

**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. 61/DB/2020**

1. Ashish Bhatt, s/o Sri S.P.Bhatt aged about 37 years presently posted as Executive Engineer (Incharge) Central Store Division, Dehradun Uttarakhand Jal Sansthan, Dehradun, Uttarakhand.
2. Abhishek Kumar Verma, s/o Sri Mahesh Chandra aged about 44years, presently posted as Executive Engineer, Maintenance Division, Ghansali Uttarakhand Jal Sansthan, Tehri Garhwal, Uttarakhand.
3. Naresh Pal Singh, s/o Sri Umed Singh aged about 39 years, presently posted as Executive Engineer, Maintenance Division, Haridwar Uttarakhand Jal Sansthan, Haridwar, Uttarakhand.
4. Mukesh Kumar, s/o Sri Malkhan Singh aged about 48 years, presently posted as Executive Engineer (Incharge), Maintenance Division, Karnprayag Uttarakhand Jal Sansthan, Chamoli, Uttarakhand.
5. Satish Chandra Nautiyal, s/o Sri Tejram Nautiyal aged about 45 years, presently posted as Executive Engineer(Incharge), Maintenance Division, Tehri Uttarakhand Jal Sansthan, New Tehri, Uttarakhand.
6. Laxmi Chand Ramola, s/o Sri Pooran Chand Ramola aged about 42 years, presently posted as Executive Engineer (Incharge), Maintenance Division, Kotdwar Uttarakhand Jal Sansthan, Pauri, Uttarakhand

.....Petitioners.

**vs.**

1. State of Uttarakhand through Principal Secretary, Peyjal, Civil Secretariat, Dehradun.
2. Chief General Manager, Uttarakhand Jal Sansthan, Dehradun, Uttarakhand.

.....Respondents.

Present: Sri M.C.Pant, Advocate, for the Petitioner.

Sri V.P.Devrani, A.P.O., for Respondent No.1.

Sri Deepak Singh, Advocate, for Respondent No.2.

Sri M.R.Saklani, Advocate.

Sri Sanjay Raturi, Advocate ( through audio conferencing)  
for interveners.

## **JUDGMENT**

**DATED: MARCH 22, 2021**

**Justice U.C.Dhyani (Oral)**

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

- (i) To declare that the petitioners are entitled for their deeming date of appointment from recruitment year of 2011-2012 and to direct the respondent to accord all service benefits for the purpose of all service intakes by allowing them the deeming date of appointment with reference to the recruitment year of 2011-12 along with all consequential benefits after calling the entire records from the respondents or to mould the prayer accordingly which the court may deem fit and proper in the circumstances of the present case.
- (ii) To issue any order or direction appropriate in nature commanding/ directing the Respondent No.1 to grant promotion to the petitioners on the post of Executive Engineer, by convening a review DPC and further to consider the case of the petitioners for the next higher post of S.E. in case the promotion of the junior be considered for the same and further to implement its own order dated 05.11.2018 (Annexure No. 10), further please to grant all admissible benefits for all practical purposes since the date of the promotion of the juniors on the post of E.E. and also to declare the petitioners deemed to be eligible and qualified for the promotion on the post of E.E. and other higher post as per their merit position maintained by the PSC after calling the entire records from the respondents or to mould the prayer accordingly which the Court may deem fit and proper in the circumstances of the present case.
- (iii) To issue any other order and direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) Cost of the petition to be awarded to the petitioners.

### **BACKDROP**

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

The petitioners participated in the appointment of Assistant Engineer (Electrical/ Mechanical and Civil) *vide* advertisement of combined State Engineering Service Examination, 2007. The

