

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 160/NB/DB/2022

Dinesh Chandra Gururani (Male) Aged about 56 Years S/o Sri Tara Datt Gururani Presently working as Manager, Adventure Tourism, Tourist Rest House, K.M.V.N., Pithoragarh, District - Pithoragarh.

.....**Petitioner**

vs

1. State of Uttarakhand through Secretary, Tourism, Government of Uttarakhand, Dehradun.
2. Kumaon Mandal Vikas Nigam Ltd. through its Managing Director, Kumaon Mandal Vikas Nigam Ltd., Headquarter, Sukhatal, Nainital.
3. General Manager, Kumaon Mandal Vikas Nigam Ltd., Headquarter, Sukhatal, Nainital.
4. Prakash Singh Mehra S/o Sri Late Sri Kamal Singh, Manager through General Manager, Kumaon Mandal Vikas Nigam Ltd., Headquarter, Sukhatal, Nainital.

.....**Respondents**

Present: Sri Yogesh Pacholia, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondent no. 1
Sri Sandeep Kothari, Advocate for the respondents no. 2 & 3

JUDGMENT

DATED: OCTOBER 15, 2024

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

I- To issue an order to quash the impugned final seniority list issued in the year 2022, so far it relates to Receptionists (Pay band 5200-20200 grade pay Rs. 2800/-) of tourism cadre (contained as Annexure No.2 to the claim petition).

II- To issue an order to set aside/quash the impugned order dated 31.7.2017, as the petitioner is not entitled to transfer from General cadre (cadre-2) to tourism cadre (cadre-6) (contained as Annexure No.1 to the claim petition).

III- To issue appropriate direction to the respondents to correct/modify the seniority of petitioner in tourism cadre Receptionists (Pay band 5200-20200 grade pay Rs. 2800/-), in order of his date of appointment in tourism cadre and further also grant the benefit of the seniority to the petitioner on the post of Manager/Manager, Adventure Sports or other superior post w.e.f. its date of appointment/ regularization on the said post for the all practical purposes.

IV- To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

V. To award the cost of the petition to the petitioner.

VI- To issue an order or direction to quash and set-aside the impugned Final Seniority List issued in the month of September 2022, so far it relates to the Tourism Cadre's Post of Receptionist (Pay band Rs. 5200-20200), as the respondent had placed the name of Respondent no. 4, who were much junior to petitioner, above the petitioner in the final Seniority list, without considering and deciding the objection/representation of petitioner.”

2. The facts of the case in brief are that the Kumaon Mandal Vikas Nigam Ltd. is a company registered under Companies Act 1956. Kumaon Mandal Vikas Nigam Ltd. (For Short hereinafter referred as K.M.V.N.) is a subsidiary company of Uttarakhand Government and the Government of Uttarakhand has full administrative control over it. Since the government has deep and pervasive control over the K.M.V.N. therefore it falls under the definition of 'State', as defined under Article 12 of the Constitution of India and as such the claim petition is maintainable against the K.M.V.N. under Section 4 of the U.P. Public Services Tribunal Act, 1976.

3. The petitioner was initially appointed substantively against the vacant Class III post of Receptionist (Swagati) on consolidated salary in the year 1990. Since then the petitioner had continuously worked on the said post up to his further appointment/posting on the post of Manager.

4. The respondent no. 3 vide its order dated 1 September 1995 appointed the petitioner as Manager, and transferred him to start the newly constructed Tourist Rest House in Didihat, with direction to

complete all the pending work of accouterment of rest house. Since then, the petitioner had been working on the post of Manager continuously and had worked at various places in various capacities and the authorities of respondent corporation always referred the petitioner as Manager in their official communications.

5. In the year 2000, the authorities of corporation had taken a policy decision to initiate the adventurous sports activities e.g. Trekking, Paragliding, Rafting etc. and had granted major role to petitioner to conducting the aforesaid activities. The respondents have also appointed the petitioner as Camp in-charge of Dhakuri in the year 2001 and Camp in-charge of Baling camp in 2002. The respondent corporation, vide its order dated 4.3.2005, had appointed the petitioner as Manager, Adventure Sports of District- Pithoragarh.

