

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 81/DB/2018

Smt. Kalawati Martolia, aged about 46 years (Female) W/o Shri Jagdish Singh Martolia, presently posted as Section Officer, Urban Development Section-3, Uttarakhand Secretariat, Dehradun.

.....Petitioner

WITH

CLAIM PETITION NO. 80/DB/2018

Gauri Shankar Joshi, aged about 48 years (Male) S/o Shri Govind Ballabh Joshi, presently posted as Section Officer, Animal Husbandry Section-3 (Fisheries), Uttarakhand Secretariat, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Secretariat Administration Department, Uttarakhand, Dehradun.
2. Secretary, Secretariat Administration Department, Dehradun.
3. Prakash Chandra Bhatt, presently posted as Review Officer, Food Section-1, Uttarakhand Secretariat, Dehradun.
4. Virendra Dutt Nautiyal, presently posted as Review Officer, Planning Section-2, Uttarakhand Secretariat, Dehradun.
5. Kunwar Singh, presently posted as Review Officer, Disaster Section-2, Uttarakhand Secretariat, 4 Subhash Road, Dehradun.

.....Respondents

Present: Sri A.M.Shukla & Sri L.K.Verma, Ld. Counsel for the petitioners.
Sri V.P.Devrani, Ld. A.P.O. for the respondents No. 1 & 2
Respondents No. 3, 4 & 5 in person.

JUDGMENT**DATED: MARCH 29, 2019****Hon'ble Mr. Ram Singh, Vice Chairman (J)**

1. In both the petitions, the question involved is the same and therefore, both the petitions are being decided by a common judgment, taking the Claim Petition No. 81/DB/2018 as leading case.
2. The petitioners through their petition, have sought the relief for setting aside the order dated 16.11.2018 (Annexures: A-1 and A-2), passed by the respondent No. 2, whereby, settled seniority of the petitioners was unsettled and they were reverted from their present position.
3. Briefly stated facts in the petition, are that the petitioners were appointed through a due selection process in State of U.P. on Class-IV post in the year 1995 and 1996 respectively. After reorganization of the State of U.P., State of Uttarakhand came into existence on 09.11.2000 and some employees, including private respondents were provisionally allocated to the State of Uttarakhand, whereas, petitioners were continuing in the State of U.P., awaiting their final allotment by the Central Government.
4. Provisionally allocated persons in State of Uttarakhand, were promoted by the State from Class IV to Class-III post as Typist in the year 2001 and 2004 respectively and the seniority list of the employees, working in the Secretariat, was issued on 19.11.2004, but in the order/seniority list, an stipulation was made that the said seniority is subject to the outcome of the final allocation of the employees, by the Central Government. The petitioners who were in the State of Uttar Pradesh, were promoted from Class-IV to Class-III post in the year 2006-2007, as no promotional exercise was earlier undertaken there, and they were duly promoted later in time.

5. Since, allocation of the employees of the Secretariat, was pending before the Central Government for their final allocation, and on 28.01.2009 (Annexure: 5), the Central Government issued an order, by which, it was informed to the State that there will be no difference in the seniority position of the employees, who are allocated either on the basis of optee or domicile category. Further, service conditions of the employees are protected under Section 74(1) of the Uttar Pradesh Re-organization Act, 2000. It was further informed that the promotion is governed by the Service Rules and also as per the vacancies available and all the employees allocated to Uttarakhand either on option basis or on domicile basis, are to be treated alike in respect of promotion and other service conditions. The final allocation of the employees was made on 07.08.2009 (Annexure: 6) by which as many as 270 employees were allocated to the State of Uttarakhand, in which the names of the petitioners were also figured and the petitioners submitted their joining accordingly.

6. As in the seniority list of Class-IV employees earlier issued by the State of Uttarakhand on 19.11.2004, the names of the petitioners were not included, hence they requested for inclusion of their names in the seniority list. Respondent No. 2, after receiving the representation of the petitioners in July, 2011, invited objections from the employees, as per conditions mentioned in the seniority list issued on 19.11.2004 (Annexure: 3), within a period of 15 days. It was specifically mentioned in para 5 in the said list dated 19.11.2004, that the seniority list will be subject to the final allocation of the employees by the Central Government and after final allocation, if senior employees are allocated to State of Uttarakhand, then the seniority list will be amended accordingly.

