

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

CLAIM PETITION NO. 57/2012

Hukam Singh, S/o Late Sri Jumna Singh, Lekhpal, Tehsil Laksar,
District Haridwar,

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Revenue Department,
Civil Secretariat, Dehradun,
2. Chief Revenue Commissioner,(now Board of Revenue
Uttarakhand,) Dehradun,
3. Commissioner, Garhwal Mandal, Pauri,
4. Kunwar Pal, Revenue Inspector, Tehsil and District
Dehradun,
5. Main Pal, Revenue Inspector, Tehsil Vikas Nagar, District
Dehradun.

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondent no 1 to 3
Dr. Aparna Singh, Counsel
for the respondents no. 4 & 5

JUDGMENT**DATE: DECEMBER 04, 2014**

1. The petitioner has prayed for the quashing of the present seniority list as well as promotions made on the basis of present seniority list. And a further direction for the redetermination of seniority.

2. The facts relevant for adjudication of this petition are that the petitioner is a permanent Lekhpal and his seniority was determined in the year 2000 and was placed at Sl. No. 19, whereas the private respondents no. 4 and 5 were placed at sl. no. 25 and 26 respectively. On completion of five years as Lekhpal, the petitioner and the private respondents no 4 and 5 along with other Lekhpals were sent for training required for the promotion to the post of Revenue Inspector. However, after the required training, a new seniority was drawn in the year 2010 based on the performance of the participants in the training and petitioner was placed at Sl. No. 13 while the private respondents no. 4 and 5 were placed at Sl. No. 18 and 19, thus the petitioner is senior to the private respondents no. 4 and 5. But the respondent no. 3 issued an order on 10.4.2012 and respondents no. 4 and 5 were promoted to the post of Revenue Inspector ignoring the seniority of the petitioner. The service conditions of the Revenue inspectors are governed by the U.P. Subordinate Revenue Executive (Supervisor Kanungos) Services Rules, 1977 and their seniority is to be fixed in accordance with the provisions of

Uttarakhand Govt. Servants Seniority Rules, 2002. Apart from it, it is also important that the promotions are to be made according to seniority and not on the basis of merit as has been provided in Uttarakhand Govt. Servants Criteria for Promotions Rules, 2004. Thus, the respondent no. 3 has issued the impugned order of promotion in clear violation of the relevant rules and is liable to be quashed and petitioner is entitled for promotion to the post of Revenue Inspector. The representation of the petitioner was also dismissed. Hence this petition.

3. The petition has been opposed on behalf of the respondents and by filing two separate written statements, one on behalf of respondents 2 and 3 and another on behalf of respondents 4 and 5 and it has been stated that the seniority list was declared on 20.9.2008, which has not been challenged by the petitioner within the prescribed period of limitation therefore, the petition is time barred as the seniority list dated 20.09.2008 has been challenged in the present petition. The provisions of the Uttarakhand Govt. Servants Criteria for Promotions Rules, 2004 are not applicable in the present case. It is further stated that after training, the seniority has been re-determined in accordance with Rule-27 and 34 of the U.P. Subordinate Revenue Executive (Supervisor Kanoongos) Services Rules, 1977. Thus, the petition is devoid of merit and is liable to be dismissed.

4. No rejoinder affidavit has been filed on behalf of the petitioner.

5. We have heard both the parties and perused the record carefully.

6. The following facts are fully established on record and there is no dispute regarding these facts:

- i. That the petitioner and private respondents no. 4 and 5 have joined the service as Lekhpal and belong to the plain cadre,
- ii. That all of them have completed five years of service as Lekhpal,
- iii. That petitioner and the private respondents have completed successful training required for the promotion to the post of Revenue Inspector,
- iv. That in the cadre of Lekhpal, the petitioner was senior to the private respondents no. 4 and 5,
- v. That after the required training for the post of Revenue Inspector, a fresh seniority was drawn in accordance with their performance in the training on 20.09.2008,
- vi. That petitioner was placed at sl. 11 whereas the private respondents no 4 and 5 were placed at serial no 2 and 4 respectively.
- vii. That the private respondents no. 4 and 5 have been promoted to the post of Revenue Inspector vide order dated 10.04.2012,
- viii. That the petitioner had made a representation against the promotion of the private respondents but was dismissed.

