

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 13/DB/2015

Jai Narayan Devrani, S/o Late Chandramani Devrani, presently posted as Administrative Officer, Office of the Executive Engineer, Rural Engineering Service Pauri Garhwal, Pauri.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Rural Engineering Service Department, Secretariat, Dehradun.
2. Chief Engineer, Uttarakhand Rural Engineering Service Department, Rajpur Road, Tapovan Marg, Dehradun.
3. Gunanand Gaur, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Temporary Division Ghansali, Tehri Garhwal.
4. Prem Singh Panwar, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Temporary Division Ghansali, Tehri Garhwal.
5. Rajendra Singh Negi, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Temporary Division Ghansali, Tehri Garhwal.
6. Sher Singh Bagarwal, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, PMGSY Kapkot, Pithoragarh.
7. Dayakrishna Kandpal, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, PMGSY Didihat, Pithoragarh.
8. Kailash Chandra Upadhyay, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Didihat, Pithoragarh.

9. Subhash Chandra Chaudhary, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Champawat.
10. Bhagwat Chandra Joshi, presently posted as Administrative Officer, C/o- Office of the Superintending Engineer, Rural Engineering Service, Circle Pithoragarh.
11. Ramesh Chandra Pathak, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Almora.
12. Rakesh Mohan, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Haridwar.
13. Ashok Kumar Thapliyal, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Pauri.
14. Bhupal Singh Papola, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Temporary Division Bhikiasain, Distt. Almora.
15. Rajendra Prasad Pant, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Udham Singh Nagar.
16. Sarjeet Singh Mehra, presently posted as Administrative Officer, C/o- Office of the Executive Engineer, Rural Engineering Service, Division Almora.

.....Respondents

Present: Sri T.R.Joshi, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondent Nos. 1 & 2

JUDGMENT

DATED: APRIL 21, 2016

(HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (ADMIN.))

1. The petitioner has filed this claim petition for seeking the following relief:

“I. To set aside the impugned order dated 10.02.2015 passed by respondent no. 2 alongwith the seniority list, whereby the representation filed by the petitioner has been rejected, retrieving the seniority as fixed by order dated 12.02.2013.

II. To direct the respondent no. 2 to consider the seniority of the petitioner w.e.f. 01.04.1985, the initial date of appointment in place of 26.05.1987 placing him at appropriate serial number.

III. Award cost of the petition.”

2. The relevant facts in brief are that the petitioner was initially appointed on the post of Junior Assistant in the office of the Executive Engineer, Rural Engineering Service Department at Gopeshwar, District Chamoli on 01.04.1985 (Annexure:2).

3. Another Office Order dated 26.05.1987 (Annexure:6) was issued by the Executive Engineer, Rural Engineering Service Department, Gopeshwar, district Chamoli by which the petitioner and four other persons were appointed as Junior Assistants temporarily as their work in adhoc capacity was found to be satisfactory.

4. A seniority list of Junior Assistants was issued on 12.02.2013 (Annexure: 7) by respondent No. 2 and according to this, the seniority of the petitioner was determined taking date of 01.04.1985 as date of petitioner's substantive appointment. Later, respondent No. 2 cancelled this seniority list and an exercise to prepare the seniority list of Junior Assistants was done again. A tentative seniority list was issued on 28.10.2014 by respondent No. 2 (Annexure: 4) and objections were invited. In this tentative seniority list, the seniority of the petitioner was shown taking 26.05.1987 as date of his substantive appointment. The petitioner filed his objections against the tentative seniority list on 10.11.2014 (Annexure: 5). The petitioner contended in his objections that his date of substantive appointment is 01.04.1984 and it is not proper to take 26.05.1987 as date of his substantive appointment. The objections of the petitioner were rejected by respondent No. 2 vide order dated 10.02.2015 and the final seniority list was issued (Annexure: 1).

Aggrieved by this final seniority list issued on 10.02.2015, the petitioner filed a writ petition in the High Court of Uttarakhand at Nainital and the same was dismissed on the ground of alternative remedy before the State Public Services Tribunal vide order dated 03.03.2015(Annexure 8). Hence, the petition.

