

**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. 01/DB/2021

Vishesh Kumar, s/o Late Sri Dharmender Kumar, aged about 57 years, presently working and posted as Work Supervisor at Uttarakhand Pey Jal Nigam Dehradun branch, Chakki Tola, Niranjapur, District Dehradun, Uttarakhand.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Pey Jal, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chairman/ Uttarakhand Pey Jal Sanshadhan Vikas Avem Nirman Nigam, 11-Mohini Road, Dehradun.
3. Managing Director, Pey Jal Sanshadhan Vikas Avem Nirman Nigam, 11-Mohini Road, Dehradun.
4. General Manager (Bhujal/ Survey). Head Office Uttarakhand, Pey Jal Nigam, 11-Mohini Road, Dehradun.
5. Chief Engineer (Garhwal), Uttarakhand Pey Jal Sanshadhan Vikas Avem Nirman Nigam, 11-Mohini Road, Dehradun.

..... Respondents

Present: Sri M.C. Pant and Sri Abhishek Chamoli, Advocates,
for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondent No. 1
Dr. N.K. Pant, Advocate, for the Respondents No. 2 to 5

Judgement

Dated: 23rd May, 2022

Justice U.C. Dhyani (Oral)

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

- “(i) To issue order or direction to quash the impugned order dated 04.09.2020 and 09.11.2020 along with its effect and operation also after

calling entire records from the respondent, keeping in view the facts highlighted in the body of the petition or to mould the relief appropriately.

(ii) To issue order or direction to the concerned respondents to grant the benefit of post of work supervisor to the petitioner since the date of his regularization on the post of work agent i.e. since 01.04.1990, vide order dated 20.11.1990 as was given to the other similarly situated and junior persons to the petitioner, with all consequential service benefits had it been the impugned order never been in existence.

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

(iv) To award the cost of petition.”

2. This is the second round of litigation between the parties. Instead of narrating the facts afresh, it will be proper to reproduce the judgement dated 19.02.2020 of this Tribunal rendered in claim petition no.152/DB/2019, Vishesh Kumar vs. State of Uttarakhand and others, to understand the controversy in hand as below:

“By means of present claim petition, the petitioner seeks the following principal relief, among others:

“To issue order or direction to the concerned respondents to grant the benefit of post of work supervisor to the petitioner since the date of his regularization on the post of work agents i.e. since 20.11.1990, as was given to the other similarly situated and junior persons to the petitioner, with all consequential service benefits.”

2. Brief facts, giving rise to present claim petition, are as follows:

The petitioner was initially engaged as work supervisor on muster roll/daily wages on 01.09.1983 in Uttarakhand Pey Jal Nigam (hereinafter referred to as respondent department). *Vide* order dated 20.11.1990 of the then Superintending Engineer, the petitioner was regularized on the post of work agent. The grievance of the petitioner is that his regularization was to be done on the post of work supervisor, and not on the lower post of work agent. Petitioner made a representation to the then Executive Engineer on 11.07.1994. The Executive Engineer, *vide* letter dated 12.07.1994 recommended the case of the petitioner to Superintending Engineer, Plinth Circle. Thereafter, the then S.E., 9th Circle, *vide* order dated 13.12.1994, promoted the petitioner on the post of work

supervisor. According to the petitioner, his services should have been regularized on the post of work supervisor *w.e.f.* 01.04.1990, as similarly situated persons, who were initially engaged in the department on daily wages/ muster roll, on the post of work supervisor and regularized on the post of work agent, were regularized on the post of work supervisor from initial date by modifying their orders. The regularization was done retrospectively. Names of a few such employees have been given by the petitioner in para 4 (g & h) of the claim petition. Petitioner made representation to the respondents and prayed for regularization on the post of work supervisor. Respondent No. 3, *vide* letter dated 23.09.2013, made a query from S.E., Construction Division, Dehradun, who, *vide* letter dated 07.10.2013 forwarded the information to Respondent No.3, received from Executive Engineer, Dehradun *vide* letter dated 05.10.2013 and letter dated 07.10.2013. When no action was taken, then petitioner made representation to M.D. and G.M. of the respondent department. The G.M. (Admin), *vide* letter dated 21.08.2018, forwarded the representation of the petitioner to Respondent No.4 for necessary action. Respondent No.4, *vide* letter dated 08.09.2018 desired comments from Executive Engineer, Dehradun, who *vide* letter dated 20.09.2018 submitted his report and recommended the case of the petitioner. Respondent No.3 raised certain objections stating therein that there are major anomalies in the present report and earlier report. Respondent No.4 returned the case of the petitioner to Respondent No.3, with a direction to dispose of the matter after re-examining it, as the appointing authority of the regular field employees was Regional Chief Engineer. Till date no action has been taken in the matter. The same is pending unnecessarily and without any reason. The benefit of regularization, with retrospective effect, has already been given to the juniors of the petitioner. Hence, present claim petition.

