jurisdiction in view of the law laid down by the Hon'ble Apex Court in State of Uttarakhand and another Vs. Umakant Joshi in Civil Appeal no. 3984 of 2012 along with other connected Civil Appeals and also in view of other decisions of the Hon'ble High Court of Uttarakhand in State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna in Writ Petition (S/B) No. 71 of 2013 and the State of Uttar Pradesh and others Vs. Khushal Singh Patwal and another in Writ Petition (S/B) No.56 of 2005. Respondents have also contended that as per the provisions of State Public Services Tribunal Act, the petitioner (deceased, Ram Avtar Sharma) had never been a servant of State of Uttarakhand; he was dismissed from service in 1996 in U.P., before creation of State of Uttarakhand and the said order of dismissal dated 02.11.1996 cannot be challenged before this Tribunal and the petition is liable to be dismissed by this Tribunal only on the ground of jurisdiction.

10. On its merit, respondents have also contended that the petitioner was first dismissed from service on 13.12.1994 after conducting an enquiry against which his departmental appeal was allowed vide order dated 28.03.1995 and he was reinstated into

service and was directed to resume his duty. The petitioner was informed vide letter No. P.F.0594 dated 4.4.1995 alongwith the copy of order of the departmental appeal and was directed to resume his duty in Police Line, Nainital. The copy of this letter was personally received by him on 11.04.1995, but he never reported on duty. He was again informed to resume his duty vide letter No. P.F.05/94 dated 23.6.1995, the copy of which was also received by him on 28.6.1995 and he was directed to resume his duty vide above letter dated 23.06.1995 within three days but he never reported on duty and remained absent throughout. Consequently, a departmental enquiry was again initiated against him and after conducting the enquiry as per rules, he was again dismissed from service vide order dated 2.11.1996 and the departmental enquiry was conducted in absentia. The said order was never challenged before any departmental authority and there is no legal lacuna in the enquiry. During his service career, the petitioner also remained absent for 244 days in the year 1990 from January to September; for 1051 days from February 1991 to December 1993 without sanction of leave; and for 128 days from 12.04.1994 to 17.08.1994 for which he was duly punished. According to the respondents, the petitioner was habitual of said conduct and his final order of dismissal dated 2.11.1996 was passed after conducting a proper enquiry by the State of U.P., hence, he is not entitled for any relief. Accordingly, due to his dismissal from service, legal heirs of the petitioner are not entitled for any retiral benefits or for any family pension, as there is no case of reinstatement of the deceased Constable Ram Avtar Sharma. Hence, on its merit, the petition was also opposed by the respondents.

11. The petitioners in their rejoinder affidavit have submitted that no service of departmental enquiry was made upon him and on the basis of ex-parte enquiry, the deceased was wrongly terminated from services and the termination order dated 02.11.1996 is liable to be set aside and the legal heirs are entitled for family pension and other dues.

12. The petitioner has also replied to the objections on the point of jurisdiction with the contention that such objections were never raised before the Hon'ble High Court and hence, they are now debarred to raise any such objection. The respondents have argued that they were not having any opportunity to raise such objection as the order for sending the matter to the Uttarakhand Public Services Tribunal was passed at the last moment and the matter should have been sent to the U.P. Public Services Tribunal for its decision, as this Tribunal lacks jurisdiction.

13. We have heard both the sides and perused the record.

14. During hearing of this petition, learned counsel for the respondents has raised an issue about the jurisdiction of this Tribunal. It has been contended that Late Ram Avtar Sharma was in the services of U.P. Police, before creation of the State of Uttarakhand; he was finally dismissed from the service on 02.11.1996 i.e. before creation of new State of Uttarakhand; he never had been a servant of Uttarakhand State; all the cause of action had arisen before creation of State of Uttarakhand and the creation of this Tribunal, hence, in view of the law laid down by the Hon'ble Apex Court and law laid down by the Hon'ble High Court of Uttarakhand, this Tribunal cannot hear this petition.

15. Learned counsel for the petitioner has raised objection that the respondents cannot raise this objection now because the Hon'ble High Court of Uttarakhand vide order dated 05.05.2017 specifically remitted this matter to this Tribunal to decide it afresh and the order of U.P. Public Services Tribunal dated 16.7.2010 was quashed and set aside by the Hon'ble High Court, hence, this court cannot go into this controversy.

16. Now, learned A.P.O. has also raised a technical objection during his argument that the order of U.P. Public Services Tribunal dated 16.07.2010, cannot be set aside by the Single Bench of the Hon'ble High Court because any order of the Tribunal can only be challenged before the Division Bench of Hon'ble High Court, whereas this order was passed only by the Single Bench of the Hon'ble High Court.

