

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 66/DB/2013

Sushil Kumar Lamiyan, S/o Sri Tilak Ram, Statistical
Officer, Office of Principal Chief Conservator of Forest,
Uttarakhand, 85, Rajpur Road, Dilaram Bazar, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Forest &
Environment Department, Secretariat, Subhash Road,
Dehradun,
2. Principal Chief Conservator of Forest Uttarakhand, 85,
Rajpur Road, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Counsel
for the petitioner

Sri U.C. Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: AUGUST 31, 2015

DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)

1. The petitioner has claimed the pay and salary for the period (w.e.f. 06.03.2010 to 23.07.2013) of his officiation to the post of Deputy Director (Statistics).
2. The facts in brief are that the petitioner along with one Shri Bhuwan Chandra Pandey was promoted to the post of Statistical Officer on 20.12.2005. The service conditions of the petitioner are governed by the Uttar Pradesh Forest Statistical Service Rules, 1982 as amended from time to time.
3. The respondent No. 1 had created the two posts of Deputy Director (Statistics) vide G.O. No. 6276/दस-1/2006-14(6)/2000 dated 20.12.2006. This post was earlier known as Chief Statistical Officer. However, these posts could not be filled because of non-availability of the eligible and suitable officials. Because of urgency in the department in the year 2010, these posts were required to be filled immediately. Due to non-availability of the suitable candidate at that time also, the respondents had posted the petitioner to the post of Deputy Director (Statistics) incharge vide order dated 06.03.2010. The petitioner had taken charge on the same day and continued to officiate on the said post efficiently and to the satisfaction of his seniors till 23.07.2013.
4. It is further stated that the pay scale of the post of Statistical Officer is Rs. 15600-39100 with grade of Rs. 5400, whereas, the pay scale of Deputy Director (Statistics) is Rs. 15600-39100 with grade pay of Rs. 6600. The petitioner

is entitled for the pay and allowances to the post of Deputy Director (Statistics) for the period of his officiation.

5. It is further stated that the petitioner was not promoted deliberately to the post of Statistical Officer. The petitioner had challenged it before the Hon'ble High Court of Uttarakhand by way of writ petition (S/B) No. 180 of 2013, but the respondents had hurriedly promoted other officer who was junior officer to the petitioner, and was not entitled for promotion. As the valid claim of the petitioner was ignored, the petitioner had filed a separate Claim Petition numbered as 23 of 2013. In this Claim Petition, the petitioner has sought the relief of difference of pay for the period of his officiation along with 12 % interest. The petitioner has also claimed Rs. 15,000 as cost of the petition.

6. The petition has been opposed on behalf of the respondents and it has been stated in the counter that the petitioner was recruited to the post of Investigator-cum-Computer on 05.06.1990, whereas, three other employees namely, Sri Dinesh Chandra Pandey, Sri Ramesh Chandra and Sri Mohan Chandra Pandey were also recruited on the same post on 28.01.1981. Sri Dinesh Chandra Pandey was promoted to the post of Statistical Assistant on 08.08.1988. However, the petitioner was promoted out of turn to the post of Statistical Assistant on 29.05.1998 in accordance with the Reservation Rules against reserved post. Consequently, the two officials namely Sh. Ramesh Chandra and Sh. Mohan Chandra Pant were promoted subsequent to the petitioner, but after their promotion they had regained their seniority in accordance with the provisions of Uttarakhand Govt. Servants Seniority Rules, 2002.

7. It is further stated that the petitioner was again promoted to the post of Statistical Officer on 20.12.2005 by that time Sri Mohan Chand Pant got retired, whereas, the other three persons could be promoted to that post only on 20.09.2007, but they had again regained seniority in accordance with the Seniority Rules. The petitioner had claimed seniority which was denied by the department but the petitioner had challenged the matter of seniority in another Claim Petition.

8. It is further stated that the petitioner Sushil Kumar Lamiyan was the only available candidate in the reserved quota who had completed five years as statistical Officer, therefore, he was deputed purely on temporary basis to the post of Deputy Director (Statistics) by Principal Chief Conservator of Forest, Uttarakhand vide his order no. 39/1-12(9) dated 06.03.2010 so that the work do not suffer adversely. This order was not made according to seniority. It is further stated that it was mentioned in the order itself that the petitioner will not be entitled for any salary to that post. Thus, the petitioner is not entitled for pay to the higher post. In the written statement several other allegations have been made which are regarding to the seniority, but as the seniority is not in question in this claim petition, therefore, we do not think it proper to state that.

9. A rejoinder affidavit has also been filed on behalf of the petitioner in which the facts already stated in the main petition have been reiterated. Some allegations have also been made regarding seniority which are not relevant in this petition. Therefore, we do not think it proper to narrate these facts.

