

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN**

Present: Sri V.K.Maheshwari,

----- Vice Chairman(J)

&

Hon'ble Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 101/2009

Prem Prasad Bhatt, S/o Sri Durga Prasad Bhatt, Junior Engineer
(Electrical), (E&M Division), P.W.D., Rishikesh, District Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, P.W.D., Secretariat,
Subhash Road, Dehradun,
2. Chief Engineer Level-I, P.W.D, Yamuna Colony, Dehradun,
3. Girish Chandra Penuli, J.E. (Electrical), E&M, P.W.D.,
Rishikesh, District Dehradun,
4. Narendra Singh Negi, J.E. (Electrical) E&M, P.W.D.,
Rishikesh, District, Dehradun,
5. L.P.Penuli, J.E. (Electrical), E & M, P.W.D. Rishikesh, District
Dehradun.

.....Respondents

Present: Sri M.C.Pant & Sri L.K.Maithani, Counsel
for the petitioner
Sri U.C. Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: DECEMBER 07, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed this claim petition for seeking following relief:

“It is, therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to:

A) Issue order or direction to declare the impugned office order dated 6.7.2009(Annexure No. A-1) and final seniority list dated 5.9.2009 (Annexure No. A-2), illegal, inoperative and without jurisdiction and to set aside the same along with its effect and operation also.,

B) Issue a suitable order or direction directing the respondent no. 2 to restore the status of the petitioner after reviving the regularization order dated 19.12.2002 and place him at Sl. No. 8 above to the respondent no. 3 in the final seniority list had it been the impugned orders were never in existence.

C) Issue any other suitable direction or order as this Hon’ble Court may deem fit in the circumstances of the case,

D) Award costs of the claim petition to the petitioner.”

2. The facts in brief are that the petitioner was appointed as Junior Engineer (Electrical) in Public Works Department along with respondents no. 3, 4 and 5 on 22.04.1989 on ad-hoc basis (Annexure: A-3). By this order of 22.04.1989, six persons were appointed and their names were shown at Serial no. 1 to 6. Persons at Sl. No. 1 and 2 of the said list left the service. Respondent no. 3, 4 and 5 were shown in the said list at Sl. No. 3, 4 and 5 and the petitioner was shown at Sl. No. 6. In response to the appointment order dated 22.04.1989, the petitioner joined the service first on

24.04.1989 and respondent no. 3,4 and 5 joined the service later on 15.05.1989, 01.05.1089 and 09.05.1989 respectively.

3. In August, 2002, the Government of Uttarakhand framed “The Uttaranchal Regularization of Ad-hoc Appointments (on Posts within the purview of the Public Service Commission) Rules, 2002” (herein after referred to as Regularization Rules of 2002) and regularized the services of the petitioner and respondent no. 3,4 and 5 under these rules. While the office memorandum for regularization of the petitioner and respondent no. 3 and 5 was issued on 19.12.2002, the order for regularization of respondent no. 4 was issued on 05.03.2003. In the office memorandum dated 19.12.2002, the name of the petitioner was shown at Sl. No. 1, the name of respondent no. 5 at Sl. No. 2 and the name of respondent No. 3 at Sl. No. 3. The petitioner and respondent no. 3 and 5 were given the status of gazetted officer on 21.07.2005 and confirmed on 26.06.2006 showing their names at the same Serial Number as were shown in the regularization order dated 19.12.2002.

4. Respondent no. 3 gave a representation to the Chief Engineer Level-I on 22.04.2009 that the Serial Numbers at which petitioner and respondents have been placed in above orders of 19.12.2002, 21.072005 and 26.06.2006 are not correct and the Serial Numbers should be as per the initial appointment order dated 22.04.1989 and requested for amendment accordingly. The Chief Engineer Level-I constituted a Committee on 28.05.2009 to examine whether the Serial Numbers of the Junior Engineers in regularization order dated 19.12.2002 are as per the Regularization Rules of 2002 or not. The Committee provided opportunities to the petitioner and respondent no. 3, 4 and 5 and after considering the explanation and representation of the petitioner submitted its report to the Chief Engineer Level-I. Accepting the recommendations of

the committee, the Chief Engineer Level-I passed a detailed order on 06.07.2009 (impugned order: Annexure:A1) and decided to amend Serial numbers of junior engineers as given in the regularization orders dated 19.12.2002 and 05.03.2003 and placed the petitioner and respondent no. 3, 4 and 5 at Serial Number as per the initial appointment order dated 22.04.1989 i.e., respondent no. 3 at Serial No. 1, respondent no. 4 at Serial No. 2, respondent no. 5 at sl. No. 3 and the petitioner at Sl. No. 4 for the purpose of their inter-se seniority. Thereafter, final seniority list of junior engineers (Electrical) was issued on 05.09.2009 (Annexure: A-2) after taking into account the order passed by the Chief Engineer Level-I dated 06.07.2009. Aggrieved by the impugned orders dated 06.07.2009 and 05.09.2009, the petitioner has filed this claim petition.

