

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

Claim Petition No. 64/NB/DB/2022

1. Sanjay Kumar, aged about 51 years, s/o late Sri Damodhar Prasad, presently serving as Boring Technician, Minor Irrigation Division, Chamoli, District Chamoli.
2. Ajeet Kumar, aged about 41 years, s/o Sri Rajendra Prasad, presently serving as Boring Technician, Minor Irrigation Division, Uttarkashi, District Uttarkashi.
3. Rohit Kumar, aged about 36 years, s/o Sri Harbansh Lal, presently serving as Boring Technician, Minor Irrigation Division, Rudrapur, District Udham Singh Nagar.
4. Narendra Singh Bisht, aged about 43 years, s/o Sri G.S. Bisht, presently serving as Boring Technician, Minor Irrigation Division, Ranikhet, District Almora.
5. Deepak Chandra, aged about 44 years, s/o Sri Umanand Badola, presently serving as Boring Technician, Minor Irrigation Division, Pauri, District Pauri.

.....Petitioners

versus

1. State of Uttarakhand through Secretary, Minor Irrigation Department, Government of Uttarakhand, Dehradun.
2. Secretary, Personnel Department, Government of Uttarakhand, Dehradun.
3. Chief Engineer (Head of Department), Minor Irrigation Department, Uttarakhand, Dehradun.
4. Uttarakhand Public Service Commission, Gurukul Kangari Haridwar through its Secretary.

..... Respondents

Present: Sri Bhagwat Mehra, Advocate for the Petitioners
Sri Kishore Kumar, A.P.O., for the Respondents no. 1 to 3
Sri Ashish Joshi, Advocate, for the Respondent no. 4

Judgement

Dated: 15th September, 2023

Per: Hon'ble Mr. Rajeev Gupta, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:

"A. To set aside the impugned letter/ communication dated 20-07-2022 issued by Respondent no. 1 (Annexure No. 1 to Compilation-1).

B. To declare the action of the Respondent No. 1, 2 and 3 in ousting the petitioners from the zone of consideration for promotion to the post of Junior Engineer, Minor Irrigation Department, as arbitrary and illegal.

C. To declare the action of the Respondent No. 3 in passing the order dated 26-02-2022 (Annexure No. 13 to the writ petition) as arbitrary, illegal and without competence.

D. To issue a writ order or direction in the nature of mandamus commanding the Respondents, to forthwith include the petitioners within the zone of consideration for promotion to the post of Junior Engineer, Minor Irrigation Department.

E. To issue a writ order or direction in the nature of mandamus commanding the Respondents, to consider and promote the petitioners to the post of Junior Engineer, Minor Irrigation Department from due date, if any, along with all consequential benefits.

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

G. Award the cost of the Claim petition in favour of the petitioners."

2. The case of the petitioners is outlined as below:

2.1 The petitioners were appointed in the respondent department as Assistant Boring Technician and were promoted to the post of Boring Technician *vide* different orders dated 23.02.2016 and 24.02.2016. Their promotion orders do not mention any probation period. Their service conditions are governed by Uttarakhand Minor Irrigation Department Boring Technician Service Rules, 2009 (hereinafter referred to as 'Rules of 2009').

2.2 The next promotional post from the post of Boring Technician is the post of Junior Engineer, which is covered by Uttaranchal Minor Irrigation (Irrigation Department) Junior Engineer (Group-C) Service Rules, 2003, as amended *vide* notification dated 12.08.2008 (hereinafter referred to as 'Rules of 2003'), which provide that 75% of the posts shall be filled by direct recruitment and 25 % posts shall be filled by promotion from the post of Boring Technician. The eligibility condition for promotion is that 10 years of qualifying service on the post of Boring Technician should have been completed. Due to the non-availability of eligible candidates serving on the feeder post of Boring Technician, who had completed 10 years of qualifying service, promotions on the vacant posts of Junior Engineers in the promotion quota, could not be made earlier.