6. In the year 2008, the respondent corporation opened a new separate department of Adventure Sports under the control of General Manager (Tourism) and handed over the charge of conducting the Adventure sports in District-Bageshwar, Champawat and Pithoragarh to the petitioner. Since then petitioner is holding Additional Charge of Manager, Adventure Sports of three districts, along with his actual post of Manager, Tourist Rest House. In the year 2011, the then Managing Director of respondent corporation had appointed/ posted the petitioner as Manager, Adventure sport and granted full fledge charge of Adventure sports to petitioner.

7. The petitioner was working on the post of Manager since 1995-96 and made various representations to the respondent authorities of Nigam requesting them to regularize the services of petitioner on the post of Manager, against which petitioner is working and pay the salary of said post but the respondent authorities had not paid any heed on the representation of petitioner.

8. In the year 2011, the Government of Uttarakhand, with a view to regularized the services of daily wagers, work-charged and ad-hoc appointed employees framed a rule namely 'Daily Wagers, Work-charged, Contract, Fixed Pay, Part-time and Adhoc Appointed

Employees, Regularization Rules, 2011. The respondent Nigam, with a view to regularize the services of its employees, adopted the aforesaid regularization rules 2011. The Managing Director, KMVN, vide its order dated 3/4.9.2013 regularized the service of petitioner w.e.f. their date of joining against the Grade-3 posts in the pay scale of Rs. 5200-20,200 (Grade Pay Rs. 1900/-).

9. The respondent while regularizing the services of employees, put them all at par and without verifying their nature of work or duties, regularized them on the pay scale of Rs. 5200-20,200 (Grade Pay Rs. 1900/). The action of respondents to regularize the services of daily wages employees is welcoming step but putting them at par in the matter of post or salary, without verifying their actual nature of work is not just or proper and is prima facie arbitrary, malafide and illegal. The petitioner was working as Manager and subsequent thereafter the Nigam administration appointed/ posted him as Manager, Adventure Sports, prior to regularization but the respondents had regularized the services of petitioner on the Group-C post, on the pay scale of Rs. 5200-20,200 (Grade Pay Rs. 1900/-).

10. The respondent corporation regularized the services of petitioner and other employees in the year 2013 but did not allotted them post. The respondent no.2 vide its order dated 2.8.2017 allotted the post to all the regularized employees of 2013. The respondent no.2 allotted the post of Swagati (Receptionist) in the Tourism cadre, in place of his actual post of Manager. Adventure Sports. The petitioner had already filed a writ petition before the Hon'ble High court of Uttarakhand for redressal of his grievances related to regularization on lower post.

11. It is submitted here that there are several cadres of employees in the KMVN such as Technical / Non-technical, General, Accounts, Marketing, Tourism, Construction and Marketing. An employee of any particular cadre may be transferred to other cadre, on his request subject to fulfillment of eligibility condition but such transferred employee shall be placed at bottom of the seniority of

said cadre. For appointment in tourism cadre, a person must have possessed the Tourism Degree/Diploma from any recognized university. The respondent no. 4 has obtained the diploma in eco tourism in the year 2009, from Kumaon University, without prior permission of respondent corporation. Further the respondent has qualified the diploma in eco tourism, whereas the required eligibility for the post of tourism cadre is diploma in tourism. Therefore, the respondent no.4 was, prima facie, not eligible to transfer in cadre 6 (tourism cadre), as he does not possess the appropriate qualification. Since the petitioner does not holds the essential qualification and does qualify the required eligibility, it is therefore his appointment/transfer in the Tourism Cadre is absolutely illegal from very inception.

12. In the year 2017 the respondent corporation issued a tentative seniority list. In the list of tourism cadre, Receptionists (Pay band 5200-20200 grade pay Rs. 2800/-) the name of petitioner was figured at sl.no.11 but surprisingly the name of respondent no. 4 was figured at sl. no. 9.

13. The petitioner filed one after another objections against the such arbitrary action of respondents to put the name of respondent no. 4 above those persons, who was appointed much prior to petitioner. In pursuance of repeated request of employees, the respondent corporation issued a final seniority list in September 2022.

