

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 16/DB/2013

Govind Singh Rathore, S/o Late Sri Bhoop Singh, R/o E-32,
Judge Farm Haldwani, Distt. Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Subhash Road, Dehradun,
2. Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, Head Office-II, Mohni Road, Dehradun through its Managing Director,
3. Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, Head Office-II, Mohni Road, Dehradun through its Chairman,
4. Chief Engineer (HQ) Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, Head Office-II, Mohni Road, Dehradun,
5. Rajesh Kumar, Project Manager, Mechanical Unit , Ganga Pollution, Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, Haridwar,
6. Khagendra Kumar, Executive Engineer, Presently serving as Project Manager, Mechanical Unit Ganga Pollution, Uttarakhand Payjal Sansadhan Vikas Evam Nirman Nigam, Haldwani, District Nainital

.....Respondents

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

Sri Umesh Dhaundiyal, A.P.O.
for the respondent No. 1
Sri Nirdesh Khandelwal, Counsel
for the respondents no. 2 to 4
Sri V.P. Sharma, Counsel
for the respondents no 5 & 6

JUDGMENT

DATE: FEBRUARY 25, 2014

DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)

1. The following question is involved in this claim petition:

“Whether the employee is entitled to regain his seniority in case of delayed promotion”

2. The facts relevant for the disposal of the petition are that the petitioner and private respondents no. 5 and 6 namely; Rajesh Kumar and Khagendra Kumar had joined the department of Uttar Pradesh Pay Jal Nigam on the post of Junior Engineers on 20.1.1978, 1.9.1984 and 10.1.1979 respectively. All of them were confirmed. Respondent no. 5 and 6 who belong to reserved category were promoted to the post of Assistant Engineer (E&M) on 24.10.1998 and 15.2.1999 respectively. Whereas, the petitioner who belongs to general category was promoted on 7.11.2000. Later on, all of them were promoted to the post of Executive Engineers.

3. On the request of the petitioner, a seniority list of the cadre of Assistant Engineers was drawn up on

23.12.2010 and petitioner was placed below the private respondents no. 5 and 6, despite the fact that the petitioner had joined the services prior to the private respondents and was senior in the cadre of junior engineers, though the petitioner was promoted subsequent to the private respondents, he is entitled to regain seniority according to the initial post on which he was inducted in service, hence this petition.

4. The petition has been opposed on behalf of the department as well as private respondents and it has been stated that the petitioner has been promoted subsequent to the private respondents and the impugned seniority list belongs to the cadre of Assistant Engineers and not of the cadre of Junior Engineers. As the cadre of Assistant Engineers is different from the cadre of Junior Engineer, therefore, the petitioner is not entitled to claim any benefit on the basis of the seniority list of the junior engineers and there is no force in the petition, which is liable to be dismissed.

5. Two rejoinder affidavits have been on behalf of the petitioner reiterated the facts stated in the main petition. Apart from the rejoinder affidavits, numbers of documents have also been filed.

6. We have heard both the parties at length and perused the evidence and material available on record carefully.

7. Some facts are evident from the record and there is no dispute regarding these facts.

- i. That the petitioner had joined the services to the post of Junior Engineer (E & M) in the erstwhile State of U.P. on 26.12.1977 and he was confirmed to that post w.e.f. 25.12.1983.
- ii. That the private respondent no. 5, Rajesh Kumar belongs to Scheduled Tribe category and joined the services on 1.9.1984. The private respondent no. 6, Khagendra Kumar belongs to Scheduled Caste category and joined the services on 10.1.1979.
- iii. That the private respondent no. 5 was promoted to the post of Assistant Engineer on 24.10.1998 and the private respondent no. 6 was promoted to the post of Assistant Engineer on 15.2.1999.
- iv. That the petitioner who also hold the Bachelor Degree in Engineering i.e. A.M.I.E. was also promoted to the post of Assistant Engineer on 7.11.2000,
- v. That the private respondents had to qualify the qualifying test for the promotion.
- vi. That a seniority list of the post of Assistant Engineer was drawn up by the department on 23.12.2010 and the petitioner was placed at sl. no. 14 while the private respondent no. 5 was placed at sl. no. 8 and private respondent no. 6 was placed at sl. no. 9.
- vii. A copy of tentative seniority list has also been filed on behalf of the petitioner which reveals that

petitioner was senior to the private respondents in cadre of junior engineers in which the petitioner and private respondents had joined.

