

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. A.S.Nayal

-----Member (A)

**CLAIM PETITION NO. 38/DB/2018**

Gyan Singh Tariyal, S/o Late K.S.Tariyal, aged about 56 years, Development Officer, in the Khaadi and Gramodyog Board, Bhopal Pani, Thano Road, Dehradun

.....Petitioner

**vs.**

1. State of Uttarakhand through its Principal Secretary (Khaadi Village Industries), Civil Secretariat, Dehradun.
2. Chief Executive Officer, Khaadi Village Industries Board, Bhopal Pani, Thano Road, Dehradun.
3. Ms. Leela Upreti, Development Officer, C/O Chief Executive Officer, Khaadi Village Industries Board, Bhopal Pani, Thano Road, Dehradun.
4. Sri Sandeep Suman, C/O Chief Executive Officer, Khaadi Village Industries Board, Bhopal Pani, Thano Road, Dehradun.
5. Sri Rajeev Pathak, C/O Chief Executive Officer, Khaadi Village Industries Board, Bhopal Pani, Thano Road, Dehradun.
6. Sri Rajeev Bhatt, C/O Chief Executive Officer, Khaadi Village Industries Board, Bhopal Pani, Thano Road, Dehradun.

.....Respondents.

**Present:** Sri Shashank Pandey, Ld. Counsel for the petitioner.

Sri V.P.Devrani, Ld. A.P.O., for the Respondents No. 1 & 2.

Sri S.K.Jain, Ld. Counsel for Respondents No. 3 to 6..

**JUDGMENT**

**DATED: MAY 24 , 2019**

**Per: Justice U.C.Dhyani**

By means of present claim petition, petitioner seeks following reliefs:

“(i) To issue an order or direction directing the respondents to issue order or direction to call for records and quash the promotion order dated 18.11.2011 by declaring the order as illegal and to revert the persons wrongly promoted through this promotion order, back to their original posts.

(ii) To give any other relief in the given facts and circumstances of the case.

(iii) To give cost to the petitioner .”

2. Facts, giving rise to the present claim petition, are as follows:

Petitioner was appointed on the post of Cooperative Supervisor, *vide* appointment letter dated 18.12.1996. He joined his services on 21.12.1996 in the respondent Khadi Village Industries Board (hereinafter referred to as, ‘the Board’). Services of the employees working with respondent no.2 are governed by the Uttar Pradesh Khadi and Village Industries Board Subordinate Service Regulations, 1996 (for short, Regulations of 1996), which are *pari materia* to the Uttar Pradesh Khadi and Village Industries Board Subordinate Service Regulations, 2005 (for short, Regulations of 2005). The petitioner was promoted to the post of Assistant Development Officer in Udham Singh Nagar *vide* order dated 12.12.2005. On 18.02.2009, respondent department constituted a body in order to promote eligible employees to various posts in the department. A promotion order was passed by respondent no.2 on 18.11.2011, on the basis of departmental proceedings, which took place on 18.12.2009, wrongly promoting private respondents. It has been pleaded by the petitioner that the DPC never mentioned the names of private respondents, as such their promotion was illegal. The names of private respondents were never considered. Further, the order dated 18.11.2011 directed the private respondents to be promoted substantively, whereas the proceedings of DPC held on 18.09.2009 clearly mentioned that the promotion would be done on *ad hoc* basis. Subsequent thereto, *vide* an amended order

dated 03.08.2012, it was clarified that the private respondents were to be considered as promoted on *ad hoc* basis. Still further, the Regulations of 1996 do not provide for promotion of the persons working as Clerk/ Junior Assistants to the post of Development Officer(s). Respondent No.2 promoted the aforesaid persons in violation of the Rules and Regulations, more particularly the Regulations of 1996. They had been working on the post of Clerk/ Junior Assistant. The petitioner was working on the post of Assistant Development Officer. They belong to different cadre. The Rules, by which the services of the employees are governed, do not provide a channel to the persons belonging to the cadre to which the aforesaid persons belong, for being promoted to the post of Development Officer. Hence, their promotion, on the post of Development Officer, is violative of the Regulations governing the field. It has also been pleaded, in the claim petition, that it is beyond understanding as to how the order dated 18.11.2011 promoted four persons working on the post of Clerk and Junior Assistant to the post of Development Officer as per DPC held on 18.02.2009. When departmental proceedings took place on 26.02.2009, it was clearly stated that until Rules are made for the employees working in the Board, the promotion of employees working as Clerk/ Junior Assistant cannot be considered. Private respondents were considered for promotion in the DPC held on 15.06.2009, which was almost five months after the DPC dated 18.02.2009, on the basis of which they were promoted. The arbitrariness stems out from the facts that their promotion was made effective from a date which was six months earlier to the date on which they should have been actually promoted, i.e., 15.06.2009.

