

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

CLAIM PETITION NO. 53/2011

1. K.S.Negi, S/o Late Sri Alam Singh Negi, presently posted as Commercial Tax Officer Grade-II at the Check Post Chauli (Roorkee), District, Hardwar,
2. C.S. Banerjee, S/o Late Sri V.N. Banerjee, presently posted as Commercial Tax Officer Grade-II, at the Check Post Timli, District Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Govt. of Uttarakhand, Finance Department, Dehradun
2. Commissioner Tax, Uttarakhand, 405 Indira Nagar, Dehradun,
3. Manvendra Singh, Commercial Tax Officer, Check Post Sutaiya District Udham Singh Nagar,
4. Dr. Rimkam Singh, Commercial Tax Officer, Check Post Taraghat Khatima, Udham Singh Nagar,
5. Ms Kalpana Tripathi, Commercial Tax Officer Divisional Office Rishikesh, Commercial Tax Building near Natraj Chaunk, Rishikesh,
6. Krishna Kant Pandey, Commercial Tax Officer, Office of the Deputy Commissioner, Hardwar,

7. Rajni Kant Sahi, Commercial Tax Officer Check Post Kuwahari Narsan, District Hardwar,
8. Anil Kumar Sinha, Commercial Tax Officer Check Post Tugalpur, District Hardwar,
9. Sanjeev Kumar, Commercial Tax Officer, Check Post Rudrapur, District U.S. Nagar,
10. Kamlesh Kumar Pant, Commercial Tax Officer Check Post Asharodi, District Dehradun,
11. Ms Nidhi Singh, Commercial Tax officer Divisional Office Haldwani, Nainital,
12. Smt. Urmila Singh Peecha, Commercial Tax officer, Divisional Office Haldwani Nainital,
13. Avnish Kumar Pandey, Commercial Tax Officer Check Post Timli, District Dehradun.
14. Arvind Kumar Pandey, Commercial Tax Officer, Railway Check Post, Hardwar,
15. Ranjeet Singh, Commercial Tax Officer, Railway Check Post, Hardwar.
16. Anjali Kumar Singh, Commercial Tax officer Check Post Rudrapur, District U.S. Nagar,
17. Smt. Hema Pacholi, Commercial Tax Officer Division-8, 23 Laxmi Road, Dehradun,
18. Santosh Kumar Singh, Commercial Tax officer, Check Post Sutaiya, Udham Singh Nagar,
19. Kamal Dev Siingh, Commercial Tax Officer, Check Post Chiryapur, Hardwar ,
20. Miss Kavita Pathak, Commercial Tax Officer Sector-5, 23 Laxmi Road, Dehradun,
21. Jaideep Singh, Commercial Tax Officer Check Post Narsan Hardwar,
22. Ms Deepa Sikha, Commercial Tax Officer, Sector-2, 23 Laxmi Road, Dehradun,
23. Smt.Pallavi Kunwar, Commercial Tax Officer Division, Hardwar,

24. Smt. Meenakshi Tyagi, Commercial Tax Officer Sector-4, 23 Laxmi Road, Dehradun,
25. Smt. Rajeshwari, Commercial Tax Officer Division-4, Hardwar,
26. Ms Sikha Thapliyal, Commercial Tax Officer, Sector-1, Hardwar,
27. Ms Jyoti Pandey, Commercial Tax Officer, Divisional Office, Nainital,
28. Km. Pooja Pandey, Commercial Tax Officer, Sector-2, Rudrapur, Udham Singh Nagar,
29. Km. Anju Joshi, Commercial Tax Officer Check Post Narsan, Roorkee,
30. Mohd. Kasim, Commercial Tax Officer, Check Post Narsan, Roorkee, Hardwar
31. Dushyant Singh, Commercial Tax Officer, Sector-Uttarkahsi,
32. Chanchal Singh Chauhan, Commercial Tax Officer, Check Post Narsan , Hardwar,
33. Dr. Hari Om, Commercial Tax Officer, Check Post Narsan, District Hardwar,
34. Nandan Giri, Commercial Tax Officer, Check Post Sutaiya, Udham Singh Nagar,
35. Dharamveer, Commercial Tax Officer, Check Post Timli, Dehradun,
36. Jitendra Kumar, Commercial Tax Officer, Sector-3, Vikas Nagar, Dehadun.
37. Mohd. Imran, Commercial Tax Officer, Sachal Dal, Kashipur, Udham Singh Nagar.
38. Ms. Neetu Yadav, Commercial Tax Officer, Sector-3, 23 Laxmi Road, Dehradun,
39. Ms Vaishali Swaroop, Commercial Tax Officer, Sector-2, Hardwar,
40. Dharmendra Kumar, Commercial Tax Officer, Check Post Narsan,Roorkee, District Hardwar,
41. Mohd. Yasin, Commercial Tax Officer, Sectro-2, Hardwar.
42. Pradeep Chandra, Commercial Tax Officer, Check post Rudrapur, Udham Singh Nagar,

