

**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. 07/NB/DB/2018

Surendra Singh Rawat, aged about 47 years, S/o Sri Gujain Singh Rawat,
R/o Doodh Pokhara, District Champawat.

.....Petitioner

Vs

1. State of Uttarakhand through Chief Secretary, Horticulture, Uttarakhand Secretariat, Dehradun.
2. Director, Uttarakhand Tea Development Board, Almora.
3. Keshar Singh Gangola S/o Sri Ganga Singh, presently posted as Field Assistant Nauty Tea Garden Gairsain, Distt Chamoli.
4. Aan Singh Mehra S/o Sri Than Singh Mehra, presently posted as Field Assistant, Tea Garden Shyamkhet District Nainital.

.....Respondents.

Present: Mohd. Matloob & Sri A.N.Sharma, Advocates for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents no. 1 & 2
Sri Mukesh Rawat, Advocate for Respondents No. 3&4

JUDGMENT

DATED: JANUARY 06, 2025

PER: HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN(A)

1. By means of present claim petition, petitioners seeks the following reliefs:

- i) *Quash the order dated 18/5/2015 shown as Annexure No. 6 passed by the respondent no.2 whereby promoting the respondent no.3 from the post of Bagan Supervisor to the post of the Field Assistant.*
- ii) *Quash the order dated 18/9/2015 shown as Annexure No 7 passed by the respondent no.2 whereby promoting the respondent no 4 from the post of Bagan Supervisor to the post of Field Assistant.*
- iii) *Quash order dated 6/1/2016 and 24/5/2017 shown as annexure No 1 passed by the Respondents no 2*
- iv) *Direct the respondent no 2 to declare senior to the respondent no 3 &4 on the post of Bagan Supervisor as per settled law of seniority of the purpose for the promotion.*
- v) *and to consider the claim of the petitioner for the post of the Field Assistant, promoting him before the respondent non 3 & 4 i.e. before 1/5/2015 on the post of the Field Assistant.*
- vi) *To award ant other relief in favor of the applicant which this Hon'ble Tribunal may deem fit and proper in these circumstances of this case.*
- vii) *To award the cost of the petition in favor of the applicant as against the respondents.*

2. The brief facts of the case are as under:

2.1 The Petitioner Shri Surendra Singh Rawat was initially appointed on 3/9/1995 as supervisor tea garden on daily wages. Shri Keshar Singh Gangola, the respondent No 3 was appointed on 01/11/1995 and Shri Aan Singh Mehra Respondents No. 4 was also appointed on 4/11/1995 in Tea gardens as daily wage workers. Petitioner was engaged on contact basis w.e.f. 5/8/2002 at tea garden at Kausani and then transferred to Champawat. Respondent No 3 was first time engaged as supervisor in Jan 2005, Respondent No 4 in April 2001. The petitioner has more experience than the respondents in the post of supervisor.

2.2 The final list for the regularization of the employees was issued in 2012 in which the petitioner has been shown at Sl. no 5 where as the respondents are at sl no 8 & 9. The petitioner and the

respondents were regularized on the post of Bagan Supervisor on 07/07/2014 in view of the notification of regularization dated 21/11/2011. Regularization order dated 07/07/2014 of Respondent no. 3 was modified and he was regularized against the post of Field Assistant w.e.f. 18/5/2015. Eligibility criteria for promotion to the post of Field assistant was as graduation from recognized University and experience of 5 years as Bagan Supervisor as per the Rule 10(4) of the Board (Annexure-4). Respondent No 4 was promoted to the post of the Field assistant vide order dated 18/9/2015.

2.3 The petitioner made representations to the respondent 2, which were not replied, so he filed a writ petition 784 of 2016 in the Hon'ble High Court. Which was decided by the Hon'ble High Court on 10/4/2017 with the direction to consider the representation of the petitioner. The respondent no. 2 decided the representation on 06/01/2016 that the promotion of respondents were made on the basis of the recommendations of the DPC which considered the work experience during the contractual period and their designations. He will be considered for the promotion against the vacancies in future.

2.4 The post of the Respondent no 3 was renamed from Bagan Supervisor to Field assistant in the National employment Guaranty scheme in the Uttarakhand Tea Development, Almora on 04/5/2012, this renaming was not to be given any benefit to the respondent no 3.

2.5 The petitioner is senior and more qualified in comparison to the respondents 3 & 4, so he deserves to be promoted to the post of the Field Asstt. earlier to both of them.

