

**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. 42/NB/DB/2021

Rakesh Mahra, aged about 45 years, S/o Late Shri P.S. Mahra, presently posted as Traffic Inspector, (Haldwani) Nainital, Uttarakhand Police, Haldwani, District Nainital.

.....**Petitioner**

Vs.

1. State of Uttarakhand through its Secretary, Ministry of Home Affairs, Secretariat Rajpur Road, Dehradun.
2. Director General of Police, Police Headquarters, 12 Subhash Road Dehradun, Uttarakhand.
3. Jitendra Pathak, presently posted as Reserve Inspector, Police Line Almora through SSP, Almora.
4. Samarveer Singh, presently posted as Traffic Inspector, Dehradun through SSP Dehradun.
5. Rajpal Singh Rawat, presently posted as Quarter Master, 40 Bn. P.A.C., Haridwar through Commandant, 40 Bn. P.A.C., Haridwar.
6. Bhagwat Singh Rana, presently posted as Reserve Inspector, Police Line Champawat through SP Champawat.
7. Jagdish Chandra Pant, presently posted as Reserve Inspector, Dehradun through SSP, Dehradun.
8. Narendra Singh Mehra, presently posted as Traffic Inspector, Udham Singh Nagar, through SSP, Udham Singh Nagar.
9. Janak Singh, presently posted as Reserve Inspector, Uttarkashi through SP, Uttarkashi.
10. Ajay Kumar Arya, presently posted as Reserve Inspector Bageshwar, through SP Bageshwar.

11. Vikas Pundir, presently posted as Traffic Inspector, Haridwar through SSP Haridwar.
12. Sushil Rawat, presently posted as Traffic Inspector, Dehradun through SSP Dehradun.
13. Vipendra Singh presently posted as Reserve Inspector, Pauri Garhwal, through SSP Pauri Garhwal.
14. Hitesh Kumar, presently posted as Reserve Inspector Police Training College Narendra Nagar Tehri through Director, Police Training College Narendra Nagar Tehri.
15. Vijay Vikram, presently posted as Traffic Inspector, Udham Singh Nagar through SSP Udham Singh Nagar.
16. Rakesh Bisht, presently posted as Quarter Master, 46 Bn. P.A.C. Udham Singh Nagar through Commandant 46 Bn. P.A.C. Udham Singh Nagar.
17. Akhilesh Kumar, presently posted as Traffic Inspector, Haridwar through SSP Haridwar.
18. Manish Sharma, presently posted as Quarter Master, 31 Bn. P.A.C., Udham Singh Nagar, through Commandant 31 Bn. P.A.C., Udham Singh Nagar.
19. Ved Prakash, presently posted as Reserve Inspector, Udham Singh Nagar, through SSP Udham Singh Nagar.
20. Rajiv Rawat presently posted as Quarter Master State Disaster Response Force, Jollygrant, Dehradun through Commandant SDRF, Jollygrant, Dehradun.
21. Sanjay Kumar Upreti, presently posted as Quarter Master, Indian Reserve Bn. II, through Commandant IRB-II, Haridwar.
22. Narendra Kumar, presently posted as Reserve Inspector Pithoragarh through SP Pithoragarh.
23. Adesh Kumar, presently posted as Traffic Inspector, Nainital through SSP Nainital.
24. Pradip Kumar, presently posted as Traffic Inspector, Dehradun through SSP Dehradun.
25. Mahesh Chandra, presently posted as Reserve Inspector, Nainital through SSP Nainital.
26. Siddartha Kukreti, presently posted as Traffic Inspector, Tehri through SSP Tehri.
27. Harkesh Singh, presently posted as Quarter Master IRB-1, Bailparao Ramnagar through Commandant IRB-1, Bailparao Ramnagar.
28. Shiv Kumar, presently posted as Traffic Inspector, Pauri through SSP Pauri.

29. Jitendra Joshi presently posted as Reserve Inspector, Haridwar through SSP Haridwar.

30. Anand Singh Rawat, presently posted as Reserve Inspector, Tehri through SSP Tehri.

31. Ramesh Chandra Gairola, on deputation through SP(Police Headquarters), Police Headquarter Dehradun.

.....**Respondents**

Present: Sri D. S. Mehta, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2
Dr. N. K. Pant, Advocate for the respondents No. 3 to 30 (Online)

And

CLAIM PETITION NO. 66/NB/DB/2021

Manish Jaswal, (Male), Aged about 42 years, S/o Shri Suresh Kumar Jaswal, posted as Reserve Inspector, Police Headquarters, Dehradun, Uttarakhand/31 BN PAC. Rudrapur, U.S. Nagar.

