

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.40/DB/2021

Rai Singh Rautela, aged about 58 years, s/o Sri B.S.Rautela, presently posted as Assistant Engineer (Civil), Construction Division, Public Works Department, District, Uttarkashi.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Public Works Department, Civil Secretariat, Dehradun.
2. Secretary, Uttarakhand Public Service Commission, Haridwar.
3. Engineer-in-Chief, Public Works Department, Dehradun.
4. Chief Engineer (Establishment), H.O.D. Office, P.W.D., Dehradun.
5. Shri Rakesh Kumar, s/o Sri Bhaskar Prasad, aged about 43 years, presently posted as Junior Engineer (Technical) at 9th Circle, PWD Dehradun.
6. Shri Hari Mohan Joshi (Male) s/o Sri Chandra Bhushan Joshi, aged about 41 years, presently posted as Junior Engineer (Technical) at Provincial Division, PWD Ranikhet.
7. Smt. Madhubala Pawar (Female) w/o Sri Ravindra Singh Pawar, aged about 36 years, presently posted as Junior Engineer (Technical) at HOD Office PWD Dehradun.
8. Smt. Rita Negi Gossain (Female) w/o Sri Vikas Gossain aged about 35 years, presently posted as Junior Engineer (Technical) at A.D.B PWD Dehradun.

9. Smt. Sangeeta Dhanik (Female) w/o Sri Jeevan Singh Dhanik aged about 36 years, presently posted as Junior Engineer (Technical) at Temporary Division, PWD, Berinag, Pithoragarh.
10. Smt. Mamta Goshwami (Female) w/o Sri Hiragiri Goshwami aged about 35 years, presently posted as Junior Engineer (Technical) at Construction Division, PWD, Ranikhet, District Almora.
11. Shri Sushil Kumar Kuril (Male) s/o Sri Mahendra Singh Kuril aged about 34 years, presently posted as Junior Engineer (Technical) at Provincial Division, PWD, Uttarkashi.
12. Shri Roshan Lal (Male) s/o Sri Jhapuliya aged about 35 years, presently posted as Junior Engineer (Technical) at Construction Division, PWD, Purola.
13. Shri Subhash Ram Arya (Male) s/o Sri Ganga Ram Arya aged about 38 years, presently posted as Junior Engineer (Technical) at Construction Division, PWD, Khatima.
14. Shri Sharan Singh Ray (Male) s/o Sri Jal Singh Ray aged about 40 years, presently posted as Junior Engineer (Technical) at Temporary Block, PWD, Chakrata.
15. Shri Harish Singh Martaliya (Male) s/o Sri Jagat Singh aged about 46 years, presently posted as Junior Engineer (Technical) at PMGSY Division, PWD, Almora.
16. Shri Kailash Chandra Nautiyal (Male) s/o Late Sri Chotelal Nautiyal aged about 42 years, presently posted as Junior Engineer (Technical) at Chief Engineer Office, PWD, Dehradun.
17. Shri Ankit Bhatt (Male) s/o Sri Kaalika Prasad Bhatt aged about 30 years presently posted as Junior Engineer (Technical) at Temporary Division, PWD, Thrali.
18. Shri Neeraj Joshi (Male) s/o Sri Bholadutt Joshi aged about 28 years presently posted as Junior Engineer (Technical) at Construction Division, PWD, Lohaghat.
19. Shri Vijay Pandey (Male) s/o Sri Hem Chandra Pandey aged about 27 years presently posted as Junior Engineer (Technical) at Construction Division, PWD, Kapkot.
20. Shri Prem Singh (Male) s/o Sri Khadak Singh, aged about 30 years posted as Junior Engineer (Technical) at Provincial Division, PWD Gopeshwar.
21. Shri Suresh Chandra Kothari (Male) s/o Sri Dungar Dev Kothari aged about 28 years presently posted as Junior Engineer (Technical) at 1st circle PWD, Almora.
22. Shri Mahipal Singh Rautela (Male) s/o Sri Puran Singh Rautela aged about 27 years presently posted as Junior Engineer (Technical) at 3rd Circle, PWD Pithoragarh.