advertisement was published on 10.05.2007 for appointment of Assistant Engineer (Civil, Mechanical/ Electrical) in Jal Sansthan (Pey Jal), Minor Irrigation Department and Rural Engineering Departments. The result of the examination was published by the Uttarakhand Public Service Commission on 14.02.2011. The petitioner No. 2 was placed at Sl. No. 1 in the waiting list of OBC Assistant Engineers (Electrical/ Mechanical) of Jal Sansthan (Pey Jal). One vacancy reserved for OBC was carried forward on the ground that no eligible OBC woman candidate is available to fill up the carried forward post. Petitioner No.6 was placed at Sl. No. 1 in the waiting list of Scheduled Caste Assistant Engineer (Mechanical) of Jal Sansthan (Pey Jal) Department. One vacancy of Scheduled Caste was carried forward on the ground that no eligible S.C. Category woman was available to fill up the carried forward post. Petitioner No. 2, as also Petitioner No.6, feeling aggrieved by application of principle of carry forward, on account of non-availability of woman candidate and non-issuance of appointment letters in their favour against carried forward posts, preferred their writ petition being No. WPSS NO. 115/2012 Abhishek Kumar Verma vs. State and others and WPSS No. 114/2012 Mukesh Kumar vs. State and others, respectively. In the said writ petitions, the Public Service Commission filed an affidavit, wherein it had admitted that due to mistake, the post had been carried forward and process of filling up the posts, had already started on the basis of merit. On the basis of said statement, the Hon'ble Court *vide* judgment and order dated 31.07.2012 disposed of the petitions of Petitioners No. 2 and 6. The Uttarakhand Public Service Commission, then, in view of the subsequent filling up of posts, on the basis of merit, as per order dated 31.07.2012 of Hon'ble Court, again declared the revised result on 01.08.2012 in respect of carried forward seats, which were kept vacant, because of its mistake. Names of petitioners, Sri Ashish Bhatt figured at Sl. No.9 in E & M, Sri Abhishek Kumar Verma, at Sl. No.14 in E & M, Sri Satish Chandra Nautiyal at Sl. No. 12 in Civil, Sri Laxmi Chand Ramola at Sl.No. 16 in Civil, Sri Naresh Pal Singh at Sl. No.15 in E & M and Sri Mukesh Kumar at Sl. No.16 in E &M.

Respondents issued appointment letters in favour of petitioners on 05.03.2013 and 04.06.2013 respectively. Meanwhile Respondent No. 1 issued a final common list on 06.07.2017 for all the Assistant Engineers working in Jal Sansthan. In the said list, the petitioners were rightly shown senior to other incumbents whose name, although were in the first result, but were junior to the petitioners on the criteria of the marks obtained by them.

It came to the knowledge of the petitioners that the respondent no.1 is going to hold the DPC for promotion to the post of Executive Engineer and the petitioners, who had only rendered total service of about 5 years, would not be considered for DPC, because the petitioners' result was issued on 01.08.2012, while the delay was due to the mistake on the part of Public Service Commission, which was so observed by the Hon'ble Court. Petitioners then made representation to Respondent No.1 on 27.06.2018, stating therein that in respect of judgment rendered in WPSS No. 114/12 and WPSS No. 115/12, the result of the selection issued in February, 2011 was revised by the Commission and the revised result was issued on 01.08.2012 and thereafter appointments were given to the petitioners. Seniority list of the Assistant Engineers of the department was issued *vide* office order dated 06.07.2017, in which the merit of the petitioners was shown above some of the Assistant Engineers appointed in the year 2011. Therefore, it is possible that in view of the Service Rules, 2011, they were left being considered for promotion in DPC. Therefore, they prayed for treating their appointment since the date of their juniors were appointed. In WPSB No. 344/2018, which was filed by the petitioners, the Hon'ble High Court *vide* judgment and order dated 07.08.2018 directed the respondents to consider the case of the petitioners for promotion in the proposed DPC, if persons junior to them have been promoted and petitioners fall within the zone of consideration. *Vide* Office Order dated 30.08.2018, Respondent No. 1 rejected the representation of the petitioners with an observation that as per the Service Rules, 2011, only those Assistant Engineers will be eligible who have completed 7 years of service on the post of Assistant Engineer as such on the first date of recruitment year. Any senior person who has not completed qualifying service, cannot be

eligible for promotion and after completing the qualifying service they will be getting the notional promotion since the day their juniors were given such benefits. On the recommendation of DPC, Respondent No.1, *vide* Office Order dated 05.11.2018 promoted 19 Assistant Engineers to the post of Executive Engineers in the pay scale of Rs.15600-39100/- grade pay Rs.6600/-.

According to the petitioners, they are placed at Sl. No. 10,22, 26, 28, 40 and 48 respectively in the final seniority list, while the persons promoted *vide* Office Order dated 05.11.2018 are placed between Sl. No. 2 to 54 in the seniority list. As such S/Sri Yashveer Mall, Ashok Kumar, Bilal Yunus, Manoj Kumar Tamta, Awdhesh Kumar and Smt. Monika Verma are juniors to the petitioners.

