

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

CLAIM PETITION NO. 14/SB/2024

Sri Arun Kumar Goel, aged about 61 years, s/o Late Sri Pooran Mal Goel, r/o Mahadev Vihar, General Mahadev Singh Road, Dehradun, retired as Superintending Engineer from the office of Engineer-in-Chief, P.W.D., Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Public Works Department, Government of Uttarakhand, Secretariat, Dehradun.
2. Engineer-in-Chief and Head of Department, Public Works Department, Dehradun, Uttarakhand.

.....Respondents

Present: Sri Arun Kumar Goel, Petitioner.

Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: JUNE 14, 2024.

Justice U.C. Dhyan (Oral)

By means of present claim petition, petitioner seeks the following reliefs:

a) That this Hon'ble Tribunal may graciously be pleased to set aside and quash the impugned censure entry order dated 01.08.2023 of respondent No. 01 (Annexure No. A-1 of the Claim Petition).

b) That this Hon'ble Tribunal may further graciously be pleased to pass the order or direction that the impugned censure entry order dated 01.08.2023 shall not be treated adverse for the petitioner in any manner.

c) That this Hon'ble Tribunal may graciously be pleased to pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

d) That this Hon'ble Tribunal may graciously be pleased to decide this petition expeditiously.

e) That the Hon'ble Tribunal may graciously be pleased to allow this petition with cost as quantified Rs 51,000-00.”

2. In previous round of litigation, petitioner challenged Special Adverse Entry Order dated 29.10.2020, among other things, and filed claim petition being Claim Petition No. 101/DB/2021, Arun Kumar Goel vs. State of Uttarakhand and others, which was decided by the Tribunal *vide* order dated 04.07.2022, operative portion of which reads as under:

“In view of the above, the Tribunal sets aside the order dated 29.10.2020 (Annexure No. 1) and the order dated 28.01.2021 by which the representation of the petitioner against this order was rejected and directs the respondent no. 1 to appoint another enquiry officer and complete the disciplinary proceedings by giving proper opportunity to the petitioner to present his case and to complete the disciplinary proceedings without unreasonable delay, in accordance with law.”

3. Separate orders were passed regarding 2nd and 3rd set of reliefs. Copy of complete judgment has been filed by the petitioner with present claim petition as Annexure: A-13.

4. It will be pertinent to reproduce paragraphs 5(i), 5(iii), 6 & 10 of the decision dated 04.07.2022, herein below for convenience:

“5(i) Relief relating to setting aside of the punishment order dated 29.10.2020 and the order dated 28.01.2021, by which the representation against the punishment order was rejected. These orders relate to the punishment of special adverse entry given to the petitioner for the charge sheet issued to him by Govt. letter dated 04.07.2018 about the collapse of steel girder bridge on Madanpur Naini Motor Marg in district Pithoragarh.

(iii) The petitioner has a long history of litigation about his seniority matter *vis-à-vis* other engineers basically arising from his seniority fixation in Uttar Pradesh and subsequently in Uttarakhand about which this Tribunal and the Hon'ble High Court have passed various orders. The petitioner seeks the relief to keep in abeyance office order dated 12.11.2018 and order dated 03.06.2014 until the compliance of judgement dated 08.09.2021, passed in claim petition no. 22/DB/2020, Arun Kumar Goel vs. State of Uttarakhand and others, and consider the petitioner for promotion and other services avenues on the basis of his promotion on the post of Assistant Engineer *w.e.f.* 01.07.1990, as granted by the State of Uttar Pradesh and accordingly convene review DPC and grant him all consequential benefits and to take action against respondents and persons, who have done his exploitation etc.

6. Regarding his first set of reliefs, the Tribunal observes that special adverse entry could not have been granted to the claim petitioner by way of punishment as the same is not prescribed in the Uttarakhand Government Servant (Discipline

and Appeal) Rules, 2003, (as amended in 2010). The same has also been held in this Tribunal's judgement dated 27.05.2022 in claim petition no. 16/SB/2021, Arun Kumar Goel vs. State of Uttarakhand and another, filed by the present claim petitioner in another matter.

