

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

**CLAIM PETITION NO. 31/ SB/2021**

Swapnil Nautiyal, aged about 22 years, s/o late Sri Madan Mohan Nautiyal, r/o Village Kholi Girigaon, Patti Idwalsyu, District Pauri Garhwal, present address, 125 Ashok Vihar, Lane No. 1, Ajabpur Kalan, Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through its Secretary (Finance).
2. The District Magistrate, Pauri.
3. Chief Treasury Officer, Pauri.
4. The Director, Treasury, Pension and Hakdari, 23, Laxmi Road, Dehradun.
5. Smt. Sunita Nautiyal, wife of Sri Madan Mohan Nautiyal, c/o Sri Pradeep Bahuguna, Majri Mafi, Post Office IIP, Dehradun.
6. Km. Anshita Nautiyal, daughter of Sri Madan Mohan Nautiyal, aged about 17 years, through her mother and natural guardian Smt. Lata Nautiyal alias Lata Khanna wife of Sri Ashok Khanna, resident of Village and Post Office Jaura Sauda Saroli, Vaya Raipur District Dehradun.
7. Accountant General, Uttarakhand, Dehradun.

..... Respondents

Present : Sri Abhishek Chamoli and Sri V.P. Sharma (*online*),  
Advocates, for the petitioner  
Sri V.P. Devrani, A.P.O., for the  
respondents no. 1 to 4 and 7  
There is no representation for respondents no. 5 and 6

**JUDGEMENT**

**Dated: 12<sup>th</sup> April, 2023**

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

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

“(a) To issue order and directions to the Respondents to pay the death cum retiral benefits of Late Shri Madan Kumar Nautiyal to the petitioner, and respondent no. 5 and 6 equally 1/3<sup>rd</sup> amount is payable to the petitioner and 1/3<sup>rd</sup> amount is payable to respondent no. 5 and 1/3<sup>rd</sup> amount payable to respondent no. 6.

(b) To direct to the respondent no. 2 that an amount of Rs. 3,88,596/- to be recovered from the respondent no. 4 at the time of payment of the death cum retiral benefits to the petitioner and respondent no. 4 and 5 and the said amount to be paid to the petitioner amounting to Rs. 1,94,298/- and to respondent no. 5 amounting to Rs. 1,94,298/-.

(c) To also direct to respondent to pay the interest @ 9 % on all the death cum retiral benefits from due date till the date of payment.

(d) Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.”

2. Petitioner’s father late Sri Madan Kumar Nautiyal was *Anusevak* in Tresury, Pauri and died on 16.02.2019, leaving behind the following legal heirs:

- (i) Smt. Sunita Nautiyal- Wife
- (ii) Sri Swapnil Nautiyal- Son (Petitioner)
- (iii) Km. Anshita- Minor daughter

3. A succession certificate was obtained by respondent no. 5, Smt. Sunita Nautiyal from the District Magistrate on 13.03.2019, in which the following heirs were recorded (copy Annexure: A4):

- (a) Smt. Sunita- Wife- 47 years of age
- (b) Dhruvika- Daughter- 20 years of age
- (c) Anshita- Daughter- 17 years of age

(d) Swapnil Nautiyal- Son- 21 years of age

4. Father of the petitioner got divorce decree, as against petitioner's mother on 22.04.2011 (copy Annexure: A5). Sri Madan Kumar Nautiyal, as stated above, expired on 16.02.2019 (copy of Death Certificate Annexure: A6).

5. Smt. Lata (mother of the petitioner) gave the petitioner in adoption to her brother-in-law, Sri Harish Chandra Joshi and his wife, Smt. Neelam Joshi (copy of adoption deed Annexure: A7). Petitioner got the adoption deed cancelled from the Court of Additional Civil Judge, Dehradun (copy of judgement dated 12.09.2020 Annexure: A8).

6. Respondent Department released group insurance amount and leave encashment amount to Smt. Sunita Nautiyal (nominee) (copy Annexure: A11). According to para 4.9 of the petition 1/3<sup>rd</sup> of Rs. 5,82,894/- should be divided equally amongst Smt. Sunita, Kumari Anshika and the petitioner.

7. Petitioner sent a letter to respondent no. 3 along with nomination letter, which letter was followed by a legal notice. The petitioner is claiming compassionate appointment as also retiral benefits (para 4.17). Petitioner also prayed that the death-cum-retiral benefits of late Sri Madan Kumar Nautiyal be divided equally amongst the petitioner, respondent no. 5 and respondent no. 6. Petitioner's prayer is that the same may be recovered from Smt. Sunita and 1/3<sup>rd</sup> of Rs. 5,82,894/- be paid to him.

8. Sri Rajesh Kumar, Assistant Treasury Officer, Pauri, has filed counter affidavit on behalf of the official respondents. Paras 1 to 9 of the counter affidavit/ W.S. are important in the context of present claim petition. The said paragraphs are reproduced herein below for convenience:

“1. That the deceased late Madan Kumar Nautiyal (deceased) Was appointed as a peon in the treasury Lansdowne on 24.09.1980 in the pay scale of Rs. 305-360 (Grade pay Rs. 1800 & level -01 as per the recommendation of the seventh pay commission revision).

