

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

Present: Hon'ble Mr. Ram Singh  
-----Vice Chairman (J)  
  
Hon'ble Mr. Rajeev Gupta  
-----Vice Chairman (A)

**CLAIM PETITION NO. 33/DB/2019**

Sunil Thakur, S/o Late Sri Beer Bahadur, aged about 32 years, Oiler,  
Presently posted in Jal Vidyut Bhawan, Dhalipur, District Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Ministry of Energy, Secretariat, Dehradun.
2. Managing Director, U.J.V.N. Limited, Ujjawal Bhawan, Maharani Bag, G.M.S. Road, Dehradun.
3. Deputy General Manager, Hydel Generation Circle, Jal Shakti Bhawan, Dhakrani, Dehradun.
4. Chairman (Adhyakh)/Executive Engineer, Selection Committee No.-2 U.J.V.N. Limited, Khulhal Jal Vidyut Grah, Kulhal, Dehradun.
5. Shri Girish Kumar, S/o Shri Bacchu Singh, Skilled Labour, Presently posted in Jal Vidyut Grah, Dhalipur, District-Dehradun.

.....Respondents

Present: Sri L.D.Dobhal, Advocate for the Petitioner.  
Sri V.P.Devrani, A.P.O. for the Respondent No. 1  
Sri S.C.Virmani, Sri V.D.Joshi and Sri S.K.Jain, Advocates  
for the Respondents No. 2 to 4  
Sri R.K.Garg, Advocate for the Respondent No. 5.

**JUDGMENT**

**DATED: DECEMBER 24, 2020**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. The petitioner has filed this claim petition for the following reliefs:-

*"A. That the respondents be directed to promote the applicant to the post of P-4 from the back date on which the respondent no. 5 was promoted.*

*B. In alternative, the respondents be directed to review the selection processes by giving a chance to the applicant to appear before the selection committee.*

*C. That any other appropriate directions be issued to the respondents to the above effect.*

*D. That any other order or direction, which the Hon'ble Tribunal thinks fit, be also awarded.*

*E. Costs of the petition be also awarded."*

2. The petitioner, an employee of the Uttarakhand Jal Vidyut Nigam Ltd (UJVNL), was appointed as Labourer (Category P-I) on 15.07.2008. He was promoted on the post of Oiler (a P-II category post) on 05.07.2014. Since then, petitioner is working on this post, whereas, private respondent No. 5 was appointed as Labourer, P-I on 06.10.2006, but was promoted on P-II post of *Kushal Shramik* on 30.06.2015, later in time to the petitioner, hence, on the post of Category P-II, petitioner stands senior to private respondent No. 5.

3. Respondent No. 3 issued an advertisement to fill up a vacant post of *Parichalkeeya Sanwarg* in Category P-IV, a promotional post for the petitioner and private respondent for the selection year 2018-19. Petitioner applied for the said post, as he was fulfilling all the required qualification, terms & conditions on the date of advertisement i.e. 06.08.2018.

4. Petitioner was senior to private respondent No. 5 as per the seniority list, published vide letter No. 592 dated 06.08.2018, which was also the date of advertisement for inviting applications for P-IV category post.

5. Respondents, before taking interview, arbitrarily issued another seniority list on 18.02.2019, without giving any opportunity of hearing or without inviting any objections. In that seniority list, the name of the petitioner was omitted and consequently, he was not called for interview held on 22.02.2019 for the promotional post. The petitioner submitted representation, but of no avail. Without deciding his representation, interview was held on 22.02.2019 and debarring the petitioner from

promotional opportunity, in an illegal and arbitrary manner, the respondents promoted the private respondent No. 5 against the sole vacancy of promotional post. Hence, this petition has been filed by the petitioner on the following grounds:

6. That action of the respondents suffers from material defects, illegalities, arbitrariness and a discriminatory attitude was adopted towards law; the seniority of the petitioner was ignored; previous settled seniority was changed without giving an opportunity of hearing or without giving any notice. The action of the respondents was against Article 14 and 16 of the Constitution of India. The petitioner had every right to be promoted on the said post, for which he has been deprived by a discriminatory attitude of the respondents. The principles of natural justice have not been followed. The selection made by the respondents is illegal and the same is liable to be set aside. Hence, this petition has been filed.