Respondents constituted DPC for promotion to the post of Executive Engineer. On the recommendation of DPC, Respondent No. 1, *vide* Office Order dated 05.11.2018 promoted 19 Assistant Engineers to the post of Executive Engineers in the pay scale of Rs. Rs.15600-39100/- grade pay Rs.6600/-. Petitioners filed WPSB No. 382/2018, which was dismissed by Hon'ble High Court on 27.11.2018, on the ground of alternate remedy.

Hence, the present claim petition.

3. Separate written statements have been filed by the respondents. Respondent No.1, in its written statement stated that since the petitioners did not qualify and fulfill the qualifying service of 7 years as stipulated in Rule 6(4) of Uttarakhand Jal Sansthan Engineering Service Rules, 2011 (Amended in 2013), the petitioners were not considered in DPC for the selection year 2018-19. The seniority of the petitioners was fixed by the Respondent Department on the basis of seniority decided and fixed by Uttarakhand Public Services Commission, Haridwar. Petitioners did not qualify for promotion to the post of Executive Engineer in the DPC for the selection year 2018-19, as petitioners did not complete the criteria of 7 years' service as Assistant Engineer as per Rule 6(4) of Uttarakhand Jal Sansthan Engineering Service Rules, 2011. Representation of the petitioners was rightly decided in accordance with

Rules by way of passing a speaking and reasoned order on 30.08.2018. All those Assistant Engineers, who had fulfilled the requisite criteria for promotion as per Engineering Service Rules, 2011 for DPC for the selection year 2018-19, were given promotion. The petitioners have admitted that they did not complete stipulated 7 years' service at the time of DPC for the selection year 2018-19. No Court has so far given any relief to the petitioners in respect of late issuance of appointment letter by the respondents. The petitioners have admitted in their claim petition that they had not completed 7 years' service, therefore, present claim petition should be dismissed. The petitioners and other Assistant Engineers were selected through competitive examination held by UPSC, Haridwar. All those Assistant Engineers (but for the petitioners), who had fulfilled the requisite criteria for promotion as per Engineering Service Rules, 2011 for the selection year 2018-19, were given promotion *vide* Office Order dated 05.11.2018.

4. Separate written statement has been filed by Respondent No.2, with the prayer to dismiss the claim petition, basically on the ground that since the petitioners did not complete stipulated 7 years' service at the time of DPC for the selection year 2018-19, therefore, they did not qualify for promotion to the post of Executive Engineer for selection year 2018-19 in view of the criteria laid down in Rule 6(4) of Uttarakhand Jal Sansthan Engineering Service Rules, 2011. Respondent No.2 has also taken other averments which were taken by Respondent No.1 in its C.A./W.S.. The Tribunal does not think it necessary to repeat those averments for the sake of brevity.
5. R.A. has also been filed by the petitioners reasserting the facts which have been mentioned in the claim petition.

#### **IMPLEADMENT APPLICATION**

6. Impleadment application has been filed by S/Sri Jaipal Singh, Ajay Pal Singh and Rajendra Prasad Mamgain to direct the petitioners to implead them as Respondents No. 3, 4 and 5 in the claim petition.
7. Sri M.R.Saklani, Ld. Counsel for the interveners submitted that since the interveners are necessary parties to the claim petition,

therefore, they should be arrayed as party respondents in the claim petition. When such application was filed before this Tribunal, the Tribunal *vide* order dated 05.01.2021 permitted the interveners to argue their case.

8. We have given our anxious consideration to the grounds taken in the impleadment application. We, however, do not see any reason to implead them as party respondents because of the following :

- i) This Tribunal is not deciding *inter se* seniority between the petitioners and interveners.
- ii) It is well settled principle of law that basically it is for the petitioner in a claim petition to identify the parties against whom he has any grievance and to implead them as respondents in the claim petition filed for the necessary relief. *Dominus litis* is the person to whom a suit (petition) belongs. It is this person who will be affected by the decision in a case. This person derives benefits if the judgment is in his favour, or suffers the consequences of an adverse decision. If, during the hearing of the petition, the Court feels that some others should also be heard, on the ground that they are necessary or proper parties, the Court can direct them to be impleaded as party respondents.

