

**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. 12/DB/2013**

Kiran Prakash, S/o Shri Ramesh Chand, Anusewak, 10<sup>th</sup> National Highway Circle, Public Works Department, Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through its Secretary, Public Works Department, Dehradun,
2. Pramukh Abhiyanta & Head of Department, Uttarakhand Lok Nirman Vibhag, Dehradun,
3. The Chief Engineer, Level-I(Garhwal Region), Public Works Department, Dehradun,
4. The Chief Engineer, Garhwal Region, Public Works Department, Pauri.
5. Sri Shiv Prasad, Junior Assistant, 7<sup>th</sup> Circle, PWD, Gopeshwar,
6. Sri Satpal Singh, Junior Assistant, 6<sup>th</sup> Circle, PWD, Uttarkashi

.....Respondents

Present: Sri Indrajeet Singh, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondents

**JUDGMENT**

**DATE: DECEMBER 11, 2015**

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

1. The present claim petition has been filed for seeking following relief:

*“1. Respondents be directed to promote the petitioner to the post of Junior Assistant w.e.f. 27.02.2009 when the juniors to the petitioner were promoted to the post of Junior Assistant with all consequential benefits.*

*2. Payment of difference of pay of the post of Junior Assistant and that of Anusewak for the period from 27.02.2009 onwards to the date of payment and thereafter the continuance of regular pay-scale of the Junior Assistant.*

*3. Cost of the case be awarded to petitioner from respondents as may be deemed fit by Hon'ble Court.*

*4. Any other relief which may Hon'ble court consider appropriate in the circumstances of the case.”*

2. The relevant facts in brief are that the petitioner was appointed as a Group 'D' employee at 63<sup>rd</sup> Circle of Public Works Department (PWD), district Pauri Garhwal on 13.12.1996.

3. There is a provision in 'अधीनस्थ कार्यालय लिपिक वर्गीय कर्मचारी वर्ग (सीधी भर्ती) नियमावली, 2004' to make promotion on 25 per cent vacancies of the lowest category post of Group 'C' out of Group 'D' employees.

4. The State respondent promoted 4 Group 'D' employees to the post of Junior Assistant (Group 'C' post) on 27.02.2009 (Annexure: A-II).

5. The contention of the petitioner is that out of 4 employees promoted from Group 'D' to Group 'C', two employees namely, Shri Satpal Singh (Respondent No. 5) and Shri Shiv Prasad (respondent No. 6) were junior to the petitioner.

6. The petitioner was promoted from Group 'D' post to the post of Group 'C' on 09.01.2015 (R-II enclosed to the counter affidavit of the Appointing Authority- pages 45/3 and 45/4 of the claim petition.)

7. The petitioner has, therefore, sought the relief to promote him to the post of Group 'C' (Junior Assistant) w.e.f. 27.02.2009 when the juniors to the petitioner were promoted with all consequential benefits regarding payment of salary etc. from that date.

8. Though the petitioner has also stated in the claim petition regarding wrong calculation of vacancies when promotions were made in 2009 and also the promotion of respondent No. 5 and respondent No.6 without conducting any written examination etc. but the relief which the petitioner has sought is confined to his promotion from 27.02.2009 (with all consequential benefits) when employees junior to him (respondent No. 5 and 6) were promoted. We have, therefore, not dealt with these other issues as they are not related to relief sought.

9. State respondents (No. 1 to 4) have opposed the petition and stated in their joint written statement that the dates of substantive appointments of respondent No.5, respondent No.6 and the petitioner on Group 'D' post are 13.05.1992, 27.09.1982 and 13.12.1996 (R1 to R3 annexed to the written statement) and,

therefore, the petitioner was junior as compared to respondents No.5 and 6 and, therefore, the relief sought by the petitioner cannot be granted and the petition is liable to be dismissed.

10. In spite of service and sufficient opportunity, respondents No. 5 and 6 did not appear before the Tribunal and file any written statement. It was decided to proceed ex-parte against them.

11. The petitioner has also filed the rejoinder. The same averments as stated in the claim petition have been reiterated in it.

12. We have heard the learned counsel for the petitioner and also learned A.P.O. on behalf of state respondents No. 1 to 4 and perused all the record and documents filed by the petitioner and the state respondents carefully.