2.3 The State Govt. in the year 2010 framed statutory rules commonly known as Relaxation Rules, 2010, which provide that if no eligible candidate with prescribed qualifying service is available, in that case, the relaxation upto 50 % in the qualifying service can be granted and an employee is entitled to such relaxation only once in his entire service career. These Rules were made ineffective in the year 2015. However, the State Govt. *vide* G.O./ notification/ amended rules dated 09.11.2021 again revived the Relaxation Rules for the recruitment year 2021-22.

2.4 Respondent No. 3 issued a letter dated 27.11.2021 to subordinate offices, whereby all the personnel were required to submit their applications for relaxation in the qualifying service for the purpose of promotion to the post of Junior Engineer. Petitioners also applied for the same. Petitioners were promoted on the post of Boring Technician in the month of February, 2016, and as such they had completed five years qualifying service on the feeder post in the last week of February, 2021, and were fully eligible for the post of Junior Engineer. However, respondent no. 3 did not consider the claim of the petitioners for promotion and gave relaxation in the qualifying service to as many as ten

candidates, who were above in the seniority position to the petitioners while the petitioners were left out on the alleged ground that the probation period on the post of Boring Technician cannot be counted for the purpose of qualifying service. This logic/reasoning is totally misconceived and erroneous and has no legs to stand in the eyes of law, as a bare perusal of the promotion orders of the petitioners on the post of Boring Technician would reveal that neither there is any condition of probation nor any probation period is provided in the said order. Moreover, in the service Rules, there is no condition for promotion to the post of Junior Engineer that the qualifying service shall not include probation period. It appears that the Respondent No. 3 has completely misinterpreted the Rule-4 of the Relaxation Rules, 2010. The real meaning/interpretation of the said Rule is that no person can be promoted after giving the benefit of Relaxation Rules, 2010, who is on probation period, otherwise, the purpose of probation period i.e. to assess the work and performance of a newly recruited employees/probationer would be frustrated.

2.5 The petitioners have given examples of Agriculture Department and Irrigation Department where the probation period has been counted for the purpose of relaxation in qualifying service.

2.6 Petitioners approached the Hon'ble High Court by filing writ petition no. 944 (S/S) of 2022, which was disposed of *vide* order dated 25.05.2022 of the Hon'ble High Court with a direction to respondent no. 1 to consider the representation of the petitioner and take decision thereupon within four weeks. Since the department was acting in the matter with great hurry without taking any decision, as such, a Correction/Modification Application was moved in the said writ petition on 12.06.2022 which was decided *vide* order dated 17.06.2022 with a direction that the decision shall be taken before issuing promotion order, on the representations of the petitioners. Thereafter, the petitioners submitted a detailed

representation in the matter through their counsel on 23.06.2022 to the Respondent No. 1. The same was sent by post.

2.7 Respondent No. 1 passed the impugned order dated 20.07.2022, whereby the representation of the petitioners has been cursorily rejected without deciding the real issue involved in the matter. While passing this order, respondent no. 1 has not even cared to the facts/pleadings/ reasons given in the letter dated 23.06.2022 as well as in the letter dated 19.07.2022 sent subsequently. While rejecting the petitioner's claim in a very casual and cursory manner, he has not even cared to deal with the fact that similar benefits has already been extended by the Respondent No. 3 itself to similarly situated persons vide order dated 29.06.2022 who were serving in the Clerical Cadre, copy of which was also annexed with the letter dated 19.07.2022.

2.8 Respondent No. 3 had sent a letter on 18.04.2022 to respondent no. 1 in the matter of petitioners, seeking guidance. In reply thereto, respondent no. 1 *vide* his letter dated 23.05.2022 asked the respondent no. 3 to do the needful in the matter as per Boring Technician Service Rules, 2009.