10. This Tribunal is unable to subscribe to the view of learned A.P.O. because the punishment order dated 29.10.2020 clearly states in the last paragraph that disciplinary proceedings against the petitioner are closed by granting special adverse entry and in the earlier parts of this order, the charges levelled against the petitioner, findings of the enquiry officer, representation of the petitioner and the charge having been proved have been mentioned. Thus, this Tribunal holds that special adverse entry has been given to the petitioner by way of punishment.”

5. The claim petition has been contested on behalf of the respondents by filing Counter Affidavit. Rejoinder Affidavit thereto has been filed by the petitioner.

6. Petitioner has taken various grounds to assail the impugned censure-entry order dated 01.08.2023 (Annexure: A-1). The Tribunal need not reproduce those grounds, for, the same are already part of record. Relevant documents have been filed in support of claim petition.

7. Respondents have also filed relevant documents in support of their counter-version. Ld. A.P.O. submitted that the claim petition is devoid of merits and should be dismissed.

8. When the Bench was about to conclude the hearing, it was brought to its notice by the petitioner that departmental enquiry, pursuant to Tribunal's order dated 04.07.2022 passed in Claim Petition No. 101/DB.2021, has been conducted by Sri Deepak Kumar Yadav, the then Chief Engineer, P.W.D., Haldwani.

9. A claim petition for determining the seniority of Sri Deepak Kumar Yadav (enquiry officer of the instant case) *vis-à-vis* Sri Arun Kumar Goel (petitioner herein) was decided by the Tribunal. Copy of the judgment delivered by this Tribunal on 06.09.2018 in Claim Petition No. 33/DB/2015, S/Sri Deepak Kumar Yadav & Khagendra Prasad Upreti vs. State of Uttarakhand and 4 others, has been filed by the petitioner with this claim petition as Annexure: A-20.

10. It will be appropriate to reproduce 'Cause Title' of claim petition no. 33/DB/2015, as below:

“CLAIM PETITION NO. 33/DB/2015

1. Deepak Kumar Yadav, aged about 51 years, S/o Shri P.D. Singh, presently posted as Superintending Engineer, ADP (UEAP), Dehradun, R/o Lane No. 2, Ashok Vihar, Ajabpur, Dehradun.

2. Khagendra Prasad Upreti, aged about 53 years, S/o Late Shri Chaturbhuj Das Upreti, presently posted as Superintending Engineer, P.W.D., Dehradun, R/o House No. 466, T.H.D.C. Colony, Banjarawala, Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Secretary, Public Works Department, Subhash Road, Dehradun.

2. Secretary to the Govt. of Uttarakhand, Public Works Department, Anubhag-I, Subhash Road, Dehradun.

3. State of Uttar Pradesh through its Principal Secretary, P.W.D., Civil Secretariat, Lucknow.

4. Shri Arun Kumar Goel, Presently posted as Superintending Engineer Incharge, World Bank, New Tehri.

5. Shri Charu Chandra Joshi, Superintending Engineer, PWD, NH Circle, Haldwani.

.....Respondents”

11. It will also be useful to reproduce paragraphs no. 1, 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 4, 5, 11.1, 11.2, 12 & 13 of judgment dated 06.09.2018 passed in Claim Petition No. 33/DB/2015, herein below for convenience:

“1 The petitioners have filed the present claim petition for seeking the following reliefs:

“(a) That the impugned orders ANNEXURE-A1 and ANNEXURE-A2 be kindly held in violation of fundamental, constitutional and civil rights of the petitioners, against law, rules, orders and principles of natural justice and be kindly quashed and set aside:

(b) That the respondents no.1 and 2 be kindly ordered and directed not to disturb the already settled seniority of the petitioners and Respondent No.4 in the cadre of Assistant Engineers (Civil) wherein the petitioners are placed senior to respondent No. 4;

(c) That any other relief, in addition to or in modification of above, as the Hon’ble Tribunal deem fit and proper, be kindly granted to the petitioners against the respondents; and

(e) Rs. 20,000/- as costs of this Claim Petition be kindly awarded to the petitioners against the respondents. to quash and set aside the order dated 24.06.2015, issued by respondent No. 1.”