.....**Petitioner**

Vs.

1. State of Uttarakhand through its Secretary, Ministry of Home Affairs, Secretariat Rajpur Road, Dehradun.

2. Director General of Police, Police Headquarters, 12 Subhash Road Dehradun, Uttarakhand.

3. Rakesh Bisht, presently posted as Quarter Master, 46 Bn. P.A.C. Udham Singh Nagar through Commandant 46 Bn. P.A.C. Udham Singh Nagar.

4. Akhilesh Kumar, presently posted as Traffic Inspector, Haridwar through SSP Haridwar.

5. Manish Sharma, presently posted as Quarter Master, 31 Bn. P.A.C., Udham Singh Nagar, through Commandant 31 Bn. P.A.C., Udham Singh Nagar.

6. Ved Prakash, presently posted as Reserve Inspector, Udham Singh Nagar, through SSP Udham Singh Nagar.

7. Rajiv Rawat presently posted as Quarter Master State Disaster Response Force, Jollygrant, Dehradun through Commandant SDRF, Jollygrant, Dehradun.

8. Sanjay Kumar Upreti, presently posted as Quarter Master, Indian Reserve Bn. II, through Commandant IRB-II, Haridwar.

9. Narendra Kumar, presently posted as Reserve Inspector Pithoragarh through SP Pithoragarh.

10. Adesh Kumar, presently posted as Traffic Inspector, Nainital through SSP Nainital.

11. Pradip Kumar, presently posted as Traffic Inspector, Dehradun through SSP, Dehradun.
12. Mahesh Chandra, presently posted as Reserve Inspector, Nainital through SSP Nainital.
13. Siddartha Kukreti, presently posted as Traffic Inspector, Tehri through SSP Tehri.
14. Harkesh Singh, presently posted as Quarter Master IRB-I, Bailparao Ramnagar through Commandant IRB-I, Bailparao Ramnagar.
15. Shiv Kumar, presently posted as Traffic Inspector, Pauri through SSP Pauri.
16. Jitendra Joshi presently posted as Reserve Inspector, Haridwar through SSP Haridwar.
17. Anand Singh Rawat, presently posted as Reserve Inspector, Tehri through SSP Tehri.
18. Ramesh Chandra Gairola, on deputation through SP (Police Headquarters), Police Headquarter Dehradun.

-----**Respondents**

Present: Sri D. S. Mehta, Advocate for the petitioner
 Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2
 Dr. N. K. Pant, Advocate for the respondents No. 3 to 17 (Online)

JUDGMENT

DATE: JULY 27, 2023

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

The claim petition No. 42/NB/DB/2021 has been filed seeking the following reliefs:-

- “i) to set aside/quash the impugned incorrect placement of the petitioner in the orders and combined seniority list dated 20.1.2018 and 29.4.2020, to the extent of, seniority/placement within the PAC Platoon Commanders recruited pursuant to advertisement in the year 2001 and consequent selection after calling entire records from the respondents, alongwith its effect and operation also, keeping in view the facts highlighted in the body of the petitioner or to mould the relief appropriately;
- ii) direct the respondent authorities to correct the placement/seniority of the petitioner and in the seniority list of

the PAC platoon commanders from 125 to 157, in the combined seniority list dated 29.4.2020, and place the petitioner at Sr. no. 127 instead of 156;

- iii) assign correct seniority to the petitioner as per principles and rules explained in the order dated 23.7.2014;
- iv) to issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;
- v) to award the cost of the petition to the petitioner.”

The claim petition No. 66/NB/DB/2021 has been filed seeking the following reliefs:-

- “i) to set aside/quash the impugned incorrect placement of the petitioner in the orders and combined seniority list dated 20.1.2018 and 29.4.2020, to the extent of, seniority/placement within the PAC Platoon Commanders recruited pursuant to advertisement in the year 2001 and consequent selection after calling entire records from the respondents, alongwith its effect and operation also, keeping in view the facts highlighted in the body of the petitioner or to mould the relief appropriately;
- ii) direct the respondent authorities to correct the placement/seniority of the petitioner and in the seniority list of the PAC platoon commanders from 125 to 157, in the combined seniority list dated 29.4.2020, and place the petitioner at Sr. no. 140 instead of 157;
- iii) assign correct seniority to the petitioner as per principles and rules explained in the order dated 23.7.2014;
- iv) to issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;
- v) to award the cost of the petition to the petitioner.”

