

**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)

ORDERS ON INTERIM RELIEF APPLICATION

In

[CLAIM PETITION NO. 98/DB/2022]

Manoj Kumar Singh

vs

State of Uttarakhand & others

Present: Sri H.M.Bhatia, Advocate for the petitioner (*online*)

Sri V.P.Devrani, A.P.O., for the respondents no. 1, 2 & 3

Sri L.K.Maithani & Dr. N.K.Pant, Advocates for respondent no. 4

DATED: DECEMBER 12, 2022

Justice U.C.Dhyani (Oral)

Present claim petition has been filed by the petitioner for quashing the final seniority list dated 05.09.2022 (Annexure no.1) in so far as it relates to the petitioner and respondent no. 4 (private respondent). Another prayer in the claim petition is that the official respondents be directed to put the petitioner at sl. No. 4 above the private respondent no.4 in the said final seniority list dated 05.09.2022.

2. The claim petition was admitted on 16.09.2022. W.S. of the respondents is yet to be filed.

3. On interim relief, the time to file objections was given to the respondents. Objections have been filed the on behalf of the respondents. The basic contention of the petitioner is that whereas petitioner was initially appointed through Public Service Commission, as a direct recruit on the post of Audit Officer, Grade-I in the department of Cooperative Society and Panchayat Audit, the private respondent was appointed in the Local Fund Audit Department on the post of District Audit Officer, Grade-II in the year 1998. The petitioner was initially appointed in the pay scale of

Rs. 8000-275-13500 whereas, private respondent no. 4 was appointed in the pay scale of Rs. 6500-200-10500/-. After recommendation of the 6th Pay Commission, the pay scale of the petitioner was revised to Rs. 8000-275-13500 in the grade pay of Rs. 5400, whereas the basic pay scale of the private respondent initially revised from Rs. 7500-250-12000, grade pay of Rs. 4800/-. The petitioner has been getting more salary and higher grade pay than the private respondent. The Rules under Article 309 of the Constitution were framed on 08.07.2019. The Govt. Uttarakhand unified two departments, *i.e.* the Uttarakhand Cooperative Society and Panchayat Audit Department and Local Fund Audit Department Personnel. One department was constituted after unification.

4. The petitioner has given the details of Rule 6 of the Uttarakhand Cooperative Societies and Panchayat Audit Department and Local Audit Department Personnel Unification Rules, 2019 (hereinafter referred to as 'the Rules'). The petitioner relied upon Rule 6(iv) of the said Rules. When tentative seniority list was issued, the petitioner objected to the position of the private respondent at sl. No. 4. The contention of Sri H.M.Bhatia, learned Counsel for the petitioner is that the petitioner being a direct recruitee, is senior to the private respondent by virtue of Rule 6(iv) of the Rules. Learned Counsel for the petitioner also placed reliance upon a decision of Hon'ble Supreme Court in P. Mohan Reddy vs. E.A.A. Charles, AIR 2001 SC 1210. The details of the objections, as also the contents of the representation, have also been given by the petitioner in the claim petition.

5. The objections on interim relief application have been filed on behalf of the respondents by learned A.P.O. Each and every averment contended in paragraph 1(xxi) of the interim relief has been denied save and except as specifically admitted. It has been stated in the objections that both the officials were working in different departments under different Service Rules. At present they are governed by the Rules of 2019. Two departments were merged into one. According to learned A.P.O., Rule

6 is not applicable for determination of seniority between the petitioner and private respondent, because Rule 6 is applicable only in the case when, according to relevant Service Rules, the appointments are to be made only by promotion from a single feeding cadre, whereas the present post of the petitioner *vis-à-vis* private respondent is a direct recruitment post. In such a situation, according to learned A.P.O., the seniority of the merged employees shall be determined on the basis of date of substantive appointment to the lien post on the date of unification. According to the objections thus filed, on the date of unification on 08.07.2019, the petitioner's lien post substantive appointment date was 18.07.2005, whereas the lien post substantive appointment date of the private respondent was 18.05.1998. Hence, on the basis of the dates of substantive appointments, the private respondent has rightly been placed at sl. No. 4 and the petitioner has rightly been placed at sl. No. 5 in the final seniority list dated 05.09.2002 issued by the respondent no. 2. Learned A.P.O. has, therefore, put an endeavour to justify placement of the petitioner *vis-à-vis* private respondent in the final seniority list dated 05.09.2022.

6. Whereas, Sri H.M.Bhatia, learned Counsel for the petitioner has vehemently argued that the DPC for the post of Deputy Director should be stayed, Sri V.P.Devrani, learned A.P.O.; Sri L.K.Maithani and Dr. N.K.Pant, learned Counsel for the private respondent opposed the same and justified the departmental placement of petitioner *vis-à-vis* private respondent in the final seniority list.

7. The Tribunal is required to go into the factual and legal aspects of the controversy in question to arrive at a just conclusion, which requires filing of Counter Affidavit (s) and Rejoinder Affidavit, if any. The Tribunal is required to go into the implications of the Rules for determining the comparative seniority of the petitioner and private respondent.

8. In response to a query of the Tribunal, learned A.P.O., on seeking instructions from the respondent department, submitted that the promotional exercise will commence soon and the relative seniority of the petitioner and private respondent may be decided by the Tribunal at the time of final hearing. Learned A.P.O. submitted that the petitioner is trying to stay the DPC because integrity of the petitioner has been withheld in the year 2017-18 and if he is not found fit for promotion, sealed cover procedure may be adopted. In reply, Sri Bhatia, learned Counsel for the petitioner submitted that such fact has not been mentioned in the objections, to which learned A.P.O. replied that the detailed facts shall be brought by the respondents in the Counter Affidavit. Sri Bhatia further submitted that why should the petitioner work under a person who is his junior.

9. The circumstances suggest that the Tribunal should not stay the ongoing promotional exercise for the post Deputy Director, for, the names of both, petitioner as well as private respondent will be considered at the time of DPC (as stated by learned A.P.O.). If both are promoted, their relative seniority may be decided by the Tribunal at the time of final hearing. It is presumed that the proceedings of DPC shall be conducted in accordance with law.

10. It is, therefore, directed that the promotional exercise for the post of Deputy Director shall be subject to final decision of the present claim petition.

11. The interim relief application and objections thereon thus stand disposed of.

List on 12.01.2023 for filing C.A/W.S./further orders.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: DECEMBER 12, 2022
DEHRADUN
KNP

(JUSTICE U.C.DHYANI)
CHAIRMAN