5. The petitioner has challenged the impugned orders mainly on the grounds that re-determination of regularization and cancellation of the previous regularization, which was done by a legally constituted committee is against the law; the authorities had no jurisdiction to review or amend the regularisation of the petitioner; the regularization of the petitioner was never challenged by the private respondents or any other person and therefore, the seniority of the petitioner cannot be changed after a lapse of 6 and half years; the Serial numbers in the appointment letter (dated 22.04.1989) could not be the basis or criteria for the regularization as there is no mentioning about the procedure as to show how this merit was prepared; and seniority should be determined as per the date of joining. Petitioner has therefore, prayed to quash the impugned orders (Annexures: A-1 and A-2).

6. Respondent no. 1 and 2 have mainly stated in their written statement that the regularization has not been reviewed, changed or cancelled. Petitioner and respondent no. 3, 4 and 5 all stand

regularized as per the original list. Only, their Serial Numbers have been amended as per the provisions of the Regularization Rules of 2002 as the office memorandum which was issued did not list regularized junior engineers as per Rules and the Chief Engineer Level-I was competent authority to rectify this mistake in order to prepare the correct seniority list. Respondent no.1 and 2 have requested to dismiss the claim petition.

7. In their joint written statement, respondent no. 3, 4 and 5 have mainly relied on sub-rule 4 of Rule 4 of the Regularization Rules of 2002 and contended that the seniority of the regularized junior engineers has been correctly determined as per the serial numbers of the initial appointment letter dated 22.04.1989 and therefore, prayed to dismiss the petition.

8. The petitioner has also filed rejoinder affidavits against the written statements of respondents no. 1 and 2 and respondents no. 3, 4 and 5 and the facts stated in the main petition have been reiterated.

9. We have heard learned counsel for the parties and perused the record including the documents filed by the respondent no. 2 on 05.02.2014.

10. Learned counsel for the petitioner mainly argued that after the regularization, seniority should have been governed by the date of joining and since the petitioner joined first (and respondent no. 3, 4 and 5 joined after his joining), he should be placed higher in the regularization list and that was done also when regularization order dated 19.12.2002 was issued and therefore, later on at the time of preparing the seniority list, the amendment in placing the regularized junior engineers according to Serial numbers in the initial appointment order dated 22.04.1989 is against the law.

Learned A.P.O. refuted this and contended that the seniority has been finally decided as per the Regularization Rules of 2002.

11. In order to appreciate the issue under dispute, it would be proper to re-produce the relevant rules of “The Uttaranchal Regularization of Ad-hoc Appointments (on Posts within the Purview of the Public Service Commission) Rules, 2002”:

“Rule: 2-These rules shall have effect notwithstanding anything to the contrary contained in any other rules or orders.”

Rule:4- (1) Any person who-

- (i) *was directly appointed on ad-hoc basis before June 30, 1998 and is continuing in service as such on the date of commencement of these rules;*
- (ii) *possessed requisite qualifications prescribed for regular appointment at the time of ad-hoc appointment; and*
- (iii) *has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.*

(2) *In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.*

(3) *For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee.*

(4) The appointing authority shall prepare an eligibility list of the candidates arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed

before the Selection Committee along with the character rolls and such other records of the candidates as may be considered necessary to assess their suitability.

(5) *The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4)*

(6) *The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority.*

Rule:5- *The appointing authority shall, subject to the provisions of sub-rule (2) of Rule 4, make appointments from the list prepared under sub-rule(6) of the said rule in the order in which the names stand in the list.”*

12. Following are the main points of these Rules, which are relevant to decide the dispute in question:-

- (i) The appointing authority shall constitute a Selection Committee,
- (ii) The eligibility list of the candidates shall be prepared in order of seniority as per their names arranged in the initial appointment order,
- (iii) The Selection Committee, after assessing the suitability of the candidates on the basis of character rolls and other records, shall prepare a list of the selected candidates in order of seniority and forward it to the appointing authority,
- (iv) The appointing authority shall make appointments from the list prepared by the Selection Committee in the order in which the names stand in the list.

