

**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)

Restoration Application No. 08/DB/2022

1. Rajkumar (Male), aged about 42 years, s/o Sri Santar Pal, r/o Tibri Colony Ranipur, House No. 378, Haridwar.
2. Sudhir Kumar (Male), aged about 38 years, s/o Sri Om Pal Singh, r/o Village and Post Office Goverdhanpur, Thana Manglaur, District Haridwar.

.....Petitioners/ Review Applicants

versus

1. State of Uttarakhand through its Secretary, Ministry of Home Affairs, Uttarakhand, Dehradun.
2. Director General of Police (Headquarter and Karmik), Uttarakhand Police Headquarters, 12, Subhash Road, Dehradun.
3. Senior Superintendent of Police, District Haridwar.
4. Superintendent of Police (Karmik), Uttarakhand, Dehradun.

..... Respondents

Present: Sri M.C. Pant and Sri Abhishek Chamoli, Advocates,
for the petitioners/ review applicants
Sri V.P. Devrani, A.P.O. for the respondents

Judgement

Dated: 15th May, 2023

Justice U.C. Dhyani (Oral)

An application under Rule 24 read with Rule 17 of the U.P. Public Services Tribunal (Procedure) Rules, 1992, has been filed on behalf of the petitioners to recall the order dated 07.03.2018, passed by this Tribunal in claim petition no. 49/SB/2014, Sudhir Kumar and another vs. State of Uttarakhand and others, and to restore the claim petition to its original number. Such application is supported by the affidavit of one of the petitioners, namely, Sri Rajkumar.

Claim Petition No. 49/SB/2014, Sudhir Kumar and another vs. State of Uttarakhand and others, was decided by this Tribunal *vide* judgement dated 07.03.2018 as follows:

“6. After arguing for a while, learned counsel for the petitioners has confined his prayer only to the extent that the petitioners may be allowed to make a representation to the respondents, who may be directed by the Tribunal to decide the representation at the earliest, to which learned A.P.O. has no objection.

7. Since the relief as mentioned in paragraph 5 above has been made by the petitioners after the judgment of the Hon'ble High Court and the issuance of the Government Order at a later stage on 28.09.2015 and no Counter Affidavit has been filed by the respondents in this respect, therefore, the innocuous prayer of the petitioners in paragraph 6 above is worth accepting.

8. The claim petition is, accordingly, disposed of by granting two weeks time to the petitioners to move a representation to the respondents. Thereafter, the respondents are directed to decide such representation by a reasoned order at the earliest but not later than eight weeks of presentation of the representation before the respondents along with a copy of this order.”

The petitioners challenged the aforesaid order before Hon'ble High Court in WPSB No. 492/2018. The Hon'ble Court decided WPSB No. 492/2018 *vide* order dated 29.11.2019 as under:

“.....

4. The order of the Tribunal, passed in Claim Petition No. 49/SB/2014 dated 07.03.2018, is subjected to challenge in this Writ Petition by Mr. M.C. Pant, learned counsel appearing on behalf of the petitioners, contending that the petitioners herein did not confine their prayer only for the representation to be decided; and, in the light of the judgment of this Court in Sanjay Shah v. Kumaon Mandal Vikas Nigam and others (Order of the Division Bench in Writ Petition (S/B) No. 169 of 2017 dated 28.03.2018), the Tribunal lacks jurisdiction to direct the respondents to consider the

representation, and is obligated in law to decide the Claim Petition on its merits.

.....

7. Since we are not inclined to entertain this Writ Petition on this ground, we see no reason to examine the petitioners' claim that the Tribunal lacks jurisdiction to direct the respondents to consider their representation. In the light of the law declared by the Supreme Court, in *State of Maharashtra v. Ramdas Shrinivas Nayak* : (1982) 2 SCC 463, it would be wholly inappropriate for us to examine whether or not the Tribunal lacks jurisdiction to direct the respondents to consider their representation for, if what is recorded in the order passed by the Tribunal is true, then such a direction was sought by the petitioners themselves and, having sought such a relief, the petitioners cannot, thereafter, be permitted to resile therefrom, and turn around and contend that the Tribunal lacks jurisdiction to pass an order directing the respondents to consider their representation. In any event, since the petitioners are being relegated to avail their remedy of a review, suffice it to leave this question open to be agitated by the petitioners before the Tribunal in case they invoke its review jurisdiction.

8. Mr. M.C. Pant, learned counsel for the petitioners, would refer to Rule 17(1) of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992 to submit that the Tribunal lacks jurisdiction to entertain a petition for review unless it is filed within thirty days from the date of the order of which the review is so sought.

9. Since the question, whether or not the petitioners had given such a concession before the Tribunal, cannot be agitated in a Writ Petition filed against the order passed by the Tribunal, and the only remedy available to the petitioners is to seek review of the order passed by the Tribunal and request it to correct its record, we request the Tribunal to entertain the Review Application without taking into consideration the period of limitation, prescribed under Rule 17(1) of the of the Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992, in the peculiar facts and circumstances of the present case, more so since this Writ Petition has been pending on the file of this Court for the past more than a year."

[emphasis supplied]

We, accordingly, entertain the review application without taking into consideration the period of limitation, as directed by the Hon'ble High Court.

The only question left for the determination of this Tribunal is, whether review application should be allowed or not. It seems to be a futile exercise to enter into the question whether a direction to the respondents to decide the representation of the petitioners should be maintained or not? To put it simple, if the petitioners do not want their representation to be decided and

want their claim petition be decided on merits, let it be like that. There is no requirement, in law, that such representation must be decided before deciding the claim petition on merits. No useful purpose would be served by entering into the question whether learned Counsel for the petitioners, appearing before the Tribunal made a prayer for deciding the petitioners' representation, as was recorded by the Tribunal earlier, or not. The Tribunal, therefore, feels that the claim petition should be decided on merits, in the interest of justice.

Keeping in view the peculiar facts of the case, recall/ review application is allowed. Order dated 07.03.2018 is recalled. As a consequence thereof, the claim petition no. 49/SB/2014, Sudhir Kumar and another vs. State of Uttarakhand and others, is restored to its original number (to be heard on its own merits).

List on 20.05.2023 for further orders.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 15th May, 2023
DEHRADUN
RS