

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO.27/DB/2013.**

Ram pal Singh Negi aged about 56 years S/o Late Shri Kundan Singh Negi at present working as Marketing Assistant ( Vipanah Sahayak) in the office of the Senior Marketing Inspector P.O. Bahniawala (Centre Doiwala), District Dehradun..

.....Petitioner.

**VERSUS**

1. State of Uttarakhand through Secretary, Government of Uttarakhand, Food Departement, Dehradun.
2. Regional Food Controller Garhwal Region, 74 Kanwali Road, Dehradun..

.....Respondents

Present: Sri Jugal Tiwari, Ld. Counsel  
for the petitioner.  
Sri Umesh Dhaundiyal, Ld. P.O.  
for the respondents.

**JUDGMENT**

**DATED: AUGUST 12, 2015.**

**(Justice J.C.S. Rawat, (Oral)**

1. This claim petition has been filed by the petitioner for seeking following relief:- “

“(a) The first higher time scale of pay be given to him from 01-05-1995.

(b) Thereafter the second higher time /promotional scale be given after completing 14 years, 20 years and 26 years of services.

(c) As in his entire long service of more than 30 years he got only one promotion in class IV (Marketing Assistant) with inordinate delay on 21-08-

1999 he may be given another promotion after completion of 26 years of service .

(d) Arrears of salary in the relevant pay bands and Grade pay may also be given.”

2. The petitioner has come before this Tribunal in second round of litigation. Initially the petitioner claimed in the earlier round of litigation that he was appointed as a Godown Chowkidar in the prevalent pay scale w.e.f. 18.08.1976. He claimed his seniority from the said date. The respondents contested the said petition before the Tribunal and alleged that the petitioner joined his services only on 14.11.1996 and not on 1976 and the petitioner was transferred from Agra in the year 1996 Respondents further alleged that the seniority is determined according to the circle in which Godown Chowkidar is appointed and therefore the seniority was determined in the Garhwal Circle according to his date of joining in this circle. After hearing the claim petition, the Tribunal came to the conclusion as under:-

“8- So far as seniority from the date of initial appointment is concerned, there are number of pronouncements of Hon’ble Supreme Court that a Government servant, on his regularization is entitled for the seniority from his initial appointment. From the appointment letter of the petitioner it is very clear that petitioner was appointed on regular basis in the pay scales and neither his appointment is ad-hoc nor fortuitous. In these circumstances, it cannot be stated that the initial appointment of the petitioner was not in accordance with the prevailing rules and procedure and prevailing pay scales. The fact that petitioner was regularized later than his juniors, cannot be made as ground for determining his seniority below his juniors in services. Respondents have given no reason as to why the petitioner was regularized on later dates, whereas juniors to him i.e. respondents were regularized on earlier dated. **In the matter of direct recruits class II Engineering officers Association and others Vs. state of Maharashtra and others AIR 1990 Full Bench pg. 1607** , Hon’ble Supreme Court laid down following propositions for determining the seniority on regularization :-

(a) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad-hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(b) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his services in accordance with the rules, the period of officiating services will be counted.

**9- In the matter of G.P Doval Vs. Chief Secretary Government of UP 1984 (2) SLR pg. 555(SC),** Hon'ble Supreme Court held that " First appointment made by not following the prescribed procedure – subsequently appointment regularized –in absence of rules. Such approval/regularization of services means confirmation by the authority having power and jurisdiction to make appointment. Such regularization of services will back to the date of first appointment and entire services to be counted in reckoning the seniority.

**10- Considering the facts and circumstances of the case in hand, we are of the opinion that petitioner is entitled for determination of seniority from the date of his initial appointment and not from the date of regularization order. It is all the more pertinent in view of the fact that right from the date appointment,** the petitioner has been in regular employment without any break on record. Accordingly, seniority list (Annexure-1) is required to be amended to the extent that Sri R.P.S.Negi be shown as senior to private Respondent Nos. 4,5,&6. The claim petition accordingly deserves to be allowed."

3. Perusal of the said judgment clearly reveals that it overruled the contention of the respondents petitioner that the petitioner is entitled for determination of seniority from the date of his appointment since 1996 and not from the date viz from 1976. The Tribunal further held that the petitioner had been in regular employment without any break

on record. In view of the above judgment, the petitioner was given full benefit of his seniority and the petition was allowed. This judgment has attained finality as has been submitted by the Ld. Counsel for the parties.

