

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

Present : Sri V. K. Maheshwari

----- Vice Chairman (J)

&

Sri U. D. Chaube

----- Member (A)

CLAIM PETITION NO. 12/NB/DB/2014

Kailash Chandra Joshi, S/o Sri Heera Ballabh Joshi, R/o Village
Karayal Chatur Singh, P.O. Anandpur, Tehsil Haldwani, District
Nainital.

..... Petitioner

Versus

1. State of Uttarakhand through Secretary, Revenue Department,
Government of Uttarakhand, Dehradun,
2. Chief Revenue Commissioner, Uttarakhand, (Now Board Of
Revenue) Dehradun,
3. Commissioner, Kumaon Division, Nainital,
4. Commissioner, Garhwal Division, Pauri,
5. Dinesh Mohan Uniyal, Tehsildar, Roorkee, District Haridwar,

6. Harish Chandar Juyal, Tehsildar, District Tehri Garhwal,
7. Shakti Parsad Uniyal, Tehsildar, Rudraprayag,
District Rudraprayag,
8. Bishram Singh Negi, Tehsildar, Chabatakhal, District Pauri
Garhwal.

.....Respondents

Present: Sri N. S. Basnal, Advocate for the petitioner
Sri V.P. Devrani, A.P.O. for the respondent nos. 1
to 4
None for the private respondent nos. 5 to 8

JUDGMENT

DATE: February 27, 2015

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

The petitioner has claimed the following reliefs in this claim
petition:-

1. Setting-aside the order passed on the representation of
the petitioner on 22-10-2011 by the respondent no. 2
(Annexure A-1)
2. Direction to the respondent nos. 1 to 4 for considering
the petitioner for promotion to the post of Tehsildar
along with all the consequential benefits.

2. The facts in brief are that the petitioner was initially appointed to the post of Patwari on 13.02.1973, whereas the private respondents, namely, Dinesh Mohan Uniyal, Harish Chandra Juyal, Shakti Prasad Uniyal and Bishram Singh Negi were also appointed to the post of Patwari on different dates, but subsequent to the petitioner and thus all the private respondents are junior to the petitioner in initial cadre.

3. It is further stated that the petitioner was promoted to the post of Assistant Registrar Kanoongo on 13.12.1988 and again to the post of Registrar Kanoongo on 25.02.1989. The petitioner was further promoted to the post of Naib Tehsildar for 89 days on 18.8.2004 by the order passed by Commissioner, Kumaon Division. Though, the promotion was for a short duration, but was against the vacant post for the recruitment year 2004-05. This short time promotion was extended from time to time till the retirement of the petitioner on 30-11-2008

4. It is further stated that due to inaction on the part of the respondent nos. 1 to 4 the exercise for regular promotion to the post of Naib Tehsildar was not undertaken timely and consequently the D.P.C. was not held. However, the D.P.C. was held on 22.12.2008 and the petitioner was promoted notionally, vide order dated 18-01-2009 against the vacancy accrued in the recruitment year 2004-05.

However, the private respondent nos. 5 to 8 were promoted to the post of Naib Tehsildar in the year 2001-02 and thereafter, to the post of Tehsildar ignoring the seniority and claim of the petitioner and thus, the petitioner is also entitled for promotion to the post of Naib Tehsildar w.e.f. 31-10-2001(when Vishram Singh Negi was promoted) and to the post of Tehsildar w.e.f. 10.08.2005 (when juniors were promoted to these posts). It is further stated that the rules known as Úttar Pradesh Subordinate Revenue Executive (Tehsildar) Service Rules, 1966 are applicable for governing the service conditions of the Naib Tehsildars. It is further stated that the fact of promotion of the private respondents came to the notice of the petitioner at a later stage, thereafter he moved a representation which was dismissed. Thereafter, the petitioner challenged the impugned order before the Hon'ble High Court of Uttarakhand by way of writ petition which was dismissed on 01-03-2013. Hence, this petition.

5. Petition is opposed on behalf of the respondent nos. 1 to 4 and it is stated that in the State of Uttarakhand, Subordinate Revenue Executive (Naib Tehsildar) Service Rules, 2009 are applicable, which have been amended in the year 2010 for governing the service conditions of the Naib Tehsildars. It is further stated that the service conditions of the Registrar Kanoongo are governed by Uttarakhand Registrar Kanoongo Service Rules, 2011. Before the rules of 2009, rules of 1944 were applicable. It is further stated that the petitioner

as well as the private respondents were promoted to the post of Naib Tehsildar for 89 days only as the stopgap arrangement. These promotions were purely temporary and were made as stopgap arrangement and none of the parties are entitled to claim regular promotion on that basis. The regular promotions to the post of Naib Tehsildar were made on 18-01-2009. By that time the petitioner had retired on attaining the age of superannuation, even then he was promoted notionally. Therefore, the petitioner has no claim and the petition is liable to be dismissed.

6. Two rejoinder affidavits have been filed on behalf of the petitioner reiterating the facts which have been stated in the main petition. Some documents have also been filed with rejoinder affidavits. Supplementary counter affidavit has also been filed on behalf of the respondent nos. 1 to 4.

7. None of the private respondent nos. 5 to 8 had appeared; hence petition proceeded ex-parte against these respondents.

8. We have heard both the parties and perused the evidence available on record carefully.

9. It is admitted that the petitioner as well as the private respondent nos. 5 to 8 initially joined in the Department as Patwari on different dates and the petitioner was senior to the private respondents in the initial cadre of Patwari.

