

**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. 04/NB/SB/2016

Naveen Chandra Lohani, aged about 58 years, S/o Sri C.S.Lohani, R/O
Ranijaswa Kathghariya, P.O. Kathghariya Haldwani, District Nainital.

.....Petitioner

With

CLAIM PETITION NO. 05/NB/SB/2016

Dungar Singh Bisht, aged about 56 years, S/o Sri Mohan Singh, R/o
Dewal Chaud Bandobasthi, P.O. Phool Chaud Haldwani, District
Naintial.

.....Petitioner

With

CLAIM PETITION NO. 06/NB/SB/2016

Bala Dutt Joshi, aged about 63 years, S/o Sri Manorath Joshi, R/O
Maagirija Vihar Phase 4, P.O. Kusumkhera (Kamalwaganja) Haldwani,
District Nainital.

.....Petitioner

With

CLAIM PETITION NO. 07/NB/SB/2016

Deewan Singh, aged about 57 years, S/o Sri Mohan Singh, R/o Surabhi
Colony, Malli Bamori, P.O. Bhotiaparaw, Haldwani, District Haldwani.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Ministry of Forest, Dehradun, Uttarakhand, Dehradun.
2. Pramukh Chief Conservator of Forest, Dehradun, Uttarakhand, Dehradun.
3. Chief Conservator of Forest, Kumaon Region, Nainital, District Nainital, Uttarakhand.
4. Divisional Forest Officer, Tarai Central, Haldwani, Uttarakhand, District Nainital.

.....**Respondents**

Present: Sri A. D. Tripathi, Ld. Counsel
for the petitioners

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

JUDGMENT

DATED: APRIL 11, 2018

HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)

1. Since the common question of law and facts are involved in all these 4 Claim Petitions, the same have been taken together and disposed of by this common judgment.
2. The relief sought is common in all 4 Claim Petitions. Following relief has been sought:-

“(i) To issue a direction/order to the respondents to review and re-fixed the pay of the petitioner in the light of Fundamental Rules as well as other Government orders issued time to time for fixation of pay otherwise the petitioner shall suffer loss and injury.

(ii) To issue direction/order to the respondent to consider the past uninterrupted service rendered as export moharir/road zamadar/plantation zamadar in the department and be counted for pension benefits only.

(iii) To issue direction/order to the respondent to consider the claim of the petitioner for pension as they have completed 10 years continuous and satisfactory regular service, including the past 30 years uninterrupted service rendered as export moharir/road zamadar/plantation zamadar in the department and be counted for pension benefits only.

(iv) To pass any other or further order which this Hon'ble Court may deem fit and proper in facts and circumstances of the case.

(v) Cost of the petition may be awarded in favour of the petitioner. "

3.1 The petitioner in Claim Petition No. 04/NB/SB/2016 was initially appointed as Export Moharir in 1985 and he was regularized on 11.09.2003 on the post of Forest Guard in the pay scale of Rs. 2750-4400.

3.2 The petitioner in Claim Petition No. 05/NB/SB/2016 was also initially appointed as Export Moharir in 1985 but his services were regularized on 09.02.2009 on the post of Forest Guard in the pay scale of Rs. 2750-4400.

3.3 The petitioner in Claim Petition No. 06/NB/SB/2016 was initially appointed on the post of Export Moharir in 1985 but he was regularized on the post of Forest Guard on 25.11.2003 in the pay scale of Rs. 2750-4400.

3.4 The petitioner in Claim Petition No. 07/NB/SB/2016 was also initially appointed on the post of Export Moharir in 1985 but he was regularized on the post of Forest Guard on 20.10.2002 in the pay scale of Rs. 2750-4400.

4. The petitioners in Claim Petition Nos. 04/NB/SB/2016 and 06/NB/SB/2016 have already retired and the petitioners in Claim Petition Nos. 05/NB/SB/2016 and 07/NB/SB/2016 are still in service.

5.1 The first contention of the petitioners in all the Claim Petitions is that they were getting the pay scale of Rs. 3050-4500 before their regularization and after regularization, they have been placed in the lower pay scale of Rs. 2750-4400. The petitioners have made a prayer to refix their pay in accordance with the Fundamental Rules as well as other Government Orders. Learned A.P.O. on behalf of the respondents has opposed this contention of the petitioners. It has been submitted by the respondents that the petitioners were regularized in Group-D post of Forest Guard in the pay scale of Rs.2750-70-3800-75-4400 in compliance of the order of the Hon'ble Supreme Court in Civil Appeal No. 3634 of 1998 (Annexure:R1). Thereafter, the State Government framed a scheme for regularization vide G.O. dated 19.02.2003 (Annexure: R-2 to the W.S.). The contention of the respondents is that the petitioners have neither challenged the regularization scheme framed by the State Government nor they challenged their regularization in the pay scale of Rs. 2750-4400 at any point of time. The petitioners now cannot challenge the same and the claim petitions are hopelessly time barred. We tend to agree with the contention of learned A.P.O. that the said prayer is time barred and in view of the fact that the petitioners have not explained the delay in challenging the aforesaid

orders of the State Government, the delay cannot be condoned. Learned counsel for the petitioners however, submitted that the said prayer is not being pressed by the petitioners. Therefore, we have not gone into the said prayer any further.

5.2 The second contention of the petitioners is that their services before the regularization should be counted for the purpose of pensionary benefits. Learned counsel for the petitioners has also referred following two case laws in support of this contention:

(i) Order of the Hon'ble Supreme Court passed in Civil Appeal No.10806 of 2017, Habib Khan vs. State of Uttarakhand & others, dated 23.08.2017.

(ii) Judgment of the Hon'ble High Court of Uttarakhand passed in WPSS No. 1142/2016 and other various connected writ petitions, dated 05.06.2017.

6.1 The contention of learned counsel for the petitioners is that as per judgment of the Hon'ble High Court and Hon'ble Supreme Court above, the past services of the petitioners should have been counted and the petitioners are entitled to get full pension at the time of retirement.

6.2 Learned A.P.O. on behalf of the respondents submitted that these are the recent judgments of the Hon'ble High Court and Hon'ble Supreme Court and the petitioners did not raise the issue for claiming the benefit of past services on the basis of these judgments before the State Government and also in the pleadings of their Claim Petitions. Learned A.P.O. further submitted that there was no occasion to respond by the respondents for their version in this respect. Learned A.P.O. has further stated that a new law has also been enacted by the government with respect to the treatment to be

given in respect of the past services of the employees for the purpose of determination of retiral benefits.

7. After hearing both the parties, we find that it would be appropriate that the issue of counting of past services for the purpose of retiral benefits is first raised by the petitioners before the State Government at the proper forum for their consideration.

8. In view of the above, we are of the view that the petitioners may make a representation before the appropriate authority for their claim in respect of counting of their past services for the purpose of retiral benefits within a period of three weeks from today. The respondents will decide the representation given by the petitioners within a period of 10 weeks of presentation of the certified copy of this order along with a copy of representation, by a reasoned and speaking order in accordance with law. The decision so taken shall be communicated to the petitioners soon thereafter. All the Claim Petitions are disposed of accordingly. No order as to costs.

The copies of this order may be put on file in Claim Petition Nos. 04/NB/SB/2016, 05/NB/SB/2016, 06/NB/SB/2016 and 07/NB/SB/2016.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: APRIL 11, 2018
NAINITAL
KNP