7. Four employees (not the private respondents) filed their objections and thereafter, respondent No. 2, after considering objection/representation of those employees, vide order dated

23.08.2011, decided the same and settled the final seniority list of Class-IV employees and seniority of the petitioners were accordingly settled.

8. Thereafter, petitioners submitted representation before respondent No. 2 with the prayer that due to delay in final allocation of the petitioners, at the hands of the Central Government, their juniors were already promoted to Class-III post in the year 2001, hence petitioners requested that they also be promoted. Respondent No. 2 after detailed discussion, decided seniority as well as promotion of the petitioners and as per conditions mentioned in the U.P. Re-organization Act and after due consultation with the law department and other department of the Government, the grievances of the petitioners were found genuine and consequently, vide order dated 29.11.2011 (Annexure: 10), petitioners were granted notional promotion to the post of Typist w.e.f. 02.08.2001 from the date when their juniors were promoted.

9. After notional promotion of the petitioners w.e.f. 02.08.2001, they submitted their representations for fixation of their seniority at the appropriate place in the seniority list of Computer Operator/Typist. Thereafter, respondent No. 2 invited objections from other employees and vide order dated 19.01.2012, the seniority of the petitioners was refixed and they were placed at Sl. No. 6A, 8A in the seniority list of Typist/Computer operator. Thereafter, on 16.05.2012, the respondent department in consultation with the Public Service Commission, promoted the petitioners to the post of Review Officer w.e.f. 25.01.2005 and fixed their seniority on the post of Assistant Review Officer. Respondents invited objections from the aggrieved persons vide order dated 21.01.2013 (Annexure: 14) and after considering the objections, respondent No. 2 vide order dated 29.05.2013 (Annexure: 15) fixed the seniority of the petitioners on the post of Assistant Review Officer and they were placed at Sl. No. 105A & 107A respectively.

10. After fixation of the seniority on the post of Assistant Review Officer, respondents granted notional promotion to the petitioners on the post of Review Officer from the date when their juniors were promoted i.e. from 15.09.2008 and thereafter, vide order dated 08.10.2013, for the purpose of fixation of seniority, on that post, objections were invited from the aggrieved persons and thereafter, in the month of August, 2014, promotional exercise was undertaken in the respondent department from the post of Review Officer to the post of Section Officer, in which, petitioners participated and succeeded and they were promoted to the post of Section Officer in the month of June, 2014 and August, 2014. Thereafter, the services of the petitioners, including other employees on the post of Section Officer, were confirmed on 12.04.2017.

11. In the year 2017, private respondents No. 3 to 5 moved their representation before respondent No. 2, copy of which was not supplied to the petitioners. Petitioners tried to seek information under RTI Act about their representation as well as their clarification, but it was not fully supplied. The respondent without considering the fact that the private respondents never objected to the fixation of seniority and promotion of the petitioners and inspite of the fact, that tentative seniority list was circulated upon the employees, including the private respondents, at each and every stages and was finalized, but vide order dated 11.09.2017, on the representation of the private respondents, respondent No. 2 placed the petitioners at Sl. No. 147A and 147B and their prior settled seniority shown at serial number 6A & 8A on the post of Computer Assistant was altered.

12. Thereafter, a writ petition no. 454 of 2017 (S/B) was filed before the Hon'ble High Court, which was disposed of vide order dated 22.09.2017 and in compliance of the said order, passed by the Hon'ble High Court, detailed reply/objections were submitted on 25.09.2017 against the order dated 11.09.2017. The respondents tentatively re-

fixed the seniority of the petitioners, from their prior place. The respondents No. 2 decided the matter without considering the ground taken by the petitioners in their objections and without considering the fact that he has no power to receive and entertain the representations against the final settled seniority list, inasmuch as, there is no such provision in the "Government Servants Seniority Rules, 2002" and without considering this fact that private respondents never filed their objections against fixation of seniority of the petitioners since beginning from 2001 and they were estopped from moving such objection after a delay of 6 years.

