

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

Present: Hon'ble Mr. Rajendra Singh,

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat,

.....Vice Chairman (A)

CLAIM PETITION NO. 100/NB/DB/2023

Hemant Aswal, aged about 35 years, s/o Shri Laxman Singh Aswal, r/o Village Chorpani, Post Office Ramnagar, District Nainital, presently posted as Additional Assistant Engineer (Mechanical Division), Uttarakhand Peyjal Sansadhan Vikas Evam Nirma Nigam, Haldwani, District Nainital.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Secretary, Peyjal, Civil Secretariat, Dehradun, Uttarakhand.
2. The Managing Director, Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, 11, Mohini Road, Dehradun.
3. The Chief Engineer (Headquarter), Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, 11, Mohini Road, Dehradun.
4. The General Manager (Bhujal/Survey), Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, 11, Mohini Road, Dehradun.
5. Shri Kamal Masiwal s/o Shri Chandra Dutt, presently posted as Additional Assistant Engineer (Mechanical Division) Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, Haldwani, District Nainital.
6. Naveen Kumar, s/o Shri Padam Singh, presently posted as Additional Assistant Engineer, at Construction Unit (E&M) Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam, Dehradun Uttarakhand.

.....**Respondents**

Present: Sri Pooran Singh Rawat, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the Respondent no. 1
Sri Siddhant Manral, Advocate for the respondents no. 2,3 & 4

JUDGMENT**DATED: SEPTEMBER 13, 2024**

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

- a) *In view of the facts and circumstances and the grounds as mentioned above the applicant prays that this Hon'ble Tribunal may most graciously be pleased to give date of appointment notionally from 16/5/2023 as the given to the respondents No.1 and 3 who were also selected from same advertisement dated 4-5-2011.*
- b) *To issue any other order or the direction which the Hon'ble Tribunal deem fit and proper in the circumstances of the case.*
- c) *Award cost of the application in favor of the Applicant.*

2. The facts of case, in brief, are that that Uttarakhand Peyjal Sansthan Nigam, Dehradun published an advertisement for filling up 28 post of Junior Engineers (22 General category and 6 reserved category). The written examination for these posts was held on 20/11/2011 and the result was declared on 28/11/2012, whereby the petitioner was declared successful and his name figured at serial no 13. The private respondents were at Sl No. 5 & 6 (Kamal Masiwal and Naveen Kumar).

2.1 The verification of the documents was done on 18/04/2012. The respondents declared another result on 06/06/2012 and reduced the number of vacancies to 19 to the utter surprise of the petitioner, as the number of the general vacancies were reduced, the petitioner filed a writ petition No. 788 of 2012, Hemant Aswal vs. State of Uttarakhand and Others and other petitioner similarly placed also filed the writ petitions in the Hon'ble High Court of Nainital. The excerpts of the Interim order passed by the Hon'ble High Court in the said writ petition on 19.06.2012, is as under:

“Considering the aforesaid fact, in the event, the appointment letters have not been issued as on the date, no appointment letter would be issued to the private respondents till further orders of the Court. In the event, the appointment letters has already been issued, such appointment would be subject to the result of the writ petition.”

2.3 The appointment letters to the private respondents were issued on 16/05/2013 after the interim order passed by the Hon'ble High court on 19/06/2012. The Hon'ble High Court passed the final judgement in the writ petition 863 of 2012 and the petitions of the same nature on 12th June 2013 and quashed the list dated 28/03/2012 and 06/06/2012 and ordered that the vacancies existing at the time advertisement dated 04/05/2012 shall not be changed and the appointments be made accordingly.

2.4 In pursuance of the aforesaid judgement fresh list of the successful candidates for the JEs was published on 08.08.2013. The letters of appointment were issued on 06.01.2014 after necessary verification of the candidates till 05.12.2013. The petitioner joined on 17/01/2014.