14. It is submitted that the petitioner had spent his life more than 30 golden years in the services of Respondent Nigam and nurtured the corporation from its blood and sweat. But in return, the respondents are depriving the petitioner from its basic right of seniority and placing a person above than the petitioner in seniority list, who was transferred in tourism cadre in the year 2017, much after the regularization of petitioner. It is further submitted that appointment of an employee in a particular post by the Competent Authority to perform the duties of a post or a higher post for a

minimum period of 30 days or more would be called officiating appointment and it is settled law that the service rendered as officiating appointment cannot be ignored for reckoning length of Continuous officiation for determining the place in the seniority list. The Hon'ble Apex court in catena of judgments holds that seniority shall be determine from the initial date of appointment in cadre. The act of the respondent authority is totally perverse and against the article 14,19 and 21 of the Constitution of India.

15. C.A./W.S. has been filed on behalf of respondents no. 2 & 3, in which it has been stated that affectively, petitioner has already raised substantially same plea before the Hon'ble High Court by filing a writ petition, and the issue is pending consideration before the Hon'ble High Court, the instant claim petition has been preferred, during the pendency of the aforesaid writ petition. It is submitted that when the process of regularization was initiated, it was one of the condition advertised at the said point of time that the person whosoever is being regularized, shall provide an undertaking/ affidavit in terms of the Clause 8 of the Office Order, which provided that the undertaking regarding the acceptance of the order has to be submitted prior to release of salary and in terms of the office order dated 3/4.9.2013, the claimant has been regularized, in which the name of the claimant figured at serial no. 12 and in compliance of the aforesaid order, the claimant has submitted the requisite undertaking on 12.09.2013 and only thereafter the benefit of the aforesaid order was provided to the claimant. It is further submitted that when the claimant was regularized, he has accepted the order of regularization on his free will, accepted the salary thereafter, and on 19.5.2018 the claimant has been promoted on the post of Manager Grade -3 in the pay scale of Matrix Level-V, at this stage preferred the claim petition, affectively seeking modification of the order of which he is beneficiary, such challenge is absolutely misconceived and is not maintainable.

16. It is submitted herein that the claimant right from the day one was engaged as Receptionist, his engagement always remained

as Receptionist, however, in the commercial interest of the Corporation, the claimant was directed to discharge certain duties apart from the Receptionist, that do not create any right in favour of the claimant to claim the benefit of such post. The tentative seniority list was prepared, circulated only thereafter on the recommendation of the duly constituted committee, the order of the regularization was made in the pay scale of Rs. 5200-20200, grade pay Rs.1900 and the claimant after accepting the same, at this stage is agitating the right contrary to the order of regularization and as such, the said submissions of the claimant are hit by the principles of estoppel. Needless to mention herein that the claimant was promoted on the post of Manager on 27.6.2018 and prior thereto vide order dated 09.8.2017 the claimant has been granted the pay scale of Receptionist in the Grade Pay of Rs. 2000/-, which also the claimant has duly accepted.

17. As far as the appointment of the respondent no.4 is concerned, it is most respectfully submitted herein that the respondent no.4 was substantially appointed in the Kumaon Mandal Vikas Nigam Ltd. on 08.03.2002 under compassionate appointment as room attendant, a class 4 post and he has been given the initial appointment in the tourist rest house, Kausani. Subsequent thereto considering the academic qualifications, intermediate of the respondent no.4 he has further been granted appointment vide order dated 26.04.2005 on the post of Assistant Grade 3rd in the pay scale of 3050-4590. Very initial appointment of the respondent no.4 was in the tourism cadre and further he was given appointment against the Assistant Grade 3rd however, he continued to work in the tourism cadre and when, post regularization of the employees of Kumaon Mandal Vikas Nigam Ltd., cadres were allocated to employees of Kumaon Mandal Vikas Nigam Ltd., a formal order dated 31.07.2017 has been issued, whereby, the cadre of the respondent no.4 was allotted as tourism cadre.

