

**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. 87/DB/2021**

1. Narendra Singh, aged about 30 years, s/o Sri Rajendra Singh Gunsola, r/o Gunsola House, Tiwari Mohalla, Srinagar Garhwal.
2. Harish Thapliyal, aged about 27 years, s/o Sri Kamleshwar Prasad Thapliyal, r/o Shanti Vihar Phase 2, Ajabpur Kalan, Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Rural Works Department, Govt. of Uttarakhand Dehradun.
2. Chief Engineer, Level-1, Rural Works Department, Tapovan Marg, Raipur Road, Dehradun.
3. Uttarakhand Public Service Commission, through its Secretary, Office at Gurukul Kangari, Haridwar.
4. Gajendra Singh Rana, s/o Shri Juni Singh Rana.
5. Vinod Badoni, s/o Shri Kamal Nain Badoni.
6. Mukesh Chandra Ramola, s/o Late Shri Chatar Chandra Ramola.
7. Brijpal, s/o Late Shri Rameshwar Prasad.

Respondent no. 4 to 7 Presently Posted as Additional Assistant Engineer at Office of Executive Engineer, Rural Works Department, Dehradun Division, Tapovan Marg Raipur Road District Dehradun.

8. Bihari Lal Painuli S/o Shri Geetaram Painoli Presently Posted as Additional Assistant Engineer at Office of Executive Engineer, Rural Works Department, Haridwar Division, near Sale Tax Office Roshnabad, District Haridwar.

..... Respondents

Present: Sri Prashant Khanna, Advocate, for the petitioner  
Sri V.P. Devrani, A.P.O. for the respondents no. 1 and 2  
Col. H.S. Sharma, Advocate, for the respondent no. 3 (online)  
Dr. N.K. Pant, Advocate, for the respondent no. 4 to 8 (online)

### **Judgement**

**Dated: 17<sup>th</sup> March, 2023**

#### **Justice U.C. Dhyani (Oral)**

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

- “(i) Set aside the impugned order dated 27-07-2021 (contained as Annexure no. 1 to the claim petition) as well as requisition dated 18-08-2021 made by the respondent no.2(contained as Annexure no. 1 to the claim petition).
- (ii) Direct the respondent authorities to consider the case of the petitioners for promotion to the post of Assistant Engineer in the light of Rule 5(ii) of 2006 rules.
- (iii) 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.
- (iv) Award the cost of the petition to the petitioners.”

2. At the very outset, learned Counsel for the petitioner submitted that the controversy involved in the present claim petition is covered by the decision rendered by this Tribunal on 23.11.2020 in Claim Petition No. 40/DB/2020, Anil Negi vs. Secretary, Pey Jal, Govt. of Uttarakhand and another. Learned Counsel for the petitioner, therefore, prayed that the present claim petition be decided in terms of the decision rendered by this Tribunal on 23.11.2020 in Claim Petition No. 40/DB/2020.

3. Sri V.P. Devrani, learned A.P.O. for respondents no. 1 and 2; Col. H.S. Sharma, learned Counsel for respondent no. 3; and Dr. N.K. Pant, learned Counsel for respondents no. 4 to 8, fairly conceded that the issue involved in both the claim petitions is the same and present claim petition may be decided in terms of the decision rendered by this Tribunal on 23.11.2020 in Claim Petition No. 40/DB/2020.

4. It will be appropriate to reproduce the entire judgement dated 23.11.2020, passed by this Tribunal in Claim Petition No. 40/DB/2020, as below:

“This petition has been filed by the petitioner for seeking the following reliefs:

*I. To issue direction or order to the respondents quashing the order dated 03.07.2020.*

*II. To issue direction or order to the respondents directing them to grant promotion to the petitioner in the degree quota.*

*III. To issue any other suitable, order of direction which this Hon’ble may deem fit and proper in the circumstances of the case.*

*IV. To award the cost of the Claim Petition in the favour of the petitioner.”*

2. The facts of the case in brief are as below:

The petitioner was appointed as Junior Engineer, Uttarakhand Jal Sansthan *vide* appointment order dated 25.04.2012. Petitioner had completed B-Tech (Civil) in the year 2008 and this qualification was mentioned against the petitioner’s name in the seniority list dated 17.01.2013. The petitioner appeared in the AICTE-UGC Special Examination 2018 for validation of his degree. The petitioner made a representation dated 20.09.2019 to the department stating that he had got the B-Tech degree in Civil Engineering in the year 2008 and subsequently, he has passed the examination conducted by the AICTE-UGC for validation of his degree and requested for consideration to be promoted to the post of Assistant Engineer in the degree quota. When the representation of the petitioner was not disposed of, he filed a claim petition No. 121/DB/2019 before this Tribunal, which was disposed of by this Tribunal *vide* judgment and order dated 14.10.2019 with a direction to the respondent No. 2, to decide the pending representation dated 20.09.2019 of the petitioner by a reasoned and speaking order in accordance with law at an earliest possible, but not later than 8 weeks of the presentation of certified copy of the order along with copy of representation.

