

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 07/DB/2017

Sushil Joshi, R/o Kanderwala, Near Chauhan Mohalla, Bhaniyawala,
Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Principal Secretary (Medical),
Uttarakhand Secretariat, Subhash Road, Dehradun.
2. Director General, Medical Health & Family Welfare Service, Uttarakhand,
Sahastradhara Road, Dehradun.

.....Respondents.

Present: Sri B.B.Naithani, Ld. Counsel
for the petitioner
Sarvasri U.C.Dhaundiyal &
V.P.Devrani, Ld. A.P.Os.
for the respondents

JUDGMENT

DATE: AUGUST 30, 2018

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this petition for the following
reliefs:

*"1. (a) This Hon'ble Tribunal may be pleased to
quash the order No. 3 प / लिपिक / 13 / 2015 / 20606 dated
23.09.2016 (Annexure: A-1) by which the petitioner
had been illegally removed from service.*

and

(b) This Hon'ble Tribunal may further be pleased by issuing suitable direction to the respondents to reinstate the petitioner in his original position and status as if he was never removed from the service.

and

(c) This Hon'ble Tribunal may further be pleased to direct the respondents to treat the whole period starting from the date of suspension to the date of reinstatement as Duty and accordingly to grant the whole consequential benefits to the petitioner.

and

"2. To issue any order or direction which this Hon'ble Tribunal may deem fit and proper under circumstances of the case.

3. To grant any other Relief/Reliefs which this Hon'ble Tribunal deem fit and proper to pass in consequence of this petition.

4. To award the cost to the petitioner. "

2. During the posting of the petitioner as an Administrative Officer (a Class-III Ministerial post) in the office of Chief Medical Officer, Dehradun in the year 2014, some appointments of Paramedical Staff were made by the Chief Medical Officer, Dehradun, in excess of the sanctioned posts and without following the due process of appointment. At the level of Government, Sri Atar Singh, Joint Secretary was entrusted to inquire into the matter vide order dated 12.12.2014, who after preliminary inquiry, submitted his report (Annexure: A3) to the Government and pointed out the irregularities committed by the Chief Medical Officer and the petitioner (Administrative Officer of his office).

3. The Government enclosing the report of preliminary inquiry, sent the matter to the Director, Medical & Health to do the needful, whereupon, the petitioner was served with the charge sheet

dated 02.05.2015 (Annexure: A11). After perusal of the reply submitted by the petitioner, Director, Medical & Health, Uttarakhand appointed his Additional Director as an inquiry officer to conduct the final inquiry.

4. The inquiry officer submitted its report dated 29.09.2015 (Annexure: A 13) by which the charges against the petitioner were found proved. On some points, the matter was again referred to the inquiry officer, but after giving an opportunity of hearing, the inquiry officer again submitted its report dated 04.04.2016, reiterating his earlier report by which the charges against the petitioner were found proved.

5. After serving show cause notice to the petitioner and considering his submission, the impugned order dated 23.09.2016 (Annexure: A1) was passed by Respondent No. 2, whereby the petitioner was removed from the service. The record reveals that petitioner filed a departmental appeal dated 06.12.2016 (Annexure: A19) and without waiting for its final disposal, this petition was filed by the petitioner for the reliefs sought as above.

6. Respondents opposed this petition by filing Counter Affidavit and submitted that the petitioner was given full opportunity of hearing. According to respondents, petitioner was in full connivance with the then Chief Medical Officer, Sri Gurpal Singh (later on expired) and illegal appointments of paramedical staff (ANM) were made without following the due procedure and the Government was made to suffer for financial loss and after conducting due inquiry, he was removed from service. Respondents in para 35 of their Counter Affidavit has accepted the version of the petitioner, mentioned in para 4.29 and 4.30 of the claim petition, wherein the petitioner has alleged that the appeal against the impugned order was filed on 06.12.2016 but no reply has yet been received by the petitioner from the appellate authority. The respondents have alleged that his appeal is

still under consideration with the Government and petition lacks merit and deserves to be dismissed.

7. The petitioner reiterated the contents of his petition, and in his rejoinder affidavit admitted the contents of para 35 of the Counter Affidavit, saying that there is no need to reply it in view of the admission made by the respondents.

8. We have heard both the parties and perused the record.

9. It is an admitted fact that the petitioner, who was posted as an Administrative Officer in the office of Chief Medical Officer, Dehradun, was charged for initiating and completing the process of making illegal appointments in the office of Chief Medical Officer, Dehradun and he was charged for being involved in conspiracy with the then Chief Medical Officer, Sri Gurpal Singh and it is alleged that the appointments were made in excess of the sanctioned posts and without following the due process. After preliminary inquiry, final inquiry was also made and after giving an opportunity to show cause, the petitioner was removed from service vide order dated 23.09.2016 (Annexure: A1).

10. It is also admitted to both the parties that against the impugned order of removal from service passed by the respondents, a departmental appeal was filed by the petitioner on 06.12.2016 (Annexure: A 19) in which, he has raised so many points. Respondents in para 35 of their Counter Affidavit admitted that the departmental appeal is still pending for consideration at the Government level. Learned A.P.O. on behalf of the respondents has argued that the petitioner has approached the Tribunal without waiting for the disposal of departmental appeal, hence, according to them, his petition is premature and deserves to be dismissed.

11. The petitioner himself admits that his departmental appeal has not been decided as yet.

12. In view of the fact that the departmental appeal is pending and is yet to be decided by the department, hence, in view of the fact that alternative remedy is still available and yet to be decided by the respondents, this court is of the view that the petition is premature.

13. Learned counsel for the petitioner has submitted that the departmental appeal was filed in December 2016 and since then, it has not been decided by the respondents, so this court finds that the petition needs to be disposed of with the direction to the respondents to decide the departmental appeal within a limited time frame. The opportunity of the petitioner to challenge the order of departmental appeal will remain open as a separate cause of action.

ORDER

The Claim petition is disposed of with the direction to the respondents to decide the pending departmental appeal dated 06.12.2016, filed by the petitioner, within a period of two months from the date of receipt of this order.

No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: AUGUST 30, 2018
DEHRADUN
KNP