
(2019) 07 UK CK 0009
In the Uttarakhand High Court
Case No : Writ Petition (SB) No. 277 Of 2019

Krishna Kavi

APPELLANT

Vs

Uttarakhand State Public Service Tribunal And Others

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 UK CK 0009

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : M.C. Pant, Pooja Banga

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. M.C. Pant, learned Counsel for the petitioner and Ms. Pooja Banga, learned Brief Holder for the State of Uttarakhand, and, with their consent, the writ petition is disposed of at the stage of admission.

2. The petitioner is the applicant before the Uttarakhand Public Service Tribunal, Dehradun. She is aggrieved by the order passed by the Uttarakhand Public Services Tribunal dated 02.07.2019, disposing of her claim petition at the stage of admission. Before the Public Service Tribunal, the petitioner had challenged the order passed by the Chief Engineer, Level-I dated 17.05.2019 whereby her seniority was altered reverting her to the post of Head Assistant from the post of Senior Administrative Officer.

3. The learned Tribunal, after taking note of the submission of the Assistant Presenting Officer, that the petitioner had not exhausted the remedy of a departmental appeal, she had directly approached the Tribunal which was not as per the provisions of the Public Services Tribunal Act and the Rules, and she was required to first avail the remedy of a departmental appeal, directed the petitioner to move an appeal/representation before the concerned authority

within 15 days and observed that, in case any such representation/appeal is filed, the same shall be decided with a reasoned and speaking order, in accordance with law, within two months. Aggrieved thereby, the present writ petition.

4. Mr. M.C. Pant, learned counsel for the petitioner, would contend that, against the order passed by the Chief Engineer, Level-I dated 17.05.2019, no statutory appellate remedy is provided; the mere possibility of a representation being examined by the authority would not denude the petitioner of her right to approach the Tribunal; and the Tribunal had erred in non-suiting the petitioner, and in dismissing her claim petition, on the ground that appellate remedy had not been exhausted by her.

5. When the matter came up earlier before us on 04.07.2019, we had asked Ms. Pooja Banga, learned Brief Holder for the State of Uttarakhand, to ascertain whether the petitioner had a statutory remedy of an appeal against her reversion by three stages, which order of reversion was passed not as a measure of punishment, but consequent on revision of the seniority list.

6. Today Ms. Pooja Banga, learned Brief Holder, would fairly state that, while there is no statutory remedy, the Irrigation Department Manual enables a representation to be filed. The rule of exhaustion of alternative remedy applies only where such a remedy is statutorily prescribed. In the absence of any statutory remedy of appeal being available to the petitioner, the Tribunal was in error in dismissing her application on this ground.

7. The order, impugned in the writ petition, is set aside; and the matter is remanded to the Tribunal for its consideration afresh, and in accordance with law. The Tribunal shall examine the petitioner's claim on its merits.

8. The writ petition stands disposed of accordingly. No costs.

9. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, by 12.07.2019.