2 In brief, the case of the petitioners is as under:-

2.1 The petitioners were directly recruited through U.P. Public Service Commission (PSC). In the year 1989-90, the erstwhile Government of Uttar Pradesh appointed petitioner NO. 1 on 20.09.1990 and Petitioner No. 2 on 06.07.1992 (Annexure: A-3 and Annexure: A4).

2.2 Recruitment year is defined as from 1st July of the year to 30th June of the next year.

2.3 Respondent No. 4 filed a claim petition before the Uttarakhand Public Services Tribunal (No.1 of 2001) which was decided on 16.07.2003. The operative part of the judgment reads as under:

“So under these circumstances, we find no good reason to deprive the petitioner of his eligibility for promotion from the date of his confirmation, as per rules w.e.f. 01.03.1990. Accordingly, we allow the petition and quash the impugned order dated 06.05.1999 contained in Annexure-1 and direct the Respondents to reconsider the petitioner’s claim for promotion as an Assistant Engineer in the first batch of promotees chosen and selected in November, 1990 and in case no post was available for him at that time in view of his seniority, to reconsider him in the next selection held in May, 1991. Obviously if he is found fit for promotion, then his promotion will relate back to the date of availability of the vacancy. As a natural sequence thereto he would also be reconsidered for the promotional post of Executive Engineer on that basis regardless of his having promoted during the meanwhile in the Hill Sub Cadre.”

2.5 The respondents issued a tentative seniority list on 12.05.2015 (Annexure: A1), the petitioners filed objections against it, the same were rejected and the final seniority list was issued on 24.06.2015 (Annexure: A2) in which the petitioners have been placed below the respondent No.3.

2.6 The contention of the petitioners is that the respondent No. 4 was notionally promoted against a supernumerary post and, therefore, legally and under Rules, he has no right to have seniority in the cadre of Assistant Engineers.

2.7 The petitioners have vehemently submitted that neither the order of the Tribunal dated 16.07.2003 (reproduced in paragraph 2.3 of this order) nor the G.O. of the U.P. Govt. dated 10.06.2009 (reproduced in paragraph 2.4 of this order) have promoted respondent No. 4 on the post of AE w.e.f. 01.07.1990 but the respondent No. 4 has been shown to be promoted on 01.07.1990 in the final seniority list dated 24.06.2015 (Annexure: A2) which is patently wrong. The order of the Tribunal as well as G.O. of the U.P. Govt. have only allowed promotion to respondent No. 4 in the recruitment year 1990-91.

2.8 The petitioners have also submitted that the State of Uttarakhand has no power or jurisdiction to determine the seniority of the respondent no. 4. Only respondent No. 3 (State of Uttar Pradesh) has relevant record/data for fixation of seniority of respondent No. 4 *vis-à-vis* other persons and only the State of Uttar Pradesh is competent to determine inter-se seniority for the period prior to formation of the State of Uttarakhand.

2.9 It has also been stated by the petitioners that according to the Rules, the seniority of the persons promoted to the post of Assistant Engineer for recruitment year 1990-91 is to be determined as per their inter-se seniority in the feeding cadre of the Junior Engineer. Respondent No. 5 was senior to the respondent No. 4 (and there were other persons also who were senior to the respondent No. 4 in the feeding cadre) and, therefore, respondent no. 4 has wrongly been shown above respondent no. 5 in the final seniority list dated 24.06.2015.

