

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

EXECUTION PETITION NO. 18 /DB/2022

*(Arising out of judgment dated 16.07.2003, passed in Claim petition No. 01/ 2001
& judgment dated 17.11.2011, passed in Claim petition No. 47/2011)*

Arun Kumar Goel

....Applicant/Petitioner

vs.

State of Uttarakhand through Principal Secretary, P.W.D., Secretariat,
Dehradun, and others.

.....Respondents.

Present: Sri Arun Kumar Goel, Applicant/ Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents /State.

JUDGMENT

DATED: MAY 24, 2022

Justice U.C.Dhyani (Oral)

Applicant/ petitioner Sri Arun Kumar Goel, Superintending Engineer, P.W.D., Dehradun, has filed present execution application for compliance of judgments and orders dated 16.07.2003 and 17.11.2011 of this Tribunal.

2. Applicant/ petitioner has prayed for ensuring compliance of the aforesaid judgments by attaching the seniority list of the Assistant Engineers' cadre and bank accounts of the respondents.

3. It may be noted here that the order dated 16.07.2003 was passed in Claim Petition No. 01/2001 and order dated 17.11.2011 was passed by the Tribunal in Claim Petition No. 47/2011. The application has been moved

under Rule 24 of the U.P. Public Services (Tribunal)(Procedure) Rules, 1992, with Section 5(7) of the U.P. Public Services (Tribunal) Act, 1976 and Rule 87 of The U.P. State Public Service Tribunal Rules of Practice, 1997. It will be appropriate to reproduce the aforesaid Procedure Rule, Section 5(7) and Practice Rule herein below, for convenience:

“Rule 24- **Orders and directions in certain case-** The Tribunal may make such orders or give such directions, as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

“**Section 5 (7)-** The order of the Tribunal finally disposing of a reference shall be executed in the same manner in which any final order of the State Government or other authority or officer or other person competent to pass such order under the relevant service rules as to redressal of grievances in any appeal preferred or representation made by the claimant in connection with any matter relating to his employment to which the reference relates would have been executed.”

“**87. (1) Scrutiny of application and issue of notices and processes-** On receipt of application for execution of the decision/orders or directions made by the Tribunal, the Registrar shall get the application scrutinized by the Munsarim.

(2) It shall be the duty of the Munsarim to see that the application for execution contains the correct number of the claim petition, full name and complete address of the parties and the complete operative orders of the Tribunal, the execution whereof is sought to be made, and the mode of execution and the form of the process to be issued and the name of the person with complete address against whom it is prayed for.

(3) If it is found in order the Munsarim shall enter it in the Register of Execution Application, Register Form No.8 and attach an index and order-sheet thereto, and submit the same along with his report to the Registrar.

(4) If any defect or omission is noticed, he shall get the defect rectified at the earliest, and thereafter put up his office report before the Registrar either on the same day, or on the next day.

(5) On the submission of the execution application the Registrar will order the issue of a notice of the proposed execution specifying time not exceeding three months for compliance and report to show cause for non-compliance.

(6) Process and orders directed to be given 'dasti' to a party or counsel shall be promptly prepared by the Court Officer. If process and order are to be sent by post, Court Officer shall prepare it immediately and hand over the same to the party or counsel or pairokar under his signature on the order-sheet.

(7) After the notice of the execution application is served and no satisfaction or the compliance of the order/decision or direction is made within the time stipulated in the notice, the Registrar shall on the expiry of the aforesaid time, present the record of proceeding along with his report before the Bench to which such work is assigned by the Chairman.

8) Thereupon necessary direction/orders for the execution of the decision/ b done no a direction or orders shall be made by the Member, having regard to the provisions of Order XXI of the Code of Civil Procedure, in such form as may be considered just and expedient.

(9) All orders for the execution proceedings shall be recorded on the order sheet in consecutive order, the serial no. will be prefixed, and all such orders shall be legibly signed and dated by the member.

(10) The Member shall see that the orders issued by him are carried out and frequent and habitual carelessness, unpunctuality or procrastination in the issuance of the process/warrants and orders should be adequately furnished.”