18. The respondent no.4 has served considerable number of years and worked against the class 3 post on a substantive

appointment from the year 2005 while the substantive appointment of the claimant is of the year 2013 i.e. 04.09.2013. The entire case has been setup by the claimant in the claim petition that though in a different capacity i.e. either daily wages appointment, the claimant was working on a higher post viz-a-viz the respondent no.4. The date of substantial appointment in a class 3 post of the respondent no. 4 on 26.04.2005, while that of the claimant is 04.09.2013 and hence, the entire case setup by the claimant is absolutely misconceived and is not liable to be considered. The date of substantive appointment in the class 3 post of the respondent no.4 is prior to that of claimant and further he has been promoted on the post of Manager on 27.06.2018 and hence the respondent no.4 was rightly placed above the claimant more particularly on the same date the claimant was also promoted as Manager and the since the respondent no.4 being senior the substantial date of appointment of class 3 cadre and hence rightly been placed above the respondent no.4.

19. It has further been submitted that as far as the issue raised that the respondent no.4 has obtained the tourism course certificate from the Kumaon University obtained without due permission, in reply thereto it is submitted herein that vide order dated 06.11.2009 the due and proper permission is given to respondent no.4 to undergo tourism course from the Kumaon University and further right from the day he was appointed was serving in the tourism department/cadre. The petitioner has a cause of action in September, 2022 when final seniority list is issued but surprisingly the claimant has not challenged the seniority list and this makes it absolutely clear that only in order to support his stale claim which is barred by limitation, the aforesaid submissions have been made though no substantial relief challenging the seniority list has been made.

20. The regularization was made against the class 3 post and initially the different cadres were not allocated to the persons regularized and hence by a subsequent order issued on 09.01.2018

the name and pay scale of receptionist was given to the petitioner. The respondent no.4 has obtained the qualification after due permission from the answering respondent corporation and the further the respondent no.4 is duly qualified, and is eligible to be promoted as Manager of a rest house and averments made to the contrary are denied. It is further submitted that the date of substantial appointment of the respondent no.4 in class 3 post is much prior to the claim claimant and averment made to the contrary are denied.

21. Rejoinder affidavit has been filed on behalf of the petitioner denying the contentions of the C.A./W.S. and reiterated the averments of the claim petition.

22. Learned Counsel on behalf of the petitioner pleaded that the petitioner was appointed in 1990 as daily wage worker and worked as Receptionist and Manager at different places before his regularization in the corporation on 03/04.09.2014. He worked in the tourism cadre and holds the diploma in tourism, a qualification required for the post of Receptionist. The private respondent worked under him and is junior to him after his shifting to tourism cadre. Both of them were given tourism cadre in 2017 but he has worked as Manager even since his regularization in 2013. So, the seniority list notified in 2022 did not consider his representation in a judicious manner.

23. Learned Counsel on behalf of the respondents no. 2 & 3 has pleaded that the respondent no. 4 was appointed on compassionate ground in 2001. He was promoted in Rs. 2400 grade pay in 2005. He has worked in the Tourism cadre of KMVN. It is a Commercial Organization and the cadre division remains quite fluid and the persons are posted in the different posts belonging to different cadre time to time. The contention of the petitioner that he is senior to the respondent no. 4 is unfounded. The comparison of the service record reveals that the private respondent was initially appointed to the post room attendant on compassionate appointment in 2002 and he was promoted to the grade pay of Rs. 2400 in the

year 2005 to the post of Assistant Grade-III. So as per the service record the petitioner is junior to the respondent no. 4.

24. On the basis of the documents and the arguments of both the parties, we are of the opinion that the petitioner has previously filed a Writ Petition (S/S) No. 548 of 2020 before the Hon'ble High Court of Uttarakhand and in that petition, the petitioner sought the following reliefs:

I. Issue a writ, rule, order or direction in the nature of Certiorarified Mandamus commanding and directing the respondents to quash the order dated 2.8.2017 whereby the respondent no.-2 had granted/ allotted the cadre/ post of Receptionist (Swagati) in place of his actual post of Manager/Manager, Adventure Sports and further be please to direct the respondent to allot/ grant, the claimant, his actual post of Manager/ Manager, Adventure Sports and also pay him regular salary every month alongwith all the benefits of said post.