Aggrieved by the promotion order dated 18.11.2011, whereby ineligible private respondents were promoted to the post of Development Officer(s), petitioner sent representation on 19.11.2011 to the respondents, which representation was not decided.

The petitioner was promoted to the post of Development Officer in the Respondent Board *vide* promotion order dated 13.07.2015, much later to the promotion of private respondents, who were unlawfully promoted in 2011, thereby making the petitioner junior to the private respondents. It is, therefore, imperative to set aside the order dated 18.11.2011 and to revert the private respondents to their original posts so that the seniority of the petitioner does not get adversely affected by unfair action of the official respondents.

Petitioner filed writ petition No. 523/2012 before Hon'ble High Court of Uttarakhand, who directed the petitioner to file a claim petition before this Tribunal. Petitioner, accordingly, filed the claim petition, withdrew the same, with permission of the Court, with liberty to file a fresh one, *vide* order dated 06.07.2018. Now the petitioner has filed present claim petition to quash the promotion order dated 18.11.2011 and to revert the private respondents to their original posts.

3. Respondents No. 1-2 and Respondents No.3 to 6 have filed separate Written Statements. All the respondents have opposed claim petition of the petitioner, by almost the same pleadings. In their Counter Affidavits, the respondents have pleaded that the petitioner has no locus to file present claim petition. A reference of Appendix has been given to show the percentage of employees which could be promoted to the post of Development Officer(s). The Appendix provides the source of recruitment to the post of Development Officer. The Respondent Board came into existence on 17.08.2002. The departmental cadre was restructured, whereby many of the posts, which were existing in the erstwhile State of U.P., were done away with and new posts were created considering the requirement of the department in the newly created State.
4. DPC was convened on 18.02.2009, 26.02.2009 and 15.06.2009 for making recommendation to the post of Development Officer. DPC was supposed to recommend the names of employees for 13 posts of Development Officers, but only 7+4=11 persons were recommended.

No person was found eligible for filling up roster point No. 1 and 6 and therefore, 7 general category Assistant Development Officers were to be recommended for promotion. Since the petitioner was not senior enough, therefore, his name could not be considered and recommended. For filling up 30% posts, a recommendation was made to fill them up from the cadre of Clerks and Senior Assistants. A reference of Appendix has been given, in the Counter Affidavits to show source of recruitment to the post of Development Officer. Petitioner's name figured at Sl. No. 10 in the seniority list. Since only 70% employees were to be taken up from the cadre of Assistant Development Officer, for promotion to 13 posts of Development Officer, which comes out to be 9 and since the petitioner's name figured at Sl. No.10, therefore, his name was not considered for promotion to the post of Development Officer.

5. Ld. A.P.O. as well as Ld. Counsel for private respondents, at the very inception, vehemently opposed the claim petition on the ground that the same is barred by limitation. In reply thereto, Ld. Counsel for the petitioner submitted that the petitioner submitted a representation on 19.11.2011 against promotion order dated 18.11.2011, which representation was never decided. Thereafter, petitioner was compelled to file WP SS No. 523/12 before Hon'ble High Court of Uttarakhand, which was relegated to this Tribunal *vide* order dated 20.06.2016. Pursuant to the aforesaid order, petitioner filed claim petition before this Tribunal on 06.07.2018, but the same was dismissed as withdrawn with liberty to file a fresh claim petition, in accordance with law, on 06.11.2018. The petitioner has filed present claim petition on 02.08.2018 and hence, according to Ld. Counsel for the petitioner the claim petition is within time.
6. Sri V.P.Devrani, Ld. A.P.O. for Respondents No. 1 & 2 and Sri S.K.Jain, Ld. Counsel for Respondents No. 3 to 6 submitted that, whereas according to Section 5(1)(b)(i) of the U.P. Public Services Tribunal Act, 1976, the period of limitation for any reference before the

Tribunal is one year, the petitioner is challenging the order dated 18.11.2011 in the year 2018 and, accordingly, the claim petition is time barred.