4. Ld. A.P.O. objected to the maintainability of present execution application, *inter alia*, on the grounds, that - (i) the same barred by limitation, (ii) the orders dated 16.07.2003 and 17.11.2011 have been complied with in the year 2015 and the seniority has been given to the petitioner, (iii) seniority list was challenged by Sri Deepak Kumar Yadav and Sri Khagendra Prasad Upreti in Claim Petition No. 33/DB/2015, which claim petition was decided by the Tribunal on 06.09.2018, in which present applicant/petitioner was respondent no.4, (iv) judgment dated 06.09.2018 remains unchallenged and has attained finality, (v) in compliance of order dated 06.09.2018, Office Memorandum dated 12.11.2018 has been issued by Respondent Department in which the petitioner has been kept at Sl. No. 112 in the seniority list and (vi) O.M. dated 12.11.2018 also remains unchallenged.

5. It is ironical that in the garb of execution application, the applicant/ petitioner wants to set aside the order dated 06.09.2018, passed by this Tribunal in Claim Petition No. 33/DB/2015, which has not been challenged by the petitioner and has attained finality.

6. It will be useful to reproduce some important paragraphs and operative portion of the judgment dated 06.09.2018, passed in Claim Petition No. 33/DB/2015 Deepak Kumar Yadav & another vs. State & others, as below:

“8.1 The first question before us for examination is whether the Government of Uttarakhand is competent to promote respondent No. 4 from 01.07.1990 when the Tribunal in its judgment dated 16.07.2003 (reproduced in paragraph 2.3 of this order) and the Government of Uttar Pradesh by its G.O. dated 10.06.2009 (reproduced in paragraph 2.4 of this order) have directed to promote respondent No. 4 on the post of AE in the recruitment year 1990-91 which starts from 1st July, 1990 and ends on 30th June, 1991. The petitioner No. 1 (and others) have also been promoted on the post of AE during the recruitment year 1990-91. The question is whether that date of promotion of respondent No. 4 (pertaining to the recruitment year 1990-91) as 01.07.1990 can be decided by the State of Uttarakhand or it could be decided by the Govt. of Uttar Pradesh only as the date of 01.07.1990 is a date prior to the creation of State of Uttarakhand. In the absence of any specific date

as the date of promotion of respondent No. 4 between 01.07.1990 to 30.06.1991 (recruitment year 1990-91) in the Tribunal's order dated 16.07.2003 or in the Govt. of U.P. G.O. dated 10.06.2009, the date of 01.07.1990 which is the date anterior to the appointed day (09.11.2000) under the Uttar Pradesh Reorganization Act, 2000, in our considered view, cannot be determined by the State of Uttarakhand and only the State of Uttar Pradesh is competent to decide the same.

8.2 Apart from the date of 01.07.1990 as the date of promotion, the second question which arises is whether the State of Uttarakhand was competent to decide/modify the seniority list of the petitioner and the private respondents pertaining to the period prior to the creation of the State of Uttarakhand. On this question also, we are of clear view that it was outside the jurisdiction of the State of Uttarakhand to change the seniority of the petitioners/respondents related to the period 1990-91 when the Uttarakhand State was not even in the existence. While vide Govt. of U.P. G.O. dated 10.06.2009, the notional promotion of respondent No. 4 has been made by creating a supernumerary post of A.E. for the recruitment year 1990- 91, the seniority between the petitioners (and others) vis-à-vis respondent No. 4 has not been determined. The exercise to determine the seniority for the period related to 1990-91 could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttarakhand which was formed on 09.11.2000.

11.1 Now, we would like to take up a judgment of the Hon'ble High Court at Nainital which is directly related to the present claim petition. Sri Arun Kumar Goyal (the respondent No. 4 in this claim petition) filed a Writ Petition (S/B) of 2011, Arun Kumar Goyal Versus State of Uttarakhand & another which was decided by the Hon'ble High Court on 21st June, 2018. The petitioner (Sri Arun Kumar Goyal) had approached the Hon'ble High Court at Nainital seeking the following reliefs:-

i).....

ii) Issue a writ, order or direction in the nature of mandamus commanding / directing the respondent no. 1 to fix the seniority of the petitioner as Assistant Engineer with effect his promotion as Assistant Engineer on 1.7.1990.

iii).....

iv).....