3. Ld. A.P.O., who is representing Respondent No.1 and Sri Manokam Nautiyal, Advocate, who is representing rest of the respondents, objected to the maintainability of the claim petition, on the ground that the same has been filed belatedly.

4. An application for condoning the delay in filing the claim petition has been filed. It is the submission of the petitioner that similarly placed work supervisors in the respondent department were given relief by the department in the year 2013, and he has continuously been approaching the respondent department for such relief, therefore, petitioner should be granted similar relief after condoning the delay.

5. Written objections have been filed on behalf of respondents, vehemently opposing the maintainability of the claim petition by stating that by rendering his services as work agent for four years without any protest, the petitioner has accepted his regularization on the post of work agent *w.e.f.* 01.04.1990 and not being promoted to the post of work supervisor *vide* order dated 23.12.1994.

6. Ld. A.P.O. submitted that the period for filing the claim petition before this Tribunal is one year and petitioner has filed present claim petition after a considerable delay of more than 29 years. The claim petition, therefore, suffers from laches, according to Ld. A.P.O.

7. We have given our anxious consideration to the aforesaid objections of Ld. A.P.O. and Ld. Counsel for respondent department. After going through the pleadings and documents brought on record, we are of the view that it is not a case in which the petitioner has been sitting idle since 1990. He has repeatedly been espousing his cause through representations, which were, most of the times, recommended by the departmental officers to their superiors. Some action was taken on such recommendatory letters, but ultimately the same could not clinch the issue in favour of the petitioner, despite the fact that those who were engaged as muster roll work supervisor after engagement of the petitioner, have been given benefit of regularization retrospectively. The peculiar characteristic of this case is that initially the petitioner was engaged as muster roll employee as work supervisor. After having served the respondent department for 4 years, he was although regularized, but on the lower grade post of work agent. Whereas similarly placed employees were subsequently regularized on the post of work supervisor, the petitioner was not. In other words, similarly placed employees, who were initially engaged as work supervisor, were regularized on the post of work supervisor, retrospectively. In between, they were regularized as work agent. The petitioner has been hoping that his regularization will be done from the back date like his juniors, but the same did not yield result. Several documents from Annexure: A-1 to Annexure:A-13 have been brought on record to show the same. Annexure: A-3 is a copy of the representation of the petitioner dated 11.07.1994, addressed to Executive Engineer, Dehradun. Annexure: A-4 is letter dated 12.07.1994, written by Executive Engineer to Superintending Engineer, U.P. Pey Jal Nigam. The petitioner was promoted on the post of work supervisor *w.e.f.* 02.12.1988 in the pay scale of Rs.825-15-900/- *vide* letter dated 23.12.1994. The case of one Sri Virendra Singh Bisht, work agent was reviewed *vide* letter dated 21.11.2001 and was regularized on the post of work supervisor *w.e.f.* 01.04.1984 (Annexure: A-6). Similar treatment was given to one Sri Pratap

Singh, work agent *vide* Annexure: A-7. Copies of representations given by the petitioner to his superior officers, from time to time, have also been brought on record. Petitioner's case was recommended by his superiors and one such example is recommendation of Ms. Pallavi Kumari, Executive Engineer, who on 20.09.2018 (Annexure: A 11). G.M., (Ground Water/ Survey), wrote a letter to Chief Engineer, Garhwal on 06.10.2018 (Annexure: A 12) to decide the matter at his own level after re-examining the issues involved. The documents obtained under RTI have also been filed to show that it was continuous and concerted effort on the part of the petitioner to have agitated his grievance before the officers of the respondent department. Another recommendation in favour of the petitioner is a letter dated 22.01.2019 of Superintending Engineer, addressed to Chief Engineer, Garhwal and letter dated 18.11.2019 of Executive Engineer to Superintending Engineer, Construction Division of the respondent department.

8.

9. One can, therefore, safely conclude that the petitioner has not been sitting idle. He has made representations from time to time in an effort for redressal of his grievances, which, at times, were recommended by the departmental officers to their superiors. When the petitioner's concerted effort could not yield result, he was compelled to file present claim petition, which cannot be said to be time barred. It does not suffer from laches. Petitioner has not been sleeping over his rights.