Leading decisions on the subject are:

(1) *Kasturi vs. Uyyamperumal & others*, (2005)6 SCC 733 (2) *Razia Begum vs. Anwar Begum*, AIR 1958 SC 886 (3) *Mahadeva Rice & Oil Mills vs. Chennimalai Gounder*, AIR 1968 Mad. 287 (4) *Antony Devaraj vs. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula*, Annai Church rep by the Trustee, 2004 (2) CTC 183 (5) *Mumbai International Airport vs. Regency Convention Centre*, AIR 2010 SC 3109.

- iii) Here, the Tribunal does not feel that the interveners are necessary or proper parties, notwithstanding the fact that the interveners have an axe to grind with the petitioners.
- iv) The sole issue, to be decided in this claim petition, is the issue of qualifying service and promotion of the petitioners from the day petitioners' juniors were promoted. In written statements , the

official respondents have admitted that the petitioners now have qualifying service for promotion to the post of Executive Engineer.

- v) Annexure: A-9 is the Office Memorandum dated 30.08.2018 issued by the Govt. in Drinking Water and Sanitation Department. The representation of Sri Satish Chandra Nautiyal and others was disposed of *vide* such Office Memorandum. The same has been reproduced by the respondents in their counter affidavits. The interveners have not challenged Annexure: A-9. Unless Annexure: A-9 is put to challenge, interveners have no case for impleadment.
- vi) Impleadment application is, therefore, dismissed.

### DISCUSSION

9. When WPSB No. 382/2018, Ashish Bhatt and others vs. State and others was filed by the petitioners before Hon'ble High Court, Hon'ble Court *vide* order dated 27.11.2018, dismissed the writ petition leaving it open to the petitioners to approach Public Services Tribunal. Hon'ble High Court also observed that:

“In case the petitioners approach the Tribunal, the Tribunal shall also consider entertaining the original application taking into consideration the fact that the present writ petition has been pending on the file of this Court for past more than three months.”

Accordingly, this claim petition has been filed by the petitioner.

10. In WPSB No. 114 of 2012, Mukesh Kumar vs. State of Uttarakhand and another, Hon'ble High Court *vide* order dated 31.07.2012, observed as follows:

“The Public Service Commission has filed an affidavit, where it has been stated that it could not carry forward the horizontal reservation, which was carried forward by mistake, as has already been pointed out by this Court in Writ Petition (S/B) No. 213 of 2011 (Rajeev Misra versus State of Uttarakhand and others), decided on 12th June, 2012 and, accordingly, has started the process of filling up those carried forward posts on the basis of the merit of the candidates belonging to the category in question. That being the contention in the counter affidavit and that being the claim in the writ petition recording the statements made in the counter affidavit, the writ petition is disposed of.”

*[Emphasis supplied]*



11. Service Rules, namely Uttarakhand Jal Sansthan Engineering Service Rules, 2011 provide for promotion of Assistant Engineers to the post of Executive Engineer. The Rule is that post of Executive Engineer shall be filled up by promotion on the basis of seniority subject to rejection of unfit from amongst such Assistant Engineers who have completed minimum 7 years' service on the first July of the year of recruitment.
12. In a nutshell, the petitioners have now completed stipulated 7 years of service as Assistant Engineers as per Rule 6(4) of Uttarakhand Jal Sansthan Engineering Service Rules, 2011. **Respondent No.1 had passed an order on 30.08.2018 that whenever petitioners will complete 7 years of qualifying service, then they will be eligible for promotion and if the promotion has been granted to any junior Assistant Engineer earlier, then the petitioners will gain notional promotion and other (service) benefits from the date of the promotion of the junior.**
13. Respondents, in their written statements, have stated that since the petitioners did not complete stipulated 7 years of service at the time of DPC for the selection year 2018-19, therefore (they) did not qualify for promotion to the post of Executive Engineer for selection year 2018-19, in view of the criteria laid down in Rule 6(4) of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011.
14. Respondent No. 1 had issued an order on 30.08.2018 that whenever the petitioners will complete 7 years of qualifying service, then they will be eligible for promotion and if the promotion has been granted to any junior, then the petitioners will be granted notional promotion and other benefits from such date. Respondent No. 2 has stated the same thing by filing separate written statement.
15. For selection year 2019-20, DPC has not been convened and the seniority list dated 06.07.2017 has been set aside *vide* judgment dated 28.07.2020 by this Tribunal in Claim Petition No. 42/DB/2018, K.C.Peinuly vs. State and others. Fresh seniority list has been issued by the Respondent Department on 12.02.2021.