11.2 It is clear from the above reliefs that the Sri Arun Kumar Goyal (who is respondent No. 4 in the claim petition before the Tribunal) in the writ petition before the Hon'ble High Court in relief (ii) had prayed to fix his seniority as AE w.e.f. 01.07.1990 by the Govt. of Uttarakhand.

11.3 The Hon'ble High Court at Nainital in paragraphs 8 & 9 of its judgment dated 21.06.2018 held as under:-

“8.....We have already noticed the absence of parties, who might be affected by granting such relief. We further bear in mind a judgment passed by the Apex Court in the case of State of Uttarakhand & another vs. Umakant Joshi, reported in 2012 (1) UD 583.

9. In such circumstances, we do not think that we should grant relief as sought for by the petitioner. Without prejudice to any other remedy, which the petitioner has in any forum, we decline jurisdiction and dismiss the writ petition. No order as to costs.”

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.

ORDER

The petition is hereby allowed and the impugned order dated 24.06.2015 (Annexure: A2) is hereby set aside. No order as to costs."

7. In Para 10 of the execution application the petitioner has stated that *".....order dated 12.11.2018 passed by respondent no.1 is and was totally in violation and contempt of the judgment dated 16.07.2003 and 17.11.2011 and is, therefore, null and void in the eyes of law."*

8. It may be noted here that order dated 12.11.2018 was passed by respondent no.1, Principal Secretary, P.W.D., Govt. of Uttarakhand in compliance of order dated 06.09.2018 passed by this Tribunal in Claim Petition No. 33/DB/2015.

9. When order dated 06.09.2018 has attained finality, how can the applicant/ petitioner, without challenging the same, plead that the O.M. dated 12.11.2018 is in violation of Court's order?

10. The petitioner has stated that the O.M. dated 12.11.2018 is in violation of judgment dated 16.07.2003 and 17.11.2011. Ld. A.P.O. submitted that the O.M. dated 12.11.2018 is not in violation of orders dated 16.07.2003 and 17.11.2011, but is in compliance of order dated 06.09.2018, which has been passed in accordance with law.

11. It is also ironical that in Para 12 of the execution application the petitioner has stated that *"judgment dated 06.09.2018 is nullity in the eyes of law, hence the order dated 12.11.2018 of respondent no.1 is also wrong, illegal and nullity in the eyes of law..."* This Tribunal is not sitting as an appellate Court to look into the legality or otherwise of its own order passed on 06.09.2018.

12. Whether the applicant/ petitioner is permitted to say, in this execution application, that the judgment dated 06.09.2018 is nullity in the eyes of law when the same has not been challenged by him? The reply is in the negative.

13. It is also settled law that the Executing Court cannot go beyond the terms of the decree, which is judgment/ order dated 06.09.2018 in the instant case. The Executing Court cannot go beyond what has been directed in Tribunal's earlier order dated 06.09.2018.

14. The Tribunal is also at a loss to find out that the applicant/ petitioner has stated, in Para 13 of the execution application, that the judgment dated 06.09.2018, passed in Claim Petition No. 33/DB/2015 is not binding in view of the previous judgment dated 16.07.2003, passed in other Claim Petition No.01/2001. The Tribunal feels that it cannot ignore its earlier judgment dated 06.09.2018, passed in Claim Petition No. 33/DB/2015 without rhyme or reason.

15. The judgment dated 16.07.2003 has been affirmed by the Hon'ble High Court on withdrawal of State appeal [WPSB No. 68/2007] *vide* judgment date 01.04.2009 passed in WPSB No. 68/2007. It is quite obvious that the points, in his favour, must have been raised by the applicant/ petitioner, who was respondent no.4 in Claim Petition No. 33/DB/2015 at the time of its decision. The decision was not challenged by the petitioner even though he was party-respondent in that case. It is not permissible for him to say, at this stage, that the judgment dated 06.09.2018 is a nullity in the eyes of law.