2.5 As per the Rule -3, sub-rule 5 and sub-rule -2 of the Service Rules, 2011, 8.33 percent quota for the AE from JE/ Addl AE has been reserved for the incumbents who obtained prior permission to pursue the Engineering Degree from the Institution of Engineers. The petitioner also applied for the permission to pursue the course and the permission was granted by the department. The petitioner obtained the Course (AMIE) certificate on 24/03/2018, which was registered with the respondents on 04/05/2018.

2.6 The petitioner also claimed notional appointment from 16/05/2013 the date from which the private respondents No. 5 & 6 were given appointment. He preferred the representation to the department on 21/06/2023 and requested for the appointment notionally from 16/05/2013, the date of appointment of the respondents no. 5 & 6. He also requested that he may also be given benefit of ACP after completing 10 years of the service as he is eligible for promotion to the post of AE against 8.33 percent quota for the candidates having put 10 years of the service and obtained Bachelor degree or the degree of Institute of Engineers (AMIE) during the service period with the permission of the Department.

3. The respondents have raised the issue of limitation in the Counter affidavit stating therein that the claim petition is barred by the limitation and is liable to be dismissed. Petitioner remained silent for the good amount of time and woke up after long delay and as such his claim petition is not maintainable. Hence such claim petition filed after limitation period as enshrined under section 5 of the U.P. Public Service Tribunal Act ,1976 as such is liable to be dismissed on the ground of the delay.

4. The petitioner filed the Rejoinder Affidavit and denied the contents of the Counter Affidavit and has reiterated the averments made in the claim petition.

5. Heard learned Counsel for the parties and perused the record.

6. Learned Counsel the petitioner argued on the issue of limitation raised by the respondents that since the claim petition has already been admitted and the same cannot be opened. Learned Counsel for the petitioner has further pleaded that the department has issued the appointment orders to private respondents no. 5 & 6 on 16.05.2023, even after the stay order of the Hon'ble High Court in WPSB No. 788 of 2012, and the respondents should have issued appointment orders only after final outcome of the writ petition. The aforesaid appointment orders have been issued to the private respondents no. 5 & 6 prior to the decision of Hon'ble High Court. The final select list issued by the respondents on 08.08.2013 consists of the names of persons who were appointed before final order passed by the Hon'ble High Court, so the petitioner should be given the appointment notionally from the date i.e. 16.05.2013 (the respondents no. 5 & 6 were given appointment), so that petitioner can avail the benefit of ACP and other promotion also.

7. The respondents have pleaded that the private respondents no. 5 & 6 were issued appointment letters on 16.05.2013, as they were not party in the writ petition, on which the stay order was granted by the

Hon'ble High Court. The petitioner cannot claim the benefit of adding period prior to their appointment.

8. It would be appropriate to quote para 9 of the judgment and order dated 12.06.2013, passed by the Hon'ble High Court in Writ Petition no. 785 of 2012 (S/S) and connected writ petitions, as under:

“9. In the light of the aforesaid, the writ petitions are hereby allowed. The select lists dated 28.03.2012 and 06.06.2012 are hereby quashed. A mandamus is issued directing the respondents to publish a fresh select list, within a period of eight weeks from the date of production of a certified copy of this order, keeping in view of the above determination, namely, that the existing vacancies as per the advertisement dated 04.05.2012 shall not be changed and thereafter, the appointment shall be made accordingly. ”

9. In compliance of the aforesaid judgment of the Hon'ble High court, the respondent department has issued a fresh select list dated 08.08.2013. This list includes the name of petitioner as well as private respondents no. 5 & 6. As in the fresh select list, the names of the persons including petitioner and the private respondents no. 5 & 6 have been shown, the earlier appointment orders issued on 16.05.2013 have no relevancy. The fresh select list issued on 08.08.2013 shall be applicable to all the candidates including petitioner as well as private respondents no. 5 & 6. Hence, the claim of the petitioner for notional appointment w.e.f. 16.05.2013 is liable to be rejected.

ORDER

The claim petition is hereby dismissed. No order as to costs.

A.S.RAWAT
VICE CHARMAN (A)

RAJENDRA SINGH
VICE CHARMAN (J)

DATED: SEPTEMBER 13, 2024
DEHRADUN
KNP