

**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)

**EXECUTION PETITION NO. 10/DB/2023**

*( Arising out of judgment dated 16.02.2022,  
passed in Claim petition No. 49/DB/2020)*

Tara Chandra Pant and others.

.....Petitioners-executioners

**vs.**

1. State of Uttarakhand through Secretary/Add. Chief Secretary, P.W.D., Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Engineer in Chief & Head of the Department, Public Works, Department, Uttarakhand, Yamuna Colony, Dehradun.

.....Respondents.

Present: Sri M.C.Pant (online) & Sri Abhishek Chamoli, Advocates,  
for the petitioners-executioners.  
Sri V.P.Devrani, A.P.O., for Respondent No.1.

**JUDGMENT**

**DATED: JULY 18, 2023**

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

By means of present execution application, petitioners-executioners seek to enforce order dated 16.02.2022, passed by this Tribunal in Claim Petition No. 49/DB/2020, Tara Chand Pant and others vs. State & others.

2. The execution application is supported by the affidavit of Sri Tara Chand Pant.

3. Instead of narrating the facts of the petition again, it is better if the facts, as narrated in the decision dated 16.02.2022, along with the reasons, are reproduced herein below for convenience.

“By means of present claim petition, petitioners seek the following reliefs:

“a). To quash the impugned office order No. 556 of dated 23.12.2019 (Annexure No. A-1) of respondent no.2 with its effect and operation in league with order dated 28.06.2019 by which the respondent rejected the objection of the petitioners

b) To issue an order or direction to the respondents to modified the absorption order dated 12.05.2018 and 23.05.2018 (Annexure No. A-7 and A-8) of respondent No. 1 and 2 respectively, and absorbed the petitioners in the public works department on the post of Junior Engineer (Civil) from the date 21.10.2005, the date when the petitioners were transferred from Rural Works Department (Old name Rural Engineering Services) to Public Works Department declaring that since the date of transfer the lien of the petitioners were transferred to the Public Works Department and since then they became the members of the service of the respondent department, therefore they are entitled for all the benefit of service, i.e. seniority, promotion etc. in the department since 21.10.2005.

c) To issue an order, or direction and declaration that the date of the absorption of the petitioners by way of order dated 12.05.2018 and 23-5-2018 as arbitrary and non est in terms of the dictum of the Hon'ble High Court and Fundamental Rules and the same ought to be corrected *w.e.f* the date of initial transfer or 21.10.2005 and further to allow for the benefit of seniority and other service benefits on the basis of the merit position of the petitioners as prepared by Public Service Commission and from the initial date of induction in Govt. service i.e. 2002 before the persons who were appointed and selected by Public Service Commission in JE (civil) in PWD subsequent to the date of petitioner's and also allow all benefits of promotion and qualifying services and other service benefits including promotions from the date when the juniors were given such benefits or to mould that relief in view of the facts highlighted the body of the petition.

d) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E) To award the cost of the petition to the petitioner.”

[Emphasis supplied]

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#### PETITIONERS' VERSION

5. Facts, giving rise to present claim petition are as follows:

5.1 The petitioners were initially selected on the post of Junior Engineer (Civil) through combined Junior Engineer (Emergency Direct Recruitment) Competitive Examination, 2002, conducted by the Public Service Commission, Uttarakhand. The Commission *vide* letter No. 47/9/vfrxksiu/2002-03 dated 15.05.2004 recommended the names of the petitioners to the post of J.E. (Civil) in the Rural Engineering Services Department, renamed as Rural Works Department, Uttarakhand (for short R.W.D.). On the recommendation of the Commission, *vide* appointment order dated 06.01.2005 of Chief Engineer, R.W.D., the petitioners were appointed on the post of J.E.(Civil). Petitioners gave their joining on 13.01.2005 and afterwards.

