

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

Judgment reserved on 04.08.2021.
Judgment delivered on 14.09.2021

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 28/DB/2020

K.C.Sharma 'Panthari', s/o Late Shri Brahmanand Sharma, Accountant, Office of the Chief/District Development Officer, Roshnabad, Haridwar, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through its Principal Secretary/Secretary, Rural Development Department, Govt. of Uttarakhand.
2. Secretary, Finance, Govt. of Uttarakhand.
3. Director, Account Directorate, 23, Laxmi Road, Dalanwala, Dehradun, Uttarakhand.
4. The Commissioner, Department of Rural Development, Uttarakhand, Pauri.

.....Respondents.

Present: Dr. N.K.Pant, Advocate for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 14, 2021

Per: Sri Rajeev Gupta, Vice Chairman (A)

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

“(i) To quash the impugned order dated 07.03.2018 along with its annexure no. 1 and 2 along with its effect and operation declaring that the respondent no.3 has no authority to challenge the right of the appointing /competent authority of the petitioner and pass an order for inclusion of the petitioners names in the state level seniority

list with view of relaxation granted vide G.O. letter dated 21.07.2006.

(ii) To issue an order or direction to concerned respondent to include the name of the petitioner and other accountant of the rural development department in the state seniority list dated 08.03.2018 of accountants working under the various departments mentioned in the schedule 'A' of amended service rules 2017 of AAO according to his/their seniority from the date of initial appointment/promotion.

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

(iv) To grant expenses of the proceedings.

(v) To award the cost of claim petition to the petitioner."

2. Brief facts, according to the claim petition, are as follows:

Petitioner is working and posted as Accountant in the office of Chief/District Development Officer, Haridwar. Initially, he was appointed as Junior Accounts Clerk in 1991 and was subsequently promoted on the post of Accounts Clerk/ Assistant Accountant in 1993. Petitioner, along with other Assistant Accountants, thereafter, was promoted to the post of Accountant, *vide* order dated 30.11.2012. This order was subsequently amended by another order dated 05.10.2013 *vide* which notional promotion was granted to the petitioner and other promoted persons *w.e.f.* 21.08.2007 for the limited purpose of determination of seniority only. U.P. Assistant Accounts Officers' Service Rules were framed in 1985. On creation of State of Uttarakhand, State Government framed Uttarakhand Assistant Accounts Officer Service Rules, 2003. Rules were further amended in the year 2017 according to which, post of Assistant Accounts Officer is to be filled cent percent by promotion from Accountants/Senior Auditors of various government departments.

Until 2008, the Accountants of Rural Development Department were included in the State list of Accountants for promotion to the post of Assistant Accounts Officer.

On the recommendation of the Pay Commission, the post of Accounts Clerk was declared as dead cadre *vide* Government Order dated 02.08.2004 and nomenclature of Accounts Clerk was changed to Assistant Accountant. It was provided in the G.O. that those substantively appointed Assistant Accountants, who have passed first departmental examination, up to the completion of three years of service on the post, have been sanctioned the pay scale of Rs.5000-8000/-. *Vide* order dated 21.07.2006, Respondent No.1 granted relaxation to the Assistant Accountants of the department to pass the departmental examination for promotion to the post of Accountant. Uttarakhand Accounts Cadre (Rural Development Department) Service Rules were framed in 2011. After reorganization of the cadre structure of Rural Department, 274 Assistant Accountants were promoted to the post of Accountant since the date of their joining. In this promotion order dated 30.11.2012, the name of the petitioner was included. Subsequently, *vide* order dated 05.10.2013, promotion order dated 30.11.2012 was modified and notional promotion was granted to the Accountants of Rural Development since 21.08.2007, for the purpose of seniority only; no other benefit was granted for this period. Commissioner Rural Development, thereafter, wrote to Respondent No.3 for the inclusion of the names of departmental Accountants in the State seniority list of Accountants/ Senior Accountants. Respondent No.3 raised objection as regards inclusion of Accountants of Rural Department in the State Seniority list. Petitioner also sent a legal notice to Respondents No. 1 & 2, but to no avail. They issued the State tentative seniority list of Accountants in December, 2017. A writ petition was filed before Hon'ble High Court, who, *vide* order dated 08.01.2018 gave direction to the respondents to decide the representation of the petitioner. According to petitioner, such representation was dismissed *vide* order dated 07.03.2018. Such rejection of the representation was illegal.

Petitioner had filed a claim petition on similar ground being claim petition No. 13/DB/2018 before this Tribunal, which was decided by this

Tribunal *vide* judgment dated 27.07.2018. The operative part of this judgment is reproduced below:

“8. We, therefore, think it proper to relegate the matter to Ld. Chief Secretary to the Govt. of Uttarakhand to make an endeavour to reconcile contradictory views of Rural Development Department and Finance Department, and bring the dispute, between two departments of the State Govt., to a logical conclusion.