16. Admittedly, the petitioners' juniors have been promoted. It is settled law of the land that the senior should be placed above the juniors, if they have been promoted. Uttarakhand Public Service Commission had already filed an affidavit before Hon'ble High Court in WPSS No. 114/2012, Mukesh Kumar vs. State and others that horizontal reservation could not be carried forward and UPSC had started the process of filling up those carried forward posts on the basis of merit of the candidates belonging to the category in question. Petitioners should not be allowed to suffer on account of mistake committed by the Respondent State/ UPSC, for no fault of them. The decisions rendered by Hon'ble Supreme Court in *Pilla Sitaram Patrudu & others vs. Union of India & others, 1996(4) Supreme 544*, by Hon'ble Delhi High Court in *W.P.(C) 7423/2013, C.M. No. 15903/2013, Govt. of NCT of Delhi & others vs. Sh. Rakesh Beniwal & others* and in *W.P. (C) 5549/2007, Dr. Sahadeva Singh vs. Union of India & others*, illustrate this legal proposition.
17. *Post Peinuly (supra)*, seniority list has been issued by the Govt. on 12.02.2021. The Respondent department and Govt. have already promised grant of notional promotion along with other (service) benefits from the date of promotion of junior, as has been indicated in their written statements (Counter Affidavits). Ld. Counsel for the petitioners asserts that in *post Peinuly* seniority list, Sri Tarun Sharma, petitioner of similar claim petition No. 67/DB/2020 is at Sl. No. 6, Sri Ajay Kumar, petitioner of similar claim petition No. 53/DB/2020 is at Sl. No. 10, Sri Ashish Bhatt is at Sl. No. 12, Sri Abhishek Kumar Verma is at Sl. No.24, Sri Naresh Pal is at Sl. No. 28, Sri Mukesh Kumar is at Sl. No. 30, Sri Satish Chandra Nautiyal is at Sl. No. 42 and Sri Laxmi Chand Ramola is at Sl. No. 48, intervener Sri Jai Pal Singh is at Sl. No. 65, intervener Ajay Pal is at Sl. No. 64 and intervener Sri Rajendra Mamgain is at Sl. No. 69, intervener of Claim Petition No. 53/DB/2020, Sri Sunil Tiwari is at Sl. No.32, while many persons promoted *vide* Office Memorandum dated 05.11.2018 (Annexure: A-10) are junior to them. Therefore, the petitioners should be promoted *w.e.f.* 05.11.2018, the date of promotion of juniors. We have perused the *Post Peinuly*

seniority list dated 12.02.2021 and are satisfied with such statement of the Ld. Counsel for the petitioners.

18. In response to a query, as to why those Executive Engineers, who have been promoted earlier and above whom the petitioners claim seniority, have not been impleaded as party respondents in present claim petition, Ld. Counsel for the petitioners replied that the petitioners are not seeking reversion of those who have been promoted earlier. The petitioners only want that Annexure: A-9, dated 30.08.2018 should be honoured by the Respondent State. It may be noted here that the W.Ss./C.As. filed on behalf of Respondents No. 1 & 2, reflect the same intention which has been promised in Annexure: A-9.
19. In view of the above, Respondent No. 1 is directed to convene a DPC for consideration of notional promotion of petitioners *w.e.f.* 05.11.2018. The petitioners, who thus get promoted, shall be deemed to have been promoted *w.e.f.* 05.11.2018 with all related service benefits. Our adjudication is based upon Annexures A-9, A-10 and averments made in the written statements/ counter affidavits filed on behalf of the respondents. It is made clear that this Tribunal has not expressed any opinion on *inter se* seniority of the petitioners *vis-à-vis* others.
20. The claim petition is, accordingly, disposed of. No order as to costs.

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

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

*DATE: DATED: MARCH 22, 2021*  
*DEHRADUN*

*VM*