5.2 Due to exigency of work and scarcity of Engineers in Public Works Department (for short P.W.D.), the respondent no.1 *vide* letter dated 30.08.2005, requested the Secretary, Rural Engineering Department, Govt. of Uttarakhand, to send 40 Junior Engineers on the basis of transfer/ deputation for one year or till the selection through

Commission (Annexure: A-2). *Vide* order dated 21.10.2005 of the Govt., 16 J.Es. were transferred to the post of J.E. (Civil) in the P.W.D.

5.3 According to the petitioners, prior to their transfer to P.W.D., no consent of the petitioners was taken by R.W.D. (parent department), hence, they came to P.W.D. by way of 'transfer' and not by way of 'deputation'. The respondents wrongly treated the service of the petitioners on deputation in P.W.D. The G.O. No. 490 dated 21.12.2015 of Personnel Department has clarified and defined 'deputation' and 'transfer'. The posting of petitioners from R.W.D. to P.W.D. is only by way of transfer of service and not deputation, therefore, the petitioners have become members of P.W.D. since the date of their transfer. Hence, they are legally entitled for determination of seniority in the cadre of J.E. (Civil) of P.W.D. since the date of transfer and not from the date of merger.

5.4 The State Govt. framed the Rules for merger of Junior Engineers (Civil), who were working on deputation in P.W.D. Such Rules are known as Uttarakhand Absorption on the Vacant Post of Direct Recruitment of Junior Engineer (Civil) in the Public Works Department Rules, 2012 (hereinafter referred to as the Rules of 2012) (Copy: Annexure-A 4). Petitioners prayed to the respondents to merge their services in P.W.D., as they were working in the Department since the year 2005, the year when they were appointed on the post of J.E. (Civil) in R.W.D., but the respondents did not pay any heed to the prayer of the petitioners. Instead of absorption in the P.W.D., petitioners were repatriated to the R.W.D. *vide* orders dated 09.10.2013 and 15.10.2013. Petitioners filed Writ Petition before Hon'ble High Court of Uttarakhand. Hon'ble Court was pleased to direct the respondents to absorb the petitioners according to Rule 4 of the Rules of 2012.

5.5 In the meanwhile, *vide* Office Order dated 30.08.2017 of R.W.D., the petitioners were granted promotion on the post of Addl. Assistant Engineer, notionally, *w.e.f.* 28.04.2011 and 25.03.2015 (Annexure: A-6). *Vide* G.O. No. 610 dated 12.05.2018, the respondent no.1 sanctioned the absorption of the petitioners in the department and directed the respondent no.2 to issue the absorption order (Copy: Annexure- A 7). Respondent No.2, *vide* order dated 23.05.2018, absorbed the services of the petitioners in P.W.D. (copy: Annexure- A 8).

5.6 After issuance of the order dated 23.05.2018, the petitioners were under the *bonafide* belief that after the merger, all the service benefits have been given to the petitioners in the department by counting their services since the date of their transfers, but in the interim seniority list, issued by respondent no.2 *vide* letter No. 63/07 dated 18.01.2019, the petitioners were placed below the private respondents, who were selected by the Commission much after the petitioners. Petitioners made representation against the interim seniority list (Annexure: A-9). Thereafter, respondent no.2, without considering the objections of the petitioners, *vide* impugned Office Order dated 23.12.2019 (Copy: Annexure- A10), issued the final seniority list from Sl. No. 658 to 1020 of Junior Engineer (Civil) of the department, in which petitioners have been placed at Sl. No. 1007 to 1020, while private respondents no. 3 to 351 have been placed above the petitioners. Hence, present claim petition has been filed by the petitioners challenging the impugned orders on various grounds, which have been mentioned in the claim petition itself and which form part of the record. The same shall be considered if and when so required, during the course of discussion.

#### RESPONDENTS' VERSION

6. Sri Rajendra Singh, Superintending Engineer-cum- Senior Staff Officer in the office of Engineer-in-Chief, P.W.D., Dehradun, has filed Counter Affidavit on behalf of official Respondents No. 1 & 2. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. No Counter Affidavit has been filed on behalf of private respondents.