17. This court is of the view that we cannot go into these issues now and if the respondents are aggrieved by any of such technicality, they could have approached the appropriate forum but they cannot raise this question before this Court now and this Court has to decide the matter afresh as per the direction of the Hon'ble High Court, and the dismissal order dated 02.11.1996 is required to be considered on its merit. Hence, without expressing any opinion on the above contentions raised by the respondents, this court is of the view that the petition is to be decided on its merit without considering the objection on the point of jurisdiction. Plea raised against the order of the Hon'ble High Court can only be raised by the respondents, before the appropriate forum and not before this court.

18. As per the contention of the parties, the petitioner Late Ram Avtar Sharma, who was dismissed from service on 13.12.1994, by the Senior Superintendent of Police, Nainital and whose departmental appeal was allowed by the Deputy Inspector of Police, Kumoun Region with his reinstatement into the service with some other punishment, he was required to resume his duty forthwith. As per contention of the respondents, notices were also personally served upon petitioner to resume his duty, but the petitioner did not comply with the same. It is an admitted fact that Late Ram Avtar Sharma remained absent from duty throughout his life and did not resume his duty even after order of reinstatement by the DIG, Kumaun Region.

19. It is an admitted fact that the petitioner who remained absent from duty and against him a departmental enquiry was again started as per rules in which he did not participate and every stages of enquiry was completed in absentia, was finally terminated from the service on 02.11.1996 after completing all necessary formalities. The respondents have argued that there was no lacunae in the enquiry, conducted by the department. The petitioner was given every opportunity in law to defend himself which he never availed, rather he remained absent from his duty in his life time. The petitioner could not clarify this stand as to why he (Constable, Ram Avtar Sharma) did not resume his duty. It is an admitted fact that a public servant cannot remain absent from duty without any leave for indefinite period and if he remained absent, then departmental disciplinary enquiry is inevitable. Learned counsel for the petitioner has argued that he was never informed about any departmental disciplinary enquiry so he did not participate in the same. This court is of the view that when the

petitioner filed his departmental appeal against his earlier order of dismissal and his appeal was allowed and he was reinstated into service then he was under obligation in law to resume his duty. He cannot thrust his burden on the department and without approaching the department, he can claim immunity of being absent throughout his life and simultaneously claim the service benefits.

20. Learned counsel for the petitioner has argued that because of the reasons that claim petition was filed before the U.P. Public Services Tribunal against the appellate order of the department, he did not join his duty on reverted scale. This is not a good justification of absence from duty because after setting aside the dismissal order, it was necessary for the petitioner to resume his duty and he could challenge the remaining other part of the order of the departmental authority, before the Tribunal. He cannot be permitted to remain absent, specifically when he was reinstated into the police service and when he was directed again and again by issuing notices to resume his duty so his objection is not justified. Furthermore, the department conducted a departmental enquiry as per law, the notices of which were issued to him; he knowingly did not participate in the enquiry and finally, the order of dismissal from service dated 2.11.1996 was passed. This court finds no illegality or irregularity in the departmental enquiry, because no option was left with the authority except to complete the enquiry ex-parte, as the petitioner did not join his duty inspite of notices.

21. This court cannot go into the correctness of the subjective jurisdiction of the departmental authority; he was found guilty in the enquiry; show cause notice was also issued and full opportunity

was given to the petitioner to which the employee did not avail, hence the order of punishment was correctly passed.

22. Learned counsel for the petitioner has argued that they never came to know about the order of enquiry and order of dismissal dated 2.11.1996. The court is of the view that when the petitioner did not join his duty after his reinstatement into service, he cannot claim that he will not report to the department and simultaneously he be allowed the fruit of his continuous service. Departmental authority took every possible step to call him to resume his duty and also given opportunity by a show cause notice and finally found him guilty of willful absence. This court is of the view that the dismissal order dated 2.11.1996 was passed by the then State of U.P., does not suffer from any legal defect. As the matter has been remitted to this Tribunal by the Hon'ble High Court, hence without considering the point of jurisdiction and after considering the merit of the case, this court is of the view that the dismissal order dated 2.11.1996 is correct in law. As the employee, Ram Avtar Sharma was dismissed from service, hence, his legal heirs are not entitled for any retiral benefits as prayed by them and the petition deserves to be dismissed on its merit.

ORDER

The petition is hereby dismissed. No order as to costs.

Sd/-

(D.K.KOTIA)
VICE CHAIRMAN (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JANUARY 10, 2018
NAINITAL

KNP