23. Shri Sanjeev Kumar Pal (Male) s/o Sri Karamvir Pal aged about 32 years, presently posted as Junior Engineer (Technical) at Development Block PWD Bajirao.
24. Shri Deepak Bahuguna (Male) s/o Sri Ram Ram Krishna Bahuguna aged about 28 years presently posted as Junior Engineer (Technical) at Provincial Division, PWD, Bhatwari, Uttarkashi.
25. Shri Sanjay Rana (Male) s/o Sri Rajpal Singh Rana aged about 28 years presently posted as Junior Engineer (Technical) at Circle Office, PWD, Gopeshwar.
26. Shri Sunil Kumar (Male) s/o Sri Radhe Shyam aged about 32 years presently posted as Junior Engineer (Technical) at Construction Division, PWD, Guptkashi.
27. Shri Mayur Shah (Male) s/o Sri Vijay Pal Shah aged about 27 years, presently posted as Junior Engineer (Technical) at Chief Engineer Office, PWD, Almora.
28. Shri Pradeep Singh Rauthan (Male) s/o Sri Raghubir Singh Rauthan aged about 30 years presently posted as Junior Engineer (Technical) at Provincial Division, PWD, Karanprayag.
29. Shri Ankur Nautiyal (Male) s/o Sri Ghanshyam Nautiyal, aged about 27 years presently posted as Junior Engineer (Technical) at Chief Engineer Office, PWD, Pauri.
30. Shri Kiran Mehra (Male) s/o Sri Narayan Singh Mohra, aged about 28 years presently posted as Junior Engineer (Technical) at N.H Division, PWD, Lohaghat.
31. Smt. Pallavi Chaudhari (Female) w/o Sri Harish Lal Chaudhari, aged about 28 years presently posted as Junior Engineer (Technical) at Provincial Division, PWD, Didihat.
32. Smt. Puja Juyal (Female) w/o Sri Ramesh Dutt Juyal, aged about 31 years, presently posted as Junior Engineer (Technical) at N.H. Division PWD, Barkot.
33. Smt. Sarita (Female) w/o Sri Shiv Charan Singh, aged about 30 years, presently posted as Junior Engineer (Technical) at 7th Circle, PWD, Gopeshwar.
34. Smt. Kiran Bhatt (Female) w/o Sri Vijay Ram Bhatt aged about 28 years, presently posted as Junior Engineer (Technical) at Temporary Division, PWD, Ghansali.
35. Shri Arvind Kumar (Male) s/o Sri Santosh Kumar Yadav, aged about 35 years, presently posted as Junior Engineer (Technical) at Provincial Block, PWD, Rudraprayag.
36. Shri Anuj Singh (Male) s/o Sri Satye Singh Mahar, aged 30 years, presently posted as Junior Engineer (Technical) at Construction Division, PWD, Barkot, Uttarkashi.

37. Shri Sachin Kumar (Male) s/o Sri Chaman Lal, aged about 34 years, presently posted as Junior Engineer (Technical) at Chief Engineer Office, PWD, Pauri.
38. Smt, Ginni Paliwal, (Female) w/o Sri Satyapal Paliwal, aged about 29 years, presently posted as Junior Engineer (Technical) at 8th circle, PWD, Tehri.

.....Respondents

Present : Ms. Devika Tiwari, Advocate for the petitioner.(online)
 Sri V. P. Devrani, A.P.O. for the Respondents No.1, 3 & 4.
 Col. H.S.Sharma, Advocate, for Respondent No.2 (online).
 None for private Respondents No. 5 to 38.