Respondent No. 2 *vide* his letter dated 08.01.2020 (Annexure: 7) recommended to the Government that the petitioner should be given the benefit of Rule 6-3(c) of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011 (amended in 2013) (hereinafter called as the “Rules”). As the respondent No. 2 did not dispose of the representation of the petitioner dated 20.09.2019, in compliance of the judgment and order dated 14.10.2019 of the Tribunal, the petitioner filed contempt petition before this Tribunal. This Tribunal

*vide* order dated 03.07.2020 directed copy of the contempt petition to be sent to the Respondent No. 2 through email, soliciting response on or before 31.07.2020. Respondent No. 2 *vide* his order dated 03.07.2020 (Annexure: 9) rejected the petitioner's representation ignoring his earlier recommendation made *vide* letter dated 08.01.2020, *inter-alia* stating that the petitioner is not eligible to get the benefit of Rule 6-3(c) of the Rules. Aggrieved against this order, the petitioner has filed the instant claim petition.

Petitioner had also pressed for interim relief, on which, after hearing both the parties, following order was passed on 05.08.2020:

*"Heard both the parties on the issue of interim relief.*

*The petitioner is a Civil Engineer degree holder prior to his appointment in 2012. His degree has been validated in the AICTE-UGC Special Examination conducted in June, 2018, in which the petitioner had participated after sanction of casual leave.*

*Petitioner has a prima facie case to be considered for promotion to the post of Assistant Engineer, as degree holder.*

*It is, therefore, just and proper that promotional exercise, if any, being conducted to the post of Assistant Engineer, shall be subject to the final outcome of this claim petition."*

3. Intervention application was also moved on behalf of four Additional Assistant Engineers of Uttarakhand Jal Sansthan. Written Statements were filed on behalf of the respondents and Rejoinder Affidavit has been filed on behalf of the petitioner.

4. Learned Counsel for the petitioner, Respondents and Interveners have been heard. We will refer to relevant parts of the pleadings and arguments of the parties in the following paras.

5. The issue involved in this petition is about the interpretation of Rule 6-3(c) of Rules. Rule 6-3 is produced as below:

*"6-3 Assistant Engineer- Recruitment to the posts of Assistant Engineer shall be made from following sources-*

*(a) 40% posts by direct recruitment through the Public Service Commission.*

*(b) 50% posts by promotion on the basis of seniority subject to rejection of unfit from amongst such Junior/Additional Assistant Engineers, who have completed minimum 10 years service as such, on the first day of the year of recruitment.*

*(c) 7.33% posts by promotion from amongst such Junior/ Additional Assistant Engineers, who have completed 07 years satisfactory service as such, on the first day of the year of recruitment and who have*

*Graduate in Civil, Electrical or Mechanical Engineering from any University established by Law in India or passed examination of 'A' and 'B' of Institute of Engineers recognized in Civil, Electrical or Mechanical Engineers, Computer Science or equivalent thereto with the prior approval of the Jal Sansthan.*

(d).....

**Note: .....**"

6. Rule 6-3(c) provides for accelerated promotion to those Junior/Additional Assistant Engineers who have completed 7 years of satisfactory service and who have graduate degree with prior approval of the Jal Sansthan. The quota for such accelerated promotion was earlier 5% of the posts of Assistant Engineer, which was increased to 7.33% by way of the amendment done in 2013. The normal quota of promotion after minimum 10 years of service is of 50% posts available to all Junior/Additional Assistant Engineers.

7. The petitioner's contention is that he had got the degree qualification before his appointment and joining of service as Junior Engineer, therefore, the issue of getting degree qualification with prior approval of the Jal Sansthan does not arise. He also states that he had appeared in the validation examination of his degree, which was organized by the AICTE-UGC in 2018 with the permission of his Executive Engineer. Since he was having the degree qualification, the respondent No. 2 vide his letter dated 08.01.2020, addressed to the Additional Secretary, Drinking Water and Sanitation, Uttarakhand Govt. (Annexure: 7) had treated him to be covered under the above Rule 6-3(c) of the Rules and recommended this benefit to be given to him. However, when he filed the contempt petition before this Tribunal about non-compliance of the order dated 14.10.2019 of this Tribunal, *vide* which, Respondent No. 2 was directed to decide pending representation dated 20.09.2019 of the petitioner, Respondent No. 2 vide Office Order dated 03.07.2020 (Annexure: 9), has held that the petitioner has not been granted permission to participate in any examination regarding degree and has now held that the petitioner is not covered by above Rule 6-3(c) of the Rules. A perusal of this Office Order reveals that in this order the respondent No. 2 has distinguished the fact that the petitioner has appeared in the examination for validation of the degree from 03.06.2018 to 06.06.2018 which is different from any examination relating to degree. Subsequently, Respondent No. 2 has also stated in this order that as the petitioner has been appointed in the department in the year 2012 and he received his degree in the year 2008, the question of granting permission by the department does not arise. As far as mention of the degree qualification of the petitioner in the seniority list is concerned, it does not entitle him to any benefit against the Rules.

