

**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. 38/SB/2023

Mangat Singh, aged about 48 years, s/o late Sri Bishan Singh, presently posted as Driver at the Office of CO, Manglaur, District Haridwar.

.....Petitioner

versus

1. State of Uttarakhand, through Secretary, Home, Civil Secretariat, Dehradun, 4, Subhash Road, Dehradun.
2. Senior Superintendent of Police, Haridwar, Office of SSP, Haridwar.

..... Respondents

Present: Sri Shashank Pandey, Advocate, for the petitioner (online)
Sri V.P. Devrani, Advocate, for respondents

Judgement

Dated: 24th February, 2023

Justice U.C. Dhyani (Oral)

By means of present claim petition, the petitioner seeks following reliefs:

- “(i) To issue order or direction to set aside order dated 26.02.2020 passed by Respondent no. 2.
- (ii) Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of the case.
- (iii) Award the cost of the petition to the petitioner against the respondents.”

2. At the very outset, learned A.P.O. objected to the maintainability of present claim petition, *inter alia*, on the ground that the claim petition is pre-mature, inasmuch as the petitioner has not exhausted his remedy of filing departmental appeal. The petitioner ought to have filed the departmental appeal before the appropriate authority and had his prayer been rejected, only then he should have filed the claim petition before the Tribunal.

3. Learned A.P.O. further submitted that as per Sub-Rule (1) of Rule 11 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010), the petitioner is entitled to file appeal. Such Rule reads as below:

“11. Appeal (1) Except the orders passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.

.....”

4. Learned A.P.O. also drew attention of this tribunal towards Section 4(5) of the U.P. Public Services (Tribunal) Act, 1976, which reads as under:

“4. Reference of claim to Tribunal —

(5) The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances.

.....”

5. The Tribunal, therefore, finds force in the submission of learned A.P.O. that the petitioner should have availed the remedy of departmental appeal before coming to this Tribunal.

6. Learned Counsel for the petitioner fairly conceded that the departmental appeal has not been filed by the petitioner. Learned

Counsel for the petitioner, therefore, prayed that the petitioner may be granted liberty to file the departmental appeal against the impugned order dated 26.02.2020 (Annexure: A1) to the Appellate Authority, in the interest of justice.

7. It will be in the fitness of things, if the petitioner is granted liberty to file the departmental appeal against the impugned order dated 26.02.2020 (Annexure: A1) for redressal of his grievances.

8. The claim petition is disposed of, at the admission stage, by granting liberty to the petitioner to file departmental appeal against the impugned order dated 26.02.2020, passed by S.S.P., Haridwar, to the Appellate Authority, within a period of 8 weeks, in accordance with law. The delay in filing such application is condoned in the interest of justice [Section 5 of the Limitation Act, 1963 applies to the applications also].

9. Liberty is granted to the petitioner for filing fresh claim petition, in case petitioner's grievance survives.

No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
[virtual]

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 24th February, 2023

DEHRADUN

RS