5. The main grounds on the basis of which the seniority list dated 10.02.2015 (Annexure:1) has been challenged are that the date of substantive appointment of the petitioner is 01.04.1985 and not 26.05.1987; there was no reason to deviate from the earlier seniority list of 12.02.2013; there is wrong interpretation of the Uttarakhand Government Servants Seniority Rules, 2002; impugned order has disturbed the admitted long term seniority; the petitioner was awarded one increment after completion of 10 years' satisfactory service (w.e.f. 01.04.1985) in 1995; the benefit of the Assured Career Progression (ACP) scheme dated 08.03.2011 was also given to the petitioner after completion of 20 years' regular satisfactory service from the date of initial appointment in 1985; and the representation of the petitioner has been rejected on erroneous ground and extraneous consideration.

6. Respondents No. 1 and 2 have opposed the claim petition and stated in their joint written statement that the final seniority list dated 10.02.2015 has been issued by respondent no. 2 as per Seniority Rules. The date of substantive appointment of the petitioner is 26.05.1987 and his seniority has been fixed on the basis of this date. The petitioner was not substantively appointed on 01.04.1985 as is being claimed by the petitioner. The appointment of the petitioner was not a regular appointment vide order dated 01.04.1985. It has further been contended by the respondents No.1 and 2 in the written statement that after issuing the seniority list on 12.02.2013, it came to the notice of the Department that the list was not prepared correctly on the basis of dates of substantive appointment of various employees and, therefore, this seniority list was cancelled and the exercise to prepare the correct seniority list was done again. After issuing the tentative seniority list on 28.10.2014, the

objections were invited and after considering the objections (including the objections of the petitioner), final seniority list was issued on 10.02.2015. The seniority list has been prepared according to dates of substantive appointments of the employees as per the Uttarakhand Government Servants Seniority Rules, 2002 (herein after referred as Seniority Rules of 2002). Respondents No.1 and 2 have contended that the claim petition is devoid of merit and, therefore, liable to be dismissed.

7. In spite of sufficient service, private respondents No. 3 to 16 have not filed any written statement.

8. The petitioner has also filed the rejoinder affidavit and the same averments which were stated in the claim petition have been reiterated and elaborated in it.

9. We have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of respondents No.1 and 2 and also perused the record carefully.

10. Learned counsel for the petitioner argued that the petitioner was appointed substantively from 01.04.1985 and, therefore, the petitioner is entitled to get seniority from this date. Learned A.P.O. refuted the argument and contended that 'substantive appointment' has been defined in the Seniority Rules of 2002 and in the light of the definition, the petitioner's appointment on 01.04.1985 was not a 'substantive appointment' and, therefore, the petitioner is not entitled to get seniority from 01.04.1985.

11. It is admitted to both the parties that the 'seniority' is required to be fixed according to the Seniority Rules of 2002. The Seniority Rules of 2002 have over-riding and retrospective effect. Rule 3 of the Seniority Rules of 2002 reads as under:-

“3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to before.”

It is also admitted to both the parties that the relevant date to fix the seniority of an employee is the date of ‘substantive appointment.’ While the contention of the learned counsel for the petitioner is that the date of substantive appointment of the petitioner is 01.04.1985, the learned A.P.O. contended that the appointment of the petitioner on 01.04.1985 is not substantive appointment according to the Seniority Rules of 2002.

12. Rule 4(h) of the Seniority Rules of 2002 defines the ‘substantive appointment’ as under:-

“(h) “substantive appointment” means an appointment, not being an ad hoc appointment, on the post in the cadre of the service, made after selection in accordance with the service rules relating to that service.”

Before the Seniority Rules of 2002, the “Uttar Pradesh Government Servants Seniority Rules, 1991” were in force. These rules of 1991 also had the same over-riding/retrospective effect as the Seniority Rules of 2002 have. Similarly, the definition of ‘substantive appointment’ above in the Seniority Rules of 2002 was also exactly the same in the rules of 1991.

