

**Claim Petition No. 64/NB/DB/2022**

**Sanjay Kumar & others  
Vs.  
State of Uttarakhand & others**

Dated: 06.04.2023

While preparing for judgment, the Tribunal observes that Counter Affidavit of respondent no. 2 (Secretary, Personnel Department, Govt. of Uttarakhand) is necessary to be filed, in the interest of justice.

The petitioners had completed 5 years' service including 2 years' probation on 30.06.2021 and their contention is that as per the Relaxation Rules of 2010, they should have been granted relaxation upto 50% in the qualifying service for consideration of their promotion to the post of Junior Engineer in the recruitment year 2021-22 for which year the Relaxation Rules of 2010 were again revived. The qualifying service for promotion from the post of Boring Technician to the post of Junior Engineer is 10 years and the petitioners were not considered for relaxation by the respondent department whose contention is that no relaxation could be given in the probation period of two years and beyond that, the petitioners' service is only three years while minimum 5 years of service beyond the probation period was required to make them eligible for relaxation under the Relaxation Rules of 2010. The petitioners have also cited the example of the clerical cadre in the same department wherein the respondent no. 1 (Secretary, Minor Irrigation Department) vide his letter dated 22.06.2022 (Annexure No. 27 to the claim petition) has directed the Chief Engineer and HOD, Minor Irrigation Department in the case of Personal Assistant cadre that 50% relaxation can be given after deducting the probation period from the qualifying service and about the clerical cadre, it has been stated in this letter that regarding counting of probation period for relaxation in the qualifying service of one year on the post of Senior Administrative Officer and total service of 25 years for promotion to the post of Chief Administrative

Officer, the Relaxation Rules shall have overriding effect over the Confirmation Rules (*Sthaikaran Niyamawali*). The second part of this advice of the Administrative Department is not clear. The petitioners have alleged that on the basis of this advice, relaxation of 50% in the total qualifying service including probation period has been given in the clerical cadre, while in their case, it is being denied.

The petitioners have also made the Secretary (Personnel), Govt. of Uttarakhand, as respondent no. 2, but no affidavit has been filed on behalf of the respondent no. 2. In the interest of justice, Counter Affidavit of respondent no. 2 is required to throw light on the fact whether the Relaxation Rules of 2010 permit the relaxation of 50% of the total qualifying service including the probation period or whether they permit relaxation upto 50% only in the qualifying service after the probation period. According to the petitioners, the intention of mention of probation period in the Relaxation Rules of 2010 is only to ensure that the relaxation in qualifying service may be given after the probation period is over and not during the probation period and 50% of the relaxation in total qualifying service including the probation period can be given, which should have been given to the petitioners, as they had completed 5 years upto 30.06.2021 and were, therefore, eligible after relaxation for promotion to the post of Junior Engineer in the recruitment year 2021-22.

Learned A.P.O. may ensure that the Personnel Department (Respondent no. 2) files detailed Counter Affidavit or a short Affidavit clarifying the position on the above points within a period of four weeks.

Learned Counsel for the parties may be informed accordingly.

List on 08.05.2023 for further orders.

RAJEEV GUPTA  
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI  
CHAIRMAN