3. Respondent no. 1 & 2 filed Counter affidavits and submitted that the DPC in a meeting was held on 14/9/2015. As many persons were regularized on the same date, the Committee, based on the experience, prior to regularization, nomenclature of the post considered the employees for the promotion to various posts. Shri Aan Singh Mehra Respondent No 4 was also considered for the

promotion based on his greater experience compared to other employees and recommended for the post of Field Assistant. He was appointed on the post of the Field Asstt. on 18/9/2015. But he was subsequently reverted to the post of Garden Supervisor on 25/7/2016.

3.1 Petitioner worked on contract basis w.e.f. 01/01/2005 to 31/5/20014 as a garden supervisor and w.e.f. 01/6/2014 to 30/6/2014 as Field Assistant. The respondent No. 4 also worked as Garden Supervisor w.e.f. 1/4/2001 to 31/12/2004 and as Field Asstt. w.e.f. 01/01/2005 to 30/6/2014. He was also regularized on 07/07/14 on the post of the garden supervisor. The Government approved the Service Rules in 2016 wherein for the promotion to the post of the Field Asstt, five years' experience as Garden Supervisor is required and there is no qualification mentioned. Respondent no 3 was regularized on 07/7/2014 in the post of Garden supervisor. Based on his representation as other employees were regularized a post lower than that they held before regularization, he should be considered for the post of FA for the regularization, the committee rectified the mistake and regularized him on the post of the FA vide letter dated 18/5/2015.

4. The petitioner filed a Rejoinder affidavit, he reiterated the fact that he was senior to the respondents 3 & 4, he was transferred from Ghorakhal to Kausani as Supervisor in 2002.

5. The private Respondents 3 & 4 filed the Counter affidavit and submitted that the facts submitted by the petitioner are misleading, he was absent from the department for the period from 1997 to 2000, the documents submitted in support of his working during the above period are not related to the concerned department. He was absent from the concerned department for the aforesaid period and joined in September 2002. The petitioner was engaged on contractual basis w.e.f. February 2005. The petitioner has worked regularly from 2000

as against the respondents 3 & 4 who worked since 1995. His absence from the regular service will not be considered for the regular appointment in view of the Judgement of the Hon'ble High court in the matter of Virendra Singh Bist Vs State of Uttarakhand and Others.

6. The petitioner filed a Rejoinder Affidavit in response to the Counter affidavit of the Respondents 3 & 4 and submitted that he was working in the Jari Booti Pariyojana under Kumaon Mandal Vikas Nigam w.e.f. 1995 to 2003. The petitioner worked as a daily wage worker from 01/12/98 in Jari booti Pariyojana. He was on a muster roll for the period from 01/6/97 to 13/4/2000 but the record is not available. He was not absent from the Tea Development Payriyojana. His contention is that the experience of the respondent no. 3 for working as FA from 2012 has been counted for his regularization on the post of the FA as against the terms of his engagement as FA (Annexure 10) and the seniority position of the petitioner has been ignored in this case and the qualification of respondent has also been relaxed.

7. The petitioner filed an amendment application against the promotion of the Respondent -3 on the post of Assistant manager vide order dated 27/10/21, that the petitioner would also have been promoted to the post of Asstt. Manager on 27/10/21. He should have been promoted as FA before Respondent No 3. He requested for the modification in the relief at sl no 8 (v-b)

8. The Respondent No. 3 filed supplementary affidavit and submitted that the petitioner was appointed on 3/9/1995. Petitioner was absent from 6/6/1997 to August 2000 from Tea Board and during that period he worked with Jari Booti Department. He joined Tea Board in September 2000. These are two different departments which are not connected with each other. Whereas the respondent No. 3 was appointed on 1/11/1995 and since then he regularly

worked with the department. So the respondents 3 & 4 are senior to the petitioner. Tea Development project was a separate project under Kumaon Mandal Vikas Nigam from Jari Booti Pariyojana for which there used to be separate budget with the Kumaon Mandal Vikas Nigam.

9. Additional Counter affidavit has been filed by the Respondent no. 2 and it has been submitted that the Tea development scheme was sanctioned first time in 1994. Uttarakhand Tea board was constituted in February, 2004. Uttarakhand Jari Booti Pariyojana was a separate project under Kumaon Mandal Vikas Nigam. In 2015 the Service rules were not approved by the Government, so the Board constituted a Selection Committee for the promotion. The committee prepared a seniority list for the approval of the Board. Based on the experience of the workers, the promotion in 2015 were given and the petitioner was left out. The petitioner was promoted to the post of the Field Assistant vide order dated 27/10/2021. The petitioner was appointed as a daily wage worker in the Tea development project at Ghorakhal. In 1997 to 1998 he worked in Jari Booti Vikas Nigam of Kumaon Mandal Vikas Nigam which was separate project under KMVN.