13. Above definition of ‘substantive appointment’ makes it clear that an ad hoc appointment is not a ‘substantive appointment’. It is also clear from Rule 4(h) above that in order to be a ‘substantive appointment’, an appointment should have been made after selection in accordance with the Service Rules relating to that service.

14. The petitioner as well as state respondents were directed to file the appropriate service rules which govern the appointment on the post of Junior Assistant in the Department. Learned A.P.O. could not file relevant recruitment/service rules on behalf of respondents No. 1 and 2. Learned

counsel for the petitioner filed “उत्तर प्रदेश ग्रामीण अभियंत्रण विभाग अधीनस्थ अभियांत्रिक सेवा नियमावली, 1984 (Annexure: 12). The perusal of these Rules clearly reveals that that said Rules are for the cadre of “सहायक विकास अधिकारी (अवर अभियंता)” and the Rules are not at all applicable to the recruitment/appointment on the post of Junior Assistant which is a clerical post in the Ministerial staff.

15. In the light of the definition of ‘substantive appointment’ above, we would like to examine the appointment of the petitioner on 01.04.1985. The appointment letter of the petitioner (Annexure: 2) is reproduced below:-

“कार्यालय अधिशासी अभियन्ता, ग्रामीण अभियंत्रण सेवा गोपेश्वर।

संख्या /1-स्था0/ग्रा0अ0से0/85 दिनांक 1-4-1985

कार्यालय आदेश

कार्यभार ग्रहण करने की तिथि स निम्नलिखित अभ्यर्थियों की नियुक्ति प्रखण्ड कार्यालय, ग्रामीण अभियंत्रण सेवा गोपेश्वर में कनिष्ठ लिपिक के पद पर वेतनमान 354-10-425 दरो-10-454-12-515 दरो-12-550 में अग्रिम आदेशों तक की जाती है। इसके अतिरिक्त उन्हें शासन द्वारा समय-समय पर अन्य भत्ते भी देय होंगे।

1- श्री जयनारायण देवरानी, पुत्र श्री चन्द्रमणी देवरानी, ग्राम डुन्डेख, पो0औ0 डाडागन्डी, जिला पौड़ी गढ़वाल

2-श्री गोविन्दसिंह असवाल, पुत्र श्री गिरधारी सिंह, ग्राम पीड़ा, पो0औ0 चुन्डई, पट्टी कौड़िया जिला पौड़ी गढ़वाल

इस नियुक्ति के फलस्वरूप नियमित नियुक्ति के लिये कोई क्लेम नहीं होगा। योगदान करते समय उपरोक्त अभ्यर्थियों को निम्नलिखित प्रमाण पत्र प्रखण्ड कार्यालय गोपेश्वर में प्रस्तुत करने होंगे। योगदान के कोई यात्रा भत्ता देय नहीं होगा। उपरोक्त अभ्यर्थियों की सेवायें पूर्ण अस्थायी हैं।

.....

(सतीश कुमार वर्मा)
अधिशासी अभियन्ता,
ग्रामीण अभियंत्रण सेवा,
गोपेश्वर।
कैम्प पौड़ी।”

16. The underlined parts of the appointment letter are crucial to understand the nature of appointment made on 01.04.1985. These are given below:-

- (i) “कार्य-भार ग्रहण करने की तिथि से.....नियुक्ति.....अग्रिम आदेशों तक की जाती है।”
- (ii) “इस नियुक्ति के फलस्वरूप नियमित नियुक्ति के लिए कोई क्लेम नहीं होगा।”
- (iii) “उपरोक्त अभ्यर्थियों की सेवायें पूर्ण अस्थायी हैं”

Above conditions in the appointment letter lead to draw an inference that the appointment is not regular; and it is purely an adhoc arrangement. The appointment could be withdrawn at any time as the appointment was till further orders; the appointment was purely temporary; and the appointment did not entitle the appointee to claim a regular appointment on the basis of this appointment. The very fact that the appointment order mentions that “इस नियुक्ति के फलस्वरूप नियमित नियुक्ति के लिए कोई क्लेम नहीं होगा,” makes it clear that the appointment was not regular; it was purely an adhoc appointment dehors the rules. The counsel for the petitioner could not demonstrate that the appointment of the petitioner was made after selection of the petitioner in accordance with the service rules which govern the recruitment/appointment on the post of Junior Assistant in the Department. Therefore, on the basis of the record made available to the Tribunal, the appointment of the petitioner on 01.04.1985 cannot be said to be a ‘substantive appointment’ as defined under Rule 4(h) of the Seniority Rules of 2002 and it was totally an adhoc appointment.