43. Dinesh Kumar Mishra, Commercial Tax Officer, Check Post, Narsan Hardwar,
44. Rajesh Kumar Singh, Commercial Tax Officer, Check Post Tugalpur, Hardwar,
45. Deepak Kumar, Commercial Tax Officer Check Post Tugalpur, Hardwar,
46. Dubey Umesh Mahendra Nath, Commercial Tax Officer, Check Post Tugalpur, District Hardwar,
47. Nitin Kumar Vishwakarma, Commercial Tax Officer, Check Post Chidyapur, Hardwar,
48. Kuldeep Singh, Commercial Tax Officer, Check Post Asharori, District Dehradun.
49. Anil Kumar, Commercial Tax officer Check Post Sutaiya , Udham Singh Nagar,
50. Krishan Kumar, Commercial Tax Officer check Post Asharori, Dehradun.
51. Rahul Kant Arya, Commercial Tax Officer, Check Post, Sutaiya ,Udham Singth Nagar,
52. Ashok Kumar, Commercial Tax officer, Check Post, Sahganj,Kahsipur, Udham Singh Nagar,
53. Vinod Kumar Arya, Commercial Tax Officer Sachal Dal Kashipur, Udham Singh Nagar,
54. Km. Kiran Arya, Commercial Tax Officer, Sector Office Almora, District Almora,
55. Tika Ram,Commercial Tax Officer, Check Post Rudrapur, Udham Singh Nagar,
56. Kabir Singh Chauhan, Commercial Tax Officer, Check Post, Rudrapur, Udham Singh Nagar,
57. Shishpal, Commercial Tax Officer, Railway Check Post, Dehradun,
58. Surendra Singh Rana, Commercial Tax Officer, Railway Check Post, Hardwar.

.....Respondents

Present: Sri Jugal Tiwari, Counsel
for the petitioners

Sri Umesh Dhaundiyal, P.O.
for the respondent no. 1 & 2
Sri L.K.Maithani, Counsel,
for the respondents no. 3 to 13, 15 to
26, 28 to 57 and 59.
Sri Shashank Pandey, Counsel
for the respondent no.27

JUDGMENT

DATE: SEPTEMBER 13, 2013.

DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)

1. Re-determination of the seniority in the cadre of Commercial Tax Officer Grade-II is a prayer in this petition.

2. Shorn of unnecessary details, the facts are that there are two sources of recruitment to the post of Commercial Tax Officer Grade-II, first by direct recruitment, second by way of promotions (from three feeding cadres of Class-III employees i.e. Clerical, Statistical and Stenographer) each having 50% 50 % quota. Recruitment to be done with the consultation of Public Service Commission. The petitioners along with some other officials were promoted against the quota of the promotees vide order dated 03.12.2007 on adhoc basis . On the other hand, the private respondents no. 3 to 59 are direct recruitees under their quota and have joined the services on 28.4.2009. However, the petitioners have been placed below the private respondents in the seniority list despite the fact that the private respondents entered into the services much later then the petitioners. The petitioners made representations to the authorities, but of no consequences. Therefore, this petition. Name of Ms. Vaishali Swaroop has been

shown twice in the array of parties at Sl. No. 39 and 41 so, in the judgment it has been corrected.

3. Opposing the petition, it has been stated on behalf of the respondent no. 1 and 2 that some promotions were made against the vacancies, some promotions were made only for the purpose of proper functioning of the department. These promotions were made as stop gap arrangement only. In fact, the petitioners have been regularly and substantively appointed on 27.8.2010 whereas the private respondents were appointed against substantive vacancies in the year 2009. Thus, the private respondents are senior and seniority has been determined accordingly. It has further been stated that as per the Uttarakhand Govt. Servant Seniority Rules, 2002, the seniority can be determined from the date of substantive appointment and not from the date of ad-hoc or stopgap arrangement promotions. Thus the petitioners have no case and petition is liable to be dismissed.