6.1 It has been mentioned in the C.A., among other things, that the State Govt., *vide* order dated 12.05.2018 (Copy: Annexure- CA 5 & 6), directed absorption of services of the petitioners in P.W.D. under the provisions of Rules 4, 5, 6, 7 and 8 of the Rules of 2012. It is the submission of Ld. A.P.O. that on perusal of Rules of 2012 and on the plain reading of the Rule 7(2), it is clear that seniority of the employees, on absorption, shall be determined from the date of absorption. Ld. A.P.O., therefore, contended that in view of the Rule position, the seniority of the petitioners in P.W.D. shall be reckoned with from the date of order of their absorption.

6.2 In compliance of the approval order dated 12.05.2018, issued by the State Govt., the petitioners were absorbed in P.W.D. Respondents department issued the absorption order on 23.05.2018 (Copy: Annexure- CA 7). In P.W.D. 86+35+37 new Junior Engineers were recruited from different sources. Petitioners were absorbed under the Rules of 2012. The competent authority, *vide* order dated 18.07.2019, issued tentative seniority list of the J.E. (Civil) with liberty to the aggrieved persons to file objections against the tentative seniority list, if they are not satisfied with the tentative list. Petitioners filed their objections against the tentative seniority list. Respondent authority constituted a committee for redressal of their grievances. The committee held that the lien of the petitioners, including seniority in the P.W.D., shall be determined as per Rule 7 of the Rules of 2012. Final seniority list was issued on 23.12.2019. Objections of the petitioners were rejected (by respondent no.2).

6.3 According to service record of the petitioners, their lien continued in their parent department until their services were absorbed in P.W.D. *vide* order dated 23.05.2018. The notional promotion order of the petitioners was issued by their parent department on 30.08.2017. By such order, *i.e.* order dated 30.08.2017, the petitioners were notionally promoted from the post of Junior Engineer to the post of Addl. Assistant Engineer, in their parent department. Petitioners were drawing their salary from their parent department until they were absorbed in P.W.D. [according to Ld. Counsel for the petitioners, this is a wrong statement in the C.A.]

6.4 It is submission of Ld. A.P.O., appearing on behalf of official respondents that the petitioners were discharging their duties in public interest in P.W.D., on deputation and their services cannot be treated as service transfer in P.W.D. until their services were absorbed *vide* order dated 23.05.2018. Ld. A.P.O. also submitted that seniority has been given to the petitioners from the day when they were absorbed in P.W.D.

6.5 Detailed para-wise reply has been given in the C.A. The replies are in furtherance of the facts mentioned in earlier part of C.A. and are elaborate in nature. Documents have been filed in support of the averments contained in C.A. Ld. A.P.O. has, during the arguments, relied upon those documents to justify the departmental action. Rejoinder Affidavit thereto has also been filed by the petitioners.

## DISCUSSION

7. Office Memorandum No. 556/ 07 *vyagh-sa./2019* dated 28.06.2019 and Office Memorandum No.1157/ 07 *vyagh-sa./2019* dated 23.12.2019, along with other documents, are in the teeth of present claim petition.

8. *Vide* letter dated 30.08.2015 (Annexure: A-2), the Secretary, P.W.D. wrote to the Secretary, R.W.D. to provide 40 Junior Engineers (Civil) on deputation/ service transfer with the clarification that no additional allowance shall be payable on such deputation/ service transfer.

9. It was clarified in the G.O. dated 21.12. 2015 (Annexure: A-3) that whenever any officer is taken from one department to another, in public interest, the same is not deputation, but it is service transfer. It was thus clarified in G.O. dated 21.12.2015 (Annexure: A-3) that no employee/ officer be taken on deputation. Instead, such posting shall be treated as service transfer. Rules of 2012 have been enclosed with the claim petition as Annexure: A-4.