2.9 In the matter of clerical employees, respondent no. 3 *vide* his letter dated 01.06.2022 sent the proposal for relaxation to respondent no. 1, who *vide* his letter dated 22.06.2022 granted approval for relaxation in qualifying service to the clerical employees, observing that the Relaxation Rules shall have overriding effect over the Confirmation Rules (*Sthaikaran Niyamawali*). In pursuance of this order dated 22.06.2022, various persons in the clerical cadre were given the benefit of relaxation in qualifying service including the period of probation.

2.8 The petitioners have been discriminated in the matter and different yardsticks have been adopted by the Respondents in the same Department while interpreting the same provisions of Rules, dealing with two set of similarly situated persons. For eg.,

one Sri Yogendra Singh Chauhan was appointed only in April, 2017 on the post of Junior Assistant with two years probation period meaning that he completed two years probation period on or after April, 2019, and 06 years qualifying service is needed for promotion to the next higher post of Senior Clerk, but, he has already been promoted as Senior Clerk vide order dated 29.6.2022 by treating him to be eligible for promotion *w.e.f.* 01.07.2021. Such contradictory stands on the part of the Respondents are unheard of and cannot be justified in the eyes of law.

3. Identical separate counter affidavits have been filed on behalf of respondents no. 1 and 3 mainly stating the following:

3.1 Benefit of relaxation was given to the ten eligible Boring Technicians for promotion to the post of Junior Engineer *vide* office order dated 26.02.2022 of the Chief Engineer and H.O.D., Irrigation Department. According to the Relaxation Rules, after excluding the probation period, relaxation upto 50 % in the prescribed minimum service period can be granted. For promotion to the post of Junior Engineer, minimum ten years service on the post of Boring Technician is prescribed. On the first date of the selection year 2021-22 i.e. 01.07.2021, the petitioners have only completed five years of service and in this five years period after leaving two years of probation period, the petitioners are not eligible for relaxation. In the matter of the petitioners, advice was sought from the Govt. *vide* letter dated 18.04.2022. *Vide* Govt. letter dated 23.05.2022, it was directed that action be taken in the light of Rule 21 (1) of the Rules of 2009, which provides that a person appointed on the post of Boring Technician shall be under probation for two years.

3.2 The representation of the petitioners has been disposed of *vide* Govt. letter dated 20.07.2022 holding that the petitioners are not eligible for relaxation. The eligible Boring Technicians have

been given the benefit of relaxation and action for the promotion has been taken.

3.3 Regarding the examples of Agriculture Department and Irrigation Department, it has been submitted that different departments have different service rules and even in one department different cadres have different service rules and the service rules of one post cannot be applied to another department or another service cadre.

3.4 Pursuant to the orders of the Hon'ble High Court, after considering all facts and in the light of the provisions of the Service Rules of 2009 and the Relaxation Rules, the representation has been decided *vide* G.O. dated 20.07.2022, which is proper and appropriate.

3.5 The Chief Engineer and H.O.D. *vide* letter dated 26.03.2022 had desired guidance from the Govt. in the matter of relaxation to the employees of the Personal Assistant Cadre and Clerical Cadre and action was taken according to the instructions issued *vide* Govt. letter dated 22.06.2022. Directions were also sought from the Govt. in the matter of petitioners and instructions were received from the Govt. *vide* letter dated 23.05.2022.

3.6 The service rules of Boring Technician, Personal Assistant Cadre and Clerical Cadre are different and their service conditions are totally different.

3.7 Sri Yogendra Singh was of Clerical Cadre, who had completed four years service including the probation period on the first day of selection year 2021-22 and two years service excluding the probation period. According to service rules of clerical cadre, six years service as Junior Assistant is required for promotion to the post of Senior Assistant. According to the provisions of the Relaxation Rules, after excluding probation period, the prescribed minimum period can be relaxed upto 50 % on the basis of which Sri Yogendra Singh after excluding probation period, required

relaxation of two years service and such benefit was given to him. The Relaxation Rules, 2021, were effective only for the selection year 2021-22 (01.07.2021 to 30.06.2022) and after 30.06.2022, these Relaxation Rules are ineffective and therefore, benefit of relaxation cannot be given to the petitioners.