4. By separate written statement submitted on behalf of the respondents no. 3 to 13, 15 to 26, 28 to 57 and 59 and it has been stated that petitioners were initially promoted on the basis of stopgap arrangement only, so they cannot claim seniority on the basis of such promotions. The petitioners have been promoted against the substantive vacancies on 27.08.2010 and they can claim seniority from that date only and not prior to that date. On the other hand, the answering respondents had been appointed much prior to the appointment of the petitioners. Therefore, they are unquestionably senior to the petitioners and have rightly been placed in the seniority list. The petition is devoid of merit and is liable to be dismissed.

5. A separate written statement has been submitted on behalf of the respondent no. 27 and the facts pleaded on behalf of the other respondents have been reiterated.

6. No written statement has been filed on behalf of other respondent no. 14 Arvind Kumar Pandey and respondent no. 58 Shishpal. None had appeared on their behalf.

7. Two rejoinder affidavits have been submitted on behalf of the petitioners and facts pleaded in the main petition have been reiterated.

8. We have heard both the parties at length and have gone through the record carefully.

9. Earlier the service conditions of the petitioners were governed by Sales Tax Service Rules, 1983, which have been replaced by The Uttarakhand Commercial Tax Officer Service Rules, 2009. Moreover, the seniority of the parties is to be determined in accordance with the provisions of Uttaranchal Govt. Servants Seniority Rules, 2002.

10. In the present petition the facts are admitted. The only question to be determined is whether the seniority of the petitioners is to be determined from the date when they were promoted on adhoc basis or as stop gap arrangement or from the date when they were substantively appointed after consultation with the Public Service Commission. As per the contention of the petitioners, their seniority is to be reckoned from the date of their initial promotions. The word stopgap arrangement or adhoc is meaning less. They are working on that post uninterruptedly. It has further been contended that at the time of initial appointment,

vacancies existed and petitioners were not promoted in due time without any fault on their part. It was mere inaction on the part of the respondents no. 1 & 2 and now petitioners cannot be made suffer because of inaction of the State Govt. On the other hand, it has been contended that seniority is to be determined in accordance with the provisions of Uttarakhand Govt. Servants Seniority Rules, 2002 and it is clear that the seniority is to be determined from the date of substantive appointment and in no case seniority can be determined from the date of promotion either on the basis of stopgap arrangement of ad-hoc. In support of the contention that seniority is to be determined from the date of initial appointment, the petitioners relies upon the following cases:

- i. Virendra Kumar Verma Vs. State of Uttaranchal & others, 2005 (2) U.C, 1313.
- ii. Decision by Hon'ble High Court of Uttarkahand in Writ petition (SB) no.177 of 2007, Uttarakhand Jal Sanshthan Vs. Public Services Tribunal & others, dated 01.08.2012,
- iii. Keshav Deo & others Vs. State of U.P. (1998) Lab. I. C., 3554, Supreme Court.

11. On the other hand, the respondents relies upon the following cases:

- i. State of U.P. & others Vs. Ashok Kumar Srivastava & another, (passed by Hon'ble Supreme Court in Civil Appeal No. 6967 of 2013 on 21.8.2013),
- ii. Union of India Vs. Dharam Pal & others, (2009)1 SCC (L&S), 790,
- iii. Secretary, State of Karnataka & others Vs. Uma Devi & others, (2006) SCC (L&S), 753,

- iv. Sayed Khalid Rizvi & others Vs. Union of India & others, 1994, SCC, (L&S)84,
- v. State of Haryana & others Vs. Vijay Singh & others, passed by Hon'ble Supreme Court in Civil Appeal No. 5947 of 2012 on 22.8.2012),
- vi. Devbabrata Dash and Another Vs. Jatindra Prasad Das & others, passed in Civil Appeal No. 2316 of 2013 by the Hon'ble Supreme Court on 11.3.2013,

12. We have carefully gone through the abovementioned cases. In the recent judgment passed by the Division Bench of the Hon'ble Uttarakhand High Court in Rakesh Kumar Uniyal Vs. Public Services Tribunal & others (Supra), it has been held that:

“It has been declared by the Hon'ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post. The conclusion, therefore, would be, having regard to the facts and circumstances of the case, that the order of the Tribunal cannot be sustained. The same must go, but at the same time, Sri Uniyal will be entitled to count his seniority in the post of Assistant Engineer with effect from 5th December, 1985, inasmuch as, undisputedly he had been permitted to discharge the duties attached to the said post uninterruptedly until he was permanently promoted to the said post on 8th February, 2000 ”