13. Vide order dated 16.11.2018, the respondents have re-fixed the seniority of the petitioners from Sl. No. 6A & 8A to 147A & 147B in the seniority of typist and vide another order dated 16.11.2018, disturbing the long standing seniority of the petitioners, and without any notice or information to the petitioners, reverted back, the petitioners from the post of Section Officer to the post of Review Officer, hence, this petition was filed for the relief of cancellation of the orders dated 16.11.2018 (Annexure: A-1 and A-2).

14. Both the petitions were opposed by the private respondents as well as by respondent department on the ground that the private respondents given their joining in Uttarakhand in November 2000, whereas, petitioners joined the State in 2010 and they were promoted from Class-IV to Computer Operator in Uttar Pradesh in September 2007. Whereas, respondents were promoted in State of Uttarakhand in December 2004. Hence, they got their promotion prior to joining of the petitioners in the State of Uttarakhand and they were given notional promotion thereafter from 2001, 2005, 2008 and 2014 respectively and at the time of notional promotion, their overall seniority was not considered. The promotion from Class-IV post to Class-III post, is new appointment and it can be given only upon passing of a test, hence, the point of seniority on Class-IV post became irrelevant and the persons

who passed the Computer examination later in time, cannot claim seniority from back date. Hence, on this analogy, according to the respondents, petitioners were junior to the private respondents. Such examinations were passed by the petitioners in 2007, so granting them promotion from class IV to class III in 2001 without passing the examination, was not as per the Rules. The order of granting notional promotion was not circulated, hence, objections could not be filed at that time. The conclusion for expectation of passing of such examination on imaginary basis, is not correct and the petition deserves to be dismissed. Similarly, the petition was also opposed by the State respondents, alleging that they passed the order as per law and after considering all the provisions of Service Rules and the petition deserves to be dismissed.

15. We have heard both the sides and perused the record.

16. The main question in both the petitions is whether the settled final seniority list of the employees can be re-examined and re-settled in the manner, it was done by the respondents. Learned counsel for the petitioners submitted that before final allocation of the employees on 07.08.2009 (Annexure: 6), the Central Government vide letter dated 28.01.2009 (Annexure: 5) clarified all the positions about the service conditions of the employees and this question was raised in the meeting before the concerned department of the Central Government about the persons who were optees and of domicile categories. Para-2 of the letter dated 28.01.2009 (Annexure: 5) is very much relevant and specific in this respect which reads as under:-

“2. In this connection, it may be stated that though the 175 personnel (optees) were allocated provisionally to Uttarakhand, final allocation in respect of these employees is yet to be made by the Central Government. Once the list of employees of domicile category is finalized the combined list of employees to be allocated to Uttarakhand (both ‘optees’ & ‘domicile’ category) would be issued by the Central Government as on appointed day i.e. 09.11.2000. There will be no difference in the seniority position of the employees

who are allocated either on the basis of 'optees' or 'domicile' category. Further service condition of the employees are protected under Section 74(1) of Uttar Pradesh Re-organization Act, 2000."

17. We agree with the argument of the petitioners that as a result of final allocation of the employees to the State of Uttarakhand, may be optees or of domicile category, they will be placed in a similar position as per their service conditions and service conditions of the employees were protected under Section 74(1) of the Uttar Pradesh Re-organization Act, 2000 and there will be no difference in the seniority and service conditions, of the optees and domicile category. On this analogy, when the petitioners were finally allocated to the State of Uttarakhand vide order dated 07.08.2009, all the employees, previously working in the State of Uttarakhand, and others joining later, will be deemed to be allocated to Uttarakhand w.e.f. 09.11.2000. Admittedly, on that date, the petitioners and the private respondents, both were working in Class-IV post. Although, the petitioners given their joining in 2010 after final allocation to State of Uttarakhand, but their service conditions will be considered from the date of creation of the State i.e. 09.11.2000, vis-à-vis the private respondents.