4. Rejoinder affidavit to the counter affidavits of respondents no. 1 and 3 has been filed on behalf of the petitioners reiterating the averments of the claim petition and mainly stating the following:

4.1 The contention of the Respondents that the Relaxation Rules, 2021 were only applicable upto 30th June, 2022, is misconceived and infact the said Relaxation Rules are applicable for the vacancies of recruitment year 2021-22. It is also admitted fact between the parties that the promotion order of similarly situated persons who were above in the seniority position, was issued by the Respondents itself on 29.09.2022.

4.2 Although the Respondent No. 1 has attempted to justify the arbitrary and discriminatory action by making irrelevant and illogical averments which have no legal basis, however, the Respondent No. 1 has not denied the fact that similarly situated persons serving in clerical cadre having similar condition of probation period in their respective Service Rules, have been given the benefit of relaxation after including/adding the services of probation period while the petitioners have been discriminated. As per the settled position in law that there cannot be different interpretation/yardsticks for the same Rule regarding similarly situated employees.

5. C.A. has also been filed on behalf of respondent no. 4 mainly stating that the paras of the claim petition relate to the State Govt. or the concerned department and no comments are required from respondent no. 4 and that the Commission conducts promotional exercise on the basis of recommendations sent by

State Govt. and the Commission is only the proforma party in the claim petition.

6. This Tribunal in its order dated 06.04.2023 observed that the C.A. of respondent no. 2 (Secretary, Personnel Department, Govt. of Uttarakhand is necessary to be filed in the interest of justice. The extract of this order is reproduced herein below:

“The petitioners had completed 5 years’ service including 2 years’ probation on 30.06.2021 and their contention is that as per the Relaxation Rules of 2010, they should have been granted relaxation upto 50% in the qualifying service for consideration of their promotion to the post of Junior Engineer in the recruitment year 2021-22 for which year the Relaxation Rules of 2010 were again revived. The qualifying service for promotion from the post of Boring Technician to the post of Junior Engineer is 10 years and the petitioners were not considered for relaxation by the respondent department whose contention is that no relaxation could be given in the probation period of two years and beyond that, the petitioners’ service is only three years while minimum 5 years of service beyond the probation period was required to make them eligible for relaxation under the Relaxation Rules of 2010. The petitioners have also cited the example of the clerical cadre in the same department wherein the respondent no. 1 (Secretary, Minor Irrigation Department) vide his letter dated 22.06.2022 (Annexure No. 27 to the claim petition) has directed the Chief Engineer and HOD, Minor Irrigation Department in the case of Personal Assistant cadre that 50% relaxation can be given after deducting the probation period from the qualifying service and about the clerical cadre, it has been stated in this letter that regarding counting of probation period for relaxation in the qualifying service of one year on the post of Senior Administrative Officer and total service of 25 years for promotion to the post of Chief Administrative Officer, the Relaxation Rules shall have overriding effect over the Confirmation Rules (*SthaikaranNiyamawali*). The second part of this advice of the Administrative Department is not clear. The petitioners have alleged that on the basis of this advice, relaxation of 50% in the total qualifying service including probation period has been given in the clerical cadre, while in their case, it is being denied.

The petitioners have also made the Secretary (Personnel), Govt. of Uttarakhand, as respondent no. 2, but no affidavit has been filed on behalf of the respondent no. 2. In the interest of justice, Counter Affidavit of respondent no. 2 is required to throw light on the fact whether the Relaxation Rules of 2010 permit the relaxation of 50% of the total qualifying service including the probation period or whether they permit relaxation upto 50% only in the qualifying service after the probation period. According to the petitioners, the intention of mention of probation period in the Relaxation Rules of 2010 is only to ensure that the relaxation in qualifying service may be given after the probation period is over and not during the probation period and 50% of the relaxation in total qualifying service including the probation period can be given, which should have been given to the petitioners, as they had completed 5 years upto 30.06.2021 and were, therefore, eligible after relaxation for promotion to the post of Junior Engineer in the recruitment year 2021-22.