16. Much emphasis has been laid by the applicant/petitioner on the decision rendered by Hon'ble Apex Court in Union of India vs. Madras Telephone S.C. & S.T. Welfare Association, AIR 2000 SC 1717, to argue that the petitioner is entitled to the *ratio* laid down by the Hon'ble Supreme Court in the said decision. The Tribunal deems it appropriate to reproduce some of the important paragraphs of the said decision herein below for convenience:

"1. This is an application by Union of India, seeking clarifications, being of the opinion that the Judgment of this Court in the case of Union of India vs. P.N.Lal and Ors., in S.L.P. Nos. 3384-86/86 runs contrary to the Judgment of this Court dated 13.2.97 in the case of Union of India vs. Madras Telephone

SC/ST Social Welfare Association in C.A. No. 4339 of 1995. By this application, the department also seeks further directions as to the manner in which judgment of the Central Administrative Tribunal, Hyderabad dated 5.1.96 as well as the judgment of the High Court of Andhra Pradesh dated 28.10.97, passed in Writ Petition No. 23522/97 would be implemented, since according to the department, the directions contained therein run contrary to the principle enunciated in the judgment of this Court in P.N. Lals case. The Union of India has filed an application for condonation of delay in filing application for directions, which has been numbered as I.A. No. 3/99.

2. After the disposal of C.A.No. 4339/95 by order dated 13.2.97, as the directions given therein had not been implemented, the Madras Telephone SC/ST Social Welfare Association filed a contempt Petition, which was registered as Contempt Petition(Civil) No. 121/1999. When that application had been listed before a Bench of two learned Judges of this Court on 16.11.99, an application for intervention had been filed by a group of officers and it was contended by the interveners that the judgment of this Court in C.A. No. 4339/95 has been rendered without noticing four earlier judgments, each one rendered by two Judge Bench. The said interveners had also filed an application for recalling the order dated 13.2.97 passed in C.A. No. 4339/95, on the ground that they were not party to the said appeal. In view of the conflict in different judgments of this Court, rendered by two Hon'ble Judges in each of the matters, the Bench hearing the matter on 16.11.99, passed an order that the matters be placed before a Bench of three Hon'ble Judges and that is how this group of matters have been placed before us.

3. In I.A. No.2/99, filed by the Union of India for clarifications and directions, as already stated, an application for intervention had been filed by four persons, claiming themselves to be vitally affected, if the judgment of this Court in C.A.No. 4339/95 is not implemented and the said Intervention Application has been numbered as I.A. No.10 of 2000.

7. C.A. Nos. 6485-86 of 1998 is by Parmanand Lal, directed against the order of Central Administrative Tribunal, Principal Bench, New Delhi, passed in R.A.No. 170/97 on 18.9.97, as well as the Order of the said Tribunal in O.A. No. 2646 of 1993 dated 11.4.97. In the aforesaid Civil Appeal Nos.6485-86 of 1998, said Parmanand Lal, filed an application for interim relief, which has been registered as I.A. Nos. 4 and 5 of 1999.

14. The controversy between the parties centers round a question, as to how the selection list has to be drawn up for the purpose of promotion to the post of Assistant Engineer from the post of Junior Engineer in Tele-communication circles. It may be stated that prior to 1966, the Junior Engineers were being designated as Engineering Supervisors Telecom/Wireless Supervisors Telecom. Before the Telegraph Engineering Service Class II Recruitment Rules, 1966 framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India (hereinafter referred to as the recruitment rules), came into force the promotion from the post of erstwhile Engineering Supervisor Telecom (re-designated as Junior Engineer) to the post of Assistant Engineer was being made in accordance with the instructions contained in paragraph 206 of the Post and Telegraph Manual Volume IV. The said instructions were obviously the executive instructions, which governed the field in the absence of statutory rules. The aforesaid instructions contained in para 206 of the P & T Manual are extracted herein below in extenso for better appreciation of the point of controversy.....