18. The order of the Government of Uttarakhand while issuing the seniority list dated 19.11.2004 (**Annexure: A4**), further clarifies all the conditions and the last para of this order is very specific, which reads as under:-

“उपरोक्त ज्येष्ठता सूची भारत सरकार द्वारा किये जाने वाले कार्मिकों के अन्तिम आबंटन के अधीन होगी। यदि अन्तिम आबंटन के फलस्वरूप ज्येष्ठ कार्मिक उत्तरांचल शासन को आबंटित होते हैं, तो तदनुसार ज्येष्ठता सूची को यथा समय आवश्यकतानुसार परिवर्तित/परिवर्धित/परिमार्जित किया जायेगा।”

19. Hence, while settling the seniority of the employees working in the State of Uttarakhand in 2004, it was specifically mentioned that if any senior employee will be allocated to State of Uttarakhand, as a result of the final allocation, then the seniority list will be amended accordingly. On this analogy, when the petitioners joined State of

Uttarakhand and they submitted their representation for inclusion of their names in the seniority list, it was rightly considered by the respondents and they were given notional promotion w.e.f. 02.08.2001 vide order dated 29.11.2011. Thereafter, on the representation of the petitioners, for fixation of their seniority, objections were invited vide order dated 29.11.2011 (Annexure: 10) and finally after disposing the objections, final seniority list for the post of Computer Operator was issued vide order dated 19.1.2012 (Annexure: 12) by which, previous seniority list dated 19.11.2004 was amended accordingly and the petitioners were rightly placed at Sl. No. 6A and 8A.

20. This court also finds that the petitioners were also granted notional promotion to the post of Assistant Review Officer vide order dated 16.05.2012 (Annexure: 13). Petitioners (Smt. Kalawati Martoliya and Sri Gauri Shankar Joshi) were granted notional promotion w.e.f. 25.01.2005 and after inviting objections vide order dated 21.01.2013 (Annexure: 14), their seniority was settled vide order dated 29.05.2013 (Annexure: 15) and the petitioners were placed at sl. No. 105A and 107A respectively. Thereafter, vide order dated 08.08.2013 (Annexure: 16), the petitioners were granted notional promotion on the post of Review Officer w.e.f. 15.09.2008 and after inviting objections vide order dated 08.10.2013 (Annexure: 17), the seniority of the petitioners on the post of Section Officer was settled vide order dated 31.10.2013.

21. Private respondents submitted their representations dated 14.05.2016, 02.01.2017, 11.01.2017 and 02.05.2017, taking the ground that petitioners were promoted from Class-IV to the post of Typist in 2007, later in time, from the private respondents, hence, their seniority was wrongly disturbed by the respondents.

22. Learned counsel for the petitioners has submitted that settled seniority list has been unsettled and at the time of their joining, objections were invited for settling the seniority at every stage. Private respondents never submitted their objections at any stage but after a

long delay on their representations, now the respondent has unsettled the final seniority list, dehors the rules.

23. The petitioners has referred the following case laws of the of the Hon'ble Apex Court and the Hon'ble High Court of Uttarakhand: **P.S. Sadasivaswamy vs. State of Tamil Nadu (1975)1 Supreme Court Cases 152, Shiba Shankar Mohapatra and others vs. State of Orissa and others (2010)12 Supreme Court Cases 471 and Writ petition (S/B) No. 326 of 2017, Ajay Kumar & others vs. State of Uttarakhand & others, decided on 24.9.2018.**

24. Referring to the above judgments, petitioners have submitted that such objections against seniority were raised after a long period of 6 years. The seniority was finally settled for the post of Typist in 2011, for the post of Assistant Review Officer on 16.05.2012, on the post of Review Officer on 29.05.2013 and it was not open to the aforesaid persons to question the final seniority list, which was already finalized, way back in 2011.

25. This court agree with the argument of the learned counsel for the petitioners and is of the view that petitioners were granted notional promotion on the analogy that their juniors were given the same benefits. The impugned orders passed by respondent No. 2 are not sustainable in the eye of law inasmuch as, under the Uttarakhand Government Servants Seniority Rules, 2002, representation can be filed only against the tentative seniority list, but once the seniority list is finalized, after inviting objections and disposal of such representation/objections, no such representation can be entertained hence, the impugned orders were passed without any provisions in the Uttarakhand Government Servants Seniority Rules, 2002.