13. On the insistence of the Tribunal, respondent no. 2 filed the proceedings of the Selection Committee constituted for the regularization. The perusal of these proceedings shows that

names of 4 eligible candidates (petitioner and respondents no. 3, 4 and 5) were presented before the Selection Committee. The Selection Committee after considering the suitability found all 4 candidates suitable for regularization. The recommendation of the Selection Committee as revealed from the proceedings is in two parts. In the first part the petitioner and respondent no. 3 and 5 were cleared. Since the annual entries of respondent no. 4 for the years 1994-95 and 2001-02 were not available, his case was cleared later after receiving these entries.

14. The perusal of proceedings for regularization also reveals that the Selection Committee while recommending the selected candidates did not prepare a list according to Rule 4(6) and submitted its recommendation to the appointing authority without any such list. The proceedings also reveal that the 4 eligible candidates (petitioner and respondents no. 3, 4 and 5) which were presented before the Selection Committee in a Chart were not listed as per Rule 4(4) which prescribes that the list should be prepared in order of seniority as per their names arranged in the appointment order dated 22.04.1989. It is therefore, clear that neither the list of eligible candidates was prepared in the correct order under Rule 4(4) to be placed before the Selection Committee nor the Selection Committee after its assessment prepared its own list in order of seniority under Rule 4(6) when it submitted its recommendation to the Selection Committee. However, the fact remains that the Selection Committee found all 4 candidates suitable for regularization and the appointing authority after regularization made appointments of all 4 candidates. The appointing authority in its appointment order dated 19.12.2002 put the names of the candidates in the order in which they appeared in the chart of the eligibility list of candidates for regularization. As mentioned earlier, the appointing authority while preparing the

seniority list received the representation of respondent no. 3 and after due consideration and after providing opportunities to all concerned, amended the order of names of regularized candidates on 06.07.2009 and on that basis final seniority list was issued on 05.09.2009. Keeping in view the fact that the Selection Committee found all candidates suitable for regularization, we are of the view that the inter-se seniority of regularized candidates is to be determined as per Rule 4(4) of the Regularization Rules of 2002 as all ad-hoc appointments were made by a single order of 22.04.1989. Rule 4(4) of Regularization Rules, 2002 clearly provides that the eligibility list prepared by the appointing authority would be arranged in order of seniority as determined in the order of the appointment. There is no provision in the Regularization Rules of 2002 to determine the seniority of regularized candidates on the basis of their date of joining. On the contrary, the method of determining the seniority has been very clearly laid down in Rule 4(4) of the Regularization Rules of 2002. Learned counsel for the petitioner could not show any rule or order in favour of determining the seniority on the basis of date of joining when initial ad-hoc appointments were made by a single order. In any case, Rule 2 provides that the Regularization Rules of 2002 shall have effect notwithstanding anything to the contrary contained in any other rules or orders.

15. In other words, if we analyze the provisions of Rule 4 of Regularization Rules of 2002, it is clear that the eligibility list prepared by the appointing authority would be arranged in order of seniority as determined in the order of initial appointment. The phrase used after the word seniority “as determined from the date of order of appointment” is very relevant. It denotes how the appointing authority will fix the seniority. The principle of fixation of seniority has been made clear in the above phrase, which

mentions that the seniority is to be determined only in accordance with the order of appointment. If the intention of the Rules would have been to determine the seniority of the regularized candidates on the basis of their joining, the phrase would have been 'as determined from the date of joining of the candidates'. Thus, the contention of the petitioner is not sustainable in view of the above Rule-4(4) as highlighted and discussed above. The second portion of the Rule 4(4) is also very clear, which provides that "if two or more persons are appointed together from the order in which their names are arranged in the said appointment order". Thus, the appointing authority has to arrange the list in accordance with the provisions of Rule 4(4). The list which was submitted to the selection committee was not in accordance with Rule 4(4) of the Regularization Rules of 2002. Initially, the appointing authority committed the mistake and the eligibility list of the candidates was prepared according to the date of joining to the post of Junior Engineer. Accordingly, the regularization committee as constituted under Rule 4(3) had no power to go through the veracity of the said list which was submitted to the committee. The committee acted on the list submitted by the appointing authority and made the regularization accordingly. Thus, the preparation of the eligibility list was one part of the regularization proceedings, that had to be discharged by the appointing authority and committee had not to do anything with this list. The committee had only to see the character rolls and other records of the candidates and it had to assess the suitability of the candidates for regularization. The selection committee even had no right to call for any other record from the department because Rule 4(5) of the Regularization Rules, 2002 is also very clear and the selection committee had to consider the regularization of the candidates on the basis of the record under sub-rule (4) of Rule 4 forwarded by the appointing authority to the committee. Meaning thereby, the appointing authority himself had

