

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 05/DB/2020**

Bihari Lal Danosi aged about 75 years, s/o Late Sri Kirti Ram, Assistant Engineer (Retd.), Electricity Distribution Division, Srinagar, District Pauri Garhwal, r/o Lane No. 1, Lakshman Enclave, Delhi Farm, Harrawala, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Chief Secretary, Govt. of Uttarakhand, District Dehradun.
2. State of Uttar Pradesh through Chief Secretary, Government of Uttar Pradesh, Lucknow, Uttar Pradesh.
3. Managing Director, U.P. Power Corporation Limited, Government of Uttar Pradesh, 14 Ashok Marg, Shakti Bhawan, Lucknow, U.P.
4. Chief Engineer (Hydel) U.P. Power Corporation Limited, Government of Uttar Pradesh, 14 Ashok Marg, Shakti Bhawan, Lucknow, U.P.
5. Managing Director, Uttarakhand Power Corporation Limited, Government of Uttarakhand, Victoria Cross Vijeyta Gabar Singh Urja Bhawan, Kanwali Road, Balliwala Chowk, Dehradun, Uttarakhand.
6. Executive Engineer, Electricity Distribution Division, Srinagar, Pauri Garhwal.

....Respondents

Present: Sri Ram Prasad, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for State/Respondent.

Sri V.D.Joshi & Sri S.K.Jain, Counsel for UPCL.

**JUDGMENT**

**DATED: MARCH 02, 2020**

**Justice U.C.Dhyani(Oral)**

By means of present claim petition, the petitioner has sought quashing of order dated 29.01.2019 (Annexure: A-1), which has been issued by U.P.

Power Corporation Ltd., Lucknow (UPPCL). The petitioner has also sought direction commanding Respondent No.4, i.e., Chief Engineer (Hydel), U.P. Power Corporation Ltd., Lucknow (U.P.), to recast the seniority of the petitioner after regularization of his services *w.e.f.* 01.04.1969, along with Junior Engineers of 1969 batch. The petitioner wants himself to be placed at Sl. No. 1863 A, instead of Sl. No. 2273 D. The petitioner, through present claim petition, also seeks to command Respondent No.3, i.e., M.D., U.P. Power Corporation Ltd., Lucknow, U.P. to convene review DPC for all next higher grades/ posts of the petitioner, in accordance with revised seniority, on the basis of his regularization, *w.e.f.* 01.04.1969, consider him for promotion to the next higher grades/ posts with retrospective effect and also direct Respondent No.3 to provide all consequential benefits including promotion to the next higher posts along with arrears of pay and pension after recommendation of DPC, among others.

2. A perusal of the relief sought would indicate that the reliefs relate to U.P. Power Corporation Ltd., for, Annexure: A 1 has been passed by the said Corporation and petitioner's prayer is also for recasting his seniority *w.e.f.* 01.04.1969. This State came into being only on 09.11.2000 and Uttarakhand Power Corporation Ltd. (UPCL) came into existence thereafter. Thus, the reliefs either pertain to UPPCL, or relate to the period when State of Uttarakhand was not in existence.

3. We do not feel it necessary to go into the detailed facts of the claim petition, for, the only question before us is regarding the maintainability of claim petition before this Tribunal.

4. Annexures: A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-11 & A-12 were issued either by U.P. State Electricity Board or U.P. Power Corporation Ltd. When the petitioner approached Hon'ble High Court of Uttarakhand at Nainital by filing WPSB No. 448/2019, Hon'ble Court, vide order dated 16.10.2019 dismissed the writ petition and granted liberty, giving an occasion to the petitioner to file present claim petition before this Tribunal.

5. As has been stated above, all reliefs pertain to the erstwhile State of U.P. (UPSEB/ UPPCL). The prayer is also for directing UPPCL (and not UPCL) to recast his seniority after his regularization *w.e.f.* 01.04.1969. It has

also been stated that this State came into existence on 09.11.2000. Ld. Counsel for UPCL has filed objections to argue that UPPCL has already fixed the seniority and pay scale of the petitioner as per directions dated 24.10.2018 (Annexure: A 13) of State Public Services Tribunal, Lucknow, given in Claim Petition No. 350/13 and earlier a direction was given by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench on 09.02.2005 in WP No. 338/1989. The representation of the petitioner has been decided by Chief Engineer, Hydrel, UPPCL, vide letter dated 03.04.2018 (copy filed as Annexure: R 4).