7. Ld. Counsel for the petitioner, on the other hand, countered the arguments of Ld. Counsel for the respondents, by pointing out that immediately after the promotions were made, petitioner made representation on 19.11.2011 (copy: Annexure- A9). When the petitioner did not receive any reply, then he filed Writ Petition No.523/2012 on 24.04.2012. This W.P. was decided on 08.10.2015, by observing the following:

“6. Meanwhile, a statement has been given by the Ld. Counsel for the respondents no.1 to 2 at the bar that during the pendency of the present writ petition, petitioner has also been promoted to the post of Development Officer w.e.f. 13.07.2015 and hence, the grievance of the petitioner has already been redressed. The promotion to the post of Development Officer since 13.07.2015 is accepted by the petitioner who is represented by Mr. Shailendra Nauriyal. Therefore, writ petition has now become infructuous and the same is dismissed as such.

7. It is however made clear that in case the petitioner has any grievance relating to his promotion to the post of Development Officer from any date preceding 13.07.2015, he shall be at liberty to file a fresh writ petition before this court.”

8. Thereafter, the petitioner filed WPSS No. 1209/2016, which was decided on 20.06.2016, *vide* which the Hon'ble High Court relegated the matter to this Tribunal (Copy available in the file of claim petition no. 48/DB/2016). Petitioner filed claim petition no. 48/DB/2016 on 01.09.2016, which claim petition was withdrawn by the petitioner on 24.07.2018, with liberty to file the same afresh, as per law. Accordingly, the petitioner has filed present claim petition. It is the submission of Ld. Counsel for the petitioner that the petitioner never slept over the matter and has always been pursuing his case in the Courts of

competent jurisdiction. According to Ld. Counsel for the petitioner, the petitioner is entitled for exclusion of time.

9. Section 14 of the Limitation Act reads as under:

**14 Exclusion of time of proceeding bona fide in court without jurisdiction. —**

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

10. On perusal of the documents brought on record, it is abundantly clear that the petitioner has been pursuing remedy before different Courts of competent jurisdiction vigourously, right from 19.11.2011, which remedy remains unfulfilled till date. The claim petition is, therefore, held to be within limitation.

11. Now, we should deal with very important legal provision of the Constitution. Article 309 of the Constitution of India deals with recruitment and conditions of service of the persons serving in a Union or a State. Recruitment is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well known methods of recruitment. Even appointment by transfer is not

unknown. Besides, laying down certain general provisions, Constitution does not aim at providing detailed rules for recruitment or conditions of the services of the Union or of the States. The power is left to the respective Legislatures. [Entry 70 of List (i) and 41 of List (ii)]. The power of appointment belonging to the executive is subject to legislative control. It is not necessary for the exercise of the legislative power under Entry 70 of List (i) or 41 of List (ii), that it must be made by a specific legislation under Article 309, which does not stand in the way of a appropriate Legislature in laying down necessary conditions of service in any general law enacted by it. If any rules contravene any of the provisions of the Constitution, including the Fundamental Rights, the Rules shall be declared void. With regard to making appointments to clerical posts in the subordinate Courts, even the Chief Justice of a High Court cannot deviate from the constitutional and statutory provisions on the subject. The Government can issue executive instructions, but those instructions should not be contrary to the statutory rules. In view of Section 21 of General Clauses Act, it is competent for the President or a Governor to amend or a the rule made by him, so long the appropriate Legislature does not exercise its' powers under Article 309. Benefit that has accrued under the existing rules, cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and no rule can be framed under this *proviso* which affects or impairs the vested rights. The circulars subsequently described as administrative instructions could not be treated as statutory. Rules made under Article 309 have statutory force. A rule made under Article 309 can be amended only by a rule or notification duly made under Article 309, and not otherwise. [ I.N. Saksena vs. State of M.P.,AIR 1967 SC 1264; B.N.Nagrajan vs. State of Mysore, AIR 1966 SC 1942]. So long as the rule framed under Article 309 is not duly amended, it is binding on the Government and its' action in matter covered by the rules must be regulated by rules.



