

**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. 101/NB/DB/2023

Usha Rana (Female) aged about 46 years, W/o Jagdish Rana, R/o Kasni Bin, P.O. Bin, District Pithoragarh-262501.

-----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. Sheela Shah W/o Vikas Kumar Shah Presently Posted as Manager, Kumaon Mandal Vikas Nigam Ltd. through Personnel Officer, KMVN Headquarter, Oakpark, Mallital, Nainital.

.....Respondents

Present: Sri Yogesh Pacholiya, 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: JANUARY 16, 2025

By way of this claim petition, the petition seeks the following reliefs:

“1- To issue an order to set aside/quash the impugned final seniority list of 2022, so far it is related to the post of Manager/ Receptionist (Pay band 5200-20200 Grade Pay Rs. 2800/4200 Metrix level 5) (contained as Annexure No.1 to the claim petition).

II- To issue appropriate direction to the respondents to correct/modify the seniority of petitioner on the post of Manager, Tourism cadre (Pay band 5200-20200 Grade Pay Rs. 2800/4200), in order of his date of appointment in tourism cadre and further also grant the benefit of the seniority to the petitioner on the other higher posts or other superior post.

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

IV- to award the cost of the petition to the petitioner.”

2. The facts of the case, in brief, are as follows:

2.1 The petitioner was initially appointed in the year 1990-91 against substantively vacant Class-III post of Receptionist (Swagati) on a consolidated amount per month. Since then, she was working on the said post continuously. She had worked at various places, as per the directions of authorities.

2.2 To upgrade her educational qualification, the petitioner took admission in the Diploma in Tourism Course of Uttarakhand Open University, with prior intimation to Respondent Corporation. After completion of Diploma, petitioner also submitted said certificate in the Head Office of corporation, which was duly recorded by department in the service record of petitioner.

2.3 In the year 2011, the Govt. of Uttarakhand, with a view to regularize the services of daily wagers, work-charged and ad-hoc appointed employees framed the Rules, namely 'Daily Wagers, Work-charged, Contract, Fixed Pay, Part-time and Adhoc Appointed Employees, Regularization Rules, 2011'. The KMVN, with a view to regularize the services of its employees, adopted the aforesaid Regularization Rules, 2011. The Managing Director, KMVN, vide order dated 3/4.9.2013 regularized the services of petitioner and other employees 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/-) by a common order. However, all of them were doing different nature of work and were posted on different posts. Moreover, the respondents while regularizing the services of employees, put them all at par and without

verifying their nature of work or duties. The petitioner was initially working as receptionist and subsequently, the Nigam administration appointed/ posted her 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/-).

2.4 The services of petitioner and other employees were regularized in the year 2013 but did not allot them cadre/post. The respondent no.2, ultimately, vide order dated 2.8.2017, allotted the post to the regularized employees but the name of petitioner was not included in the said list.

2.5 Feeling aggrieved by the said action of respondents, the petitioner filed several representations before the respondent authorities and also met personally with them. The petitioner had pursued the diploma course in tourism study from Uttarakhand Open University, through open distance learning mode and for pursuing any course through distance mode, prior permission was not required. But despite this fact, the petitioner sent letter to the departmental officers through Manager, TRH Pithoragarh for pursuing the course with due permission of respondents.

2.6 It is submitted that for appointment in tourism cadre, a person must have possessed the Tourism Degree/Diploma from any recognized university. Therefore, the petitioner in anticipation of her future regularization, decided to join the Diploma in Tourism Studies Course of Uttarakhand Open University. The Respondent corporation recorded the Diploma in the service record of petitioner and this fact is evident from an eligibility list prepared by the department for allotment of cadre, in which name of petitioner figured at sl. no. 22 and in front of her name in column no. 5 her educational qualification is mentioned as 'B.A./ Computer, Diploma in Tourism Studies'. Since petitioner's services are regularized in the 2013, therefore prior to 2013, the rules applicable upon permanent employees cannot be made applicable in case of the petitioner.

2.7. In the year 2019, the respondent no. 3 asked the petitioner that if she wants to get benefit of cadre / post, she would have to submit an affidavit to the effect that if she gets the post of Receptionist, she would not claim for seniority in future. The petitioner had no option but to accept the same. On the compelling circumstances, the petitioner prepared an affidavit on 24.12.2019 and submitted affidavit before the respondent authorities to this effect. The respondent no. 2, after receiving the affidavit of petitioner, vide order dated 02.01.2020, allotted the post of Receptionist (Swagati) to petitioner in tourism cadre.

2.8 In the month of September-October 2022, the respondent corporation issued a final Seniority list of all the cadre employees in which her name is figured at sl. no. 16, whereas the name of Respondent no.4 is placed at sl. no. 15, who is junior to her. This fact is apparent from the seniority list itself, as the respondent department itself mentioning the date of appointment of Petitioner 06.09.2013, whereas the date of appointment of Respondent no. 4 is mentioned as 24.2.2014. In spite of the apparent seniority of petitioner, the respondent no. 2 & 3 placed the name of respondent no.4, just above the petitioner. This was another example of harassment and exploitation of petitioner, which is not permissible under any law.

2.9 A very basic rule to determine the seniority is "Seniority shall be determined from the date of appointment", but the authorities of respondent corporation did not follow this basic rule of seniority and fixed the seniority of one set of employees very arbitrarily, malafidely and without following any rule.