17. Learned counsel for the petitioner has also contended that the petitioner was granted one increment as per the Time Scale Promotion/Increment scheme of the government dated 03.06.1989 (Annexure: 10) after completion of satisfactory service of 10 years in 1995 and he was also granted the benefit of Assured Career Progression (ACP) scheme of 08.03.2011 (Annexure: 11) after completion of 20 years (from 1985) in 2005. Learned A.P.O. stated that these schemes under which the petitioner has been benefited have no connection with the determination of the seniority of government employees. We tend to agree with the contention of the learned A.P.O. The perusal of the scheme of the government dated 03.06.1989 (Annexure: 10) reveals that

the same is related to the fixation of pay on the basis of the report of the “समता समिति” and it does not deal with the determination of seniority in any manner. The ACP scheme of the government dated 08.03.2011(Annexure: 11) is related to the assured career progression of government employees and the seniority is not governed by the scheme. Paragraph 3(7) of the government order dated 08.03.2011 makes it clear that the ACP scheme has no relation with the seniority. The paragraph 3(7) of the GO is reproduced below:

“(7) इस योजना के अन्तर्गत प्राप्त वित्तीय स्तरान्तरण पूर्णतयः वैयक्तिक हैं और इसका कर्मचारी की वरिष्ठता से कोई संबंध नहीं है। कोई कनिष्ठ कर्मचारी इस व्यवस्था के अन्तर्गत उच्च वेतन/ग्रेड वेतन प्राप्त करता है, तो वरिष्ठ कर्मचारी इस आधार पर उच्च वेतन/ग्रेड वेतन की मांग नहीं कर सकेगा कि उससे कनिष्ठ कर्मचारी को अधिक वेतन/ग्रेड वेतन प्राप्त हो रहा है।”

In the light of above, granting of benefits to the petitioner under the schemes of the government after completion of 10 years and 20 years of service (after 1985) does not entitle him to claim the seniority from the year 1985.

18. Learned counsel for the petitioner has also contended that the impugned order has disturbed the settled and universally admitted long term seniority in the department. In his counter argument, learned A.P.O. has stated that the earlier seniority list was issued on 12.02.2013 (Annexure: 7) and after issuing this seniority list, it came to the notice of the department that the list was not prepared correctly on the basis of substantive appointment of various employees and, therefore, this seniority list was cancelled and the exercise to prepare the correct seniority list was done again. Learned A.P.O. further stated that in order to do this exercise, a tentative seniority list was issued on 28.10.2014 (Annexure: 4), the objections were invited and after considering the objections of the petitioner alongwith the objections of other employees, the final seniority list was issued on 10.02.2015 (Annexure: 1) on the basis of dates of substantive appointments of the employees according to Rule 4(h) of the Seniority Rules of 2002. We have carefully gone through the record and there is nothing on record to suggest that any

seniority list was issued in respect of the cadre of the Junior Assistant in the department during the period 1985 to 12.02.2013. We find that the seniority list issued on 12.02.2013 has been rectified by the department by issuing the tentative seniority list on 28.10.2014 and the final seniority list on 10.02.2015. Learned counsel for the petitioner could not demonstrate that any seniority list was issued between 1985 and 2013 and the settled and long-term seniority list was disturbed. We are, therefore, of the opinion that the seniority list was rectified by the department without unreasonable delay and the case in hand is not a case where a settled seniority list has been disturbed.

19. No other points were raised and pressed by the learned counsel for the parties for adjudication.

20. For the reasons stated above, we do not find any merit in the claim petition and the same is liable to be dismissed.

ORDER

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

JUSTICE J.C.S.RAWAT
CHAIRMAN

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: APRIL 21, 2016
DEHRADUN

KNP