[Bhatnagar A.K. vs. Union of India, (1991) 1 SCC 544]. Article 309 does not make it obligatory for the Government to make rules relating to public service, nor invalidates any act done by the Government in the exercise of its executive power relating to the public service, on the ground that rules relating to the matter, say, recruitment have not been made under Article 309. So long as rules under Article 309 are not framed, qualification may be laid down by executive order. Even after the rules are framed under Article 309, there is nothing to debar the Government to fill up the gaps by administrative instructions, issued under Article 162. On matters in respect of which the rules are silent, neither the rules can be amended or superseded by administrative instructions nor can they be superimposed by anything inconsistent with the rules. Reference may be had to the decisions of Santram Sharma vs. State of Rajasthan, AIR 1967 SC 1910 (1914); P.D. Agarwal vs. State of U.P., AIR 1987 SC 1676 (Para 19) in this regard. Office memorandums or executive orders made under Article 73 have, for their operation, an equal efficacy as an act of Parliament or the rules made under Article 309. But statutory rules cannot be altered by administrative instructions, nor an administrative circular can replace the rules. The decisions of Hon'ble Apex Court in K.Balasubramanyam vs. State of Tamil Nadu, (1991) 2SCC 708 and Subhash vs. State of Maharashtra, 1995 (Supp)(3) SCC 332 (Para 2) lend support to the aforesaid proposition.

12. We have discussed constitutional scheme of Article 309 in the foregoing paragraph of this judgment. **Petitioner, as well as respondents, in the instant claim petition, rely upon the Regulations of 1996. Such Regulations have been framed under sub-section (3) of Section 10 read with Section 37 of the Uttar Pradesh Khadi and Village Industries Board Act 1960, (U.P. Act No. X of 1960). Sub-section (3) of Section 10 of the above noted Act prescribes that the Board may, in accordance with the Regulations made in this behalf, appoint such officers and employees as it thinks fit. Section 37 of the Act provides that the Board may, with the previous sanction of the State Government,**

make Regulations consistent with this Act and the Rules made thereunder and notify them in the official gazette. Whereas, Regulations of 1996 relate to Group-C posts; Uttar Pradesh Khadi and Village Industries Board , Group-D, Service Regulations, 2005 relate to, as the name itself suggests, to Group-D posts. Whereas Regulations of 1996 are applicable to the State of Uttarakhand by virtue of U.P. Reorganization Act,2000, the Regulations of 2005 are not, inasmuch as they were framed by the successor State of U.P. after the appointed day. This Tribunal has been informed, by the parties, that Uttarakhand has not framed Subordinate Rules for Subordinate Services (Group-C) and, therefore, they are applicable to the State of Uttarakhand, as well. The APPENDIX, appended to the Regulations of 1996 have also not been amended. Regulation 5 of the Regulations of 1996 makes a reference of the APPENDIX to specify the source of recruitment to various posts indicated therein. Whereas, Regulation 5 refers to source of recruitment to various posts, Regulation 8 points out essential qualification for direct recruitment posts. According to the APPENDIX, posts of Assistant Development Officer (I) shall be filled up, by promotion, from amongst substantively appointed Assistant Development Officers(II) and Inspectors. 70% posts shall be filled up from them. Remaining 30% posts shall be filled up, by promotion, from amongst substantively appointed Accountants, who have completed three years of service on the first day of the year of recruitment. In Uttarakhand, 30% posts of Assistant Development Officers, have, admittedly, not been filled up, by promotion, from amongst Accountants. 30% of such posts have, admittedly, been filled up, from amongst, Senior Assistants/ Account Clerks, which is *de hors* the Regulations.

13. It has been admitted, on behalf of respondents, in their respective Written Statements/ Counter affidavits that there is a provision in the Service Rules for promotion to the post of Development Officer, to the extent of 30%, from the feeding cadre of Accountants [ pay scale Rs.4000-6000/-, grade pay Rs.2400/-]. It has been admitted in the Written Statements that in the absence of any necessity of Accountants, the same were not included in the departmental structure of Uttarakhand. Instead of retaining the

posts of Accountants, posts of Senior Assistants/ Account Clerks, in the same pay scale and grade pay, were kept in the departmental structure. Departmental Promotion Committee, made a recommendation for promotion of Senior Assistants/ Account Clerks for supplying 30% quota [from the cadre of Accountants] to the post of Development Officers. The feeding cadre of Senior Assistant/ Account Clerk is Junior Clerk and the seniority list of such Senior Assistants/ Account Clerks is common.