to determine the seniority of the candidates according to the serial order as mentioned in the letter of appointment dated 22.04.1989 and not from the date of joining of the junior engineers. The appointing authority had all the powers to rectify the mistakes, if comes to his knowledge or is brought to his knowledge by others committee while preparing the seniority list. It is true that there is no dispute about the regularization of the respondents and the petitioner. The only dispute is regarding seniority. The committee after submitting the recommendations of the regularization, had completed its job and thereafter, it becomes functus officio. Thereafter, the appointing authority assumes the jurisdiction to prepare the seniority list of the candidates. If the committee becomes functus officio then, the appointing authority would have to take the charge of all the things, however, he has to follow the rules regarding seniority, which have been prescribed in Rule 4(4) and 4(6) of the Regularization Rules of 2002. All the candidates were regularized by the same process and by the same committee and hence there was no question to disturb the seniority, which existed prior to regularization and how the seniority would be determined, we have already pointed out. The Rule 4(4) comes into play and it determines the seniority according to the date of order of initial appointment. The serial order of the candidates in the list which was published by the department at the time of initial appointment and the serial order in the list submitted to the committee was not the same. So the appointing authority rectified the error and order passed by the Chief Engineer Level-1 is in accordance with law.

16. A somewhat similar dispute also came up before the Allahabad High Court in the case of Dr. Kripa Ram Mathur Vs. State of U.P. and others (2001)9 SCC, 506, in which the adhoc appointments of Lecturers were made in the Medical College and

their services were regularized in the year 1990 pursuant to the U.P. Regularization of Ad hoc Appointments (on posts within the purview of The Public Service Commission) Rules, 1979 (hereinafter referred to as Regularization Rules, 1979). The committee for regularization recommended that their seniority would be determined according to the rules later on. The name of the appellant was wrongly shown below the respondent no. 4 and he made a representation to the Government and the Government allowed the representation and placed the appellant above the respondent no. 4. The division bench of Hon'ble High Court quashed the order and held that inter-se seniority had to be fixed according to Rule 7(2) of the Regularization Rules, 1979. They had a dispute that while they were appointed as adhoc appointee, the appellant secured higher marks than the respondent no. 4. In the case in hand, the petitioner is claiming the seniority from the date of joining of the candidates, not from the date of order of the initial appointment. In the said case of Kripa Ram Mathur also, Rule 7(2) of Regularization Rules, 1979 provides the principle of fixation of the seniority, which reads as under:

“ यदि दो या अधिक व्यक्ति एक साथ नियुक्त किये जाये तो उनकी परस्पर ज्येष्ठता नियुक्ति के आदेश में उल्लिखित क्रम में अवधारित की जायेगी।”

The Hon'ble High Court held as under:

“The relevant Rule 7(2) of the Rules envisages that if two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment. Thus, whenever, the question of determination of seniority arises, this sub rule (2) of Rule 7 of the Rules cannot be lost sight of. It appears, may be due to inadvertence or by any reason, sub rule (2) of Rule 7 of the Rules has not been taken into consideration and contrary to that order dated 21.7.1993 has been passed, which in our opinion, cannot be allowed to stand.” The order of the Hon'ble High Court was affirmed by the Hon'ble Supreme Court. Thus, if

Rules provide that the two or more persons are appointed together, the seniority arranged in the list of the appointment order would determine the seniority. In view of this, the combined list has been prepared together in the case in hand and the names have been shown accordingly in the list and list would be conclusive according to Rule 4(4) of the Regularization Rules of 2002. Thus, the above judgment also helps to recite the controversy in the case in hand.

17. Learned counsel for the petitioner also contended that the Chief Engineer Level-I (appointing authority) was not empowered and competent to amend or review the order of names given in the office memorandum dated 19.12.2002. We find that the Selection Committee found all 4 candidates suitable for regularization and recommended all for the regular appointment. The perusal of Rule-4 of the Regularization Rules of 2002 shows that the Selection Committee was to assess the suitability of the eligible candidates. The Selection Committee could recommend a candidate either suitable or not suitable. In so far as seniority of selected candidates is concerned, the Selection Committee had no role to play. The method of determining the seniority is laid down in Regularization Rules of 2002. Learned counsel for the petitioner has laid stress on the point that once the regularization order has been passed by the competent authority, the said order cannot be revised or varied by the competent authority. The proposition of law is contra to the above argument. It is settled position of law, if the candidates do not fulfill the conditions laid down in the Government Orders or any Government Rules and the regularization has been made wrongly, the competent authority can review, rescind and modify the said order. In the case of **Secretary to Government, Agriculture and Cooperation, Government of Andhra Pradesh and others Vs. K. Kesavulu**