2. Since both the claim petitions are related to the same recruitment and are similar, they are being disposed of by a common order. Claim petition No. 42/NB/DB/2021 shall be the leading case.

3. The facts of these two claim petitions are that the petitioners and the private respondents were selected on the basis of a common selection on the posts of Platoon Commanders of PAC for which advertisement was issued in the year 2001. The petitioners and the private respondents appeared in the written examination and physical fitness test and were called for interview in August 2002. While the private respondents got appointment in the year 2002, the petitioners got the appointment in the year 2005.

4. The reason for delay in the appointment of the petitioners was that 07 candidates were irregularly selected in the aforesaid selection whose services were terminated in the year 2004 on the basis of a CBI inquiry and subsequently, the petitioners were given appointment on the posts thus falling vacant. The Police Training College (PTC) training of the private respondents was conducted earlier and PTC training of the petitioners was conducted later. The seniority of the selected candidates was to be decided on the basis of marks obtained in the PTC training alone and if two candidates got the same PTC training marks, their seniority was decided according to their date of birth.

5. The petitioners were placed below the private respondents in the seniority list because they had joined the service later. The contention of the petitioners is that that they belong to the same selection and had some candidates not been irregularly selected, they would have been selected alongwith the private respondents and would have been kept in the seniority list according to marks obtained in the PTC training and not after private respondents on the basis of their joining later.

6. Counter affidavits, rejoinder affidavits and supplementary affidavits have been filed in the petitions. After hearing the learned counsel for the parties, our observations are as below.

7. The main contention of the respondents is that according to the Uttarakhand Government Servants Seniority Rules and the rulings of the Hon'ble Apex Court in the case of Pilla Sitaram Patru Vs. Union of India, 1997 (1) AWC75 (SC) & Vijaya Kumar Shrotriya Vs. State of U.P., JY 198 (1) SC 692: 1998 (1) UPLBEC 70 (SC): 1998 (1) SLR749 (SC), the petitioners have been provided seniority against the 2001-2002 batch and they have been placed after the Platoon Commanders who have completed their training in the year 2003, as the petitioners have completed their training in the year 2005. The contention of the learned counsel for the petitioners is that a bare perusal of both these Hon'ble Supreme Court Judgments would show that the Hon'ble Supreme Court has clearly said that while giving seniority among candidates recruited in same recruitment process, if appointment of any candidate is delayed due to laches by the Department and not due to the fault of the candidate, his later induction in service would not come in the way of giving him seniority according to the advertisement/recruitment year. If the delay is because of the fault of the Recruiter or the Government, the Recruit must not be made to suffer for it and should be given all the benefits as he would get, if there was no delay in his recruitment.

8. The Tribunal observes that the late joining of the petitioners is not due to their fault and had there not been irregularities in the selection process, they would have been selected alongwith private respondents and done the PTC training simultaneously with them. Therefore, keeping them below the private respondents on the ground of late joining is not justified.

9. In response to the query of the Tribunal, the respondent-department has clarified that the seniority is based on the marks obtained in the PTC training alone and the respondent-department in their additional counter affidavit have also listed the percentage marks obtained by the petitioners and the private respondents in their respective PTC trainings. While the respondent-department has kept the seniority of the private respondents on the basis of these percentage marks, the petitioners have been kept below them on the ground that their joining and training is of later years.

10. The Tribunal, in view of the above, directs that the petitioners should be placed at the respective places in the final seniority list on the basis of percentage of marks obtained by them in the PTC training irrespective of the fact that they have joined later. The respondent-department may modify the impugned seniority lists accordingly within a period of four weeks of the presentation of a certified copy of this order.

11. With the above directions, the claim petitions are disposed of. No order as to costs.

Let a copy of this order be also kept in the file of Claim petition No. 66/NB/DB/2021 Manish Jaswal Vs. State & others.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: JULY 27, 2023

NAINITAL

BK