JUDGMENT

DATED: NOVEMBER 04, 2024

Justice U.C.Dhyani (Oral)

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

- i. Issue an order or direction for quashing and setting aside the impugned order dated 22.10.2020 alongwith seniority list (Annexure no. 1 to this claim petition) issued by the respondent no. 3 in so far as it relates to the petitioner only.
- ii. Issue an order or direction commanding respondent no. 3 to prepare a de novo seniority list to the post of JE(T), wherein petitioners' seniority is calculated from the date his juniors were promoted.
- iii. Issue an order or direction declaring petitioners' denial of right to be considered for regular promotion to the post of Assistant Engineer (Civil) by the respondents, as unjust and arbitrary.
- iv. Issue an order or direction commanding respondents to consider and promote the petitioner on regular basis to the post of Assistant Engineer (Civil) from the date his juniors were promoted, with all consequential benefits.
- V. Issue any order of direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

vi. Award the cost of the Claim Petition in the favor of the Petitioner.”

[Emphasis supplied]

2. Ld. A.P.O. is representing Respondents No. 1, 3 & 4. Col. H.S. Sharma, Advocate, is representing Respondent No.2. There is no representation for private Respondents No. 5 to 38 despite service of notices on them.

3. The nature of reliefs claimed by the petitioner has been highlighted in Paragraph No.1, as above. Facts, which are relevant for deciding the petition, should be mentioned while discussing the merits of the case, to avoid repetition.

4. Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

5. When interim relief application was pressed by the petitioner, the Tribunal passed an order on 05.08.2021, as under:

“Ld. A.P.O. stated, on the strength of an affidavit given to him, that the private respondents have been served through HOD.

Heard Ld. Counsel for the parties on interim relief application.

Ld. counsel for the petitioner prayed that an interim order may be passed to the effect that the promotional exercise in respect of promotion to the post of Assistant Engineer shall be subject to final decision of present claim petition. Ld. A.P.O. as well as Ld. Counsel for Respondent No. 2 has no objection in granting such interim relief.

Having heard Ld. counsel for the parties and perused the record, it is provided, as an interim measure, that further promotional exercise, if any, for the post of Assistant Engineer, shall be subject to final decision of present claim petition.

The interim relief application thus stands disposed of.

.....”

6. The claim petition has been contested on behalf of the respondents. One Counter Affidavit has been filed on behalf of Respondents No. 1, 3 & 4, and another Counter Affidavit has been filed on behalf of Respondent No. 2.

7. Affidavit has been filed by Sri Karmendra Singh, Secretary, Uttarakhand Public Service Commission, Haridwar, on behalf of Respondent No.2. Col. H.S.Sharma, Ld. Counsel for Respondent No.2, relying upon the C.A. thus filed, submitted that the Uttarakhand Government *vide* letter dated 23.05.2018 had forwarded requisition for promotion from the post of Draftsman to the post of JE (Technical) against the existing vacancies through selection in the Public Works Department (PWD). As a sequel to the aforesaid requisition, a meeting of selection committee was held by the Commission on 26.06.2018. The selection committee made selection as per selection process as prescribed in Regulation 2010, which are applicable to Uttarakhand Government Services, which were made on the basis of seniority and merit and disregarding the unsuitable and Uttarakhand Public Service Commission (Consultation and Selection Procedure) Rules, 2003. The recommendation regarding promotion of the petitioner by the selection committee was forwarded to the Government of Uttarakhand *vide* letter dated 17.07.2018.

8. Rejoinder Affidavit to the C.A. filed on behalf of Respondent No.2, has been filed by the petitioner.

9. C.A., on behalf of Respondents No. 1, 3 & 4 has been filed by Sri Prem Singh Nabiyal, Senior Staff Officer-cum- (S.E) in the office of Engineer-in-Chief, H.O.D., P.W.D., Uttarakhand, Dehradun. Ld. A.P.O., on the strength of C.A. thus filed on behalf of Respondents No. 1, 3 & 4, submitted that the petitioner was promoted against the promotional quota post available for Draftsman under relevant Service Rules to the promotion post of JE(T) *vide* O.M. dated 17.05.2007 *w.e.f.* 30.06.2007. The said promotion was made without approval and consultation of Uttarakhand Public Service Commission. In Para 2 of the C.A., it has been mentioned that 'Respondent No.3 failed to refer the matter to Public Service Commission', hence the said promotion could not be treated as substantive appointment as per provision of Seniority Rules, 2002, for the purpose of determination of seniority.