17. The Allahabad High Court considered the grievances of the applicant before him viz. Parmanand Lal and Brij Mohan on the basis of instructions contained in paragraph 206 of the P & T Manual and the provisions of the Recruitment Rules did not come up for consideration. The Court ultimately had directed that the two petitioners before it viz. Parmanand Lal and Brij Mohan should be promoted with effect from the date prior to a date of promotion of any person, who passed the departmental examination,

subsequent to them and adjust their seniority accordingly. When this Court dismissed the Special Leave Petition filed by the Union of India, though it was stated that the special leave petition is dismissed on merits, but in the very next sentence the Court had indicated that in the facts and circumstances of the case, the Court was not inclined to interfere with the judgment of the High Court except to a limited extent. It is, therefore, obvious that while dismissing the special leave petition, the Court had not examined the provisions of the recruitment rules and the instructions issued thereunder, providing the procedure for promotion to the service in Class II and, therefore, there was no reason for the Union of India to think that what has been stated in Civil Appeal No. 4339 of 1995, runs contrary to the judgment of the Allahabad High Court, which stood affirmed by dismissal of the special leave petition Nos. 3384-86 of 1986 on 8.4.1986.....

18. Since Departmental Authorities had not implemented the decisions of this Court in Civil Appeal No. 4339 of 1995 for which a Contempt Petition had been filed, having regard to the circumstances under which the Departmental Authorities entertained bona fide difficulties, it would not be proper to proceed against the authorities under the contempt and the contempt proceedings accordingly are dropped. We would, however direct the Departmental Authorities to proceed in accordance with law and in accordance with the observations made by us in this Judgment and promotions may be made within a period of six months from the date of this judgment.

Civil Appeal Nos. 6485-86 of 1998:

19. These appeals by Parmanand Lal is directed against the order of the Central Administrative Tribunal dated 11th of April, 1997. Said Parmanand Lal had approached the Tribunal, challenging the order of reversion dated 4.2.93 and the basis of said reversion was re-fixation of the seniority in the rank of Engineering Supervisor, because of some judgments of different Tribunals and because of some Judgments of this Court. We have considered this question in great detail and we have held that the question of seniority in the feeder cadre of Junior Engineers, when persons belonging to the same recruitment year are recommended, has to be decided in accordance with paragraph (iii) of the Memorandum dated 28th of June, 1966 and in accordance with the statutory recruitment rules read with Appendix attached thereto for promotion to the posts in Group B service, separate list has to be made in respect of each recruitment year. We have also held that after promulgation of the recruitment rules, the administrative instructions contained in paragraph 206 of the P & T Manual, will have no force. We have also indicated that the promotions already effected pursuant to the Judgment of the Allahabad High Court, which was upheld by this Court by dismissing the special leave petition filed by the Union of India will not be altered in any manner. This being the position and the Judgment of the Allahabad High Court in favour of Parmanand Lal having attained finality, he having received the benefit of the said Judgment and having been promoted, could not have been reverted because of some latter Judgments and directions given either by the Tribunals or by this Court. On the admitted position that the applicant Parmanand was reverted by order dated 4.2.93 because of certain directions given by some other Tribunals, deciding the principle of re-fixation of seniority and it is on that basis an order of reversion was passed, we have no hesitation to come to the conclusion that the order of reversion is untenable and unjustified on the grounds on which the said reversion has been passed, and as such cannot be sustained in law. We make it clear that the seniority of Parmanand in the cadre of Junior Engineer, fixed on the basis of the directions of Allahabad High Court, after dismissal of the SLP against the same by this Court is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different Benches of the Central Administrative Tribunal. The impugned order passed by the Central Administrative Tribunal is erroneous and we quash the same and allow the civil appeals filed by the said Parmanand Lal.”

