

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 49/NB/DB/2019

Jaipal Singh S/o Late Sri Gawar Singh presently posted as Assistant Engineer,
Uttarakhand Jal Sansthan, Ramnagar, District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Peyjal Evam Swachhata Dehradun, District Dehradun.
2. Chief General Manager, Uttarakhand Jal Sansthan, Nehru Colony, Dehradun.
3. Sri Ravi Shankar Loshali, S/o Sri Mohan Chandra Loshali, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Khatima, District Udham Singh Nagar.
4. Sri Abhishek Kumar Verma, S/o Sri Mahesh Chandra, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Ghansali, District Teri Garhwal.
5. Sri Lakshmi Chand Ramola, S/o Sri P. C. Ramola, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Kotdwar, District Pauri Garhwal.
6. Sri Ashish Bhatt, S/o Sri S. P. Bhatt, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Central Store, Dehradun, District Dehradun.
7. Sri Satish Chandra Nautiyal, S/o Sri T. R. Nautiyal, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, New Tehri, District Teri Garhwal.
8. Sri Suresh Thakur, S/o Late Sri Sundar Singh Thakur, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Ranikhet, District Almora.
9. Sri Mukesh Kumar, S/o Sri Malkhan Singh, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Karnprayag, District Chamoli.
10. Sri Naresh Pal Singh, S/o Sri Ummed Singh, presently posted as In-charge Executive Engineer, Uttarakhand Jal Sansthan, Maintenance Division, Haridwar, District Haridwar.

11. Sri Pradeep Singh Kunwar, S/o Sri Indra Singh Kunwar, presently posted as Assistant Engineer, Uttarakhand Jal Sansthan, Mussoorie, District Dehradun.
12. Uttarakhand Public Service Commission, through its Secretary, Haridwar, District Haridwar.

.....Respondents

Present: Sri Sanjay Raturi, Advocate for the petitioner
 Sri Kishore Kumar, Ld. A.P.O. for the respondent No. 1
 Sri Vinod Tiwari, Advocate for the respondent No. 2
 None for the respondent No. 3
 Sri Sandeep Kothari, Advocate for the respondents No. 6 & 7
 Sri Ashish Joshi, Advocate for the respondent No. 12

JUDGMENT

DATE: NOVEMBER 23, 2022

HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A) (Oral)

This claim petition has been filed seeking the following reliefs:-

- I. To set aside the impugned seniority list dated 12.02.2021 (contained as Annexure No. 6 to the claim petition).
- II. To direct the respondents no. 1 & 2 to refix the inter-se seniority in seniority list dated 12.02.2021 of the petitioner vis a vis respondents no. 3, 4, 5, 6, 9, 10 as per Rule 20 & 24 (4), 3 (n) of "The Uttarakhand Jal Sansthan Engineering Service Rules 2011 amended in 2013" as well as, as per Rule 8 (3) of Uttaranchal Government Servant Seniority Rules 2002 by holding the petitioner senior to the respondents no. 3, 4, 5, 6, 9, 10 in cyclic order.
- III. to direct the respondents no. 1 & 2 to refix the seniority, in seniority list dated 12.02.2021, of the petitioner vis a vis respondent no. 7 as per the directions passed by Hon'ble Division Bench of the Uttarakhand High Court dated 18.03.2019 passed in WPSB 168 of 2017 (annexed at page no. 13-24 of rejoinder affidavit filed against respondent no. 2) by holding the petitioner senior to the respondent no. 7
- IV. to direct the respondents no. 1 & 2 to refix the seniority, in seniority list dated 12.02.2021, of the petitioner vis a vis respondent no. 8 as per provision of Rule 24 (2), 3 (n) of "The Uttarakhand Jal Sansthan Engineering Service Rules 2011 amended in 2013" by holding the petitioner senior to the respondent no. 8 on the basis of date of joining on the post of Assistant Engineer.

