

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

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 46/DB/2016

Rameshwar Dayal aged about 55 years S/o Late Sri Ram Kishore Yadav, R/o Vishvatama Sevashram near Police Theka Chowki, Pilibheet, Uttar Pradesh.

.....Petitioner.

vs.

State of Uttarakhand and Others.

.....Respondents.

Present: Sri Ravindra Singh, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents

JUDGMENT

DATED: MARCH 22, 2018

Justice U.C.Dhyani (Oral)

Facts of present claim petition lie in a narrow compass. Petitioner was a Class –IV employee, working in District Tehri, which now falls within the territory of State of Uttarakhand (Section 3, UP

Re-Organization Act, 2000), till 1989. The word 'appointed day', in the Act of 2000 has been defined in Section 2(a), which was subsequently notified as '09.11.2000'. Services of the petitioner were dispensed with *vide* order dated 26.06.1989 of Executive Engineer, Tehri Dam Division 21, because a charge sheet under Section 302 IPC was submitted against him. The Trial Court (Session Judge, Tehri Garhwal) convicted the petitioner *vide* order dated 27.07.1994. Aggrieved against the same, Criminal Appeal No. 953/2001 was filed by the convict. Such criminal appeal was allowed by the Division Bench of Hon'ble High Court of Uttarakhand *vide* order dated 06.07.2005. Accused-appellant-petitioner Rameshwar Dayal was held not guilty and was acquitted of the charges under Sections 302, 201 IPC. The prayer of the petitioner is that the impugned order, whereby his services were terminated, be set aside.

2. Hon'ble Division Bench, while acquitting the accused-appellant-petitioner, observed as below:

"We have no hesitation in coming to the conclusion that what to think of forming a complete chain of circumstances pointing to the guilt of the accused, not a single incriminating circumstance stand established against the accused in this case and it is evident that the inferences drawn by the learned Session Judge were not at all warranted by the evidence on record. The learned Session Judge on hypothetical basis inferred that the accused murdered the two girls by way of human sacrifice to please the deity 'Kali' worshiped by him. There was absolutely nothing to indicate that he could lay his hands upon the two girls when they went to ease themselves from their house on 24.05.1989 and there being no established incriminating circumstance against him he could not have been held guilty of the offences with which he was charged"

[Emphasis supplied]

3. Ld. A.P.O. has cautioned us not to transgress our territorial authority in terms of judgment dated 28.05.2012 rendered by Hon'ble Apex Court in Civil Appeal No. 3984 of 2012, State of Uttarakhand and

another vs. Umakant Joshi. It will be useful to reproduce relevant paragraphs of the aforesaid judgment herein below for convenience:-

“11. 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 No.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 No.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. 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 No.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. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.

12. In view of the above, we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors.

13. In the result, the appeals are allowed, the impugned order is set aside and the writ petition filed by respondent No.1 is dismissed.

14. However, it is made clear that this Court has not expressed any opinion on the merits of the entitlement of respondent No.1 to claim promotion to Class-I post with retrospective effect and, if so advised, he may avail appropriate remedy by filing a petition in the Allahabad High Court. It is also made clear that we have not expressed any opinion on the legality or otherwise of order dated 17.1.2005 issued by the Government of Uttarakhand withdrawing the order of punishment passed against respondent No.1 and the writ petition, if any, pending before the Uttarakhand High Court

against that order shall be decided without being influenced by the proceedings of these appeals.”

[Emphasis supplied]

4. In the instant case, services of petitioner were, admittedly, dispensed with in the year 1989, when State of Uttarakhand was not in existence. Petitioner was, till then, an employee of erstwhile State of Uttar Pradesh. Uttarakhand was born only on 09.11.2000, and therefore, if we pass any order in the present claim petition, the same will amount to exceeding our territorial jurisdiction. We do not intend to go beyond our geographical boundaries and do not want to commit jurisdictional error by directing State of U.P. to pass an appropriate order. We, therefore, hold that this Tribunal has no jurisdiction to entertain present claim petition.
5. Let claim petition be returned to the petitioner for presentation, if so desires, before U.P. Public Services Tribunal, Lucknow, as per rules.
6. At this stage of dictation, Ld. Counsel for the petitioner confined his prayer only to the extent that a request be made to Engineer-in-Chief, Irrigation Department to decide the pending representation/departmental appeal of the petitioner at an early date. It is brought to our notice that the petitioner has already filed representations/departmental appeals on 06.11.1989 (Pg. 24), 10.10.2005 (Pg. 42), 18.08.2005 (Pg. 39) and 30.04.2013 (pg. 88). We are conscious that no direction can be issued to State of U.P., in view of the fact that, present claim petition is not maintainable before this Tribunal. [State of U.P. has also not been arrayed as party-respondent]. We can only make a request to the Engineer-in-Chief, Irrigation Department, U.P. to decide pending representations/departmental appeals of the petitioner, a brief reference of which has been given above, at an early date, in accordance with law, keeping in view the peculiar facts of the

case. We are making such request purely in the interest of justice, and not by way of exerting any authority bestowed on us.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 22, 2018
DEHRADUN

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