10. The respondents appear to have wrongly treated the services of the petitioners in P.W.D. on deputation. G.O. No. 490 dated 21.12.2015 of Personnel Department clarified and defined 'deputation' and 'transfer'. The G.O. dated 21.12.2015 clearly mentioned that posting of Govt. servants from one department to other department is a transfer of service and not the deputation. Therefore, posting of the petitioners from the R.W.D. to the P.W.D. appears to be 'transfer of service' and not 'deputation'. Petitioners became the members of P.W.D. since the date of their transfer to such department (P.W.D.). They appear to be legally entitled for determination of seniority in the cadre of Junior Engineer (Civil) of the P.W.D. since the date of their transfer and not from the date of their merger. (Copy of G.O. dated 21.12.2015 is at Annexure: A-3). The petitioners prayed to the respondents to merge their services in P.W.D., as they were working in the department since the year 2005, the year when they were appointed in the R.W.D. on the post of Junior Engineer (Civil), but the respondents, instead of absorbing the petitioners in P.W.D., repatriated them to R.W.D. *vide* order dated

09.10.2013 and 15.10.2013. Thereafter, writ petitions were filed before the Hon'ble High Court of Uttarakhand at Nainital.

11. The Hon'ble Court passed common judgment on 05.05.2017 in WPSS No. 1646 of 2013, Manoj Kumar and others vs. State and others and connected writ petitions, which is important in context of present claim petition. Hon'ble Court has, in such order dated 05.05.2017, observed that-

**“.....Their services were transferred. They were never sent on deputation. The person is entitled to deputation allowance when sent on deputation. In the present case, no deputation allowance was paid to the petitioners, they were merely transferred to work in Public Works Department.”**

Hon'ble Court directed the respondents to take necessary steps for absorption of the petitioners strictly according to Rule 4 of the Rules.

12. Ld. Counsel for the petitioners submitted that the petitioners were wrongly placed below the private respondents. In the final seniority list the petitioners were placed at Sl. Nos. 1007-1020 while private respondents No. 3 to 351 have been placed above the petitioners at Sl. Nos. 658-1006. Ld. Counsel for the petitioners also pointed out that from a bare perusal of the impugned seniority list dated 23.12.2019, it is revealed that the respondents number 3 to 61 are placed in seniority list at serial number 658 to 716, were selected and appointed on the post of Junior Engineer (Civil) against the vacancy of the selection year 2011-12 *vide* order no 1661 dated 29-9-2011 and amended order no. 3193, dated 12-3-2012 of "Commission". The respondent no. 62 Shri Madan Singh Bhensora was selected and appointed *vide* G.O. No. 966 dated 14-8-2012 and placed at Sl. No. 717 in the seniority list. The respondents no. 63 to 65 were initially appointed on *ad hoc* basis in 2002 and thereafter selected to the post *vide* order dated 10-1-2013 of Commission and placed at Sl. Nos. 718 to 720 of seniority list. The respondents no. 66 to 280 were selected *vide* order number 106 of dated 24-7-2013 of Commission against the vacancies of the selection year 2013-14 and placed at Sl. Nos. 721 to 935 of seniority list. The respondents no. 281 to 317, who were working in department on *ad hoc* basis were regularized on the post of Junior Engineer (Civil) under the provisions of Regularization Rules, 2013 and appointed on the post *vide* order dated 20-10-2016 of respondent no. 2 and were placed at Sl. Nos. 936 to 972 in the impugned in seniority list. The respondents no. 318 to 351 were working on the lower post or working on the basis of *ad hoc* promotion on the post of Junior Engineer (Civil) since 2011, were selected *vide* order dated 25-4-2017 of Commission and appointed on the post of Junior Engineer (Civil) and placed at Sl. Nos. 973 to 1006 in seniority list.

13. It is also pointed out that the ground taken by the respondents to determine the seniority of petitioners is wrong and illegal. The Tribunal finds substance in such submission of the petitioners. The petitioners were never sent on deputation in P.W.D. No Rules of deputation were followed. No consent of the petitioners was taken before sending them on deputation. (No deputation allowance was given to them). Prior to merger, the services of the petitioners in P.W.D. were not on deputation. On 03.10.2005, the services of the petitioners were transferred from R.W.D. to P.W.D. Since October, 2005 the petitioners are continuously working on the substantive post of J.E. (Civil) in P.W.D., hence, they are entitled for determination of seniority *w.e.f.* October, 2005 and not from 23.05.2018.