10. In Para 3 of the affidavit, it has been mentioned that it is mandatory to take approval/ consultation from Public Service Commission because post of JE(T) comes within the purview of Public Service Commission. On 17.07.2018, Respondent No.2 issued a letter stating that for promotion to the post of JE(T), a selection committee sat on 26.06.2018. The said committee considered the eligible persons and recommended the name of petitioner for promotion to the post of JE(T). The petitioner was recommended for promotion against the vacancy of selection year 2006-07. Public Service Commission also acknowledged that the petitioner is entitled for promotion *w.e.f.* 2006-07 (Copy of Letter dated 17.07.2018: Annexure-8).

11. It has been stated in Para 9 of the C.A. that on 10.08.2018, Respondent No.3, acting on the recommendation of Respondent No.2, issued Office Memo, promoting the persons from the feeder post to the post of JE(T). By the said O.M., petitioner was promoted against the vacancy of selection year 2006-07. It has further been mentioned in Para 10 of the C.A. that “due to confusion regarding petitioner’s date of substantive appointment on the post of JE(T), guidance was sought from the State Govt.”

12. In Para 11 of the C.A., it has been mentioned that petitioner’s name was dropped from the requisition because the State Govt. did not issue any instructions in response to the letter dated 13.02.2023. In Para 12, respondents have mentioned that the “Service Rules for the post of AE (Civil) provide that a JE(T) shall become eligible for promotion to the post of AE (Civil) after completing 07 years of qualifying service. Petitioner was promoted as JE(T) in 2007 and he was continuously serving as JE(T) up to 2014 and he is serving on the promotional post of AE(Civil), therefore, “his name could not have been dropped from the requisition dated 12.05.2020. By no stretch of imagination, petitioner could be treated as ineligible for regular promotion to the post of AE(Civil).”

13. However, Ld. A.P.O. submitted that the Secretary, Public Service Commission, sent approval for promotion to the post of JE(T) from the post of Draftsman against the vacant post of JE(T) for the selection year 2006-07, therefore, legally, petitioner's substantive promotion order dated 10.08.2018 from the post of Draftsman to the post of JE(T) was issued, as per Rules. Ld. A.P.O. further submitted that for the purpose of determination of seniority to the post of JE(T), the relevant date is the date of substantive appointment, which is 10.08.2018 and as per the said date of substantive appointment, the petitioner has rightly been placed at Sl. No. 103 of the final list of JE(T), circulated on 22.10.2020, which is under challenge in present claim petition.

14. Ms. Devika Tiwari, Ld. Counsel for the petitioner submitted that confirmation in promotion from one non-gazetted post to another non-gazetted post is not required, as per rules. Moreover, even if confirmation was required, confirmation shall relate back to the date of initial appointment. The period of continuous officiation shall be counted for seniority.

15. Relying on Regulation 6 of Uttarakhand Public Service Commission (Limitation of Functions) Regulations, 2003, she submitted that no consultation with Public Service Commission is required for promotion from one non-gazetted post to another. No consultation was required in case of the petitioner, as petitioner was promoted from the post of Draftsman to JE(T). Both these posts are non-gazetted posts. Rule 2 of Junior Engineer (Technical) Service Rules, 1968 clarified that JE(T) is non-gazetted post and Draftsman being a junior post to JE(T) is also a non-gazetted post. Even otherwise, Regulation 9 of the Uttarakhand Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003, casts a duty on the appointing authority to intimate Public Service Commission about the number of vacancies of each year of recruitment in which selection is proposed. Further more, Rule 16 states that candidates included in that list shall be appointed against vacancies as notified in Rule 9.

16. Ms. Devika Tiwari, Advocate also submitted that the appointing authority has recommended the name of the petitioner for selection year 2006-07. Public Service Commission is duty bound to appoint petitioner as per intimation of the appointing authority.

17. She also submitted that G.O. dated 25.11.2002 provides that promotion/ selection exercise for supplying promotion should be initiated one year in advance by sending the vacancies to Public Service Commission. The selection year of the petitioner is admittedly 2006-07. The action of respondent in not sending promotion of the petitioner for consultation one year in advance, is in complete violation of G.O. dated 25.11.2002.