14. According to Service Rules, as quoted in W.S., substantively appointed Clerks/ Typists, Store Keepers and Cashiers, on completion of three years' service, may be promoted as Accountants.
15. This Tribunal is of the considered opinion that without carrying out amendments in the Service Rules, Accountants could not be replaced by Senior Assistants/ Account Clerks, and therefore, Senior Assistants/ Account Clerks could not have been promoted as Development Officers.
16. We have considered the issue of (i) limitation and (ii) constitutionality of the action of respondents while promoting Senior Assistants/ Account Clerks without amending the Regulations and APPENDIX, appended thereto. The third aspect on which the claim petition is assailed by the respondents is, *locus* of the petitioner. Whereas Ld. Counsel for the petitioner has argued that the petitioner is within his right to challenge the order impugned, it is the submission of Ld. A.P.O. and Ld. Counsel for private respondents that since the petitioner and private respondents belong to different cadres, therefore, petitioner has no *locus* to file present claim petition. This fact may be noted, at the very outset, that the petitioner and private respondents, both have been promoted as Development Officers. Whereas, private respondents were promoted to the post of Development Officers, on *ad-hoc* basis on 18.11.2011, petitioner was promoted to the said post substantively on 13.07.2015. The petitioner, as well as private respondents, now belong to one

cadre, which is of Development Officers. It does not lie in respondents' mouth to say that petitioner and private respondents belong to different cadres. They might be belonging to different cadres earlier, but now they belong to the same cadre (of Development Officers).

17. There are two sources of recruitment for the post of Development Officers, as per Regulations of 1996. This fact is under no dispute that, as per APPENDIX –kha, that 70% posts of Development Officers are to be filled up by promotion from amongst Assistant Development Officers and remaining 30% posts are to be supplied from substantively appointed Accountants. The case of the petitioner is that since the private respondents were not substantively appointed Accountants, therefore, they had no channel for promotion to the post of Development Officers. Whereas private respondents were promoted to the post of Development Officer on *ad-hoc* basis on 18.11.2011, the petitioner was promoted on the said post substantively on 13.07.2015. The apprehension of the petitioner is that when final seniority list will be prepared, private respondents might be placed above the petitioner. The petitioner will thus be junior to such illegally promoted Development Officers/ private respondents. Rule 7 of the Seniority Rules of 2002 is the basis of the apprehension of the petitioner. According to such Rule, when promotions are made from two feeding cadres, seniority of persons appointed as a result of subsequent selection shall be lower than the seniority of persons appointed as a result of previous selection. The petitioner, although belonged to different cadre earlier, but since the petitioner and private respondents have become Development Officers, therefore, they are now in the same cadre. Therefore, he has *locus* to challenge the promotions of private respondents. He is the affected person, inasmuch as the private respondents have been promoted without proper amendments in the Regulations (*de hors* the Regulations) and the petitioner has well founded apprehension that he might be kept below private respondents when the final

seniority list of Development Officers is prepared. Section 4 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 clearly provides, that any employee of the State Government aggrieved by 'any order' can file claim petition. The petitioner is certainly an aggrieved person, inasmuch as his legal rights have been violated when the private respondents have obtained illegal *ad hoc* promotion to the post of Development Officers. This Tribunal is, therefore, inclined to hold that the petitioner has locus to file present claim petition.

18. Yet, there is another aspect of the matter. Minutes of the DPC, which was held on 26.02.2009, indicated that the respondents were not considered for promotion because the Rules of the Board were not framed and, therefore, the posts were left vacant. However, they were promoted, although on *ad hoc* basis, on the recommendation of DPC held on 05.06.2009. Promotion order dated 18.11.2011 of the private respondents does not mention the word *ad hoc*. They were given regular promotion. But the mistake was rectified *vide* order dated 03.08.2012 by giving *ad hoc* status to the promotions of private respondents.
19. This Tribunal, therefore, comes to the conclusion that the petitioner has *locus* to file present claim petition; the claim petition is within time; it is not barred by limitation and private respondents have been promoted on *ad hoc* basis to the post of Development Officers without amending the Regulations and APPENDIX appended thereto. Senior Assistants/ Account Clerks could not have been promoted to the post of Development Officers, in place of Accountants, without amending the Regulations and APPENDIX appended thereto.
20. The most crucial question, which arises for consideration of this Tribunal is— what should be done now? Whether promotion of the private respondents should be set aside? Or, whether a declaration, to the effect that the petitioner shall be senior to the private respondents, when final seniority list is prepared, would be sufficient?

