

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 25/NB/DB/2016

Subhash Chandra S/o Sri Bankey Lal, Presently posted as Accountant in
the office of Treasury, Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Finance, Government of
Uttarakhand, Secretariat, Dehradun.
2. Director, Treasury, Pension and Haqdari, Dehradun.
3. District Magistrate, Udham Singh Nagar.
4. Chief Treasury Officer, Udham Singh Nagar.
5. Himanshu Joshi, Presently posted as Accountant (Treasury),
Haldwani, Nainital.

.....Respondents

Present: Sri C.S.Rawat, Ld. Counsel
 for the petitioner.
 Sri V.P. Devrani, Ld. A.P.O.
 for the Respondents No. 1 to 4
 Ms. Menka Tripathi, Ld. Counsel
 for the respondent No. 5

JUDGMENT

DATED: MAY 08, 2018

HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed the present claim petition for
seeking the following reliefs:

“i) To issue writ, order or direction in the nature of certiorari to quash the entire State Level Seniority List of Accountants (Treasury) dated 16.07.2015 along with the Communication letter dated 20.07.2015 so far as relates to the respondent no. 5.

ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to re-fix the final Seniority List and not to include the name of those incumbents who were never promoted substantively as Accountant (Treasury).

iii) To issue a writ, order or direction in the nature of mandamus directly the respondents not to promote the respondent No. 5 prior the promotion of the petitioner.

iv) To issue any other or further writ, order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

v) To award the cost of the petition in favour of the petitioner.”

2. The petitioner was initially appointed as Assistant Accountant (Treasury) in district Udham Singh Nagar on 26.02.1999 and he was promoted on the post of Accountant on substantive basis in District Udham Singh Nagar on 02.12.2013. The petitioner has contended that he made representation against the tentative seniority list issued on 25.01.2014 but his representation was not considered by the respondents. The petitioner has also stated that the relevant Rules for determining the seniority are the Uttarakhand Treasury Subordinate Cadre Rules, 2003 and the Uttarakhand Government Servants Seniority Rules, 2002 and according to these Rules, State-wise seniority of Accountants was to be fixed on the basis of dates of the substantive appointments on the post of Accountants in various districts. The respondents have determined the seniority on the basis of the number of posts which were sanctioned by the government in the ratio of 80:20 for the Accountants and Assistant Accountants respectively as a result of

the recommendations of the Samta Samiti, 1989. It is the contention of the petitioner that promotion of the Accountants in various districts were not made by following due process prescribed under the Service Rules and the promotions were made merely on the basis of availability of vacancies and, therefore, such promotions cannot be said to be promotions made on substantive basis. Thus, the seniority list dated 16.07.2015 (Annexure: A-1) is not in accordance with the Rules. The petitioner has further contended that the respondents have taken up the exercise to promote Accountants to the post of Assistant Treasury Officer and the private respondent No. 5 who has not at all been substantively appointed on the post of Accountant has been included in the seniority list (Annexure: A-1) as well as in the eligibility list (Annexure: A-2) in violation of the Rules.

3. State respondents (No. 1 to 4) and private respondent no. 5 have opposed the claim petition and their pleadings are similar. It has been contended by the respondents that the petitioner was substantively appointed on the post of Accountant on 21.12.2003, while the date of substantive appointment of respondent no. 5 on the post of Accountant is 19.11.2000 and, therefore, respondent no. 5 is senior to the petitioner. The respondents have submitted that the seniority list has been made on the basis of the Service Rules of 2003 and the Seniority Rules of 2002 taking dates of substantive appointments of promotion on the post of Accountant in various districts. State respondents have also submitted that the State-wise seniority list of Accountants has been prepared on the basis of the dates of substantive appointment of Accountants communicated by the District Magistrates to the Director, Treasury. It was also contended by the State respondents that objections of the petitioner against the tentative seniority list were duly considered and thereafter, his place in the seniority list was finalized. State

respondents also submit that there are as many as 16 writ petitions pending before the Hon'ble High Court regarding determination of date of substantive promotion of those who were promoted as a result of fixation of vacancies by the government in the ratio of 80:20 in respect of Accountants and Assistant Accounts respectively. State respondents have also pointed out that the petitioner himself has filed a writ petition in the Hon'ble High Court of Uttarakhand no. 1785(S/S) of 2015 for determination of his seniority on the basis of 80:20 ratio and this fact has been concealed by the petitioner from this Tribunal. It has been clarified by the State respondents that the seniority list dated 16.07.2015 (Annexure: A-1) is subject to the various writ petitions pending for adjudication before the Hon'ble High Court of Uttarakhand at Nainital.

4. The petitioner has not filed any Rejoinder Affidavit. In spite of sufficient opportunity, none has appeared on behalf of the petitioner as well as private respondent no. 5 at the time of hearing. We have heard learned A.P.O. on behalf of state respondents and perused the record.

5. In the present claim petition, there is controversy regarding determination of date of substantive appointment. It seems that different districts have adopted different yardsticks and at the time of preparing state-wise seniority list, the Director, Treasury has gone as per the information provided by the districts. We have perused the record and find that adequate material has not been provided, neither by the petitioner nor by the respondents regarding promotions made by various districts on the post of Accountants in respect of posts fixed under 80:20 ratio in so far as procedure of promotion and the basis of date of substantive promotion are concerned.

6. By perusing record, we also find that the petitioner has sought relief to quash the entire state level seniority list of Accountants (Annexure: A-1) but he has made only private respondent no. 5 as respondent in the claim petition. In the claim petition, the petitioner has not shown the serial number at which he should be placed in the seniority list. In the seniority list dated 16.7.2015, there are in all 95 persons and the petitioner has been placed at sl. No. 79 and the private respondent no. 5 is at sl. no. 25. As the petitioner has prayed for quashing the entire seniority list, all persons who are above the petitioner from sl. No. 1 to 78 may get affected. Moreover, by seeking relief for quashing the entire seniority list, the persons placed in the seniority list from Sl. No. 80 to 95 may also get affected in so far as inter-se seniority among them is concerned. We find that the petitioner who has prayed to quash the entire seniority list, has not made parties to those persons who are listed in the seniority list (except respondent no. 5) and who might be adversely affected. All these persons are necessary parties for adjudication of the matter in this claim petition. Without going into any other aspect, we are of the definite view that in the absence of inclusion of necessary parties as respondents, the claim petition is liable to be dismissed on this ground alone. Accordingly, claim petition is hereby dismissed. No order as to costs.

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

Sd/-

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

DATE: MAY 08, 2018
NAINITAL

KNP