2. That the petitioner expired on 16.02.2019 during the course of service from the post of peon in the treasury Pauri although the petitioner was to be retired in year 2022 on attaining the age of superannuation i.e. 60 yrs.

3. That as per the record of service book Smt. Sunita Nautiyal w/o late Sri Madan Kumar Nautiyal is the legal nominee in the respondent department.

4. That after furnishing the death certificate of the deceased petitioner belately by the Smt. Sunita Nautiyal along with the indemnity bond the admissible retiral dues i.e. pension, gratuity, leave encashment, GIS and GPF were paid to the legal nominee Smt. Sunita Nautiyal as per following details:

Sr. No.	Retiral Dues	Amount	Date of Payment
1.	GPF (100 %) being a IV class employee	6,10,323.00	21.11.2019
2.	Leave encashment	4,02,300.00	27.04.2019
3.	Gratuity	14,48,832.00	31.08.2019
4.	Pension		31.08.2019
5.	GIS	1,80,594.00	15.03.2019

Hence in view of the above mentioned facts and circumstances the retiral dues admissible to the nominee of Madan Kumar Nautiyal (deceased) have been duly paid to wife Smt. Sunita Nautiyal on the basis of the service book nomination and also on the basis of indemnity bond by her.

5. That the petitioner's father Shri Madan Kumar Nautiyal (deceased) was married on 04-02-1994 to Smt. Lata, daughter of Shri Jagdish Prasad Pokhriyal, R/o Ajabpur Kalan, Dehradun. After the marriage, son Swapnil Nautiyal and daughter Anshita were born.

6. That Madan Kumar Nautiyal (deceased) had nominated EVRA for GPF, gratuity and family pension in favour of Smt. Sunita Nautiyal, according to which, after the death of Shri Nautiyal was to be paid gratuity, family pension, GIS, Leave encashment and General Provident Fund to Smt. Sunita Nautiyal as per rule and law.

7. That after the divorce between Shri Madan Kumar Nautiyal (deceased) and Smt. Lata, Shri Harish Chandra Joshi S/o Late Shri Harshpati Joshi and Smt. Neelam Joshi w/o Shri Harish Chandra Joshi both R/o 125, Ashok Vihar, Lane No. 01, Ajabpur Kalan, Dehradun adopted Shri Swapnil through an adoption deed which is registered on 07-12-2012.

8. That Shri Madan Kumar Nautiyal (deceased) had not made any nomination in favour of the petitioner Swapnil Nautiyal, due to which the petitioner is not eligible for any relief and employment under dying in harness rule. Therefore the claim petition has no legal substances as such same is liable to be rejected with an exemplary cost at very on set.

9. **That the payment of family pension and gratuity payment was done to Smt. Sunita Nautiyal by Chief Treasurer, Cyber Treasury, Dehradun vide letter no. 2256/UK/13/16022019/26926 dated 31-08-2019. That there is a nomination in favour of Mrs. Sunita Nautiyal in the service records of Mr. Madan Kumar Nautiyal, (deceased) according to which, after the death of Mr. Madan kumar Nautiyal, (deceased) Mrs. Sunita Nautiyal is eligible for all the claims and employment under dying in harness rules.** Hence the claim petition has no legal merit and same being devoid any legal merit same is liable to be dismissed with cost.”

*[emphasis supplied]*

9. It is an admitted fact that death-cum-retiral benefits of late Sri Madan Kumar Nautiyal have been released by the respondent-department to Smt. Sunita Nautiyal, respondent no. 5 (nominee).

10. This Tribunal cannot, in law, direct respondent no. 5 to refund 1/3<sup>rd</sup> of the death-cum-retiral dues to the petitioner. The respondent-State has released such money in favour of the respondent no. 5. Now it is a dispute between the petitioner and respondent no. 5 *i.e.* between two individuals. Individual disputes are not decided by the Service Tribunal. Had the respondent-department not released death-cum-

retiral dues to respondent no. 5, the position would have been different. In such case, the Tribunal would have adjudicated the matter between the petitioner, respondent-State and respondent no. 5, but, at present, the position is different. The dispute remains between two individuals, which cannot be decided by this Tribunal. Otherwise also, death-cum-retiral dues (but for GPF) viz., leave encashment, gratuity, pension and GIS are, normally, released only in favour of the wife.

11. The claim petition is, therefore, dismissed leaving it open to the petitioner to seek appropriate remedy before the appropriate forum. No order as to costs.

12. It is made clear that the Tribunal has not expressed any opinion regarding entitlement of death-cum-retiral dues of late Sri Madan Kumar Nautiyal in favour of anyone.

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

*DATE: 12<sup>th</sup> April, 2023*  
*DEHRADUN*  
*RS*