10.

11. Now the only question which is left for consideration of this Tribunal remains— what should be done, if continuous representations of the petitioner are not decided by the respondent department? The only reply to the aforesaid question would be that Respondent No. 3 should be directed to bring the representation of the petitioner to its logical conclusion, as per law.

12. Order accordingly.

13. The claim petition is disposed of at the admission stage by directing Respondent No.3 to decide the pending representation(s) of the petitioner by a reasoned and speaking order, in accordance with law, at an earliest possible but not later than 12 weeks of presentation of certified copy of this order, along with a copy of such previous representation.

14. Needless to say that the decision so taken shall be communicated to the petitioner soon thereafter.”

3. Petitioner’s representation was rejected *vide* office memorandum dated 04.09.2020 (Annexure: A1) of Chief Engineer (Garhwal), *Uttarakhand Pey Jal Sanshadhan Vikas Avem Nirman Nigam*. The same was communicated to the petitioner *vide* letter dated 09.11.2020 of Chief Engineer (HQ) of the respondent-nigam. Both are in the teeth of present claim petition.

4. Written Statement has been filed by Dr. N.K. Pant on behalf of respondents no. 2 to 5, Uttarakhand Pey Jal Nigam.

5. Preliminary objections have been raised that the claim petition is barred by limitation. The claim petition has also been contested on merits by pleading that petitioner was initially regularized on the post of Work Agent *vide* order dated 20.11.1990 and he not only accepted his regularization as work agent but also worked on the same post for more than four years without protest. He was promoted to the post of Work Supervisor, *vide* order dated 23.12.1994, which too was accepted by him without any protest and ever since he is rendering his services as Work Supervisor. He is being paid salary and other allowances even for the post of Work Supervisor. Present claim petition has been filed after a period of more than 29 years.

6. Petitioner is not entitled to parity with Sri Harendra Singh, who filed a writ petition no. 708 (S/S) of 2007, before Hon’ble High Court of Uttarakhand. Sri Harendra Singh is not a party to present claim petition and was working as Pipeline Mistry/ Work Supervisor in work charge establishment before regularization. He was regularized on the post Work Agent by Superintending Engineer due to non-availability of the post of Work Supervisor. When Superintending Engineer demanded the post of Work Supervisor, the regularization of Sri Harendra Singh was amended as Work Supervisor in place of Work Agent *vide* order dated 20.10.2001. The

same treatment was given by Superintending Engineer to Sri Abbal Singh, Sri Anand Singh and Sri Sateshwar Singh.

7. According to Dr. N.K. Pant, learned Counsel for the respondent-Jal Nigam, the petitioner was engaged on muster roll. Regularization of employees depends upon the availability of the post. The post of Work Supervisor was not available at that time. Respondent-Nigam did not adopt the policy of 'pick and choose'. Otherwise also, the claim petition is barred by limitation.

8. Rejoinder Affidavit has been filed by the petitioner against the counter affidavit, filed on behalf of respondents no. 2 to 5.

9. It will be appropriate to quote the following observations of Hon'ble Apex Court in State of Uttarakhand & another vs. Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179, in which it was held that non-statutory representation will not extend the period of limitation, as below:

“Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time.”

9.1 Such ruling was not in the notice of the Tribunal in the first round of litigation.

10. It is the submission of learned Counsel for the petitioner that the respondents cannot be allowed to take the advantage of their own wrong. Present claim of the petitioner has continuous and recurring cause of action. Moreover, the claim, which is sought in this petition is a fundamental right and the same cannot be waived.

11. In para 10 of the rejoinder affidavit, it has been mentioned that the respondents have themselves admitted, in their counter affidavit, that the regularization of similarly situated persons were amended by the respondents. The Superintending Engineer amended the orders of S/Sri Abbal Singh, Anand Singh and Sateshwar Singh. Similarly situated persons were given the benefit, which benefit has been denied to the petitioner.

12. Learned Counsel for the petitioner submitted that the petitioner was initially appointed as Work Supervisor in muster roll/ daily wages on 01.09.1983 in Uttarakhand Pey Jal Nigam at Dehradun. Thereafter, the petitioner continuously performed the duties of Work Supervisor in the department. Petitioner has filed the copies of relevant pages of muster roll/ attendance register dated 01.09.1983 showing the work of petitioner on the post of Work Supervisor (Annexure: A3). Petitioner was regularized on the post of Work Agent from 01.04.1990. The respondent-department promoted him on the post of Work Supervisor *vide* order dated 23.12.1994. Petitioner made several representations to the respondents, but to no avail.