18. It is also the submission of Ld. Counsel for the petitioner that the impugned order is in contravention of para 13 of the decision rendered by Hon'ble Apex Court in *Direct Recruit Class II Engineering Officer's Association vs. State of Maharashtra (1990) 2 SCC 715*. Period of continuous officiation by a Govt. servant after his appointment has to be taken into consideration. Seniority cannot be determined solely on the basis of confirmation, as confirmation is one of the inglorious uncertainties of government service, depending neither on efficiency nor on availability of substantive vacancies. Ld. Counsel for the petitioner also relied upon the decision rendered by Hon'ble Apex Court in *L. Chandra Kishore Singh vs. State of Manipur & others (1999) 8 SCC 287*, in which it was observed that it is now well settled that the service rendered as officiating appointment or even on probation, cannot be ignored for reckoning the length of continuous officiating service for determining place in seniority list. Where the first appointment is made and such appointment is later approved, approval would mean that his confirmation shall relate back to the date on which appointment was made and the entire service will have to be computed in reckoning the seniority.

19. Ld. Counsel for the petitioner also relied upon the decision rendered by Hon'ble Supreme Court in *Siraj Ahmed vs. State of U.P. (2019 SCC Online SC 1613)* to submit that in that except for the

concurrence of Public Service Commission, the appointment of appellant was made following due procedure. The appellant uninterruptedly served till regularization of his services and is squarely covered by judgment rendered in *Direct Recruit Class II Engineering Officer's Association (supra)*, in which several judgments including those in *Baleshwar Dass vs. State of U.P. and others, (1981) 1 SCR449; Delhi Water Supply and Sewage Disposal Committee and others vs. R.K. Kashyap and others, (1989) Supp. 1 SCC 194 and Narendra Chadha and others vs. Union of India and others, (1986) 1 SCR 211*, have been referred to and discussed.

20. Petitioner was initially appointed as Draftsman in the erstwhile State of U.P., Public Works Department. He was promoted to the post of JE(T) *w.e.f.* 30.06.2007 *vide* O.M. dated 17.05.2007. Respondent No.3 failed to refer the matter to Public Service Commission. The Uttarakhand Public Works Department Subordinate Engineering (Junior Engineer Civil, Technical, Electrical and Mechanical) Service Rules, 2007, came into force on 22.11.2007. Petitioner was promoted on the post of JE(T) on 30.06.2007 and the Rules of 2007 came into force on 22.11.2007, with immediate effect. The Rules were not given retrospective effect.

21. Petitioner was promoted as Assistant Engineer (Civil) *vide* O.M. dated 19.09.2014, after considering the objections. Petitioner's name figured at Sl. No. 77 in the final seniority list of Assistant Engineer(Civil), after considering the objections. In letter dated 24.09.2016 (Annexure: 6), Engineer-in-Chief/ H.O.D., P.W.D. has written to the Secretary, P.W.D., Govt. of Uttarakhand that *Uttarakhand Lok Sewa Aayog (Kritiyon ka Pariseeman) Viniyam, 2003*, was not in the knowledge of the respondent department, therefore, 22 Draftsmen were given regular promotion as JE(T). It has also been mentioned in the said letter that 10 Draftsmen out of 12, who were promoted to the post of JE(T), were given relaxation by the respondent department. The meeting of the selection committee, which was convened on 26.06.2018, recommended name of the petitioner for the post of JE(T) against the selection year

2006-07. This fact has been admitted by the respondent in office order dated 17.07.2018 (Annexure: 7). Respondent No.3, acting on the recommendation of Respondent No.2, recommended the name of the petitioner against the vacancy of selection year 2006-07 vide O.M. dated 10.08.2018 (Annexure: 8). In requisition dated 13.02.2020, name of the petitioner was mentioned at Sl. No. 08 against selection year 2018-19 (Annexure: 9). Respondent No. 3 sent a revised requisition for promotion from JE(T) to AE (Civil) on 12.05.2020. The name of the petitioner was dropped from the requisition merely because State Govt. did not issue any instruction to the respondent department in response to their letter dated 13.02.2020 (Annexure: 10).