7. Respondents contested the petition on the ground that the promotion was made as per the Rules. The petitioner was not having requisite qualification and experience for the post. The private respondent entered into the service as Labour on 06.10.2006, prior to the petitioner. Petitioner got his promotion on P-II category post on 05.07.2014, after getting relaxation whereas, private respondent No. 5 did not avail the relaxation during his first promotion. At the time of impugned promotion order, the private respondent was the only eligible candidate. The seniority list dated 06.08.2018 was amended vide order dated 18.02.2019 in which, the name of the petitioner was not included, as he was not having the required experience. On the basis of interview, the promotion order of private respondent was correctly issued, and he joined on the post. Petitioner had already availed the relaxation under the rules, which could be given only once in service time. Petitioner was not called for interview on account of non-fulfillment of the required qualification. The promotional exercise was conducted for the year 2018-

19, for which, the seniority list was rightly prepared and amended. The claim of the petitioner is not maintainable, as he was not entitled for promotion and he was rightly denied the same. The claim petition is liable to be dismissed. Private respondent No. 5 also submitted a separate Counter Affidavit stating that in his first promotion although, he was offered relaxation but the same was not availed by him. He was only eligible person for impugned promotion hence, his name was included in the seniority list and he was called for interview and, as per rules, his promotion was made in a legal manner. Petitioner has no right to challenge his promotion and the claim petition deserves to be dismissed.

8. Petitioner through his R.A. has denied the contention of the Counter Affidavit and reiterated the facts narrated in his petition. Petitioner also submitted that Respondents No. 2 to 4 have adopted a wrong method for the purpose of making selection on the post of promotion. The whole procedure adopted by the respondents was against the rules and arbitrary procedure was adopted only to benefit the private respondent No. 5. On the date of advertisement for promotional post i.e. 06.08.2018, the petitioner was eligible for promotion, as he fulfilled all the requisite qualifications and other criteria. Petitioner was senior to private respondent No. 5 on P-II category post and was fit for promotional post. In the seniority list dated 06.08.2018, he was also shown senior, but before the date of interview, suddenly, on 18.02.2019, another seniority list was issued by the respondents and the petitioner was excluded from the seniority list and was not called for interview. Before publication of said seniority list, neither opportunity of hearing was given to the petitioner, to raise any objection against the same nor the correct procedure was adopted to review the seniority list. The petitioner submitted representation against the order dated 18.02.2019, but without disposing of the same, interview was held, wherein, the only private respondent No. 5 was called for interview and was selected. The procedure adopted by respondents No. 2 to 4 is illegal, against the rules and the principles of natural justice and, the same is liable to be set aside.

9. The promotion was to be made for selection year 2018-19 and this fact was admitted by the respondents in their Counter Affidavit, as well as in their several official letters/correspondences. Therefore, there was no question of amending the seniority list, but it was done, contrary to the rules and conditions, mentioned in the advertisement. Without inviting objections against the seniority list, the seniority cannot be changed. When the promotion was to be made for the year 2018-19, then petitioner was eligible at the relevant time. He was also senior to private respondent No. 5 on P-II Category post. In arbitrary and illegal manner, he was denied promotion *vis-à-vis* private respondent No. 5. The procedure adopted by the respondents is totally wrong, illegal and contrary to the rules.

10. The petitioner also contended that private respondent No. 5 was given relaxation in 2013 for granting him promotion for P-II category post and after giving relaxation, his promotion order was also issued, but he did not join the post and after taking medical leave, he joined the post later in time. Next year, he got his promotion in regular manner. The petition deserves to be allowed, rejecting the contention of the respondents.

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

12. In the respondent department, the petitioner joined the service as labourer in P-I category on 15.07.2008 whereas, private respondent, Sri Girish Kumar joined the service as Labourer in P-I category on 06.10.2006. The petitioner was promoted on the post of Oiler (P-II category post) on 05.07.2014 prior to the private respondent No. 5, who was although promoted by giving relaxation, like the petitioner, on P-II category post in 2013-14, but he did not join that post and he got his promotion on P-II category post on 30.06.2015 as *Kushal Shramik*. On account of the posting of the petitioner *vis-à-vis* respondent No. 5 on P-II category post, the petitioner stands senior to the private respondent because petitioner joined P-II post on 05.07.2014, whereas, respondent No. 5 joined P-II

category post on 30.06.2015, later in time. Although, learned Counsel for the petitioner raised objection that private respondent was given relaxation during his first promotion so, he cannot be given relaxation again for promotion in question. Contrary to this, the respondent department and private respondent have submitted that relaxation facility was not availed by the private respondent. Looking into the contentions and the proof filed before the Court, we find that the relaxation was not availed by private respondent. Had the private respondent availed the relaxation at that time, he would have ranked senior to the petitioner on P-II category post. We hold that, as benefit of relaxation was not availed by private respondent No. 5, it cannot be said that he cannot be given relaxation now for considering him for promotion at later stage because the first relaxation was although offered, but the same was not availed by him. It does not disentitle the private respondent No. 5 from getting relaxation at later stage. He had lost his seniority to the petitioner for not accepting his prior promotion with relaxation and in this manner, on P-II category post in the seniority list dated 06.08.2018, the petitioner stands senior to the private respondent.