14. The decision rendered by Hon'ble Supreme Court in Sub-Inspector Roop Lal and another vs. Lt. Governor through Chief Secretary, Delhi and others, (2000) 1 SCC 644, is important in the context of deciding the controversy in hand. Relevant paragraphs of Sub-Inspector Roop Lal's decision (*supra*) are as follows:

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15. Apart from its own merits, the claim petition draws analogy from S.I. Roop Lal's decision (*supra*). In fact, it is on better footing than *Roop Lal*.

Rule 7(2) of the Rules of 2012 reads as below:

“After the merger, the seniority of the concerned junior engineers will be determined from the date of merger only”.

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17. The petitioners were absorbed on the date of merger. Petitioners filed writ petitions before the Hon'ble High Court of Uttarakhand, in which the Hon'ble High

Court *vide* common judgment dated 05.05.2017, directed the respondents for the absorption of the petitioners according to Rule 4 of the Rules of 2012.

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22. In the decision rendered by Hon'ble Apex Court in S.I. Rooplal's case (*supra*), the petitioner S.I. Rooplal was although taken on deputation, still he was given seniority from the date of his induction in the cadre (S.I./ Executive, Delhi Police). Offending part of the memorandum was struck down by the Hon'ble Apex Court.

23. Here, in the instant case, the petitioners joined P.W.D. not on 'deputation' (as observed by Hon'ble High Court), but by way of 'service transfer'. Moreover, petitioners joined their service on substantive basis much earlier than the induction of private respondents in P.W.D.. Initial pay scale of R.W.D. and P.W.D. is the same. They are the equivalent posts, carrying the same pay scale. It will be the travesty of justice if duly selected petitioners, selected substantively through Public Service Commission, while joining P.W.D. by way of service transfer, are denied their length of service and seniority from the date they joined initially in R.W.D. and precisely, when their services were taken (by way of transfer) in P.W.D.

24. The petitioners are entitled to the reliefs claimed.

25. The claim petition is allowed and the petitioners are entitled to all the benefits of service, in the Public Works Department, like seniority, promotion etc. from the date of their joining the P.W.D., which shall be deemed to be the date of their absorption in the P.W.D. and according to the seniority as per their merit position in the selection list prepared by the Public Service Commission. The impugned office orders dated 23.12.2019, 28.06.2019, 12.05.2018 and 23.05.2018 are set aside *qua* the petitioners. The seniority list of the P.W.D. be modified accordingly. No order as to costs."

4. It is the submission of Ld. Counsel for the petitioner that copies of judgment dated 16.02.2022, along with representation were sent to Respondents No. 1 and 2 on 27.02.2023, but still petitioners' representation have not been decided. The judgment dated 16.02.2022, rendered by this Tribunal in Claim Petition No. 49/DB/2020, Tara Chandra Pant & others vs. State & others, has become final, as the same has not been challenged before any superior forum till date. It is the submission of Ld. Counsel for the petitioners/ executioners that casual approach on the part of opposite parties/respondents should not be tolerated and strict action should be initiated against them.

5. Considering the facts of the case, this Tribunal directs the official respondent(s) concerned to comply with the order dated 16.02.2022, passed by this Tribunal in Claim Petition No. 49/DB/2020, Tara Chand Pant and others vs. State & others, if the same has not been complied with so far,

without further loss of time, failing which the concerned respondent(s) may be liable to face appropriate action under the relevant law governing the field.

6. Petitioners/ executioners are directed to place a copy of this order before the authority(ies) concerned by 28.07.2023, to remind that a duty is cast upon said authority(ies) to do something, which has not been done.

7. Execution application is, accordingly, disposed of at the admission stage with the consent of Ld. Counsel for the parties.

8. Let copies of this order be supplied to Ld. Counsel for the petitioners/executioners and Ld. A.P.O., as per Rules.

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

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

*DATE: JULY 18, 2023.*  
*DEHRADUN*

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