4. The second round of litigation which starts again with the above prayer which has been extracted at the top of the first preceding para of the judgment. Now again a controversy has arisen amongst the petitioner and the respondents as to whether the petitioner is entitled to get the time promotional pay scale, selection grade, time scale and other benefits of the time scale, as alleged by the petitioner in the petition, from the date of his appointment i.e. 1976 or he is entitled for the same from 1996 as alleged by the respondents in their W.S.
5. It is admitted fact that the respondents had determined his seniority as if he has been appointed in the year 1996 and it is also admitted that the petitioner had been promoted in the year 1999. The respondents had granted two time scales to the petitioner; first, on 1.9.2008 and second is 6.4.2014 as written in Para 9 of the W.S. The petitioner is claiming his selection grade, promotional pay scale and time scale from the date when he has been held to be senior to all the persons who had already been appointed after 1976, thus, the petitioner is claiming his time promotional pay scale, selection grade, time scale from the date of the appointment i.e. from 1976.
6. Ld. Counsel for the petitioner contended that during his 37 years' long service, the petitioner got only a delayed promotion on 21.8.1999 on the post of Marketing Assistant, Class-IV and he did not get the benefit of any higher time scale till then and he further contended after that the State Government has promulgated different Government orders which have been annexed along with claim petition as Annexure Nos.- 16 & 17. He further contended that Government servant is entitled to first higher time scale who has completed 8 years on 1.3.1995 and thereafter he will be entitled to further higher promotional pay scale after completing 14 years of service and further higher promotional pay scale after completing 20 years' service and the next pay scale after

completing 26 years of service. Position was made further clear vide Government order dated 10.4.2001 which is Annexure-18 to the Claim petition. Thus, the petitioner is claiming his promotional pay scale, selection grade as well as time scale from 1976.

7. Ld. A.P.O. appearing on behalf of Respondent No.1 contended that the petitioner was appointed in the different zones in Agra and he was transferred thereafter to the Uttarakhand Circle and his seniority is to be determined according to the circle in which Godown Chowkidar is appointed. He further contended that his seniority was determined according to the date of regularization in the zone as such the petitioner was regularized on 1.11.1996, hence all the time scales, promotional pay scale and selection grade would be available to the petitioner from 1996 which has already been granted to the petitioner.
8. We have heard learned counsel for the parties and perused the record.
9. The first and foremost question arises as to whether the plea of the respondents is barred by the principle of resjudicata. The judgment of the Tribunal, which is Annexure-2 to the claim petition has attained finality and that plea was specifically taken in the W.S. of that claim petition in the first round of litigation and the said plea had already been overruled and the petitioner had been granted seniority from the back date i.e. from the year 1976 when he joined the services. If an issue has already been decided by a competent Court, the subsequent plea is not maintainable. The matter, which has been tried and disposed of in first round of litigation, cannot be raised in the second round, hence the plea of the respondents is barred by the principle of resjudicata.
10. Now the second question arises as to whether the petitioner was appointed in the year 1976 or he was appointed in 1996 as alleged by the respondents. It is evident from the perusal of the record and the judgment of the Tribunal that the petitioner's services were deemed to have been regularized from the date when he joined the services of the respondents in the year 1976. In view of the above, there is no dispute that the petitioner is entitled to get the time scale, selection grade and

promotional pay scale w.e.f. the date of the initial appointment. In view of the above findings, the petitioner will also get all the benefits in accordance with the relevant Government orders applicable in the case of the petitioner with regard to the time scale, promotional pay scale and selection grade. We agree with the contention of the petitioner. We do not find any force in the contention of the Ld. Counsel for the respondents. Ld. Counsel for the respondents further emphasized that he had already been granted two time scales on different dates in the year 2008 and 2014. However, the said scales, which have already been granted, will be dealt with according to the general guidelines laid down in the Government orders vis-à-vis according to the finding of the Tribunal. The time scale, promotional scale and selection grade would be given to the petitioner calculating his services w.e.f. 1976 not w.e.f. 1996. In view of the above, the petitioner's claim is liable to be allowed.

**ORDER**

11. The claim petition is allowed. No order as to costs. The respondents are directed to calculate the said time scale, promotional scale and selection grade and other benefits w.e.f. 1976 and not from 1996 within a period of three months from the date of presentation of the copy of this order before them and payment be ensured to be made expeditiously preferable within a period of six months.

**( D.K. KOTIA )**  
VICE CHAIRMAN (A)

**(JUSTICE J.C.S.RAWAT)**  
CHAIRMAN

DATED: AUGUST 12, 2015  
DEHRADUN