9. Ld. Chief Secretary, Government of Uttarakhand is, accordingly, requested to convene a meeting of officers representing Rural Development Department and Finance Department, within 8 weeks of presentation of certified copy of this order, and resolve the controversy raised in present claim petition, which pertains to inclusion of the Accountants of Rural Development Department in the State seniority list of the Accountants, in accordance with law.”

3. In continuation of the above order, Chief Secretary convened a meeting on 12.02.2020 in which other controversy has been raised according to the petitioner and the names of Accountants of Rural Development Department have not been included in the State list of Accountants for promotion to the post of Assistant Accounts Officer. Hence, this petition.

4. Counter Affidavits praying for dismissal of the claim petition have been filed on behalf of respondents no. 1 & 4 and respondents no. 2 & 3. Rejoinder Affidavits have been filed by the petitioner and Additional Affidavits have also been filed by the parties in response to the observations of the Tribunal.

5. During hearing, the Tribunal asked the respondents as to what action has been taken by the Govt. in furtherance of the decision taken in the meeting dated 12.02.2020 of the Chief Secretary, Uttarakhand. In this decision, it was mentioned that the persons, who have been promoted through relevant Services Rules and G.Os. on the post of Accountant in the Rural Development Department, will be included in the State seniority list of Accountants being considered for promotion to the post of Assistant

Accounts Officer. The Tribunal also directed the Govt. to complete the identification of such persons to be included in the State list in two months.

6. It has been pleaded by learned A.P.O. before the Tribunal that none of the Accountants of the Rural Development Department can be included in the State seniority list as they have not passed the first departmental examination as stipulated in the earlier Government Order of 2004 and subsequently in the corresponding Rules of 2011 of Rural Development Department. The contention of the petitioner is that *vide* Govt. Order of 2006, one time relaxation was given about passing of the departmental examination and on the basis of the same, they were promoted as Accountants without going through the departmental examination. A perusal of this G.O. reveals that it talked of only one relaxation in the condition of passing departmental examination but at the same time, asked the Commissioner, Rural Department to contact Administrative Training Institute, Nainital to arrange departmental examination within a month. The language of this G.O. is confusing and the respondents in their C.A. have interpreted that the relaxation was a one time opportunity to get the departmental examination arranged by the ATI. We do not find this argument of respondents convincing but we do observe that after this G.O., the relevant Rules of 2011 of Rural Development Department, did *provide* for the necessity of passing the departmental examination for promotion to the post of Accountant and for promotions of 274 Assistant Accountants to the post of Accountant in 2012, relaxation given in 2006 could not be used as a basis for not holding the departmental examination before promotion.

7. We do not want to hold these promotions of 274 Accountants of Rural Development Department as illegal for the reason that it was not the fault of these Accountants that the departmental examination was not conducted for them. However, when Accountants from different departments are being drawn into a combined State list for further promotion to the post of Assistant Accounts Officer, the requirement of

their having been promoted according to the relevant Service Rules cannot be ignored. Therefore, we observe that for inclusion in the State combined list for further promotion to the post of Assistant Accounts officer, these Accountants of the Rural Development Department should have been made to pass the departmental examination before their promotion to the post of Accountant. However, natural justice demands that for no fault of theirs, they should not be blocked forever in getting entry into State list of Accountants for further promotion to the post of Assistant Accounts Officer. The way to resolve this anomaly is to now hold a departmental examination for those Accountants of the Rural Development Department who want to get included in the State combined list for promotion to the post of Assistant Accounts Officer, instead of creating impasse on this ground. The petitioner in his R.A. dated 27.05.2021 has mentioned that the Additional Commissioner, Rural Development Department, Pauri, has requested Respondent no. 3 *vide* his letter No. 718 dated 31.05.2017 (Annexure: R-3 to this R.A.) for conducting the departmental examination of the persons promoted from the post of Assistant Accountant to Accountant. He had enclosed a list of 235 persons working on the post of Accountants, including the petitioner, whose departmental examination was proposed. This R.A. states that the Respondent no. 3 has ignored this letter while he has conducted examinations from 2016 onwards for other departments. Respondent no. 3 has also stated in his C.A. that he has conducted departmental examination for Assistant Accountants of various departments. **Therefore, the respondent no. 3 is directed to hold a departmental examination for the Accountants of the Rural Development Department, as he has been holding for many other government departments for promotions to the post of Accountants in those departments. The Accountants of Rural Development Department, who qualify such examination, shall be eligible for inclusion in the State combined list for promotion to the post of Assistant Accounts Officer.**