13. The advertisement was issued on 06.08.2018 for filling up the P-II category post and necessary criteria for eligibility was mentioned therein. According to the advertisement, the recruitment was to be made for the year 2018-19, which admittedly starts from 01.07.2018 to 30.06.2019. In the seniority list dated 06.08.2018, issued along with the advertisement, the petitioner was rightly shown senior to the private respondent hence, he was in the zone of consideration for promotion post. As shown in Annexure-3, on the date of advertisement i.e. 06.08.2018 (Annexure: 4), the petitioner was having an experience of more than 10 years of P-I and P-II Categories posts. Private respondent No. 5 was also having required experience, but he was junior in the seniority list on P-II category post. In Annexure: 4, it is clearly mentioned that the petitioner was fulfilling all the required criteria/eligibility for promotional post. But, before calling the interview on 18.02.2019, according to the respondents, the seniority list

dated 06.08.2018 was amended. The criteria of seniority were to be seen considering 30.06.2018 as the date of ascertaining the criteria and on that date, the petitioner was not entitled and he was not called for interview and the seniority list was amended accordingly. The petitioner has challenged this exercise on the ground that the previously issued seniority list dated 06.08.2018 by the respondent department, cannot be changed without giving an opportunity of hearing and without giving due notice and without following the due procedure and principles of natural justice.

14. Respondents have contended that vide Office Memorandum dated 10.10.2018 (Annexure: R-9) an interim seniority list was issued and objections were invited against the same till 29.10.2018 and it was also mentioned that if no representation is received from any employee by this date, this seniority list will be declared as final seniority list. The seniority list attached to this memorandum had the names of both the petitioner and private respondent No. 5 and was showing length of service rendered upto 30.06.2019 and upto that date both employees were having more than 10 years of service and were shown as fulfilling the qualifications. They still required relaxation as mentioned in the O.M. dated 22.08.2015 (Annexure: R-8) which was also annexed with the petition as Annexure-A-3. This O.M. provides for relaxation in qualifying service done on P-I and P-II level posts from 17 years to 10 years but it is also stated that for promotion, the relaxation in length of service will not be given to an employee more than once in entire service period. In the seniority list annexed to Annexure: A-9, both the petitioner and private respondent No. 5 have been shown as requiring this relaxation and it is also recorded that after the approval of the relaxation from headquarters, they will be included in the final seniority list. Further, an amended seniority list was again issued with O.M. dated 17.12.2018, which reads as follows:

“यूजेवीएन लिमिटेड

कार्यालय अधिशासी अभियन्ता अनुरक्षण एवं उत्पादन, जल-विद्युत गृह, कुल्हाल,  
जिला- देहरादून, (उत्तराखण्ड)-248148  
दूरभाष एवं फ़ैक्स: 01360-224107

कार्यालय ज्ञापन

एतद्वारा ढालीपुर विद्युत गृह के विज्ञप्ति पत्रांक 592/यूजेवीएनएल/02/  
अ0अ0 (अनु0 एवं उत्पान)/कुल्हाल/चयन समिति न0-02 दिनांक 06.08.2018  
के संदर्भ में निर्गत अन्तिम वरिष्ठता सूची के सम्बन्ध में कार्यालय ज्ञापन सं0  
801/यूजेवीएनएल/02/अ0अ0 (अनु0 एवं उत्पान)/कुल्हाल/चयन समिति  
न0-02 दिनांक 04.12.2018 में, त्रुटिवश चयन वर्ष 30.06.2018 के स्थान पर  
चयन वर्ष 30.06.2019 अंकित हो गया था ।

अतः अन्तिम वरिष्ठता सूची को संशोधित कर पुनः जारी की जा रही है।  
(संशोधित अन्तिम वरिष्ठता सूची संलग्न)

(अजय कुमार)

अध्यक्ष चयन समिति नं-2

एवं अधिशासी अभियन्ता।”

15. This amended list showed the names of both, petitioner and private respondent No. 5, but showed the services rendered by them upto 30.06.2018 whereby total length of service of the petitioner is less than 10 years and his qualification is shown incomplete. While the qualification of the respondent No. 5 is shown as complete as his total length of service is more than 10 years. Still, the respondent No. 5 requires relaxation and it is recorded in this list that after approval of the relaxation from the headquarters, the employee will be included in the list for the interview. Respondents have clarified in their Supplementary C.A. that writing the selection year as 30.06.2018 is for the calculation of length of service which was earlier wrongly calculated upto 30.06.2019. It is clear that selection was for the year 2018-19 and the respondents intended to calculate the length of service upto 30.06.2018 which they had earlier calculated by mistake upto 30.06.2019. The respondents have relied upon the logic that since the petitioner had not completed 10 years of service upto 30.06.2018, he was not eligible for the promotional post of level P-IV. Even if, his length of service had been 10 years or more, he would have required a relaxation as per the O.M. dated 22.08.2015 (Annexure: R-8/A-3) which could not have been given to him as he had already obtained relaxation once in his service career while considering



his promotion from level P-1 to level P-II post. The final list of eligible candidates issued vide O.M. dated 18.02.2019, therefore, did not have the name of the petitioner and for the post in question only the name of private respondent No. 5 was in this list for whom the approval of relaxation had been given by the headquarters' letter dated 14.02.2019.