- ix. Kanungos are now renamed as revenue inspectors and the rules applicable to the post of kanungos are applicable to the post of revenue inspectors

7. In the light of the above facts, the first question to be adjudicated upon is whether the petition is barred by time. In this regard it has been argued on behalf of the respondents that the petitioner has not challenged the list of seniority issued in the year 2008 within the prescribed time limit, so the petition is barred by time, but we are not convinced with this contention. It has not been proved as to whether the seniority list was served upon the petitioner or not? Until the seniority list was in the knowledge of the petitioner, it cannot be said that petitioner had not challenged it. Apart from it, it is also important to mention that, the petitioner had moved a representation against the seniority list and after rejection of that representation, the petitioner has preferred this petition. Under the above circumstance, the petition cannot be treated as barred by time.

8. Now the vital question for adjudication remains as to whether a fresh seniority can be drawn on the basis of performance of the parties in the required training for promotion to the post of Revenue Inspector. In this regard, Rule 27 and 34 of the U.P. Subordinate Revenue Executive (Supervisor Kanoongos) Services Rules, 1977 has been referred on behalf of the respondents which read as follows:

“27. Diploma Holders:- The Board shall maintain a list of the candidates who have successfully undergone the prescribed training and have been entitled to receive the diploma of the Institute. The name in the list shall be arranged according to the year in which the candidates pass the final examination of the Institute and their position in that examination,

Provided that if two or more candidates secure the same position their names shall be arranged according to the age the older one will be placed above”

Rule 34 reads as follows:

“34. Seniority :- Except as provided in rule 44 seniority of the candidates appointed to the post of Supervisory Kanungo in any year shall be determined by the position in the list of diploma holders maintained under rule 27:”

The respondents have contended that the seniority of the parties have been fixed in accordance with the above mentioned rules.

9. On the other hand, the petitioner has placed reliance on two Govt. Orders which are also relevant as well as very important. The first G.O. issued by the Principal Secretary, Govt. of Uttarakhand on 30.10.2009 numbered as 490/XVIII(1)/09-3(15)/2009, which lays down that after making amendment in the relevant rules, directions were issued for determination of the seniority of the cadre of the Revenue Inspectors.

The relevant direction is contained in clause-7, which reads as under:

“राजस्व निरीक्षक के पद पर ज्येष्ठता का निर्धारण “उ०प्र० सरकारी सेवक ज्येष्ठता नियमावली, 1991 के संगत नियम-7 के अनुसार किया जायेगा।”

In the same G.O, it is further clarified that after the creation of State of Uttarakhand separates rules have been framed for determination of seniority of Govt. Servants known as “Uttaranchal Govt. Servants Seniority Rules, 2002” and seniority of the candidates after the training, the seniority of them shall be determined in accordance with these rules. This direction is contained in para-4 of the said G.O., which reads as follows:

“वर्तमान में उत्तराखण्ड राज्य में उत्तरांचल सरकारी सेवक ज्येष्ठता नियमावली, 2002 का प्रख्यापन किया जा चुका है अतः प्रशिक्षण के उपरान्त इन कार्मिकों की ज्येष्ठता का निर्धारण उत्तरांचल सरकारी सेवक ज्येष्ठता नियमावली, 2002 के संगत प्रावधानों के अनुसार किया जायेगा।”

The Second G.O. issued by Secretary, Govt. of Uttarakhand numbered as 166/XVIII(1)/11-03(15)/2000, dated 12.02.2011, which reads as follows:

- “1. राजस्व निरीक्षक पद पर प्रोन्नति से पूर्व अनिवार्य प्रशिक्षण की अवधि साढ़े चार माह की होगी।
2. साढ़े चार माह के प्रशिक्षण के लिए पाठ्यक्रम राजस्व पुलिस एवं भूलेख सर्वेक्षण प्रशिक्षण संस्थान, अल्मोड़ा द्वारा

यथाआवश्यकता उत्तराखण्ड प्रशासन अकादमी/मुख्य राजस्व आयुक्त से परामर्श प्राप्त कर निर्धारित किया जायेगा। प्रशिक्षण के उपरान्त संस्थान द्वारा एक सरलीकृत परीक्षा का आयोजन अपने स्तर पर किया जायेगा।