(2008) 1 SCC, 641 before the Hon'ble Apex Court, the candidate was appointed as watchman at the Seed Stores in the year 1980 on a temporary basis and subsequently, the services of the employee were regularized w.e.f. 01.03.1991. However, by subsequent proceeding on 01.04.1999, the services of the employee was again regularized w.e.f. 22.4.1994. Thereafter, again the competent authority vide proceeding dated 08.04.1999 considered the employee to be regularized w.e.f. 01.04.1999. As a result, the respondent was denied the benefit of regularization w.e.f. 01.3.1991. The employee filed the petition before the Administrative Tribunal, Andhra Pradesh which was allowed holding that he was entitled to be treated as regular employee w.e.f. 01.03.1991 when his earlier order of regularization was passed. Thereafter, the Hon'ble High Court also affirmed the said findings. The Hon'ble Supreme Court allowing the appeal held that the regularization order dated 23.09.1991 was passed while the respondent and several others did not fulfill the conditions laid down in the Government Order dated 01.02.1991. The relevant condition provided in Government Order was that the services of the full time contingent employees appointed before 01.2.1980 be regularized after completion of 5 years subject to fulfillment of the conditions laid down in the Government Memo I and II. The respondent did not fulfill the conditions of the said Government Order because he was appointed in the month of April, 1980. The concerned Government Order was related to persons who had completed 5 years of service before 1.2.1990. Undisputedly, the respondent was appointed on 21.04.1990 and therefore, he did not fulfill this condition. The Hon'ble Apex Court held that in this position, the respondent could not have been regularized in the year 1991 or 1994. The order of regularization was passed without noticing the discrepancy as pointed out above, which was subsequently rectified. Thus, the order of rectification was

justified. The Hon'ble Apex Court held in para 9,10,11 and 12 as under:

“9. The Tribunal held that the services of the respondent and others were regularized under earlier orders, and, therefore, GOMs No. 88 dated 1.4.1999 cannot be applied to the case of the respondent.

10. It is to be noted that the order dated 23.9.1991 was passed because the respondent and several others did not fulfill the conditions laid down in GOMs. No. 124[F&A Agri.V] dated 1.2.1991. The condition which is relevant has already been extracted above. Undisputedly, the G.O. concerned related to persons who had completed five years of service before 1.2.1990. Undisputedly the respondent was appointed on 21.4.1990 and, therefore, he did not fulfill the condition.

11. That being so, the question of his regularization did not arise. After the order of regularization was passed, the discrepancy was noticed and was subsequently rectified. It is not the case of the respondent that he was to be regularized in terms of GOMs No. 124 dated 1.2.1991. The Tribunal and the High Court clearly lost sight of this fact. That being so, the orders of the Tribunal and the High Court are indefensible and are set aside.

12. The appeal is allowed. There shall no order as to costs.”

Thus, this proposition also does not find favour to the petitioner in the case in hand. It is clear from the above judgment of the Hon'ble Supreme Court that the competent authority can change, modify or rectify the regularization order. In the case in hand, the authority concerned has not even varied or modified the regularization order, but only rectified the error committed by him in preparing the seniority list and the authority was competent to do so in order to prepare the correct seniority list.

18. The appointing authority while passing order dated 06.07.2009 has neither reviewed the regularization recommended by the Selection Committee nor changed the findings of the Committee. The Chief Engineer Level-I has simply amended the Serial numbers of the regularized candidates which were not according to the Regularization Rules of 2002 in order to prepare the correct seniority list. Though the Selection Committee had to submit its recommendation and the list of suitable candidates to the appointing authority under Rule 4(6) of the Regularization Rules of 2002 in order of seniority yet this shortcoming is of no consequence as all candidates were found suitable and recommended for regularization and the question of determination of seniority is very objectively prescribed under Rule 4(4) of the Regularization Rules of 2002. Under these circumstances, the amendment in office memorandum dated 19.12.2002 by the appointing authority with reference to Serial numbers of selected candidates after providing sufficient opportunity to the petitioner and others so that seniority list can be prepared according to Rules in our view is a justified act within the competence of the appointing authority.

19. In view of the foregoing discussion, we do not find any force in the claim petition and the same is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: DECEMBER 07, 2015.

DEHRADUN

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