13. It has further been emphasized that similarly situated persons, who were initially engaged in the department on daily wages/ muster roll on the post of Work Supervisor and were regularized on the lowest post of Work Agent, later on their regularization orders were modified. They were regularized on the post of Work Supervisor retrospectively. Sri Virendra Singh Bisht and Sri Chandra Singh Bisht are/ were the similarly situated persons, who were regularized on the post of Work Agent *w.e.f.* 01.04.1984 and 01.04.1989 respectively. Later on, *vide* order dated 21.10.2001 and 17.09.2003 respectively, previous regularization orders of Sri Virendra Singh Bisht and Sri Chandra Singh Bisht were modified. Benefits of original post of Work Supervisor were given to them since the date of regularization. Copies of order dated 21.11.2001 in respect of Sri Virendra Singh Bisht and pay fixation order of Sri Chandra Singh Bisht have been filed as Annexure: A8 *colly* to the claim petition.

14. Similarly, some of petitioner's juniors, who were working on daily wages/ muster roll/ Work Charge on the lower post of Work Agent had been regularized on the higher/ promoted post of Work Supervisor. A copy of regularization order dated 31.01.1987 of junior Sri Pratap Singh, Work Agent on the post of Work Supervisor since 01.04.1985 has been filed as Annexure: A9 to the claim petition.

15. Learned Counsel for the petitioner also submitted that on the date of regularization, the posts were not available. On 20.11.1990, the petitioner was regularized on the post of Work Agent from 01.04.1990. Prior to this, *vide* no. 982/16/8/1985 by way of amendment, the post of Work Supervisor pay scale Rs. 335-495 was included. As such, on the date the petitioner was regularized, the post of Work Supervisor was available. Thus, denial of claim of the petitioner is wrong. Petitioner made a representation to the respondent-authority on 11.07.1994 and since then he is regularly pressing his matter before the authority concerned. Higher authority also called proposal from Executive Engineer in this respect and in all the proposals, it was admitted by the respondents that the appointment and working on the muster roll was on the post of Work Supervisor and not Work Agent. Therefore, the Executive Engineer recommended the regularization of the petitioner on the post of Work Supervisor.

16. From a bare perusal of information dated 20.05.2019 received under RTI, it is revealed that Sri Bhavani Dutt, Sri Harendra Barthwal and Sri Chandra Singh Bisht, who are/ were working/ retired as Work Supervisor were initially appointed on the post of Work Supervisor on 01.06.1979 and 15.09.1980 respectively were regularized on the post of Work Agent but later on, respondent G.M. (Admin), *vide* order dated 10.12.2013 changed the post of above noted persons from the post of Work Agent to the post of Work Supervisor since the date of regularization. Petitioner is entitled to the same benefits on this ground. Copy of the information dated 20.05.2019 received under RTI has been filed as Annexure: A16 to the claim petition.

17. Decisions rendered by Hon'ble Apex Court in Prem Ram vs. Managing Director, Uttarakhand Pev Jal & Nirman Nigam, Dehradun and others, 2015(1) UD 507; State of U.P. and others vs. Arvind Kumar Srivastava and others, (1985) 2 SCC 648; and by Hon'ble Himachal Pradesh High Court in CWPOA No. 659 of 2019, Mohinder Singh vs. State of Himachal Pradesh and others were cited by disputants in support of their contentions.

18. Similarly placed persons should be given similar treatment. This is the underlying philosophy behind Article 14 and Article 16 of the Constitution of India. The petitioner has not been given the same treatment, which was given to similarly placed persons, namely, Sri Virendra Singh Bisht, Sri Chandra Singh Bisht, Sri Bhavani Dutt and Sri Harendra Barthwal. Even if the claim petition is barred by limitation, which stops the Tribunal from issuing any direction, the Govt. and respondent-Jal Nigam can always do so to meet the ends of justice. Limitation is for the Courts and Tribunals and not for the Govt. and its functionaries.

19. Dr N.K. Pant, learned Counsel for respondents no. 2 to 5 has no objection, if a request is made to respondent-Jal Nigam to reconsider the prayer of the petitioner.

20. The respondent *Uttarakhand Pey Jal Sanshadhan Vikas Avem Nirman Nigam* is, therefore, requested to reconsider petitioner's prayer to post him as Work Supervisor from the date of regularization, instead of on the post of Work Agent since 01.04.1990. Respondent-Jal Nigam may also reconsider granting consequential service benefits to the petitioner, if he is regularized as Work Supervisor since 01.04.1990.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 23rd May, 2022

DEHRADUN

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