3. प्रशिक्षण उपरान्त परीक्षा उत्तीर्ण करने के लिए अधिकतम 2 अवसर दिये जायेंगे। परीक्षा में सफल होने पर ही प्रशिक्षणार्थियों को संतोषजनक रूप से प्रशिक्षण प्राप्त करने का प्रमाण पत्र भी संस्थान द्वारा इन अवसरों के बाद निर्गत किया जायेगा। संतोषजनक रूप से प्रशिक्षण प्राप्त करने का प्रमाण पत्र प्राप्त करने तक प्रशिक्षु को राजस्व निरीक्षक पद पर विनियमित नहीं किया जायेगा।

4. परीक्षा परिणाम के आधार पर किसी कार्मिक की ज्येष्ठता प्रभावित नहीं होगी। ज्येष्ठता के सम्बन्ध में उत्तराखण्ड राज्य में लागू एवं समय-समय पर संशोधित उत्तराखण्ड सरकारी सेवक ज्येष्ठता नियमावली, 2002 के प्रावधान लागू रहेंगे।”

10. The last Govt. Order mentioned above is relevant for the determination of the seniority as this G.O. has been issued in supersession of the above mentioned G.O. issued in the year 2009. From the above mentioned G.O., it becomes crystal clear that seniority of the candidates is to be determined in accordance with the Uttaranchal Govt. Servants Seniority Rules, 2002 and not in accordance with the Rule-27 and 34 of the U.P. Subordinate Revenue Executive (Supervisor Kanoongos) Services Rules, 1977. The Uttaranchal Govt. Servants Seniority Rules, 2002 lays down the following provisions for determination of the seniority, which are applicable to the present case:

“Rule-6- Where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

***Explanation-** A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.”*

11. Thus, in accordance with the G.O. and the provisions contained in the above seniority rules, it becomes clear that petitioner and the private respondents being the member of the same feeding cadre, therefore, their promotion to the post of Revenue Inspector should have been made in accordance with the seniority in the feeding cadre. It also becomes crystal clear that seniority is not permissible to be re determined on the basis of the performance or the result of the examination held on training the seniority list drawn on the basis of performance in the requisite training cannot be held justified.

12. There is another aspect of the matter. The relevant rules, which are admittedly applicable to the parties, lays down that for the promotion, the seniority is to be determined in accordance with the performance of the candidates in the training. So the directions given in the Govt. orders will not override the rules. But in the present case, it is not the Govt. orders which are material rather the Uttaranchal Govt. Servants Seniority Rules, 2002 are very important and Rule-3 of the said Rules lays down that these

rules will have overriding effect over other rules either made after these rules or before these rules. So, this provision contained in the Uttaranchal Govt. Servants Seniority Rules, 2002 will have the overriding effect over the relevant services named as the U.P. Subordinate Revenue Executive (Supervisor Kanungos) Services Rules, 1977, so the provisions contained in Rule-27 will not remain effective after the enactment of Uttaranchal Govt. Servants Seniority Rules, 2002.

13. A part from the facts mentioned and discussed above, the important aspect is that a seniority was drawn by the respondents in the year 2010 (Copy Annexure A -4) in which the petitioner was placed at serial no 13 whereas the respondent no 4 and 5 were placed at serial no 18 and 19 respectively. Thus the petitioner becomes senior to that of the private respondents. It has not been considered by the respondent no. 3 while considering the representation of the petitioner. So the order passed on the representation of the petitioner requires reconsideration.

14. On the basis of the above discussion, we are of the view that the representation of the petitioner has not been decided in the right, just and legal perspective and it requires reconsideration. The order passed on the representation of the petitioner is cursory in nature and it cannot be upheld. We are of the view that the order passed on the representation of the petitioner is liable to be quashed. Further a direction is required to be given to the respondent no. 3 to reconsider the representation of the petitioner in the light of the observation made in the

judgment and decide it afresh by a reasoned and speaking order. Till the representation of the petitioner is decided, we do not think it proper to quash the impugned order dated 10.4.2012.

ORDER

The petition is partly allowed and the order dated 22.05.2012 (Annexure A-2) passed on the representation of the petitioner is hereby set aside. The respondent no. 3 is directed to decide the representation of the petitioner afresh within a period of two months from today in the light of the observations made in the body of the judgment.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: DECEMBER 04, 2014
DEHRADUN

KNP