22. Petitioner seeks that period of continuous officiation should be included in determination of his seniority.

23. As per Rule 8(1) of the Uttarakhand Government Servant Seniority Rules, 2002 (for short, Seniority Rules, 2002), seniority of an employee is counted from the date of substantive appointment. Rule 4 (h) of the Seniority Rules defines that substantive appointment is an appointment, not being an *ad-hoc* appointment, made after selection in accordance to Service Rules. As admitted by the respondent department, the petitioner was appointed on *ad-hoc* basis, but, was subsequently regularized *w.e.f.* 27.04.1985. The promotion was made after due procedure and claims of all the eligible persons who were considered as per Seniority Rules. *Proviso* to Rule 8 of the Seniority Rules, 2002, states that if appointment order has specified a particular back date, *w.e.f.* which the person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and not the date of order.

24. In the instant case, petitioner was specifically promoted against the vacancy of selection year 2006-07 (Annexure: 7). Respondent No.3, acting on such recommendation, again specifically promoted against the vacancy for selection year 2006-07 (Annexure: 8). The petitioner was promoted against the selection

year 2006-07. Thus, by virtue of *Proviso* to Rule 8 of the Seniority Rules, 2002, the petitioner is promoted against the vacancy for selection year 2006-07 and not from the date of passing of order. Rule 19 of Junior Engineer (Technical) Service Rules, 1968 states that, for promotion of Draftsman to Junior Engineer (Technical), he must be regularized and must have a service of at least 10 years. The criteria of promotion is seniority subject to rejection of unfit. The Rule imposes a duty to make a list of eligible candidates of particular year of promotion in order of seniority and send the same to Public Service Commission. The respondents did not to do the same.

25. Moreover, consultation with Public Service Commission is a formal requirement and should relate back to the date on which appointment was made.

26. Petitioner was regularized on 27.04.1985. As on 30.06.2007, he had rendered services of twenty two years. His promotion in 2007 was also made after evaluating his ACR/ Service Records and he was given promotion as per seniority amongst Draftsmen. Petitioner was eligible for promotion as JE(T) in 2007 and he was promoted as JE(T) against the promotion quota vacancy.

27. As per the then existing Service Rules for the post of AE(Civil), promotion to AE (Civil) cannot be through direct recruitment or promotion under 5% promotion quota to AE(Civil). JE(T) shall become eligible for promotion to the post of AE(Civil) after completing 07 years of satisfactory service. Petitioner was promoted as JE(T) in 2007 and he continuously served as JE(T) up to 2014. Thereafter, he continuously served on promotional post of AE(Civil). Petitioner could not be treated as ineligible for regular promotion to the post of AE(Civil). Petitioner should be deemed to have been promoted to the post of JE(T) against selection year 2006-07 and not 2018-19. The impugned order dated 22.10.2020 should be set aside. A *de novo* seniority list of the post of JE(T) should be directed to be prepared, considering petitioner's seniority from the date his junior was promoted. The petitioner could not be denied regular promotion

to the post of AE(Civil). He should be promoted on regular basis on the post of AE(Civil) from the date his junior was promoted, in the peculiar facts of the case.

28. It is trite law that the respondent department cannot stretch its case beyond what has been written in the impugned order. It will be quite useful to reproduce the observations of Hon'ble Mr. Justice Vivian Bose in *Commissioner of Police, Bombay vs. Gordhandas Bhanji*, AIR 1952 SC 16, herein below for convenience:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older”

29. Order accordingly.

30. The seniority list dated 22.10.2020 (Annexure:1) issued by In-charge Engineer-in-Chief and H.O.D., Public Works Department, Dehradun (Respondent No.3), is set aside *qua* petitioner only. Respondent No.3 is directed to prepare *de novo* seniority list of JE(T). Petitioner shall be given seniority and shall be considered for promotion on the post of AE (Civil) on regular basis, from the date his junior was promoted, in the peculiar facts of the case.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 04, 2024
DEHRADUN

VM