4. Private respondent No. 4 has also opposed the claim petition and filed a detailed written statement. In nutshell, the contention of private respondent No. 4 is that the seniority list dated 24.06.2015 is consequential to the order of the Tribunal dated 16.07.2003 and the U.P. Govt. G.O. dated 10.06.2009 and these have attained the finality and, therefore, the seniority list has been rightly prepared as per the judicial order.

5. The petitioners have also filed rejoinder affidavits against the written statements filed by the respondents. Additional written statement (by respondent No. 4) and additional rejoinder affidavit (by the petitioner) against it have also been filed. Parties have also filed certain documents.

11.1 Now, we would like to take up a judgment of the Hon'ble High Court at Nainital which is directly related to the present claim petition. Sri Arun Kumar Goyal (the respondent No. 4 in this claim petition) filed a Writ Petition (S/B) of 2011, Arun Kumar Goyal Versus State of Uttarakhand & another which was decided by the Hon'ble High Court on 21st June, 2018. The petitioner (Sri Arun Kumar Goyal) had approached the Hon'ble High Court at Nainital seeking the following reliefs:-

“i) Issue a writ, order or direction in the nature of mandamus commanding/directing the respondents to give all service benefits including salary etc. to the petitioner from the date of promotion w.e.f. 1.7.1990 on the post of Assistant Engineer and the salary to be paid to the petitioner alongwith penal interest.

ii) Issue a writ, order or direction in the nature of mandamus commanding / directing the respondent no. 1 to fix the seniority of the petitioner as Assistant Engineer with effect his promotion as Assistant Engineer on 1.7.1990.

iii) Issue a writ, order of direction in the nature of mandamus commanding / directing the respondents to prepone the promotion of the petitioner on the post of Executive Engineer w.e.f. 6.9.1997, when his promotion was due on the post of Executive Engineer.

iv) Issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 3.3.2010 passed by the Learned Tribunal to the extent denying the service benefits. (Annexure No. 20 to this writ petition).”

11.2 It is clear from the above reliefs that the Sri Arun Kumar Goyal (who is respondent No. 4 in the claim petition before the Tribunal) in the writ petition before the Hon'ble High Court in relief (ii) had prayed to fix his seniority as AE w.e.f. 01.07.1990 by the Govt. of Uttarakhand.

12. In view of analysis in paragraphs 8 to 11 above, we hold that the State of Uttarakhand could not promote respondent No. 4 as AE w.e.f. 01.07.1990 as it did not have jurisdiction and, therefore, it was not competent to do the same. We also hold that the State of Uttarakhand had no jurisdiction to modify/determine the seniority and, therefore, it was not competent to do the same. We also hold that only the State of Uttar Pradesh had jurisdiction and, therefore, only the State of Uttar Pradesh was competent to act on these issues.

13. For the reasons stated above, the seniority list dated 24.06.2015 is illegal and void and, therefore, it is liable to be set aside.

ORDER

The petition is hereby allowed and the impugned order dated 24.06.2015 (Annexure: A2) is hereby set aside. No order as to costs.”

12. Attention of the Bench has been drawn towards representation dated 11.03.2023 given by the petitioner to the Principal Secretary, P.W.D., Govt. of Uttarakhand, to submit that the action of Sri Deepak Kumar Yadav was prejudicial and biased.

13. Attention of the Bench has also been drawn towards the statement of the petitioner, which was recorded on 06.09.2022 by the enquiry officer, (the then) Chief Engineer, P.W.D., Haldwani (Annexure: A-7), in which the

petitioner pinpointed, in unequivocal terms, that he (enquiry officer) had challenged the seniority of the petitioner before the Public Services Tribunal, as a consequence of which, he (enquiry officer) was given promotion, but the petitioner has not been given such promotion. Impartial enquiry was required to be conducted. Annexure: A-7 is a questionnaire, which contains questions asked by the enquiry officer (Sri Deepak Kumar Yadav) and replies given by the petitioner (Sri Arun Kumar Goel).