Learned A.P.O. may ensure that the Personnel Department (Respondent no. 2) files detailed Counter Affidavit or a short Affidavit clarifying the position on the above points within a period of four weeks.

Learned Counsel for the parties may be informed accordingly.

List on 08.05.2023 for further orders.”

7. Pursuant to the above order, Sri Anil Joshi, Deputy Secretary, Department of Personnel and Vigilance, Govt. of Uttarakhand, has filed C.A. on behalf of respondent no. 2 mainly stating the following:

7.1 The State Government vide notification dated 23.11.2010 (Annexure No.9 to the claim petition), issued The Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010. Rule 4 of the said Rules is reproduced hereunder:

“In case a post is filled by promotion and for such promotion a certain minimum length of service is prescribed on the lower post or posts, as the case may be, and the required number of eligible persons are not available in the field of eligibility, such prescribed minimum length of service may be suitably relaxed upto 50% by the Administrative Department in consultation of the Personnel Department of the Government, excluding the period of probation as laid down for the lower post or posts, as the case may be.

Provided that relaxation in prescribed qualifying service for promotion will be allowed once in entire service tenure of any employee.

Provided further that the employees, who have availed the benefit of relaxation of prescribed qualifying service for promotion earlier, shall not be entitled for such benefit again.”

The aforesaid relaxation rules of 2010 were amended vide notification dated 17.08.2015, bringing into force The Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion (Amended) Rules, 2015. By virtue of the said amended Rules, one more proviso was added to Rule 4 of the Relaxation Rules:

"Provided that for promotion of Group "C" service cadre and for such promotion a certain minimum length of service is prescribed on the lower post or posts, such prescribed minimum

length of service may be suitably relaxed upto 50% on the recommendation of the Committee formed under the chairmanship of the concerned HOD with a Finance Controller and a member nominated by the concerned HOD, excluding the period of probation."

Thereafter, the aforesaid amended relaxation rules of 2015 were amended vide notification dated 09.11.2021 (Annexure No.9 to the claim petition), bringing into force The Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion (Amended) Rules, 2021. By virtue of the said amended Rules, one more proviso was added to Rule 4 of the Relaxation Rules of 2010, the same is reproduced hereunder:-

"Provided further that the benefit of relaxation given in the original Relaxation Rules shall be permissible for the present selection year (from 1st July 2021 to 30th June 2022) and before giving the permission of relaxation it must ensured that the said relaxation does not result into any anomaly relating to inter-se seniority and pay."

It is clear that vide 02 subsequent notifications i.e. notifications dated 17.08.2015 and 09.11.2021 provisos have been added to the original Rule 4 of the Relaxation Rule of 2010. In the original Rule 4 itself it has been categorically stated that while giving the benefit of relaxation, the period of probation has to be excluded.

7.2 In the case of the petitioners, they were promoted to the post of Boring Technician in the month of February, 2016 and if they are being considered for promotion in February, 2021, by application of Relaxation Rules, then by that time they have completed period of 05 years including the period of probation, which is not permitted under the Relaxation Rules, 2010 as amended from time to time, as the said rules categorically provide that the benefit of relaxation can be given up to 50% of the period of qualifying service, excluding the probation period.

7.3 Rule 4 of Relaxation Rules categorically provides that the period of qualifying service can be relaxed up to 50% and in the

instant case the said relaxation would amount to a period of 05 years as qualifying service for being considered for promotion to the post of Junior Engineer. The petitioners have been promoted on the post of Boring Technician in February 2016 therefore they cannot be said to have completed the period of 05 years in February 2021 as the said period also includes the period of probation.