6. But, at present, we are only concerned with the jurisdictional issue. To invoke the jurisdiction of this Tribunal, Ld. Counsel for the petitioner submitted that the petitioner retired from Uttarakhand on 31.05.2002 and as such, consequential benefits are to be provided by UPCL (and not by UPPCL). Ld. A.P.O. submitted that seniority of the petitioner was to be determined by UPSEB or UPPCL first and then only the question of consequential benefits shall follow. In any case, Ld. A.P.O. submitted, it is a petition not maintainable before this Tribunal.

7. The decision rendered by Hon'ble Apex Court in *State of Uttarakhand and another vs. Umakant Joshi, 2012 (1) UD 583* and decision rendered by Hon'ble High Court of Uttarakhand in *Dr. Kamaljeet Singh and another vs. State of Uttarakhand & others, 2018(1) UD 337*, provide the answer. In fact, the latter has relied upon the former while rendering the decision. Hon'ble Apex Court concluded in *Umakant Joshi's* decision as follows:

“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.”

8. In the latter, Hon’ble High Court of Uttarakhand speaking through Hon’ble Chief Justice K.M. Joseph (as His Lordship then was) observed as follows:

“10. Therefore, this is a case where the Court noted that the respondent therein became entitled to promotion consequent upon the order of punishment, inter alia, being set aside w.e.f. 16.11.1989. It be remembered that 16.11.1989 is a date anterior to the date of creation of the State of Uttarakhand, which took place on 09.11.2000. It is, thereafter, that the Hon’ble Apex Court proceeds to hold that the exercise, namely, the exercise of giving the benefit of promotion to the first respondent therein w.e.f. 16.11.1989 could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand). It is, thereafter, that the Court proceeds to take the view that the High Court of Uttarakhand too, which came into existence w.e.f. 09.11.2000 did not have the jurisdiction to deal with the matter. The Hon’ble Apex Court further reiterates that the High Court of Uttarakhand committed jurisdictional error in giving the direction.

11. From the aforesaid statements of law contained in paragraph nos. 11 and 12 of the judgment of the Hon’ble Apex Court, we can deduce two principles, as laid down by the Hon’ble Apex Court. Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter. Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh.

12. Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by Mr. Rajendra Dobhal, learned senior counsel for the

petitioners, we would think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh. On this short ground, the writ petition is only to be allowed.

14. Section 73 of the Act of 2000, which purports the other services (apparently, other than All India Services, which is covered by Section 72) lays down, inter alia, that all persons working in the existing State of Uttar Pradesh are unless required by a general or special order of the Central Government to serve provisionally in the State of Uttaranchal will continue to serve in connection with the affairs of the State of Uttar Pradesh. Thereafter, sub-section (2) contemplates a final allocation of the employees to be made by the Central Government. It is in respect of such persons that sub-section (2) of Section 74 provides that in regard to his conditions of service, he will be treated as working with the State, to which he is allocated.

16. Section 75 of the Act of 2000 only declares the status of a person and, no doubt, in the proviso, it declares that it would not prevent a competent authority, on and from the appointed day, from passing order in relation to such persons any order affecting the continuance in such post or office. We are unable to find out how this provision will come to the aid of the third respondent.

17. There is yet another aspect, which we must not ignore. When the Hon'ble Apex Court decides a case and the High Court culls out the ratio decidendi, which is the law under Article 141 of the Constitution of India, then, it does not cease to be binding on the Court on the reasoning that if another argument had been raised before the Hon'ble Apex Court or if a certain provision had been brought to its notice, the decision or the principle of law would have been different. It may not lie with the High Courts to disregard the law, which is laid down on the basis that it is per incuriam. We cannot, therefore, proceed on the basis that the law, which is declared in paragraph no. 11 of the judgment of the Hon'ble Apex Court, which we have referred to, namely, that in similar circumstances, it is the State of Uttar Pradesh, which could have given any relief, would not have been arrived at, had the Court adverted to Sections 74 and 75 of the Act of 2000. In fact, we notice that Section 74 of the Act of 2000 was referred to by the Hon'ble Apex Court. No doubt, Section 75, as such, was not referred to. Quite apart from our reasoning that Section 75 of the Act of 2000 may not support the argument of the third

respondent and also of the State, as already held by us, we cannot proceed on the basis that because Section 75 was not referred to, the law, as laid down by the Hon'ble Apex Court in paragraph no. 11 of the judgment, is not to be followed by us.

9. On the basis of principles laid down by Hon'ble Apex Court and Hon'ble High Court of Uttarakhand, we are of the considered opinion that this Tribunal has no jurisdiction to entertain present claim petition. The same is, therefore, returned to the petitioner for presentation before appropriate forum.

10. We make it clear that issue of limitation has not been touched by this Tribunal. We have expressed our opinion on the point of jurisdiction leaving it open to the petitioner to avail appropriate remedy before appropriate forum.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MARCH 02, 2020*

*DEHRADUN*

*VM*