8. Now, only question involved is as to whether the petitioner is entitled to regain his position in the seniority list after his promotion to the post of Assistant Engineer. In this regard, it is important that the petitioner and private respondents had joined the services as Junior Engineer and the petitioner was senior to the private respondents in the cadre of Junior Engineers as he had joined the service prior to the private respondents. The promotion of the private respondents prior to the petitioner will not affect the seniority of the petitioner to the promoted post. After promotion, the petitioner is entitled to regain his position of seniority as it was in the feeding cadre of junior engineers. In this regard, the provisions of Uttarakhand Govt. Servants Seniority Rules, 2002 are important and the relevant rule is 6, which is quoted below:

“6. जहां सेवा नियमावली के अनुसार नियुक्तियां केवल एक पोषक संवर्ग से पदोन्नति द्वारा की जानी हों, वहां इस प्रकार नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो पोषक संवर्ग में थी।

स्पष्टीकरण— पोषक संवर्ग में ज्येष्ठ कोई व्यक्ति, भले ही उसकी पदोन्नति पोषक संवर्ग में उससे कनिष्ठ व्यक्ति के पश्चात् की गयी हो, उस संवर्ग में जिसमें उसकी पदोन्नति की जाय, अपनी वही ज्येष्ठता पुनः प्राप्त कर लेगा जो पोषक संवर्ग में थी।”

9. Keeping in view the provisions of the above rule, it becomes abundantly clear that petitioner is entitled to regain his seniority of the feeding cadre soon after his promotion in the next cadre. The respondents failed to point out any provision by which it could be inferred that the private respondents are entitled to maintain the seniority because of their early promotion. As the respondents are not entitled to be placed at higher place because of their early promotions, therefore, the petitioner is undoubtedly entitled to regain the seniority as was available to him in the cadre of junior engineers. Thus, the petitioner is entitled to regain seniority as was available to him in the cadre of junior engineers after his promotion in the next cadre of Assistant Engineers.

10. It has also been contended on behalf of the respondents that the cadre of Assistant Engineers is different from that of Junior Engineers and their seniority has to be determined separately and it will have no effect of the seniority of the cadre of Junior Engineers, but this contention does not bear any force as the petitioner and the private respondents have come from the cadre of junior engineers, which is one of the feeding cadre of Assistant Engineers, therefore, the seniority in the feeding cadre is to be maintained even after the promotion in the next cadre. The seniority of the cadre of Assistant Engineer is to be based on the cadre of junior engineers. It is not proper to say that the cadre of Assistant Engineers is different and the respondents are not entitled to get any benefit on this ground.

11. It has been contended on behalf of the respondents that once the seniority is settled it should not be disturbed. As the seniority of the parties is settled so it should not be disturbed and the following cases have also been referred on behalf of the respondents in support of this contention:

- i. Pawan Pratap Singh & others Vs. Reevan Singh & others, (2011)3 Supreme Court Cases, 267.
- ii. H.S.Vankani & others Vs. State of Gujarat and others, (2010)4 Supreme Court Cases, 301.

We have gone through the cases cited on behalf of the respondents, but the controversy in these cases was entirely different from that of the present case, therefore, no benefit can be extended to the respondents on the basis of the principle laid down in these cases.

12. On the basis of the above discussion, we are of the definite opinion that the impugned seniority list has not been drawn according to the Uttarakhand Govt. Servants Seniority Rules, 2002, therefore, cannot be upheld and is liable to be quashed and it is also appropriate to direct the respondents to redraw a fresh seniority list in accordance with the observation made in the judgment, but after affording opportunity to the respective and affected parties.

ORDER

The petition is allowed. The impugned seniority list is hereby quashed. The respondents 1 to 4 are directed to redraw the seniority of the parties in accordance with rule-6 of

the Uttarakhand Govt. Servants Seniority Rules, 2002 within a period of three months from today after affording opportunity of objections to the parties. The petitioner shall also be entitled for consequential benefit, if any, accrued to him. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: FEBRUARY 25, 2014
DEHRADUN

KNP