17. There is no parallel , in facts and law, between Madras Telephone case (*supra*) and the present one. Needless to say that the Hon'ble Supreme Court is apex constitutional Court, having all the powers, including the one under Article 142 of the Constitution of India, to do complete justice. Hon'ble Apex Court has the power and jurisdiction to examine, scrutinize and evaluate the decisions of any Court. Hon'ble Supreme Court has also the power to look into and review its own decisions.

18. We have noted above that the factual matrix of present case and Madras Telephone case (*supra*) are entirely on different pedestal. The fact of the matter is that the Tribunal has to respect its own earlier decisions. It is impermissible for the petitioner to argue that the decision rendered by this Tribunal on 06.09.2018 in Claim Petition No. 33/DB/2015 should be ignored. The reasons are not far to seek. The applicant/ petitioner was party respondent in that claim petition. The decision was given after hearing him. He did not challenge the same. He cannot, now, argue that the said decision is bad in the eyes of law. He also cannot say, now, that the order dated 12.11.2018 which was passed by respondent no.1 in compliance of decision dated 06.09.2018, is in violation of the judgments dated 16.07.2003 and 17.11.2011.

19. Operative portion of the judgment dated 16.07.2003, passed in Claim Petition No. 01/2001 Arun Kumar Goel vs. State & others, is as under:

“11. So under these circumstances, we find no good reason to deprive the petitioner of his eligibility for promotion from the date of his confirmation, as per rules w.e.f. 01.03.1990. Accordingly, we allow the petition and quash the impugned order dated 06.05.1999 contained in Annexure-1 and direct the respondents to reconsider the petitioner's claim for promotion as an Assistant Engineer in the first batch of promotes chosen and selected in November, 1990 and in case no post was available for him at that time in view of his seniority, to reconsider him in the next selection held in May, 1991. Obviously if he is found fit for promotion, then his promotion will relate back to the date of availability of the vacancy. As a natural sequence thereto he would also be reconsidered for the promotional post of Executive Engineer on that basis regardless of his having promoted during the meanwhile in the Hill Sub Cadre.”

20. Operative paragraph of the decision rendered on 17.11.2011 in Claim Petition No. 47/2011 Arun Kumar Goel vs. State & others is as below:

“The petition is partly allowed. The respondents are directed to issue appropriate orders in compliance of the orders passed by this Tribunal in Claim Petition No. 01/2001 on 16.07.2003 within a period of three months from today. No further recovery shall be made from the salary of

the petitioner in pursuance of the order dated 06.05.2011 (Annexure-1) till such orders are passed. No order as to costs.”

21. Thereafter Execution petition no. 04/DB/2013 was filed before the Tribunal. The Tribunal passed the following order in the execution petition, on 26.03.2015:

“The compliance report is not complete. The Respondent nos. 2 & 3 of the main petition have referred the matter to the Respondent No.1. All the three persons are party to the execution petition as well as to the claim petition. Hence, in compliance of the Tribunal’s judgment, compliance is not complete. Respondent No.1 Secretary, P.W.D. has to comply the order pursuant to the judgment of this Tribunal. The respondents are unnecessarily delaying the matter, so a compliance report be sent by all the three persons within one and half month. In case compliance of the judgment is not made, Respondent Nos. 2 & 3 will appear in person before the Court whereas Respondent No.1 will appear through its Additional Secretary. A D.O. letter be sent to Secretary, P.W.D. along with copy of the claim petition, judgment, copy of the execution petition and copy of this order. List on 13.05.2015 for further orders.”

22. The applicant/ petitioner has concealed the fact that the Execution Application No. 04/DB/2013 Arun Kumar Goel vs. State and others, for enforcing orders dated 16.07.2003 and 17.11.2011 was already decided by this Tribunal vide order dated 07.08.2015, as follows:

“This is an application for execution of the judgment passed by this Tribunal in Claim Petition No. 01.2001, A.K.Goel v. State & others on 16.07.2003 as well as the judgment passed by this Tribunal in Claim Petition No. 47/2011, Arun Kumar Goel v State of Uttarakhand & others on 17.11.2011.