10. The petitioner filed an Additional Rejoinder and submitted that there were no service rules in the department in 2015, so the seniority list prepared is liable to be set aside. The petitioner has 17 years of experience at the time of regularization as against 9 years of Respondent No 3 and 13 years of Respondent No 4. He has submitted that the projects of Jari Booti and Tea Development were separate but they were under Kumaon Mandal Vikas Nigam. The employees working in these projects were the employees of the Kumaon Mandal Vikas Nigam. He was deputed for supervision of the plantation of Geranium in Dronagiri in 1998. In 2000 he handed over the charge of the Dronagiri. So he worked in Jari Booti Pariyojana

since 1997 to 2000 which was supervised by the Kumon Mandal Vikas Nigam.

11.1 There were no Govt. service rules in 2015 and the promotions were done without service rules. The respondent 3 & 4 were regularized in the post of Garden Supervisor in 2014. But the Respondent No 3 was regularized on the post of the FA in 2015 and further promoted to the post of the Asstt. Manager in 2021.

11.2 The petitioner was appointed as a supervisor on contract basis w.e.f. 01/01/2005 to 31/05/2014 and w.e.f. 01/06/2014 to 30/06/2014 as Field Assistant. He was regularized w.e.f. 07/07/2014 as Garden Supervisor.

11.3 The respondent no 4 Shri Aan Singh Mehra was appointed as a supervisor on contract basis w.e.f. 1/1/1995 to 31/05/2014 and w.e.f. 01/06/2014 to 30/06/2014 as Field Assistant. He was regularized w.e.f. 07/07/2014 as Garden Supervisor.

12. We have heard learned Counsel for the parties and perused the record.

13. The learned counsel on behalf of the petitioner pleaded that the petitioner is senior to the respondents no 3 & 4. He was appointed as Garden supervisor and the Respondents 3 & 4 were also appointed as the garden supervisor but on the later dates. The petitioner was also regularized vide the Government order dated 07/07/2014 on the post of the Garden Supervisor. But the order in respect of the Respondent No. 3 was amended and he was regularized on the post of the Field Assistant. The eligibility criteria for the FA was amended by the respondents 1 & 2 to select respondents no 3. He has shown the copies of the attendance registers for some duration, appointment letters of himself and of the respondents 3 & 4.

14. The learned Counsel on behalf of the respondents no. 3 & 4 pleaded that there is break in the service of the petitioner and that is

the reason that he has been placed below respondent no 3. The seniority list dated 30/5/2023 notified by the Department also shows that the respondent No. 3 was regularized on the post of the Field Assistant and the Petitioner and the Respondent. 4 were on the post of the Garden Supervisor which is lower than field Assistant. So the petition is liable to be dismissed.

15. The learned A.P.O. also pleaded that the petitioner did not work continuously till his regularization in the department, so he has been placed junior to the respondent no 3.

16. On the basis of the above discussion, we reached to the following conclusions:-

(i) The petitioner has requested to quash the order dated 18/5/2015 of the Respondent No 2 which the petitioner claims to be the promotion order. Whereas it is a regularization order issued by the respondent No. 2 as the modification of the order of regularisation dated 07/7/2014 in which the respondent No 2 has also specifically mentioned that it is not a promotion order. Hence, the relief No. 1 sought by the petitioner becomes infructuous as it is regularization order and not a promotion order issued by the respondent No 2 in respect of the respondent No. 3.

(ii) The petitioner has requested to quash the order dated 18/9/2015 issued by the Respondent No 2 for the promotion of Respondent No 4 to the post of the Field Asstt. The respondent No 2 has withdrawn this order vide order dated 25 /7/2016. In views of the order of the withdrawal the relief No.2 also becomes infructuous.

(iii) The petitioner has requested to quash the order dated 6/1/2016 and 24/5/2017of respondent no. 2. These are simply the assurances and the factual information only given by the Respondent No 2.

(iv) The relief No. 4 is also not clear as whom the petitioner wants to be senior to Respondent No 3 & 4.

(v) Relief no. 5 sought by the petitioner is for promoting him before 01/5/2015, before the promotion of the respondent No 3 & 4. The Respondent No. 3 was regularized on 18/5/2015 and not promoted. The order of the respondent No. 4 was withdrawn by the respondent No 2, so the relief sought of the petitioner for promoting him ahead cannot be granted.

17. In view of the above, the petition lacks clarity in seeking the reliefs. Hence, the relief sought by the petitioner are totally vague, so the claim petition is liable to be dismissed.

ORDER

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

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

DATED: JANUARY 06, 2025
DEHRADUN.
KNP