14. The question, which arises for consideration of the Bench is- whether enquiry should have been conducted by Sri Deepak Kumar Yadav, the then Chief Engineer, P.W.D., Haldwani, when there was a litigation between the parties for determining their *inter se* seniority and the Tribunal had adjudged *vide* order dated 06.09.2018 that the seniority list dated 24.06.2015 was illegal, void and was set aside? Claim Petition No. 33/DB/2015 of Sri Deepak Kumar Yadav & Sri Khagendra Prasad Upreti, was allowed by holding that the State of Uttarakhand could not promote Respondent No. 4 Sri Arun Kumar Goel as Assistant Engineer *w.e.f.* 01.07.1990, as it did not have jurisdiction and was not competent to do the same.

15. **It is the cardinal principle of law that justice must not only be done but must also manifestly appear to have been done.**

16. The enquiry officer, in the instant case, might have done justice, from his own end, but it does not appear, from a common man's point of view, that the justice manifestly appeared to have been done. It has been brought on record that the factum of litigation was pointed out by the petitioner to the Principal Secretary, P.W.D., Govt. of Uttarakhand and the enquiry officer himself, but, still, the enquiry by the same enquiry officer continued.

17. Ld. A.P.O. submitted that no such application was given by the petitioner either to the Principal Secretary, P.W.D. or the enquiry officer. Had the petitioner made a prayer for change of enquiry officer, the disciplinary authority would have considered the same. No such prayer was ever made by the petitioner. Ld. A.P.O. further pointed out that once Sri Deepak Kumar Yadav was appointed as enquiry officer, it was difficult for him to request the Principal Secretary, P.W.D. to appoint any other enquiry officer in his place.

Had the petitioner made such request to the Principal Secretary, P.W.D., the authority concerned would have certainly considered such request of the petitioner as per rules, learned A.P.O. emphasized.

18. The Bench is conscious of the limitations of Sri Deepak Kumar Yadav, enquiry officer, as pointed out by learned A.P.O., but, at the same time, is also conscious of the fact that principles of natural justice are *grundnorm*, which have to be followed in any case, come what may! (Doctrine of Necessity' is the exception). Disciplinary proceedings are *quasi-judicial* in nature. Nobody should have occasion to raise finger on the impartiality and independence of the enquiry officer. **Caesar's wife must be above suspicion.**

19. An enquiry officer, who has personally contested the seniority of the delinquent, could not be permitted to conduct the departmental enquiry against such delinquent, in normal circumstances. The Tribunal should uphold the 'Rule of Law'.

20. The impugned order calls for interference. The same should be set aside. Enquiry should be conducted either by the Disciplinary Authority itself or by appointing another enquiry officer.

21. It may be pointed out, at the cost of repetition, that the Bench, while passing such order, is not casting aspersions on the impartiality and independence of either Sri Deepak Kumar Yadav, enquiry officer or the Disciplinary Authority. The Tribunal is looking at it only from the point of view of a common reasonable prudent person. In normal circumstances, a reasonable person would draw the inference that if somebody has contested the seniority of the delinquent, he should not be appointed as enquiry officer and even if he has been appointed as enquiry officer, he himself should pray to the Disciplinary Authority for recusal from conducting the enquiry and such superior officer should have replaced someone else to conduct impartial enquiry. There should not be any 'interest or real likelihood of favour or bias'.

22. In such situation, irresistible conclusion would be that the order dated 01.08.2023 should be set aside by directing Respondent No.1 to appoint another enquiry officer, who should conduct fair enquiry. Petitioner has now retired.

23. Order accordingly.

24. Claim Petition is disposed of by setting aside order dated 01.08.2023 and directing the Disciplinary Authority to appoint another enquiry officer, who should complete the departmental enquiry by giving proper opportunity of hearing to the petitioner and complete it, without unreasonable delay, in accordance with law. Petitioner shall cooperate in the enquiry. No one should unduly drag the proceedings.

25. It is made clear that the Tribunal has not gone into other legal aspects of the case.

26. Rival contentions are left open.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 14th June, 2024
DEHRADUN
VM/RS