- V. to direct the respondents no. 1 & 2 to refix the seniority, in seniority list dated 12.02.2021, of the petitioner vis a vis respondent no. 11 as per Rule 3 (n) of “The Uttarakhand Jal Sansthan Engineering Service Rules 2011 amended in 2013” by holding the petitioner senior to the respondent no. 11 on the basis of recruitment year on the post of Assistant Engineer.
- VI. to direct the respondents to grant the seniority to the petitioner upon the respondents no. 3 to 11 and place him on top of the private respondents in any promotional exercise held or would be held either on the basis of proposal dated 15.02.2021 (Annexure 9 to petition) or in any subsequent proposal.
- VII. to pass any other suitable order, which this Hon’ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.
- VIII. award the cost of the petition to the petitioner.”

2. The claim petition was filed in the year 2019. But after issuance of the seniority list dated 12.02.2021 by the respondent-department the petitioner has amended the petition and has sought the reliefs as mentioned above.

3. Several affidavits have been filed on behalf of the respondent-State, respondent-department, certain private respondents and the petitioner.

4. We have heard learned Counsel for the parties and perused the record.

5. The matter under dispute is that the petitioner has been placed below the private respondents who have been posted/joined before/after the promotion and joining of the petitioner on 09.04.2013 which falls in the recruitment year 2012-13. The contention of the petitioner is that according to Rule 24(4) of the Uttarakhand Jal Sansthan Engineering Service Rules 2011 (hereinafter referred to as “Rules of 2011”) he as a promotee should have been placed in seniority on the basis of cyclic rotation with those private respondents who are direct recruits of the same selection year 2012-13 and he should have been placed at the top in this cyclic rotation as the first person in the cyclic rotation is a promotee. Respondents No. 8 and 11 are appointees of the recruitment year 2013-14 and the respondent No. 7 should be treated to be appointed in the year 2017-18 as per the orders of the Hon’ble Apex Court and Division Bench of the Hon’ble High Court of Uttarakhand at Nainital.

6. Respondents' contention is that all the private respondents have been selected in the Uttarakhand Combined Engineering Services Examination- 2007 organized by Uttarakhand Public Service Commission whose result was first declared by Public Service Commission on 14.02.2011. This result was amended many times in compliance of the orders of Hon'ble High Court in various writ petitions and was finally declared on 01.08.2012 which included the names of all the private respondents as well as persons declared successful earlier in the result dated 14.02.2011. All the private respondents have been appointed on the basis of this selection result dated 01.08.2012 while many persons, whose names are mentioned in this final result, have got appointments in the selection year 2010-11 itself. Therefore, the selection year of all the private respondents has been treated as 2010-11 as they have been selected on the basis of same selection process and there is no reason to differentiate between them and other successful candidates who have already been appointed in 2010-11. Therefore, question of placing them in cyclic rotation with the promotees of 2012-13 does not arise and private respondents have been correctly placed above the petitioner in the seniority list.

7. Learned Counsel for the petitioner argued that the appointment orders of the private respondents have been issued on various dates of selection year 2012-13 & 2013-14 and these orders do not mention the appointment to be effective from earlier dates and, therefore, the date of issuance of the order should be deemed as the date of appointment according to Rule 24 of Rules of 2011 and seniority of the respondents can be reckoned only from the dates of their appointment orders. As such, the private respondents appointed in the year 2013-14 are patently junior to the petitioner and private respondents appointed in 2012-13 should have been placed in cyclic rotation with the promotees in the seniority list and in such rotation, promotee gets all the first place and, therefore, the petitioner should have been kept above these direct appointees.

8. Learned Counsel for the petitioner further argued that the respondent No. 7 had done his graduation through Distance Education Mode and such degrees were suspended which were later restored by the orders of the Hon'ble Apex Court only from the date of passing the qualifying examination which respondent No. 7 passed in 2017/2018, therefore, the seniority of the respondent No. 7 should be reckoned from the year 2017/2018 only.