8. Learned Counsel for the petitioners did not want to file any R.A. to the C.A. of respondent no. 2. After hearing the arguments of learned Counsel for the parties, the Tribunal observes the following:

8.1 The counter affidavit of the personnel department (respondent no. 2) also states that the probation period is to be excluded while giving benefit of relaxation upto 50 % of the period of qualifying service. The qualifying service on the post of boring technician for promotion to the post of Junior Engineer is 10 years. The Minor Irrigation Department's stand is that 5 years of service (50 % of ten years) was necessary after the probation of 2 years to get the benefit of relaxation. This, *prima facie*, appears to be incorrect because after the probation period of 2 years, only 8 years of service is required to complete the necessary qualifying service of 10 years. Such logic has been taken by the respondent department in the case of Sri Yogendra Singh Chauhan, who was appointed in April, 2017 on the post of Junior Assistant with 2 years probation period and 6 years qualifying service was needed for promotion to the next higher post of Senior Clerk. However, he has been promoted as Senior Clerk *vide* order dated 29.06.2022 while treating him to be eligible for promotion on 01.07.2021. Here, the logic of respondent department is that after the end of 2 years probation period in April, 2019, further 4 years qualifying service was needed for promotion to the next higher post of Senior Clerk and 50 % of 4 years i.e. 2 years service had been done by him by 01.07.2021, thereby making him eligible for relaxation. Using the same logic in the case of the petitioners, the petitioners completed

2 years of probation before 01.07.2018 and only 4 years of further service (50% of remaining 8 years) instead of 5 years (50 % of 10 years) was needed to be eligible for relaxation. It is a different matter that even by this logic, the petitioners did not become eligible for promotion on 01.07.2021.

8.2 If the logic taken by the Minor Irrigation Department in the petitioners' case is taken, then no relaxation can be given in cases where the probation period is 2 years and qualifying service is 4 years, as after completion of probation period of 2 years, 2 years further service (50 % of 4 years) would again be required for consideration of relaxation. Therefore, the logic adopted by the respondent department in the case of the petitioners is patently wrong and unacceptable.

8.3 The petitioners' case is that 50 % of the total qualifying service of 10 years i.e. 5 years of service including the probation period of 2 years is necessary to be eligible for relaxation. The Tribunal also notes that 10 years of qualifying service on the post of Boring Technician includes the 2 years service on probation and in some cases even if the probation period is extended, the total qualifying service on the post of Boring Technician for promotion to the post of Junior Engineer remains 10 years. When the probation period is counted in the qualifying service, its exclusion while applying the Relaxation Rules requires clear explanation of the intention of the Govt. According to the petitioners, the intention of mention of exclusion of the probation period in the Relaxation Rules is only to ensure that the relaxation in qualifying service may be given only after the probation period is over and service during the probation period is also to be counted. 50 % of relaxation in total qualifying service including the probation period should have been given to them. They had completed 5 years of service on the post of Boring Technician upto 30.06.2021 and were, therefore, eligible after relaxation for promotion to the post of Junior Engineer in the recruitment year 2021-22.

8.4 The Tribunal has already recorded in its order dated 06.04.2023 as excerpted in para 6 of this judgement that in the case of clerical cadre in the same department, the respondent no. 1 has given a vague advice stating that the Relaxation Rules shall have overriding effect over the Confirmation Rules (*Sthaikaran Niyamawali*). The cases of other departments cited by the petitioners have also followed different yardsticks.

8.5 It shall be in the fitness of things that the Personnel Department (respondent no. 2) looks into the cabinet papers and concerned file notings when the Relaxation Rules were framed and clarifies what was the intention of exclusion of probation period. The Personnel Department is directed to issue a detailed clarification alongwith illustrations in this regard in the next two months.

8.6 After clarification as directed in the above sub para 8.5 is issued by the Personnel Department, the Minor Irrigation Department shall reconsider the matter of granting relaxation to the petitioners in the light of the same for the selection year 2021-22 and if they become eligible for promotion after relaxation, review D.P.C. shall be convened to consider their promotion also on the remaining vacant posts of Junior Engineer in the selection year 2021-22. Such promotions, if made, shall be notionally effective from the date when others were promoted in the D.P.C. for the selection year 2021-22.

9. With the above directions, the claim petition is disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 15th September, 2023
DEHRADUN

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