13. Before we discuss the main question regarding seniority of the petitioner vis-à-vis respondents No. 5 and 6, it would be appropriate to look at the Rule Position in respect of Group 'D' employees.

14. Group 'D' Employees Service Rules, 2004 (hereinafter referred to as Group 'D' Service Rules) govern the service conditions of Group 'D' employees. Following relevant rules are reproduced below:

*“6. Sources of recruitment--The sources of recruitment to the various categories of Group 'D' posts shall be as follows :-*

<i>(a) Peon, Messenger, Chaukidar, Mali, Farrash, Sweeper, Waterman, Bhisti, Tindal, Thelaman, Recordlifter and every other non-technical post</i>	<i>By direct recruitment;</i>
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<i>(b) Peon-Jamadar</i>	<i>By promotion from amongst permanent peons;</i>
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(c) <i>Daftri/Book-binder/Cyclostyle Operator</i>	<i>By promotion from amongst qualified Peons, Messengers and Farrashes;</i>
(d) <i>Farrash-Jamadar</i>	<i>By promotion from amongst permanent Farrashes;</i>
(e) <i>Sweeper-Jamadar</i>	<i>By promotion from amongst permanent Sweepers;</i>
(f) <i>Head Mali</i>	<i>By promotion from amongst permanent Malis;</i>

*Provided that where no eligible/suitable candidate is available for promotion to a particular post which is required to be filled by promotion, the post may be filled by direct recruitment. ”*

**“24. Scale of pay--(1)** *The scale of pay admissible to persons appointed to the various categories of posts in the Establishment whether in a substantive or officiating capacity or as a temporary measure shall be such as may be determined by the Government from time to time.*

(2) The scales of pay at the time of commencement of these rules are as follows :--

<i>Name of Post</i>	<i>Pay Scale</i>
(a) <i>Peon, Messenger, Chaukidar, Mali, Farrash, Sweeper, Waterman, Bhishti, Tindal, Thelaman, Recordlifter and every other non-technical post</i>	<i>Rs. 2550--55--2660--60--3200</i>
(b) <i>Peon--Jamadar</i>	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border-left: 1px solid black; border-right: 1px solid black; border-top: 1px solid black; border-bottom: 1px solid black; width: 40px; height: 100px; margin-right: 10px;"></div> <div style="text-align: center;"> <i>Rs.2610--60--3150--65--3540</i> </div> </div>
(c) <i>Daftri, Book-binder, Cyclostyle Operator</i>	
(d) <i>Farrash--Jamadar</i>	
(e) <i>Sweeper--Jamadar</i>	
(f) <i>Head Mali ”</i>	

15. Perusal of Rule 6 and Rule 24 of the Group ‘D’ Service Rules reveals that the Group ‘D’ posts mentioned in Rule 6(a) are the posts of direct recruitment. There are as many as 12 posts of different nomenclature in this category. Posts mentioned in Rule 6(b) to 6(f) are promotional posts. The scale of pay of posts mentioned in Rule 6(a) above was Rs. 2550-55-2660-60-3200 according to Rule 24(2)(a) at the time of commencement of the Group ‘D’ Service Rules of 2004.

16. The petitioner was appointed as Group 'D' employees on 13.12.1996 in the pay scale of Rs. 2550-3200 as prescribed under Rule 24(2)(a) above as is clear from the paragraph 4(a) of the claim petition reproduced below:-

*“4. BRIEF FACTS OF THE CASE*

*(a) That the petitioner was initially appointed to the post of Anusewak w.e.f. 13.12.1996 in the Circle of Group D in the then pay scale of 2550-3200 at 63<sup>rd</sup> Circle of Public Works Department, Jalhari-Khal, Pauri Garhwal.”*

The petitioner was appointed on Group 'D' post on 13.12.1996 (R-1 annexed to the written statement) in the pay scale of Rs. 750-940 which became 2550-3200 at the time of commencement of the Group 'D' Service Rules of 2004. Respondent No. 5 was appointed on Group 'D' post of Dak Runner (Messenger) on 13.05.1992 (R-3 annexed to the written statement) in the pay scale of Rs. 750-940 which became 2550-3200 at the time of commencement of the Group 'D' Service Rules of 2004. Respondent NO. 6 was appointed on Group 'D' post on 23.09.1982 (R-2 annexed to the written statement) in the pay scale of 300-390 which also became 2550-3200 at the time of commencement of the Group 'D' Service Rules of 2004. The perusal of R-1, R-2 and R-3 annexed to the written statement which contain the details of the first appointment of the petitioner and both the private respondents, reveals that all of them were appointed in the same pay scale as prescribed under Rule 24(2)(a). All of them were appointed on Group 'D' posts mentioned under Rule 6(a) of the Group 'D' Service Rules. It is also clear that appointment of all of them was substantive appointment.

