BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

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

---------Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

CLAIM PETITION NO. 10 /DB/2021

Manoj Singh Bisht, s/o Sri Bhim Singh Bisht, Aged about 38 years, r/o Shiv Puram, Taala Nimatpur, P.O. Haripurnayr, Nainital, Uttarakhand, presently posted as Additional Assistant Engineer, Uttarakhand Jal Sansthan, Dehradun.

…….Petitioner.

vs.

1. Secretary Pey Jal, Government of Uttarakhand, Secretariat, Dehradun.
2. Chief General Manager, Uttarakhand Jal Sansthan, Jal Bhawan, Nehru Colony, Dehradun.

…….Respondents.

Present: Sri Abhijay Singh Panwar, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondent/State.

JUDGMENT

DATED: FEBRUARY 10, 2021

Justice U.C.Dhyani (Oral)

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

> *"I. To issue direction or order to the respondents directing them to grant promotion to the petitioner under the degree quota.*
>
> *II. To issue any other suitable, order of direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
>
> *III. To award the cost of the Claim Petition in the favour of the petitioner."*

2. Present claim petition has been filed by the petitioner being aggrieved by rejection of his representation dated 12.09.2020 (Annexure: A-12) by the respondent department, wherein he had claimed promotion benefits under Degree Quota and seniority as per G.O. dated 17th January, 2013. The respondent department has rejected his representation dated 12.09.2020 (Annexure: A-12) and completely ignored his qualifications as B.E. [Civil] AMICE-I degree holder [which was pursued during service] in an arbitrary and cursory manner without applying its mind, as is evident from the letters issued by the respondents dated 23.11.2020, 18.12.2020, 30.12.2020 and 04.01.2021. Hence, present claim petition.

3. At the very outset, Sri Abhijay Singh Panwar, Ld. Counsel for the petitioner, submitted that the controversy involved in the present claim petition is covered by the decision rendered by this Tribunal on 23.11.2020, in Claim Petition No. 40/DB/2020, Anil Negi vs. State & others and, therefore, present claim be decided in the light of Anil Negi's case.

4. Sri V.P.Devrani, Ld. A.P.O. does not dispute this fact. He is not averse to the idea of deciding present claim petition in the light of Anil Negi's case, at the admission stage.

5. It will be pertinent to reproduce the relevant paragraphs of the judgment rendered by us in Anil Negi's case (*supra*), herein below for convenience:

> "2.The petitioner was appointed as Junior Engineer, Uttarakhand Jal Sansthan *vide a*ppointment order dated 25.04.2012. Petitioner had completed B-Tech (Civil) in the year 2008 and this qualification was mentioned against the petitioner's name in the seniority list dated 17.01.2013. The petitioner appeared in the AICTE-UGC Special Examination 2018 for validation of his degree. The petitioner made a representation dated 20.09.2019 to the department stating that he had got the B-Tech degree in Civil Engineering in the year 2008 and subsequently, he has passed the examination conducted by the AICTE-UGC for validation of his degree and requested for consideration to be promoted to the post of Assistant Engineer in the degree quota. When

the representation of the petitioner was not disposed of, he filed a claim petition No. 121/DB/2019 before this Tribunal, which was disposed of by this Tribunal *vide j*udgment and order dated 14.10.2019 with a direction to the respondent No. 2, to decide the pending representation dated 20.09.2019 of the petitioner by a reasoned and speaking order in accordance with law at an earliest possible, but not later than 8 weeks of the presentation of certified copy of the order along with copy of representation.