13. In the present case, it is clear from the order of initial promotion of the petitioners that the petitioners were promoted on adhoc basis against the vacancies existed in departmental quota vide order dated 03.12.2007 (copy Annexure A-9) and later on they were promoted on regular basis vide order dated 27.8.2010 (Copy Annexure A-10). It has also been made clear that the petitioners after their initial promotions continued to work on that posts without any interruption. It is also clear from the two orders mentioned herein before that the promotions are not de-hors the rules. The adhoc promotion was against the vacancies existed in their quota. Therefore, it cannot be said that adhoc promotions of the petitioners were de-hors the rules and it can be inferred that the petitioners continued to work uninterruptedly on the promoted post since their initial promotion vide order dated 3.12.2007. It is also evident from the record that the regular promotions of the petitioners were delayed due to reasons best known to the State Govt. for which the petitioners cannot be held responsible. Thus, as the petitioners are working on the promoted post uninterruptedly after their promotion on adhoc basis, therefore, the principles laid down by the Hon'ble High Court in the above mentioned case are squarely applicable and seniority of the petitioners should have been determined from the date of their initial promotion on the post and not from the date of promotion on regular basis.

14. As regards the decision in State of Uttar Pradesh & others Vs. Ashok Kumar Srivastav & others and Union of India Vs. Dharampal & others, it is not applicable in the present case as the initial promotion of the petitioners was not de-hors the rules. In Sayed Khalid Rizvi & others Vs. Union of India & others' case (Supra), the matter before the Hon'ble Supreme

Court was regarding the matter of inclusion of the petitioners in the Central Services, which is not involved in the case in hand. The principle laid down by Hon'ble Supreme Court in Secretary State of Karnataka & others Vs. Uma Devi & others (Supra) is also not applicable as the initial promotion of the petitioners was not illegal or de-hors the rules. In State of Haryana & others Vs. Vijay Singh & others, passed by Hon'ble Supreme Court in Civil Appeal No. 5947 of 2012 on 22.8.2012) and Debabrata Dash and another Vs. Jatindra Prasad Das passed in Civil Appeal No. 2316 of 2013, by Hon'ble Supreme Court on 11.3.2013 (Supra), is not helpful to the respondents as the principle adopted in the abovementioned case is as follows:

“20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be a stopgap or fortuitous or purely adhoc. In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be a fortuitous/ad hoc/stopgap are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”

15. In State of Haryana & others vs. Vijay Singh & others' case, the Hon'ble Supreme Court had the occasion to refer the

principle laid down in M.K. Shanmugam Vs. Union of India, has held as under:

“If the adhoc selection is followed by regular selection, then the benefit of ad hoc service is not admissible if adhoc appointment is in violation of the rules. If the adhoc appointment has been made as a stopgap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again. There is difficulty in the way of the appellants to fight out their case for seniority should be reckoned by reason of the length of the service whether adhoc or otherwise inasmuch as they had not been recruited regularly. As stated earlier, the appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by this Court in these cases have been again considered in the decisions in Anuradha Bodi (Dr) V. Municipal Corporation of Delhi (1998) 5 SCC 292, Keshav Deo V. State of U.P., (1999)1 SCC 280, Major Yogendra Narain Yadav V. Bindeshwar Prasad (1997) 2 SCC 150, I.K. Sukhija Vs. Union of India, (1997)6 SCC 406, and Govt. of A.P.V. Y. Sagreswara Rao, 1995 Supp (1) SCC 16, but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularized in the service in all the cases, adhoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited

even though they have been appointed adhoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stopgap arrangement.”

16. This case also is not helpful to the respondents as the promotion of the petitioners was neither illegal nor de-hors the rules. Therefore, the period of their service on adhoc basis can be counted towards determination of seniority.

17. Thus, on the basis of the above discussion, we are of the clear view that the seniority of petitioners is to be reckoned from the date of their initial promotion i.e. 03.12.2007 and not from 27.8.2010 and the petition deserves to be allowed.

ORDER

The claim petition is allowed. The respondents' no.1 & 2 are directed to re-determine the seniority of the petitioners against the private respondents within a period of four months from today, taking their date of promotion as 03.12.2007. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: SEPTEMBER 13, 2013
DEHRADUN