

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

WRIT PETITION (S/S) NO.1562 of 2018

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 134/NB/DB/2022]

Bhagwati Adhikari @ Bhagwati Mehta, aged about 38 years, w/o Rajendra Singh Mehta, d/o Sri Narayan Singh, r/o N.K.-46, Mahila Dal, 31st Battalion, P.A.C. Block GHA H. NO. 8, Rudrapur, District Udham Singh Nagar.

.....Petitioners

Vs

1. State of Uttarakhand through Secretary, Home Affairs Department, Dehradun, district Dehradun.
2. Director General of Police, Uttarakhand, Dehradun, District Dehradun.
3. Inspector General of Police, P.A.C. Dehradun, District Dehradun.
4. Assistant Inspector General of Police, P.A.C. Dehradun, District Dehradun.
5. Commander, 31st Battalion, P.A.C. Rudrapur, District Udham Singh Nagar.
6. Asha Arya, W/o Shri Sunil Kumar, Presently posted s Head Constable at 31 PAC Rudrapur.
7. Saraswati Hyanki, W/o Shri Lakshmi Singh Presently posted as Head Constable at 31 PAC Rudrapur.
8. Rekha, D/o Shri Phool Singh, Presently posted as Head Constable at 40 PAC Haridwar.
9. Manorama Parki, W/o Shri Kailash Ram, Presently posted as Head Constable at 31 PAC Rudrapur.
10. Rupa Raunkali, D/o Smt. Parmati Devi Presently posted as Head Constable at 31 PAC Rudrapur.
11. Mamta Verma, W/o Shri. Narendra Kumar, Presently posted as Head Constable at 31 PAC Rudrapur.
12. Manju, D/o Shri Omprakash, Presently posted as Head Constable at 40 PAC Haridwar.
13. Gurmeet Kaur, W/o Shri sukhvinder Singh, Presently posted as Head Constable at 31 PAC Rudrapur.
14. Sashi Madiwal, D/o Shri Kishori Lal, Presently posted as Head Constable at 40 PAC Haridwar.
15. Rajni Arya, W/o Shri Rajendra Prasad, Presently posted as Head Constable at 31 PAC Rudrapur.
16. Sushma Rani, D/o Shri Shyam Lal, Presently posted as Head Constable at 40 PAC Haridwar.

17. Kalpana Rayapa, W/o Shri Pankaj Rayapa, Presently posted as Head Constable at 31 PAC Rudrapur.
18. Deepa Aagri, W/o Shri Naveen Kumar Presently posted as Head Constable at 31 PAC Rudrapur.
19. Shabina Khanam, W/o Shri Naseem Khan, Presently posted as Head Constable at 31 PAC Rudrapur.
20. Shobhana Singh, W/o Shri Moolchandra, Presently posted as Head Constable at 31 PAC Rudrapur.
21. Indu, Presently posted as Head Constable at 40 PAC Haridwar.
22. Manju Bisht, W/o Rajendra Singh, Presently posted as Head Constable at 31 PAC Rudrapur.

.....**Respondents**

Present: Sri K.K.Tiwari, Advocate for the Petitioner
Sri Kishore Kumar, A.P.O. for the official respondents
None for the private respondents

JUDGMENT

DATED: MARCH 03, 2023

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 30.09.2022 in WPSS No. 1562/2018, Bhagwati Adhikari @ Bhagwati Mehta vs. State of Uttarakhand through Secretary, Home and Affairs Department, Dehradun & others, which (order) reads as under:

"The present Writ Petition has been filed with the following reliefs:-

(i) Issue a writ, order or direction in the nature of certiorarified mandamus quashing the effect and operation of impugned order dated 29.08.2016 (contained as Annexure No.6 to this Writ Petition) along with order dated 12.04.2018, passed by commandant 31 Bn. PAC (contained as Annexure No.11 to this Writ Petition) and other consequential orders by which without any sanction of law, dates of appointment of juniors of petitioner were altered and seniority of petitioner was disturbed.

(ii) Issue a writ, order or direction in the nature of mandamus directing respondent nos.1 & 2 to include the name of petitioner in seniority list of female constables in 31 Bn. PAC as per the date of their initial appointment i.e. 22.10.2015 and grant petitioner all consequential benefits of such inclusion.