Respondent No. 2 vide his letter dated 08.01.2020 (Annexure: 7) recommended to the Government that the petitioner should be given the benefit of Rule 6-3(c) of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011 (amended in 2013) (hereinafter called as the "Rules"). As the respondent No. 2 did not dispose of the representation of the petitioner dated 20.09.2019, in compliance of the judgment and order dated 14.10.2019 of the Tribunal, the petitioner filed contempt petition before this Tribunal. This Tribunal *vide* order dated 03.07.2020 directed copy of the contempt petition to be sent to the Respondent No. 2 through email, soliciting response on or before 31.07.2020. Respondent No. 2 *vide* his order dated 03.07.2020 (Annexure: 9) rejected the petitioner's representation ignoring his earlier recommendation made *vide* letter dated 08.01.2020, *inter-alia* stating that the petitioner is not eligible to get the benefit of Rule 6-3(c) of the Rules. Aggrieved against this order, the petitioner has filed the instant claim petition.....

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5. The issue involved in this petition is about the interpretation of Rule 6-3(c) of Rules. Rule 6-3 is produced as below:

"6-3 ***Assistant Engineer-*** *Recruitment to the posts of Assistant Engineer shall be made from following sources-*

(a) 40% posts by direct recruitment through the Public Service Commission.

(b) 50% posts by promotion on the basis of seniority subject to rejection of unfit from amongst such Junior/Additional Assistant Engineers, who have completed minimum 10 years service as such, on the first day of the year of recruitment.

(c) 7.33% posts by promotion from amongst such Junior/ Additional Assistant Engineers, who have completed 07 years satisfactory service as such, on the first day of the year of recruitment and who have Graduate in Civil, Electrical or Mechanical Engineering from any University established by Law in India or passed examination of 'A' and 'B' of Institute of Engineers recognized in Civil, Electrical or Mechanical Engineers, Computer Science or equivalent thereto with the prior approval of the Jal Sansthan.

(d)……..

Note: *……"*

6. Rule 6-3(c) provides for accelerated promotion to those Junior/Additional Assistant Engineers who have completed 7 years of

satisfactory service and who have graduate degree with prior approval of the Jal Sansthan. The quota for such accelerated promotion was earlier 5% of the posts of Assistant Engineer, which was increased to 7.33% by way of the amendment done in 2013. The normal quota of promotion after minimum 10 years of service is of 50% posts available to all Junior/Additional Assistant Engineers.

7. The petitioner's contention is that he had got the degree qualification before his appointment and joining of service as Junior Engineer, therefore, the issue of getting degree qualification with prior approval of the Jal Sansthan does not arise. He also states that he had appeared in the validation examination of his degree, which was organized by the AICTE-UGC in 2018 with the permission of his Executive Engineer. Since he was having the degree qualification, the respondent No. 2 vide his letter dated 08.01.2020, addressed to the Additional Secretary, Drinking Water and Sanitation, Uttarakhand Govt. (Annexure: 7) had treated him to be covered under the above Rule 6-3(c) of the Rules and recommended this benefit to be given to him. However, when he filed the contempt petition before this Tribunal about non-compliance of the order dated 14.10.2019 of this Tribunal, *vide* which, Respondent No. 2 was directed to decide pending representation dated 20.09.2019 of the petitioner, Respondent No. 2 vide Office Order dated 03.07.2020 (Annexure: 9), has held that the petitioner has not been granted permission to participate in any examination regarding degree and has now held that the petitioner is not covered by above Rule 6-3(c) of the Rules. A perusal of this Office Order reveals that in this order the respondent No. 2 has distinguished the fact that the petitioner has appeared in the examination for validation of the degree from 03.06.2018 to 06.06.2018 which is different from any examination relating to degree. Subsequently, Respondent No. 2 has also stated in this order that as the petitioner has been appointed in the department in the year 2012 and he received his degree in the year 2008, the question of granting permission by the department does not arise. As far as mention of the degree qualification of the petitioner in the seniority list is concerned, it does not entitle him to any benefit against the Rules.

8. .....

9. We are aware on the basis of pleadings of other claim petitions filed before this Tribunal that the Uttarakhand Irrigation and Public Works Departments also have quota of accelerated promotion for degree holder Junior Engineers, but, in the corresponding Rules, the mention of degree, having been obtained with the prior approval of the Govt. department is not there, meaning thereby that all degree holders who join these departments as Junior Engineers, are equally entitled to be considered for promotion under the accelerated quota of Junior Engineers whether they have acquired the degree before joining the service or after joining the service.