There is no gainsaying the fact that the private respondents were promoted to the post of Development Officers (*sans* Regulations or without appropriate amendments in the Regulations). Senior Assistants and Account Clerks could not be treated *at par* with Accountants, notwithstanding the fact that they carry similar pay scale. Whereas, the petitioner was promoted substantively in the year 2015 as Development Officer, private respondents were promoted on *ad hoc* basis in the year 2011. It has been held by Hon'ble Apex Court in Punjab State Electricity Board and others vs. Jagjiwan Ram and others ,( 2009) 3 SCC 661, that regular services means services rendered after regular appointment and, therefore, does not include services rendered as temporary, *ad hoc* or work charged employee. Promotion of private respondents, therefore, cannot be treated *at par* with the promotion of the petitioner, who was promoted substantively in the year 2015, although only after private respondents were promoted on *ad hoc* basis, in the year 2011.

21. The petitioner has made a prayer that the promotion order dated 18.11.2011 (impugned order) be set aside.
22. The natural corollary of quashing the promotion order would be that the private respondents would be placed back as Senior Assistants/ Accounts Clerks, as the case may be.
23. This Tribunal, therefore, comes to the conclusion that the claim petition should be allowed, and as a result thereof the promotion order dated 18.11.2011 of the private respondents should be set aside, which means that Respondents No. 3 to 6 shall be placed back to their original posts of Senior Assistants/ Accounts Clerks.
24. Order Accordingly.
25. Claim petition is allowed. Order impugned dated 18.11.2011 is hereby set aside.

26. This will, however, not preclude official respondents from promoting private respondents, as per law, after appropriate amendments are carried out in the Regulations of 1996 and APPENDIX appended thereto. No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MAY 24 , 2019*  
*DEHRADUN*

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27. AT this stage of dictation, Ld. Counsel for the petitioner, on seeking instructions from his client, submitted that the petitioner is not interested in setting aside the promotion order of private respondents. He will feel happy and contented if an observation is made by this Tribunal that whenever final seniority list of the cadre of Development Officers is prepared by the department, the petitioner should be placed above private respondents (in such seniority list). Ld. Counsel for the private respondents has no qualms about the same. On seeking instructions from his client, he stated that he has no objection to the magnanimity shown by Ld. Counsel for the petitioner.

28. This Tribunal is, therefore, inclined to pass the following order to meet the ends of justice:-----

Respondents No. 1 & 2 are directed to incorporate appropriate amendments in the Regulations of 1996 and APPENDIX appended thereto, within a period of six months from today, to facilitate supply of 30% posts to the cadre of Development Officers from amongst Senior Assistants/ Account Clerks, as per the requirement of the department. Subject to their fitment, private respondents may be promoted to such 30% posts of Development Officers on substantive basis, but only after carrying out amendments in the Regulations and APPENDIX appended thereto. The same may be done within twelve months from today. Promotion order dated 18.11.2011 is not interfered with till appropriate decision is taken by official respondents.

Since private respondents have been promoted to the post of Development Officers on 18.11.2011 on *ad hoc* basis and petitioner has been promoted to the said post substantively on 13.07.2015, therefore he shall remain senior to the private respondents. Whenever final seniority list is prepared, petitioner shall be placed above private respondents for the obvious reason that the petitioner has been promoted to the post of Development Officer substantively in the year 2015 and private respondents, have been promoted on *ad hoc* basis, although in the year 2011 and they, may be appointed substantively subject to their fitment, only after carrying out appropriate amendments in the Regulations governing the field.

Claim petition is allowed. Order impugned dated 18.11.2011 is hereby set aside.



This will, however, not preclude official respondents from promoting private respondents, as per law, after appropriate amendments are carried out in the Regulations of 1996 and APPENDIX appended thereto. No order as to costs.