Learned Counsel for the petitioner in his written arguments dated 16.08.2021 has stated that one time relaxation of not passing

departmental examination given *vide* G.O. dated 21.07.2006 was also given to the Assistant Accountants of the Panchayati Raj Department and he has also enclosed a promotion order of 10 Assistant Accountants of the Panchayati Raj Department to the post of Accountant. A perusal of this promotion order dated 05.11.2009 shows that it refers to the arrangement prescribed in G.O. dated 11.12.2006 and G.O. dated 31.07.2006. The G.O. dated 31.07.2006 bears the same number as the G.O. dated 21.07.2006 filed as Annexure-11 to the claim petition, which is regarding one time relaxation. It is not clear as to what was provided in the other G.O. dated 11.12.2006, which is mentioned in this promotion order. Learned Counsel for the petitioner has asserted that the department of respondent no. 3 has not made any objection against inclusion of these Panchayati Raj Accountants in combined State list while they are raising objections for inclusion of Accountants of Rural Development Department. Respondent no. 3 has stated in his Supplementary Affidavit that the different departments at their own level, according to their Service Rules, had been making promotions from the post of Assistant Accountant to Accountant. The departments which had the provision of passing of departmental examination in the relevant Service Rules have made promotions to the posts of Accountants after conducting departmental examination. Those departments, whose relevant Service Rules do not have the necessity of passing departmental examination, perhaps have made promotions without departmental examination according to their relevant Service Rules. In the knowledge of his department, there is no instance of inclusion of Accountants in the State list, who have not qualified the departmental examination where necessity of the same is provided in the relevant Service Rules or executive orders. The petitioner has stated in his R.A. dated 27.05.2021 that the Govt. had issued a G.O. No. 201 dated 13.07.2007 (Annexure: R-2 to this Affidavit) about the establishment of Accounts/Auditor cadre in different departments which provides for passing of departmental examination for promotion to the post of Accountant. Therefore, the averment of Respondent no. 3 that in those departments where no

provision was made for departmental examination, promotions to the post of Accountant could be made without such examination, is not correct as the same was made mandatory for all departments *vide* G.O. dated 13.07.2007 of the Finance Department. However, it is still possible that some departments may not have made the departmental examination mandatory in their Service Rules. Such Accountants of other departments are not before us in the present claim petition. So, it will not be proper on our part to probe in their matter.

8. The second issue is that in the year 2013, most of the Accountants of the Rural Development Department promoted in 2012, were given notional seniority from 21.08.2007. A perusal of this order dated 05.10.2013 of the Commissioner, Rural Development Department reveals that 158 Accountants have been given notional promotion for the purpose of determination of seniority only w.e.f. 21.08.2007 and others have been given such promotion from 10.12.2008 and further dates. The objection of the respondents that, prior to 2008 only 14 posts of Accountants existed in the department, is valid and as such, only 14 senior-most of such persons can be given notional promotion from 21.08.2007 and remaining persons have to be considered as promoted after further posts of Accountants were created by G.O. dated 10.12.2008, and after qualifying the departmental examination, their seniority has to be placed accordingly, in the State list. We, however, observe that in the final seniority list of Accountants issued by Commissioner, Rural Development Department *vide* letter no. 426 dated 17.06.2020, names of 174 Accountants have been included and the date of promotion order to the post of Accountant of the top 163 persons have been shown as 30.11.2012. This seniority list does not talk of notional promotion from earlier dates. Therefore, where exactly seniority of those Accountants of Rural Development Department, who qualify departmental examination has to be placed in the State combined list, can be mutually decided by the Respondents no. 3 & 4.

9. The third issue is about some of the Accountants of the Rural Development Department not possessing the requisite qualification as laid down in the G.O. of 1983. We find that the Rural Development Department while implementing this G.O. had fixed a cutoff date of 04.12.1985 and persons appointed prior to this date could have held lesser qualifications and still have joined the Accounts cadre. But persons appointed after 04.12.1985 were required to possess the requisite qualification. We direct that the same criterion be applied for inclusion of Accountants of Rural Development Department in the State list i.e., persons recruited after 04.12.1985 must have the requisite qualification while persons recruited before 04.12.1985 can be exempted from such qualifications.

10. It is also to clarify that all the Accountants of the Rural Development Department who are unable to join the State list shall be entitled to benefit of ACP etc. in their own department as has also been stated in the minutes of meeting held by the Chief Secretary on 12.02.2020.

11. The claim petition is disposed of with the above directions/ observations. The respondents may take action accordingly to include the names of Accountants of Rural Development in the State list for promotion to the post of Assistant Accounts Officer, within a period of three months, from the date of presentation of certified copy of this order before them. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 14, 2021.
DEHRADUN
KNP