10. Rule 6-3(c) of the Rules does not explicitly exclude those degree holders who have obtained the degree before the joining of service as Junior Engineers, that is why the Respondent No. 2 in his communication to the Govt. dated 08.01.2020 (Annexure: 7) treated the petitioner to be covered under this Rule. But, later in his office order dated 03.07.2020 (Annexure: 9)

he changed his stance as narrated above. The interpretation of the words "with the prior approval of Jal Sansthan" cannot be over-stretched to exclude the degree holders who have obtained degree before joining the service as the question of prior permission does not arise in their case. However, Rule 6-3(c) of the Rules as worded now does not clearly include them in its ambit as well. Had it been the intention of the Govt. while framing the rules that such degree holders are to be excluded, the same would have been clearly mentioned in the Rules. Common sense also says that if the government's intention is to give accelerated promotion on the basis of degree, it should be immaterial whether that degree has been obtained before or after joining the service as Junior Engineer.

11. Learned counsel for the Respondent No. 2 argued that if prior degree holders (Junior Engineers who had obtained degree qualification before joining the service) are considered for the quota of accelerated promotion, while such persons can directly apply for the post of Assistant Engineers, it will become a channel of backdoor entry of such persons to the post of A.E. and thereby block the channel of promotion of diploma holder Junior Engineers. It is not really so because there is a promotion quota of 50% of posts for all Junior Engineers whether degree holder or diploma holder and in the accelerated quota of 7.33% of posts, diploma holder Junior Engineers after acquiring graduate degree with the prior approval of the Jal Sansthan will have equal opportunity to be considered.

12. Learned counsel for the interveners also stressed on the point that Rule 6-3(c) of the Rules cannot be interpreted as allowing the consideration of prior degree holders to be covered under its ambit. We find that it is necessary to clarify the provision of exclusion or inclusion of prior degree holders in the Rule 6-3(c) of the Rules which may be done by the Govt. after perusal of the Cabinet Notes and other relevant papers on the basis of which these Rules were framed. The objective of having such accelerated quota of promotion for degree holders, as mentioned in those papers would in all probability clarify the intention of the Govt. at that time and the same can now be expressed either by a clarificatory G.O. or by a further amendment to the Rules.

13. If the Govt. finds the relevant papers to be equally vague in this respect, the Govt. should now take conscious decision about the exclusion or inclusion of prior degree holders under Rule 6-3(c) and issue the same by a clarificatory G.O. or an amendment to the Rules.

14. The above considerations are not only relevant to the case of the petitioner but all similarly placed persons who had obtained degree qualification before joining the service as Junior Engineers. Therefore, it will be in the fitness of things that such clarificatory G.O. or amendment in the Rules be issued before the promotional exercise for the post of Assistant Engineers is completed.

ORDER

With the above observations, the claim petition is disposed of. Respondent No. 1 is directed to get the clarificatory order or amendment to the Rules issued within a period of two months from the date of production of certified copy of this order. Promotional exercise shall be subject to such decision of the Govt."

6. Since the factual matrix and law governing the field, of present claim petition and claim petition of Anil Negi (*supra*) are the same, therefore, this Tribunal deems it proper to decide the present claim petition in terms of the decision rendered by us in Anil Negi's case (*supra*).

7. Order accordingly.

8. With the observations quoted by us in the decision of Anil Negi's case (*supra*), the claim petition is disposed of. Respondent No.1 is directed to get the clarificatory order or amendment to the Rules issued within a period of two months from the date of production of certified copy of this order. Promotional exercise shall be subject to such decision of the Govt.

9. No order as to costs.

10. Urgency application also stands disposed of.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 10, 2021
DEHRADUN

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