16. Respondents have tried to argue the matter with such contention that the petitioner was required to fulfill the necessary qualifications on 30.06.2018. It has been controverted on behalf of the petitioner, referring to the judgment of Hon'ble High Court of Uttarakhand, in Kailash Singh Rawat vs. State of Uttarakhand & Ors, 2019 (1) UAD 281 wherein, it was held that the date when the vacancy is notified for recruitment, will be relevant date for the purpose of determination of criteria of eligibility for promotion to the said post. The Hon'ble High Court has clearly laid down that the year of recruitment is relevant for determination of criteria of eligibility for promotion to the post, and the date, when the vacancy is notified for recruitment, will be relevant for the purpose of determination of criteria and eligibility for promotion to the post.

17. Hence, following the principles laid down in the above judgment, we are also of the view that the relevant date for ascertaining the criteria for fulfillment of eligibility will be 06.08.2018 in this case and not the date of 30.06.2018. Petitioner's date of joining in P-I post is 15.07.2008 and he completes 10 years of service on 15.07.2018, therefore, on the date of advertisement i.e. 06.08.2018, he has already completed 10 years of service on P-1 and P-II posts and is therefore, eligible for promotion provided further relaxation of qualifying service as per O.M. dated 22.08.2015 (Annexure: R-8/A-3) is available to him. According to respondents, this relaxation could not have been given to him for second time as he had already given relaxation in length of service when he was promoted from P-I level post to P-II level post and relaxation can be given only once in service as is very clearly stated in the O.M. dated 22.08.2015 (Annexure: R-8/A-3). The petitioner has tried to make out a case that even

the respondent No. 5 was give relaxation when he was promoted from P-I level to P-II level post. Respondent No. 5, after giving the relaxation for promotion, was sent joining letter to join in promotion post, but he sent medical certificate and remained absent from service and did not join the promotion post. We have already discussed this issue earlier and have held that it does not disentitle the private respondent No. 5 from getting relaxation at later stage.

18. Another question raised by the petitioner is about the procedure adopted for so called amendment made by the respondents. When the previous seniority list dated 06.08.2018 was issued, the petitioner was fulfilling all the criteria and was senior to the private respondent No. 5, then without giving an opportunity of hearing to him and without following the principles of natural justice, simply by making a correction order, the seniority list cannot be changed. We hold that seniority list cannot be changed without inviting objections and without following the principles of natural justice, without giving the petitioner an opportunity of hearing and without disposing of his representation, the wrong procedure for interview was adopted.

19. Petitioner has also contended that when there was only one post to be filled up by promotion then, as per the rules, at least two candidates must have been called for interview. Whereas, inspite of the fact that petitioner was senior, having all the criteria and eligibility, he was not called for interview and by calling single person, respondent No. 5 for interview on 22.02.2019, giving him undue favour, the promotion order was issued. The interview was called on 22.02.2019 and taking the interview of Respondent No. 5, he was appointed to the post of promotion.

20. We find that the whole procedure adopted by the respondents for selection, was not correct procedure and not as per the rules. The rules of principles of natural justice were violated. On the principle of *audi Alteram partem* (the basic concept of principles of natural justice), no one

should be condemned unheard. Petitioner has vehemently denied in his Supplementary R.A. about information being given to him by the respondent department that he does not fulfill eligibility criteria or the O.M. dated 17.12.2018 was ever brought to his notice. No opportunity of hearing was given to him before making such amendment and a great prejudice has been caused to him by amending the seniority list. Further, his representation dated 19.02.2019 was not deliberately disposed of.

21. In view of the above, the selection process needs to be conducted afresh after giving the petitioner an opportunity of hearing and counting the length of service of candidates upto the date of advertisement i.e. 06.08.2018.

### **ORDER**

The claim petition is allowed.

The selection process adopted by the respondent department for P-IV category post and the appointment on its basis are hereby declared against the rules and principles of natural justice. Accordingly, the promotion of private respondent No. 5 is hereby set aside.

Respondents No. 1 to 4 are directed to conduct and complete the impugned selection process afresh, as per the Rules by giving an opportunity of hearing to the petitioner, and counting the length of service of candidates upto the date of advertisement.

Costs easy.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATED: DECEMBER 24, 2020*  
*DEHRADUN.*  
*KNP*