

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 109/2009

1. K.C.Pant, S/o Late Sri Kalika Prasad Pant, R/o Nathanpur
Nehrugram, Dehradun,
2. Chatur Singh Tulera, S/o Sri Pan Singh, R/o MDDA
Colony, Kanwali Road, Dehradun

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Planning Department,
Civil Secretariat, Dehradun,
2. State Planning Commission Uttarakhand through its Member
Secretary, Dehradun,
3. A.S.Dhoni, Research Officer, State Planning Commission,
Dehradun,
4. Sh. Dinesh Verma, Evaluation Officer/Research Officer,
5. Sh. Vidyut Bhattacharya, Field Officer,
6. Sri Kripal Ram, Field Officer,
7. Sh. Devani Ram, S/o Late Sri Nar Ram, R/o H-12, Type IV,
Kedar Puram, Dehradun.

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioners

Sri Umesh Dhaundiyal, P.O &
Sri B.B.Naithani, Counsel
For the respondents no. 1 and 2
None for the respondents no. 3 to 7

JUDGMENT**DATE: MAY 17, 2013****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The seniority list of the cadre of Research Officers, Department of Planning dated 21.8.2009 (Copy Annexure A-1) has been challenged in this petition.

2. The facts as stated in the claim petition are that the petitioners have joined the services in the erstwhile State of U.P. to the post of Investigator/Computer in the pay scale of ₹ 4500-7000/-. Thereafter, they were promoted to the post of Statistical Assistant in the pay scale of ₹ 5000-7000/- vide order dated 07.03.1998. After creation of the State of Uttarakhand, the petitioners opted for State of Uttarakhand and had joined there on 15.2.2001. The State of Uttarakhand had also absorbed the petitioners on the post of Research Assistant in the pay scale of ₹ 5500-9000/- as there was no post of Statistical Assistant existed in the newly created State. Thereafter, the petitioners were promoted to the post of Research Officers vide order dated 09.07.2003 on the basis of the recommendations made by the Uttarakhand Public Services Commission.

3. The respondent no. 7, Sri Dewani Ram had also joined as Investigator/Computer and was promoted to the post of Statistical Assistant and thereafter, in 1995 to the post of Research Assistant (Technical).

4. The respondent no. 3, Sri A. S. Dhoni had never been in the service of the Govt. and he was appointed in 1993 by the U.P.

System Development Corporation Ltd. As the respondent no. 3 was in the services of the Corporation, he cannot be equated with the service conditions of the employees of the State Govt. However, after creation of the State of Uttarakhand, the State of U.P. had passed an order on 29.6.2001 and merged the respondent no. 3 Sri A.S. Dhoni to the post of Research Officer in the Regional Office, Almora, Uttarakhand. The said order of the State of U.P. is without jurisdiction or competence, as after the creation of the State, only the State of Uttarakhand was competent to merge the respondent no.3 and not the State of U.P.

5. Later on, the services of the respondent no.3, Sri A. S. Dhoni were regularized vide impugned order dated 03.01.2008, which is totally illegal and non-est. However, the State Govt. had issued the impugned seniority list in which the respondent no. 3, Sri A.S.Dhoni has been placed above the petitioners, which is illegal and de-hors the rules. Hence this petition.

6. The petition has been challenged on behalf of the respondents no.1 and 2, but almost all of the facts are repeated except the legality of induction of Sri A.S. Dhoni. It is further stated that after the creation of the State of Uttarakhand, the State has reorganized the cadre of employees of the Planning Directorate and State Planning Commission according to need of the newly created State and as the petitioners have accepted their absorption, therefore, they cannot be permitted to challenge the impugned order, which is in accordance with the rules and petition is devoid of merit and is liable to be dismissed.

7. A separate written statement has been filed on behalf of the private respondent no. 3 and it has been stated that he was sent

on deputation for Uttarakhand Development Department, Almora vide Govt. Order dated 5.9.1991 and services of the answering respondent were absorbed in the Uttarakhand Development Department where he rendered the services on the post of Research Officer. The Uttarakhand Development Department is similar to the U.P. State Planning Commission. Consequently, on restructuring, the services of the petitioners were absorbed in the State of Uttarakhand vide order dated 29.6.2001. Therefore, the absorption of the private respondent no. 3 is in accordance with rules. There is no illegality or irregularity and he has rightly been placed in the seniority list and no interference is required. Hence the petition is liable to be dismissed.

8. Separate written statement has been filed on behalf of the private respondents' no. 4 to 7 and the facts stated by the respondent no. 1 to 3 have been repeated.

9. Rejoinder affidavits (paper no. 298, paper no. 330 and paper no. 339) have been filed on behalf of the petitioners and mainly the facts stated in the main petition have been reiterated.

10. After filing of the C.A., some more documents have been filed on behalf of the respondents' no. 1 and 2.

11. We have heard learned counsel for the petitioners and learned counsel for the respondents no. 1, 2. None appeared on behalf of the respondent no. 3 to 7. As the matter was ripe, so we have decided to decide the matter on merits rather than ex-parte as against these respondents.

12. The important aspect of the matter is that the impugned seniority list was published and circulated vide order dated

21.8.2009, but it was mentioned in the seniority list itself that it will be subject to judgment of the claim petition no. 64/2008, Chatur Singh Tulera and another Vs. State of Uttarakhand & others pending before this Tribunal at that time. It means that the impugned seniority list was kept subject to the decision of the Tribunal in the abovementioned claim petition. The claim petition No. 64/2008, Chatur Singh Tulera & another Vs. State of Uttarakhand & others was decided by this Tribunal (One of us had presided over that bench also) vide judgment and order dated 8.4.2011 (Copy of the judgment is on record at paper no. 347.). By this judgment, the impugned seniority list was set aside. Consequently, as the seniority list was subject to the decision of the above claim petition No. 64/2008, the seniority list itself stands quashed. No material has been placed before us by the either party, by which it could be presumed that the above mentioned decision was ever altered, amended or modified by any higher court. So, we can presume that the impugned seniority list stands quashed by the decision passed in Claim Petition No. 64/2008 and we do not think to pass any further order in this regard and thus, this petition has become infructuous and is liable to be dismissed as being infructuous.

ORDER

The claim petition is dismissed as being infructuous. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN(J)

DATE: MAY 17, 2013
DEHRADUN