9. Learned Counsel for the respondents argued that the appointment orders of the private respondents mention that these appointments have been based on the revised recommendations, made in the letter of August 2012 of Public

Service Commission, of the selected candidates of the Uttarakhand State Engineering Services Examination, 2007. While no back dates from when the appointments would be effective have been mentioned in these orders, it is clear that these private respondents would be treated at par with other selected candidates of this selection who had already been appointed in the year 2010-11 itself and shall be granted seniority of the selection year 2010-11. As far as private respondent No. 7 is concerned, since all his service benefits stood restored after passing the qualifying examination his seniority shall be deemed to be from 2010-11 when other selected candidates of this combined State Engineering Services Examination 2007 have been appointed.

10. Learned A.P.O. has further argued that the petitioner has not challenged the appointment of the private respondent No. 7 and has no grievance against other persons who were appointed in selection year 2010-11 itself on the basis of this combined State Engineering Services Examination, 2007.

11. Learned Counsel for the petitioner further argued that in Writ Petition NO. 168 (S/B) of 2017, Parshuram & others vs. State of Uttarakhand & others, the Division Bench of the Hon'ble High Court did not grant promotion from the retrospective date, when the degree of the petitioner of that writ petition was suspended, even after the restoration of the degree after passing qualifying examination and similarly the benefit of seniority of private respondent No. 7 cannot be fixed from earlier date when his degree was suspended.

In Contempt Petition (C) Nos. 408-409 of 2019 in Civil Appeal Nos. 17869-17870, Ashok Kumar & others vs. Depinder Singh Dhesi & others, the Hon'ble Apex Court has held that the judgment of the Hon'ble Apex Court, according to which the validation of degree obtained through Distant Education Mode was provided after passing the qualifying examination, never directed to confer such advantage which the candidates were otherwise not enjoying earlier. Accordingly, the private respondent No. 7 cannot be given the benefit of seniority for the period when his degree was under suspension as he was not enjoying the benefit of this seniority earlier.

12. The Tribunal observes that the private respondents' selection process started with the Uttarakhand Combined State Engineering Services Examination, 2007 whose first result was published in February 2011 which falls in the selection year 2010-11. Selected candidates similar to the private respondents got appointment in the selection year 2010-11 from which year the seniority of the private respondents should be reckoned. The petitioner has been promoted in the

selection year 2012-13 and definitely his selection process started much later than the selection process of the private respondents. As the result of the examination of 2007 got revised upto August 2012 on the basis of orders of Hon'ble High Court, most of the private respondents got appointment in selection year 2012-13 and two of them got appointment in the year 2013-14 but admittedly they are in the select list of the combined State Engineering Services Examination, 2007 and natural justice requires that they should be given the seniority of the year 2010-11 itself. Had the respondent-department mentioned the retrospective date of 2010-11 in their appointment orders itself, the present dispute would not have arisen at all. However, it is mentioned in the appointment orders of the private respondents that appointments are being made on the basis of combined State Engineering Services Examination, 2007 and its select list of candidates. Therefore, the Tribunal holds that the private respondents have correctly been given the seniority of the selection year 2010-11 and correctly placed above the petitioner who has been appointed to the post of Assistant Engineer on the basis of his promotion in the selection year 2012-13.

13. As far as the dispute about seniority of the private respondent No. 7 is concerned, on the basis of his degree having been obtained through Distance Education Mode, which was validated after passing the qualifying examination, the Tribunal observes that if it was a matter of granting promotion to him from a date falling during the period of suspension of degree, his promotion from such retrospective date would not have been possible but to extend the same logic to seniority on the basis of service rendered during this period is not justified. He has already been doing service during this period and no additional advantage is conferred on him by counting such period towards his seniority.

14. In view of the above, the claim petitioner is not entitled to any relief and the claim petition is hereby dismissed. No orders as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: NOVEMBER 23, 2022

NAINITAL

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