26. This court also finds that the impugned orders are not sustainable for the reasons that seniority of the petitioners with the private respondents was finally determined, following the procedure prescribed in the Seniority Rules at each stage and relevant point of

time. While settling the seniority of the petitioners and others on different stages i.e. Class-IV post, as Typist or Assistant Review Officer or Review Officer, as the case may be, the objections were invited at every stage from the employees. Private respondents never filed any representation/objection against the tentative seniority list, hence seniority list of Typist was finalized in 2011, for Assistant Review Officer on 16.05.2013, for the post of Review Officer on 29.05.2013, hence it was not open, to the aforesaid persons to complain against the final seniority list which was already settled and finalized in the year 2011 after giving them the opportunity of hearing.

27. This court is also of the view that finalization of the seniority list is a quasi-judicial function and authority deciding the seniority cannot review the long standing seniority, in the absence of any powers in the Rules particularly, when the seniority was determined after inviting objections from all incumbents, including private respondents and the seniority list was finalized as per law and against which private respondents never filed any objections and they kept quiet for a long period of about six years.

28. Petitioners' claim for seniority was rightly entertained by the respondents at the time when their representations were submitted after final allocation to the State and after inviting the objections from all the parties, it was decided and they were granted notional promotion from the date, when their juniors were promoted.

29. The argument of the respondents, put forward about promotion of the private respondents prior in time to the petitioners, has no meaning, in view of the order of the Central Government, issued on 28.01.2009 to clarify the position that the service conditions of the employees will remain protected as per the mandate of U.P. Re-organization Act, 2000.

30. This court also agree with the argument of the petitioners that the impugned reversion order dated 16.11.2018 is also not sustainable for the reasons that reversion of the employees amounts to major penalty and it cannot be inflicted upon such employees, without any notice or without giving an opportunity of hearing. Although, the seniority was resettled after issuing notice, on representations of the private respondents, but before issuing the reversion order of the petitioners from Section Officer to the post of Review Officer, no show cause notice was issued to the petitioners, hence, petitioners were denied the opportunity of hearing and furthermore, long standing seniority, which the petitioners were retaining from the year 2011, has been disturbed on the representations of the private respondents, moved in January 2017 after a long period of six years.

31. It is significant to note that the private respondents were having opportunity to challenge the seniority of the petitioners at prior three stages but they never challenged the same, hence, seniority list of the petitioners on the post of Typist, issued in the year 2011, on the post of Assistant Review Officer issued in the year 2012 and on the post of Review Officer issued in the year 2013, was finally settled and they were promoted to the post of Section Officer in June, 2015 and after three years of their promotion, representations of the private respondents were wrongly entertained by respondent No. 2 and settled seniority was unsettled, and reversion order was passed, which is not valid and good in the eye of law. The Uttarakhand Government Servants Seniority Rules, 2002 nowhere authorizes an employee to move representations against the final seniority list and that too, after such a long period of six years. Such representations, which were entertained by the respondent No. 2, could not be entertained in view of the above cited judgments of the Hon'ble Apex Court and the Hon'ble High Court, as such representations were moved after six years and sufficient opportunity of hearing was given to the private

respondents at each and every stages, to raise such objections before finalization of seniority.

32. This court also finds that the Rules nowhere authorizes the respondent No. 2 to entertain such representations against the long standing settled seniority, hence, entire exercise at the hands of the respondent No. 2, is without jurisdiction and it resulted into the miscarriage of justice and is also violative to the provisions of Rules and Article 14 and 16 of the Constitution of India.

33. In these circumstances, we are of the view that the impugned orders dated 16.11.2018 (Annexure: 1 and 2) deserve to be set aside and the reversion order of the petitioners needs to be revoked. It is also the need of justice to order that if the petitioners have been reverted, then the respondent No. 2 will restore the status of the petitioners, from the very date of their reversion, within a period of three months.

ORDER

The claim petition is allowed. The impugned orders dated 16.11.2018 (Annexures: A1 & A2) are hereby set aside. Revoking the reversion order of the petitioners, the respondent No. 2 is directed to restore the status of the petitioners, if reverted earlier, from the very date of their reversion, with all consequential benefits, within a period of three months from the date of presentation of the copy of this judgment.

No order as to costs.

Let copy of this judgment be kept on the file of Claim Petition No. 80/DB/2018.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: MARCH 29, 2019
DEHRADUN.
KNP