17. Rule 23 of the Group 'D' Service Rules deals with the 'Seniority' which is reproduced below:

*“23. Seniority--(1) Except as hereinafter provided the seniority of persons in any category of post shall be determined from the date of the order of substantive appointment and if two more persons are appointed together, by the order in which their names are arranged in the appointment order :*

*Provided that if the appointment order specified a particular back date with effect from which a person is substantively appointed, that date, will be deemed to be the date of order of substantive appointment and, in other case, it will mean the date of issue of the order.*

*(2) The seniority inter se of persons appointed directly on the result of any one selection, shall be the same as determined by the Selection Committee :*

*Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. The decision of the appointing authority as to the validity of reasons shall be final.*

*(3) The seniority inter se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted.”*

18. Perusal of Rule 23(1) of the Group 'D' Service Rules above reveals that the seniority of persons in any category of post shall be determined from the date of the order of substantive appointment. Rule 23(3) of the said Rules also makes it clear that the seniority inter-se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted. As has been made clear in paragraph 16 that the petitioner, respondent No. 5 and respondent No. 6 were all appointed on Group 'D' post

carrying the same pay scale. Appointment of all of them was substantive appointment. Even if any Group 'D' employee is promoted from Group 'D' post mentioned in Rule 6(a) of the Group 'D' Service Rules to any post mentioned in Rule 6(b) to 6(f), the inter se seniority of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted as has been made clear under Rule 23(3) of the Group 'D' Service Rules. Since the dates of substantive appointments of the petitioner, respondent No. 5 and respondent No. 6 on Group 'D' post are 13.12.1996, 13.05.1992 and 27.09.1982 respectively, the respondent No. 5 and respondent No. 6 are clearly senior to the petitioner.

19. Learned counsel for the petitioner has relied on Annexure: A-V which is a letter dated 24.10.2008 written by the Superintending Engineer 12<sup>th</sup> Circle, PWD, Pauri Garhwal to the Chief Engineer (Garhwal Region), PWD by which the seniority of respondent No. 5 has been changed and he has been placed from Sl. No. 5 to Sl. No. 14. In the enclosure of this letter, the seniority list of 24 Group 'D' employees (अनुसेवक) has been shown and according to this list also, the dates of substantive appointments of the petitioner, respondents No. 5 and respondent No. 6 are 13.12.1996, 13.05.1992 and 27.09.1982 respectively. The seniority according to Rule 23 of the Group 'D' Service Rules as mentioned earlier shall be determined from the date of the order of substantive appointment. But the seniority list shown in Annexure: A-V is not according to the date of substantive appointment. This seniority list has been prepared on the basis of the post held by Group 'D' employees as on 24.10.2008. The seniority list is, therefore, not according to Rule 23 of the Group 'D' Service Rules. Moreover, the changes made in the seniority list by the Superintending



Engineer through his above letter (Annexure: A-V) is in gross violation of the principles of natural justice as no objections were invited or no opportunity was given to those whose positions in the seniority list were changed. We are, therefore, of the opinion that the seniority list shown in Annexure: A-V is bad in the eye of rules and law and cannot be relied upon.

20. In the light of discussion in paragraphs 14 to 19 above, we reach the conclusion that respondents No. 5 and 6 were senior to the petitioner in Group 'D' service.

21. We would also like to look at the Rule position regarding promotion from Group 'D' post to Group 'C' post. We reproduce relevant Rule 6 of the 'अधीनस्थ कार्यालय लिपिक वर्गीय कर्मचारी वर्ग (सीधी भर्ती) नियमावली, 2004' below:

“6. भर्ती का स्रोत—किसी अधीनस्थ कार्यालय में लिपिक वर्गीय कर्मचारी वर्ग की निम्नतम श्रेणी में भर्ती नियम 9 में यथा उपबन्धित शैक्षिक और अन्य उपलब्धियों के आधार पर नियम 17 में निर्दिष्ट चयन समिति के माध्यम से सीधी भर्ती द्वारा की जायेगी, परन्तु, किसी विशिष्ट अधीनस्थ कार्यालय में 25 प्रतिशत रिक्तियां नियुक्ति प्राधिकारी द्वारा, समय-समय पर जारी किये गये सरकारी आदेशों के अनुसार, उस कार्यालय के समूह 'घ' के ऐसे कर्मचारियों में से, 15 प्रतिशत जो हाई स्कूल की परीक्षा उत्तीर्ण हों तथा 10 प्रतिशत जो इण्टरमीडिएट की परीक्षा उत्तीर्ण हों, पदोन्नति द्वारा भरी जा सकती है।”

The said Rules were amended on 01.10.2008 and a 'Note' was inserted in the end of Rule 6 which is reproduced below:-

“3. नियम 6 के अन्त में टिप्पणी का अन्तः स्थापन—

मूल नियमावली के नियम 6 के अन्त में निम्नलिखित टिप्पणी अन्तःस्थापित कर दी जायेगी, अर्थात्—

“टिप्पणी—लिपिक वर्ग के पदों पर भर्ती जिस कार्यालय में होनी हो उस कार्यालय में कार्यरत श्रेणी 'घ' के नियमित कर्मचारी ही पात्रता क्षेत्र में आयेंगे। समूह 'घ' से पदोन्नति हेतु लिपिक वर्ग के पदों पर भर्ती के

लिए, आरक्षित रिक्तियों पर व्यक्तियों के लिए चयन, श्रेष्ठता के आधार पर एक साधारण परीक्षा लेकर किया जायेगा। परीक्षा में केवल एक प्रश्न-पत्र होगा, जिसमें सामान्य हिन्दी, सामान्य ज्ञान एवं सामान्य अध्ययन से सम्बन्धित वस्तुनिष्ठ प्रश्न होंगे। लिखित परीक्षा अधिकतम 50 अंक की होगी तथा पात्र कर्मचारी की वार्षिक चरित्र पंजिका हेतु 20 अंक होंगे। उपरोक्त के अतिरिक्त 20 अंकों की टंकण परीक्षा कम्प्यूटर पर ली जायेगी तथा कम्प्यूटर व्यवहारिक ज्ञान हेतु 10 अंक निर्धारित होंगे। इस प्रकार चयन परीक्षा कुल 100 अंकों की होगी:

परन्तु यह कि उत्तराखण्ड सरकारी सेवक (पदोन्नति द्वारा सीधी भर्ती के लिए मानदण्ड) नियमावली, 2004 के उपबन्ध इस नियमावली के अधीन की जाने वाली पदोन्नति पर लागू नहीं होंगे।”

22. The perusal of above Rules for the promotion from Group ‘D’ post to Group ‘C’ post reveals that the criterion for promotion prescribed under the Rules is ‘merit’. The merit is to be determined by conducting a written test, typing test, knowledge of computer and annual entries. All Group ‘D’ employees who possess the qualification of High School/Intermediate are eligible to appear in the written test for their respective quota of 15 and 10 per cent. It is, therefore, clear that the promotion of employees from Group ‘D’ to Group ‘C’ shall be made according to the criterion of ‘merit’ and not according to the criterion of ‘seniority’.

23. We also summoned the record of promotion made from Group ‘D’ to Group ‘C’. We find that a committee was constituted and the committee recommended promotion of four Group ‘D’ employees to Group ‘C’ post on 19.02.2009 without conducting the written test and without adopting the criterion of ‘merit’ as prescribed under the Rules mentioned in paragraph 21 above. The promotions were made according to the criterion of ‘seniority’. It is, therefore, clear that the promotion of 4 Group ‘D’ employees to Group ‘C’ vide order dated 27.02.2009 is de hors the Rules. Since the petitioner has not challenged the promotion order dated

27.02.2009 (Annexure: A-II); no relief has been sought to set aside the same; and also all employees promoted vide order dated 27.02.2009 have not been made parties, we leave the matter here without dealing it further.

24. In view of above, we find that the petitioner has failed to establish that juniors to him have been promoted and for the reasons stated above, we are of the opinion that the petitioner is not entitled to get the relief sought by him for his promotion w.e.f. 27.02.2009 with consequential benefits.

**ORDER**

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

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

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

DATE: DECEMBER 11, 2015  
DEHRADUN

*KNP*