

**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. 22/DB/2020

Arun Kumar Goel aged about 57 years, s/o Shri Pooran Mal Goel, r/o Mahadev Vihar General Mahadev Singh Road, Dehradun, employed as Superintending Engineer, A.D.B., Circle, Public Works department, New Tehri.

.....Petitioner

vs.

1. State of Uttarakhand through Additional Chief Secretary, P.W.D., Govt. of Uttarakhand, Secretariat, Dehradun.
2. Engineer-in-Chief and Head of the Department, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Advocate for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 08, 2021

Rajeev Gupta, Vice Chairman (A) (Oral)

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

(i) To issue an order or direction to the respondent no. 1 to place the petitioner in the seniority list of Assistant Engineers of the department as per promotion order dated 10.06.2009 and order dated 20.11.2009 of the State of Uttar Pradesh and ensure the compliance of this Hon'ble Tribunal's judgment dated 16.07.2003 passed in Claim Petition No. 01/2001 and judgment dated 17.11.2011 passed in Claim Petition no. 47/2011 or in alternate to issue an order or direction to the respondent no. 01 to ensure the determination of the seniority of the petitioner in the cadre of Assistant Engineers on the basis of his promotion since 1990 from the State of Uttar Pradesh and until the determination of the seniority by the State of Uttar Pradesh, to grant

the promotion and service benefits provisionally to the petitioner on the basis of his promotion since 1990, if the same are given to the Assistant Engineers of the year 1990 or subsequent years i.e. in selection year 1990-91 or 1991-92.

(ii) To declare that the petitioner is eligible and entitled for consideration for promotion on the post of Chief Engineer Level-2 and accordingly issue an order or direction to the respondents to convene a review DPC and consider the petitioner on the post of Chief Engineer Level-2 considering his annual character rolls and service records in accordance to the Uttaranchal Government Servant (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules 2002 and Uttarakhand Government Servant (Disposal of Representation against Adverse, Bad, Satisfactory, Good, Very good and Outstanding Annual Confidential Reports and Allied Matters) Rules 2015 with all consequential benefits on the post of Chief Engineer Level-2 w.e.f. 25.04.2020.

(iii) To take the action against the respondents and other persons who have made exploitation and gross injustice against the petitioner.

(iv) To pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

(v) To allow this petition with cost as quantified Rs.51,000/-.

2. Facts of the claim petition, are briefly as follows:

The petitioner joined the services of the U.P. Govt. as Junior Engineer in 1983. He was promoted as Assistant Engineer in 1998. On the basis of the protracted litigation, the U.P. Govt. issued an order in 2009 that he is notionally promoted in a vacancy of the selection year 1990-91 and requested the Govt. of Uttarakhand to fix his seniority on that basis. The Govt. of Uttarakhand amended the earlier seniority list of 2011 on this basis and issued a revised seniority in 2015 in which, the petitioner was placed at sl. No. 50C.

3. Aggrieved with the same, Sri Deepak Kumar Yadav and Sri Khagendra Prasad Upreti filed a Claim Petition No. 33/DB/2015 before this Tribunal, which was decided by this Tribunal on 06.09.2018. In its judgment, the Tribunal relied upon the observations of Hon'ble Apex Court in State of Uttarakhand and another vs. Umakant Joshi reported in 2012(1)

U.D. 583, the decision of Hon'ble High Court of Uttarakhand in Dr. Kamaljeet Singh and another vs. State of Uttarakhand and others, writ petition (S/B) No. 102 of 2017 and also the judgment of Hon'ble High Court of Uttarakhand passed in writ petition 47(S/B) of 2011, filed by the present petitioner, which was decided on 21.06.2018, in which, the Hon'ble High Court had declined jurisdiction and dismissed the writ petition. The relevant part of the judgment and order dated 06.09.2018 of this Tribunal, is reproduced below:

"12. In view of analysis in paragraphs 8 to 11 above, we hold that the State of Uttarakhand could not promote respondent No. 4 as AE w.e.f. 01.07.1990 as it did not have jurisdiction and, therefore, it was not competent to do the same. We also hold that the State of Uttarakhand had no jurisdiction to modify/determine the seniority and, therefore, it was not competent to do the same. We also hold that only the State of Uttar Pradesh had jurisdiction and, therefore, only the State of Uttar Pradesh was competent to act on these issues.

13. For the reasons stated above, the seniority list dated 24.06.2015 is illegal and void and, therefore, it is liable to be set aside."

4. With the quashing of the seniority list dated 24.06.2015 by the Tribunal, old seniority list got revived, in which seniority of the petitioner was fixed treating his date of promotion to the post of Assistant Engineer to be in the year 1998.

5. We observe from the above that, the order issued by the State of U.P. in 2009 whereby the petitioner was promoted to the post of Assistant Engineer for the vacancy of selection year of 1990-91 still exists and fixation of his seniority on that basis can be done by the State of U.P. only in view of the decision of the Hon'ble Courts, quoted above.

6. Learned Counsel for the petitioner submitted that the Tribunal while deciding the claim petition No. 33/DB/2015 should have also asked the State of Uttarakhand to get the seniority of the petitioner determined

appropriately by the State Govt. of U.P. as the State Govt. of Uttarakhand was not competent to do the same.

7. Learned Counsel for the petitioner now requests that a direction should be issued to the Uttarakhand Govt. to get the seniority of the petitioner determined by the Govt. of U.P. at the earliest, based on their order of 2009 promoting the petitioner in the vacancy of the selection year 1990-91 and place him at an appropriate position in the seniority list of Assistant Engineers working in the erstwhile State of U.P. Learned A.P.O. is not averse to this proposition in view of the orders of Hon'ble Courts.

8. We feel that this is the only way to bring the matter to a logical conclusion.

9. In view of above, we direct the respondents to get the seniority of the petitioner determined as above from the Govt. of U.P. and get the amended seniority list of the Assistant Engineers working in the State of U.P. at that time, within a period of three months from the date of presentation of certified copy of this order before them.

10. Pursuant to fixation of seniority of the petitioner and revision of the seniority list by the U.P. Govt., the respondents may also revise their seniority list accordingly and take further action about the promotion of the petitioner.

11. Claim Petition is disposed of accordingly. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 08, 2021.

DEHRADUN

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