The facts necessary for the disposal of this petition are that the petitioner had preferred a claim petition No. 01/2001 titled as Arun Kumar Goel v State of Uttarakhand & others before this Tribunal, which was decided by the Division Bench of this Tribunal on 16.07.2003 with the following directions:

“So under these circumstances, we find no good reason to deprive the petitioner of his eligibility for promotion from the date of his confirmation, as per Rules w.e.f. 01.03.1990. Accordingly, we allow the petition and quash the impugned order dated 06.05.1999 contained in Annexure-1 and direct the Respondents to reconsider the petitioner’s claim for promotion as an Assistant Engineer in the first batch of promotees chosen and selected in November, 1990 and in case no post was available for him at that time in view of this seniority, to reconsider him in the next selection held in May, 1991. Obviously if he is found fit for promotion, and then his promotion will relate back to the date of availability of the vacancy. As a natural sequence thereto he would also be reconsidered for the promotional post of Executive Engineer on that basis regardless of his having promoted during the meanwhile in the Hill Sub Cadre.”

The petitioner had again preferred another Claim Petition No. 47 of 2011, A.K.Goel v State of Uttarakhand & others which was decided by the Single Bench (by one of the Members of this Bench) on 17.11.2011 and the following direction was further issued to the respondents:

“The petition is partly allowed. The respondents are directed to issue appropriate orders in compliance of the orders passed by this Tribunal in Claim Petition No. 1/2001 on 16.07.2003 within a period of three months from today. No further recovery shall be made from the salary of the petitioner in pursuance of the order dated 6.5.2011 (Annexure-1) till such orders are passed. No order as to costs.”

In consequence of the judgment passed by the Division Bench of this Tribunal in Claim Petition No. 01/2001, an order of notional promotion of the petitioner was passed by the U.P. Govt. and the operative portion reads as under:

.....

The petitioner has stated in this petition that orders passed and issued by the State of U.P. have no significance unless consequential orders are passed by the State of Uttarakhand as the petitioner is serving under the State of Uttarakhand.

During the pendency of this petition and consequent to the promotion of the petitioner by the State of U.P., the State of Uttarakhand had also promoted the petitioner notionally and is in the process of determination of the seniority of the petitioner accordingly and an order has been passed by the Govt. of Uttarakhand on 12.05.2015.

We have heard both the parties at length and gone through the record carefully. It has vehemently been contended on behalf of the respondents that as the directions issued by this Tribunal in both the above mentioned claim petitions have been complied with so this petition has become infructuous and nothing is left for compliance. On the other hand, it has been contended that the salary has not been determined for the promoted post and even the arrears have not been paid. In context to rival contentions of both the parties and after perusal of the directions issued by this Tribunal, it becomes clear that the directions issued by this Tribunal in the above mentioned petitioners has been complied with and nothing more remains for making compliance. As regards the determination of salary or payment of arrears, if any, is concerned, it is a natural consequence and it will be done as soon as possible and in accordance with law and rules. We are of the view that nothing more is to be complied with, therefore, the execution application is to be struck off in full satisfaction.

The application for execution is struck off in full satisfaction. Let the record be consigned to record room.”

23. Firstly, there appears to be no contradiction in these judgments, as all the judgments were rendered on different facts. Secondly, the applicant/ petitioner has accepted the judgment dated 06.09.2018 by not challenging it. Thirdly, the respondents have implemented it by issuing O.M. dated 12.11.2018, which was also not challenged. Fourthly, Executing Court cannot travel beyond the decree (read ‘order’). Fifthly, this Tribunal is not sitting as an appellate Court to examine the validity of its judgment dated 06.09.2018. Sixthly, the execution application has already been decided

earlier on 07.08.2015, for enforcement of orders dated 16.07.2003 and 17.11.2011.

24. Now the applicant/ petitioner has woken up from deep slumber to file present execution application, which is clearly an afterthought and appears to be an abuse of the process of the Court.

25. The execution application is, therefore, dismissed at the admission stage. With great difficulty, we have restrained ourselves from imposing heavy costs upon the petitioner.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 24, 2022
DEHRADUN

VM