(iii) Issue a writ, order or direction in the nature of mandamus directing respondent nos.1 & 2 to promote petitioner to the post of Head Constable with effect from 20.10.2016 with all consequential benefits

2. Heard Mr. K.K. Tiwari, learned counsel for the petitioner, Mr. N.S. Pundir, learned Deputy Advocate General with Mrs. Anjali Bhargava, learned Addl. C.S.C. assisted by Mr. Sushil Vashistha, learned Standing Counsel for the State and Ms. Shakshi Singh, learned counsel holding brief of Mr. Shobhit Saharia, learned counsel for the private respondent nos. 6 to 22.

3. During the arguments, Mr. N.S. Pundir, learned Deputy Advocate General for the State, submitted that the present matter relates to the conditions of service of a public servant, therefore, the petitioner has alternate efficacious remedy to raise her grievances before the Uttarakhand Public Services Tribunal

4. *Mr. K.K. Tiwari, learned counsel for the petitioner agrees to transfer the present matter to the Uttarakhand Public Services Tribunal.*

5. *As the disputes raised in the present writ petition can be effectively adjudicated by the Uttarakhand Public Services Tribunal, with the consent of both the parties, the complete record along with the writ petition, after retaining the copies thereof, is being transmitted to the Uttarakhand Public Services Tribunal for hearing the writ petition as a claim petition in accordance with law.*

6. *The Uttarakhand Public Services Tribunal is also requested to consider entertaining the present matter as a claim petition taking into consideration this fact that the present matter has been pending for past four years.*

7. *The present Writ Petition (S/S No. 1562 of 2018) stands disposed of accordingly."*

2. The original record of the writ petition has been transferred to this Tribunal vide Letter No. 14932/UHC/Service Section (S/S)PST/Nainital dated 19.10.2022 2022 of the Registrar Judicial of the Hon'ble High Court. The writ petition has been registered as Claim Petition No. 118/NB/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. On 28.11.2022, Sri Shobhit Saharia, learned Counsel for the respondents no. 6 to 22 submitted that he has no instructions from his clients. The Tribunal, therefore, directed the registry to issue administrative notices to these respondents. It appears that the administrative notices have not been issued to the respondents no. 6 to 22 and, therefore, there was no representation on behalf of such respondents on next two dates of hearing *i.e.*, 06.01.2023 and 17.02.2023. Today, also there is no representation for the private respondents no. 6 to 22.

4. Counter Affidavit has been filed on behalf of the official respondents. C.A. has also been filed on behalf of respondent no. 13.

5. Sri K.K.Tiwari, learned Counsel for the petitioner submitted that the seniority in the department was to be determined from the length of service but in the present case *vide* an executive order, juniors of the petitioner were treated to have joined services on an artificial date. The petitioner moved several representations to the appointing authority in order to get justice and avail an opportunity of being promoted but all was in vain, as the

authority did not pay any heed to such representations. It is further submitted that the petitioner's representation may kindly be directed to be decided by the respondents no. 2 & 3 by a reasoned and speaking order, at the earliest, in the light of the averments contained in the Counter Affidavit of the official respondents. Sri Kishore Kumar, learned A.P.O. has no objection to such innocuous prayer of learned Counsel for the petitioner.

6. The Tribunal is of the view that the hearing of the petition should not be deferred only on account of the fact that the private respondents are not appearing before the Tribunal, for, in any case, the respondents no. 2 & 3 while considering the representation of the petitioner, shall take into account all the facts including the averments contained in the Counter Affidavits filed by the official respondents and private respondent no. 13, which are necessary for proper adjudication of the matter.

7. Without prejudice to rival contentions, the petition is disposed of, by directing the respondents no. 2 & 3 to decide the representation of the petitioner, keeping in mind the averments of the Counter Affidavits, by a reasoned and speaking order, in accordance with law, preferably within a period of 8 weeks of presentation of certified copy of this order along with fresh representation enclosing the documents in support thereof. Whenever such representation is decided, it will be the responsibility of the respondent department to communicate the same to the petitioner. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED: MARCH 03, 2023
DEHRADUN.
KNP

(JUSTICE U.C.DHYANI)
CHAIRMAN