10. It is further admitted that the petitioner as well the private respondents were promoted to the post of Registrar Kanoongo. Thereafter, the petitioner as well as the respondents was promoted to the post of Naib Tehsildar on different dates as a stopgap arrangement. This promotion was for a short period of 89 days, but was extended from time to time. This short promotion was merely as stopgap arrangement and it was made by the respective Divisional Commissioner. Some of the promotions as were made under the order of the State Government dated 13-08-2004 which reads as under:-

“प्रेषक,

एन0 एस0 नपलच्याल,
प्रमुख सचिव,
उत्तरांचल शासन।

सेवा में,

आयुक्त,
गढ़वाल/कुमाऊँ मण्डल,
उत्तरांचल।

राजस्व विभाग

देहरादून : दिनांक 13 अगस्त, 2004

विषय:— तहसीलदार/नायब तहसीलदार/पेशकार के रिक्त पदों को स्थानीय व्यवस्था में पदोन्नति से भरे जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषय के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि उत्तरांचल राज्य में नवसृजित तहसीलों के सृजन एवं सीधी भर्ती के नायब तहसीलदारों के चयन में विलम्ब होने के कारण तहसीलदारों/नायब तहसीलदारों/पेशकारों के अनेक पद रिक्त चल रहे हैं। जिसके कारण शासकीय कार्य में व्यवधान उत्पन्न होना स्वाभाविक है।

2— अतः शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि रिक्त चल रहे तहसीलदारों/नायब तहसीलदारों/पेशकारों के पदों को निम्नलिखित शर्त के साथ स्थानीय व्यवस्था में पदोन्नति से भर दिये जायें :-

1— स्थानीय व्यवस्था में पदोन्नति में वरिष्ठता एवं पोषक संवर्ग के कोटे को ध्यान में रखा जाये।

2— स्थानीय व्यवस्था में पदोन्नति प्रत्येक दशा में 89 दिन के लिये की जाये और 1 दिन का व्यवधान देते हुए पुनः 89 दिन की स्वीकृति निर्गत की जाये।

3— स्थानीय व्यवस्था में पदोन्नति इस शर्त के साथ की जाये कि मुख्य राजस्व आयुक्त/मण्डलायुक्त द्वारा नियमित तहसीलदार/नायब तहसीलदार/पेशकार की तैनाती होने पर सम्बन्धित कर्मचारी अपने मूल पद पर प्रत्यावर्तित समझा जायेगा।

3— कृपया तदनुसार तत्काल आवश्यक कार्यवाही सुनिश्चित कराने का कष्ट करें।

भवदीय,

(एन0एस0 नपलच्याल)
प्रमुख सचिव

Some of the promotions were made earlier to the above mentioned order. Perusal of above order clearly reveals that

stopgap promotions may be made for 89 days and no one will be entitled to claim any right on the basis of such promotion. Nothing has been brought on record under which order such promotions were made, but in every case it is clear that the promotions were as stopgap arrangement only and for 89 days. Apart from the above, copy of promotion orders of the private respondents have also been filed on behalf of the petitioner along with his affidavit dated 21-12-2014. These orders reveal that all the private respondents were promoted to the post of Naib Tehsildar only as stopgap arrangement by respective Commissioners. From the above, it becomes clear that the initial promotions of the petitioner as well as the private respondents were made by the respective Commissioner as stopgap arrangement only. These promotions were not made according to applicable rules or after consultation with the Public Service Commission. As these promotions were merely stopgap arrangement, therefore, the petitioner cannot claim any benefit on the basis of these promotions. In fact, the exercise of regular promotions were undertaken in the year 2008 and a meeting of D.P.C. was held on 22-12-2008 on the basis of recommendation of D.P.C, the promotions of the petitioner as well as the private respondents were made on 18-01-2009. As the petitioner had already retired by that time, his promotion was made notionally in accordance with the provisions of Government Order dated 11-06-2003, copy of which is available on record as Annexure A-8 which provides that in case, promotions are made at a time when some of the employees had retired, their names shall also be considered for

promotion, on being found fit, they will also be promoted notionally. In view of this Government Order, the petitioner was promoted notionally. Above facts make it clear that the seniority of the petitioner has not been ignored and the name of the petitioner was included in the list of the candidates considered for promotion and he has also been considered for promotion, so it cannot be said that the seniority of the petitioner was ignored.

11. It is also important to mention that the petitioner failed to prove that the private respondents were promoted on regular basis in accordance with the relevant rules prior to promotion made on 18-01-2009. Therefore, the contention of the petitioner that the private respondents who are admittedly junior to the petitioner were promoted on the regular basis prior to the petitioner is not tenable.

12. It is further contended on behalf of the petitioner that the exercise of promotion was deliberately delayed and it was made after retirement of the petitioner, but onus lies on the petitioner to substantiate the fact of any mala fide action on the part of the respondents but the petitioner miserably failed to prove any mala fide action on the part of the respondent nos. 1 to 4 in delaying the exercise of promotion. It is also pertinent to mention that no employee has a right of promotion right from the date of accrual of vacancy.

13. On the basis of above discussion, we are of the view that the petitioner was promoted notionally according to his seniority. The claim of the petitioner for his promotion w.e.f. 30-10-2001 to the post of Naib Tehsildar and w.e.f. 10-08-2005 to the post of Tehsildar is not tenable. There is no malafide on the part of the respondents. The representation of the petitioner has rightly been rejected. The petition is devoid of merit and is liable to be dismissed.

ORDER

Petition is dismissed. No orders as to costs.

Sd/-

U.D. CHAUBE
MEMBER (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: February 27, 2015

B.K.