10. We have heard both the parties at length and perused the evidence available on record carefully.

11. A very short question is involved in this petition as to whether the petitioner is entitled for pay of the post of Deputy Director (Statistics) for the period he worked in that capacity i.e. 06.03.2010 to 23.07.2013. In this regard, it is admitted that on the basis of an order dated 06.03.2010 passed by Chief Conservator of Forest, the petitioner was deputed as Deputy Director (Statistics) Incharge. He had taken over the charge on the said post same day and continued on that post till 23.07.2013. The claim of the petitioner for pay to the higher post for the above mentioned period has been opposed on behalf of the respondents firstly on the ground that it was mentioned in the order itself that petitioner will not be entitled for any additional or enhanced pay or allowances, as the petitioner was deputed to the post of Deputy Director (Statistics) purely on temporary basis. It is further stated that it was mentioned in the order itself that petitioner will not be entitled any salary or allowance on the higher post. The relevant extract of the order dated 06.03.2010 reads as under:

“इस कार्यालय में कार्यरत श्री सुशील कुमार लामियान सांख्यिकीय अधिकारी की तैनाती प्रभारी उपनिदेशक (सांख्यिकीय) के रूप में की जाती है। प्रभारी उपनिदेशक (सांख्यिकीय) के रूप में तैनाती नितान्त अस्थायी व्यवस्था है इसके लिए उन्हें कोई अतिरिक्त वेतन भत्ते देय नहीं होंगे।”

12. On the other hand, it has been contended on behalf of the petitioner that simply by mentioning in the order that petitioner will not be entitled for any additional pay does not make any sense and this fact will not preclude the petitioner from his entitlement for pay to the higher post for which he is

entitled in accordance with Rules. It appears that the petitioner was deputed for the short period, but from the record, it transpires that he continued on that post for that post for more than three years. Therefore, we agree with the contention of the petitioner that petitioner cannot be denied the benefit of higher pay simply because it has been mentioned in the order of the posting that petitioner will not be entitled for any extra pay. The petitioner had worked for a quite long time, therefore, the petitioner cannot be denied for any benefit which accrued to him on the higher post.

13. It has further been contended on behalf of the respondents that order of deputing the petitioner to the post of Deputy Director (Statistics) was not passed by any competent authority. We do not find any force in this contention as the petitioner had worked on the said post for a quite long time, under the aforesaid order. After taking work from the petitioner, the respondents cannot be permitted to allege that the order of deputation of the petitioner on the higher post was not passed by the competent authority.

14. It has been contended on behalf of the petitioner that as the petitioner had worked on the higher post, therefore, he is entitled the salary available to that post. In support of this contention, the petitioner relies upon the judgment of Hon'ble Supreme Court in **Arindam Chattopadhyay & others Vs. State West Bengal & others, (2013) 4 SCC, 152**. In this case, the Hon'ble Supreme Court has laid down as follows:

“Reverting to the facts of this case, we find that although the appellants were recruited as ACDPOs, the State Government transferred and posted them to work as CDPOs in ICDS Projects. If this would have

been a stopgap arrangement for few months or the appellants had been given additional charge of the posts of CDPO for a fixed period, they could not have legitimately claimed salary in the scale of the higher post i.e. CDPO. However, the fact of the matter is that as on the date of filing of the original application before the Tribunal, the appellants had continuously worked as CDPOs for almost 4 years and as on the date of filing of the writ petition, they had worked on the higher post for about 6 years. By now, they have worked as CDPOs for almost 14 years and discharged the duties of the higher post. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the appellants have not been discharging the duties of the post of CDPO or the degree of their responsibility is different from other CDPOs. Rather, they have tacitly admitted that the appellants are working as full-fledged CDPOs since July 1999. Therefore, there is no legal or other justification for denying them salary and allowances of the post of CDPO on the pretext that they have not been promoted in accordance with Rules. ”

The aforesaid analogy is applicable completely to the present case. Therefore, it can safely be said that petitioner is entitled for the pay available to the post of Deputy Director (Statistics) for a period of his officiation to the said post.

15. Apart from the salary to the higher post, the petitioner had also claimed the interest as well as the cost of the petitioner, but we do not find any justification for awarding the cost or any interest to the petitioner.

16. On the basis of the above discussion, we are of the view that petitioner is entitled for the pay available to the post of Deputy Director (Statistics) for a period of his officiation on that post. The petitioner is not entitled for any other relief and the petition deserves to be allowed partly.

ORDER

The claim petition is partly allowed. The respondents are directed to make the payment to the petitioner, the salary available to the post of Deputy Director (Statistics) for a period of his officiation on that post i.e. 06.03.2010 to 23.07.2013. The difference of the salary be paid to the petitioner within a period of three months from today. No order as to costs.

D.K.KOTIA
VICE CHAIRMAN(A)

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: AUGUST 31, 2015
DEHRADUN

KNP