II. Issue a writ, rule, order or direction in the nature of Certiorarified Mandamus calling for record and to declare the rule 10 of Daily Wagers, Work- charged, Contract, Fixed Pay, Part-time and Ad-hoc Appointed Employees, Regularization Rules, 2011, Unconstitutional, as the said rule declares the past services of employees insignificant and irrelevant for the purpose of determination of seniority.

III. Issue a writ, rule, order or direction in the nature of Certiorarified Mandamus, to call for the record and issue appropriate direction to the respondents to correct/ modify the order dated 3/2.9.2013, whereby, the respondents have regularized the services of claimant in the pay scale of Rs. 5200-20200 (Grade Pay Rs. 1900) and further be pleased to direct the respondent to regularize the services of claimant in the pay scale of Rs. 5200- 20200 (Grade Pay Rs. 2800), as is payable to Manager, in place of the pay scale of Rs. 5200- 20200 (Grade Pay Rs. 1900).

IV. Issue a writ, rule, order or direction in the nature of Mandamus commanding and directing the respondents to grant the benefit of the seniority to the claimant on the post of Manager / Manager, Adventure Sports w.e.f. its date of appointment on the said post for the all practical purposes.

V. Issue any other, other writ, rule, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

VI. Cost of petition may be awarded in favour of the claimant.”

25. In the present claim petition, the petitioner has also sought the following reliefs:

I-

II-

III- *To issue appropriate direction to the respondents to correct/modify the seniority of petitioner in tourism cadre Receptionists (Pay band 5200-20200 grade pay Rs. 2800/-), in order of his date of appointment in tourism cadre and further also grant the benefit of the seniority to the petitioner on the post of Manager/Manager, Adventure Sports or other superior post w.e.f. its date of appointment/ regularization on the said post for the all practical purposes.*

IV-

V.

VI-"

26. Perusal of the reliefs no. I, II & III in the aforesaid writ petition filed before the Hon'ble High Court and relief No. (iii) in the present claim petition are same. Since the relief no. (iii) has already been raised by the petitioner before the Hon'ble High Court, therefore, we are not giving any opinion on this relief. The petitioner before regularization on 04.09.2013 has worked in Tourism cadre in the capacity of Dailywage worker and after regularization, till his posting in the Tourism cadre worked in the Tourist Rest House as Class-III employee. The petitioner has diploma in Tourism, which is the minimum qualification for the post in Tourism Cadre-6 as mentioned in Office Memorandum dated 02.08.2016. Sub-para 1 of para 1 of this Office Memorandum reads as under:

“1-पर्यटन संवर्ग-6 हेतु-न्यूनतम शैक्षिक योग्यता स्नातक के साथ किसी मान्यता प्राप्त विश्वविद्यालय अथवा समकक्ष शैक्षिक संस्थान/वेतन से पर्यटन डिप्लोमा/होटल मैनेजमेन्ट/कैटरिंग डिप्लोमा के उपरान्त पर्यटन अनुभाग में नियमित पद/वेतनमान/वेतन बैंड-ग्रेड वेतन में कार्य करते हुए कम से कम 05 वर्ष की अवधि पूर्ण कर ली हो।”

27. The private respondent no. 4 has obtained diploma in Eco-Tourism from Kumaon University in the year 2009 (as private) with the permission of the respondent department (Annexure: 05 of the C.A. of respondents no. 2 & 3). It is to mention here that Eco-Tourism (Diploma) is not the required qualification for Tourism Cadre-6 so the appointment of private respondent no.4 in Tourism Cadre-6 is against the aforesaid Office Memorandum dated 02.08.2016. Hence, the order of the transfer of private respondent dated 31.07.2017 to Tourism Cadre is not sustainable for cadre transfer, which is liable to be set aside and the seniority list issued in the month of September, 2022 is also liable to be quashed. The claim petition liable to be allowed in respect of reliefs No. (i), (ii) and (vi).

ORDER

The claim petition is allowed in respect of relief no. (i), (ii) and (vi). The impugned order of the transfer of private respondent dated 31.07.2017 to Tourism Cadre is hereby quashed. The seniority list issued in the month of September, 2022 is also quashed. No order as to costs.

(A.S.RAWAT)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: OCTOBER 15, 2024
DEHRADUN.
KNP