8. The respondents' and interveners' contentions are on similar lines as mentioned in the order dated 03.07.2020 (Annexure: 9)

and they also state that the petitioner is not entitled to any benefit on the basis of the respondent's letter dated 08.01.2020 to the Government (Annexure: 7) which is internal correspondence between the Jal Sansthan and the Govt. During arguments, they have vehemently contended that this provision of accelerated promotion after 7 years (instead of 10 years) is only to incentivize the diploma holder Junior Engineers to acquire the degree qualification and that is why the Rule states about graduate degree "with the prior approval of the Jal Sansthan".

9. We are aware on the basis of pleadings of other claim petitions filed before this Tribunal that the Uttarakhand Irrigation and Public Works Departments also have quota of accelerated promotion for degree holder Junior Engineers, but, in the corresponding Rules, the mention of degree, having been obtained with the prior approval of the Govt. department is not there, meaning thereby that all degree holders who join these departments as Junior Engineers, are equally entitled to be considered for promotion under the accelerated quota of Junior Engineers whether they have acquired the degree before joining the service or after joining the service.

10. Rule 6-3(c) of the Rules does not explicitly exclude those degree holders who have obtained the degree before the joining of service as Junior Engineers, that is why the Respondent No. 2 in his communication to the Govt. dated 08.01.2020 (Annexure: 7) treated the petitioner to be covered under this Rule. But, later in his office order dated 03.07.2020 (Annexure: 9) he changed his stance as narrated above. The interpretation of the words "with the prior approval of Jal Sansthan" cannot be over-stretched to exclude the degree holders who have obtained degree before joining the service as the question of prior permission does not arise in their case. However, Rule 6-3(c) of the Rules as worded now does not clearly include them in its ambit as well. Had it been the intention of the Govt. while framing the rules that such degree holders are to be excluded, the same would have been clearly mentioned in the Rules. Common sense also says that if the government's intention is to give accelerated promotion on the basis of degree, it should be immaterial whether that degree has been obtained before or after joining the service as Junior Engineer.

11. Learned counsel for the Respondent No. 2 argued that if prior degree holders (Junior Engineers who had obtained degree qualification before joining the service) are considered for the quota of accelerated promotion, while such persons can directly apply for the post of Assistant Engineers, it will become a channel of backdoor entry of such persons to the post of A.E. and thereby block the channel of promotion of diploma holder Junior Engineers. It is not really so because there is a promotion quota of 50% of posts for all Junior Engineers whether degree holder or diploma holder and in the accelerated quota of 7.33% of posts, diploma holder Junior Engineers

after acquiring graduate degree with the prior approval of the Jal Sansthan will have equal opportunity to be considered.

12. Learned counsel for the interveners also stressed on the point that Rule 6-3(c) of the Rules cannot be interpreted as allowing the consideration of prior degree holders to be covered under its ambit. We find that it is necessary to clarify the provision of exclusion or inclusion of prior degree holders in the Rule 6-3(c) of the Rules which may be done by the Govt. after perusal of the Cabinet Notes and other relevant papers on the basis of which these Rules were framed. The objective of having such accelerated quota of promotion for degree holders, as mentioned in those papers would in all probability clarify the intention of the Govt. at that time and the same can now be expressed either by a clarificatory G.O. or by a further amendment to the Rules.

13. If the Govt. finds the relevant papers to be equally vague in this respect, the Govt. should now take conscious decision about the exclusion or inclusion of prior degree holders under Rule 6-3(c) and issue the same by a clarificatory G.O. or an amendment to the Rules.

14. The above considerations are not only relevant to the case of the petitioner but all similarly placed persons who had obtained degree qualification before joining the service as Junior Engineers. Therefore, it will be in the fitness of things that such clarificatory G.O. or amendment in the Rules be issued before the promotional exercise for the post of Assistant Engineers is completed.

#### Order

With the above observations, the claim petition is disposed off. Respondent No. 1 is directed to get the clarificatory order or amendment to the Rules issued within a period of two months from the date of production of certified copy of this order. Promotional exercise shall be subject to such decision of the Govt.

In the circumstances, no order as to costs."

5. Sri Prashant Khanna, learned Counsel for the petitioner submitted that Rule 6-3(c) of Uttarakhand Jal Sansthan Engineering Service Rules, 2011 (amended in 2013) is *pari materia* to Rule 5(ii) of the Uttaranchal Rural Engineering (Group-"B") Services Rules, 2006 (as amended in 2013). Learned Counsel for the petitioner further stated that the petitioner had obtained Civil Engineering degree even before his induction in service, as Junior Engineer in Uttarakhand Rural Works Department. Respondents have nowhere disputed the same.

6. Present petition is, therefore, disposed of in terms of the decision rendered by this Tribunal on 23.11.2020 in Claim Petition No. 40/DB/2020, Anil Negi vs. Secretary, Pey Jal, Govt. of Uttarakhand and another.

7. Order accordingly.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: 17<sup>th</sup> March, 2023*

*DEHRADUN*

*RS*