3. C.A./W.S. has been filed on behalf of the respondents no. 2 & 3, in which, it has been stated as follows:

3.1 The petitioner was initially engaged against the substantive vacant post of receptionist on a consolidated salary in the year 1990-91. It is an admitted case of the petitioner before the Hon'ble Court that her date of birth is 04.02.1976 and by no stretch of imagination she could have been engaged in the year 1991, more particularly when at

the time of initial engagement, her educational qualification was mentioned as graduation.

3.2 It is submitted that the petitioner was initially engaged in May, 1998 for an initial period of 89 days on a muster roll basis as a booking clerk, that too in the marketing division i.e. in the gas service, Pithoragarh and at the said point of time she was never engaged in the tourist rest houses. The private respondent namely Smt. Sheela Sah (respondent no.4) was initially engaged on 17.04.1996 and her initial qualification at the time of engagement was graduation and diploma in tourism. The claimant as well as respondent no.4 was initially engaged more or less in a similar manner, not against any substantive post purely considering the exigency of work.

3.3 By a simple logic, the respondent no.4 was engaged prior to petitioner, she was liable to be placed above the petitioner. The entire case has been contested by the respondent corporation on the ground that since the claimant/petitioner has acquired subsequent qualification in the tourism sector without obtaining prior permission or NOC from the answering respondent corporation and hence she was not considered for allotment of cadre of receptionist at the time when the cadre was allotted to the respondent no.4. The petitioner was considered to be allotted the cadre of receptionist after an affidavit was produced by the claimant on 24.12.2019, wherein she has deposed that if the cadre of receptionist is allotted, she will not claim the seniority with retrospective date and accordingly she was allotted the said cadre on 01.02.2020.

3.4 Even assuming for the sake argument that this particular qualification could have been taken into consideration on 29.09.2018 i.e. the date on which the respondent no.4 was given the cadre of receptionist, due to the prior date of engagement of the respondent no.4 she would have been definitely placed above the claimant/petitioner. It is absolutely clear that the case set up by the claimant/petitioner, to place her above the respondent no.4 is

absolutely erroneous, and absolutely frivolous and as such the claim petition is liable to be dismissed.

3.5 It is submitted herein that no prior intimation to the answering respondent corporation was given before undertaking such course and averments made to the contrary are denied. It is stated herein that since the petitioner was working in the marketing division against a ministerial post and at the said point of time the post were not available in such cadre and hence the petitioner was not allocated the post at the said point of time.

4. R.A. has been filed on behalf of the petitioner and denied the averments made in the W.S. and it has been stated that due to inadvertent typing mistake, the year of appointment was mentioned as 1991, whereas the petitioner was actually appointed in May 1998 against the vacant post of Receptionist and her date of birth is recorded as 04.02.1976 in the service record and educational qualification is Graduation at the time of induction in service.

4.1 It is submitted that petitioner belongs to OBC category. The respondent department had prepared the eligibility list in order of seniority and in view of reservation, provided by the Constitution of India to the different classes in public appointment. It was the reason that the petitioner's services were regularized prior to respondent no. 4, whereas the services of respondent no. 4 were regularized w.e.f. 24.02.2014. Since petitioner was regularized and substantively appointed, prior to respondent no. 4 therefore she is senior to respondent no. 4. It is a settled rule of seniority that seniority shall be determined from the date of substantive appointment.

4.2 It is submitted that the petitioner had completed her Diploma in Tourism studies from Uttarakhand Open University in the year 2010-11, prior to her regularization and submitted the same in the office of Respondent corporation. The respondent corporation accordingly recorded the said Diploma in the service record of petitioner. This fact may be verified from eligibility list prepared by respondent corporation for regularization.

4.3 The respondent corporation had regularized/substantively appointed the petitioner vide its order dated 3/4.9.2013, prior to respondent no. 4, whose date of regularization is 24.02.2014. Keeping in view the date of substantive appointments of petitioner and respondent no. 4, the respondent corporation deprived the petitioner from seniority, and belatedly allotted her cadre / post in the year 2020, only to provide benefit to respondent no. 4.

5. We have heard the learned Counsels for the parties and perused the record.

6. Learned Counsel on behalf of the petitioner pleaded that the petitioner was appointed in 1998 as daily wage worker and worked continuously till her regularization in the corporation on 03/04.09.2013. She has diploma in tourism studies from Uttarakhand Open University. She informed the Respondents corporation to allow her to pursue the study but she did not get any intimation from them. Moreover, she was not a permanent employee in 2011 and such permission was not required by her. However, there is a mention of her obtaining diploma in tourism in the list prepared for regularization by the respondents. He has further pleaded that the case is covered under the judgement of the Hon'ble Tribunal in the matter of Dinesh Chandra Gururani vs State of Uttarakhand and others. The relevant para of the judgment is as under:

“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 EcoTourism (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).”

7. The learned Counsel for the Respondent has pleaded that they have preferred appeal against the order of the Hon'ble Tribunal in the case of Dinesh Chandra Gururani vs. State of Uttarakhand & others in the Hon'ble High Court Uttarakhand, Nainital and requested to wait for the decision of the Hon'ble High Court.

8. Based on the pleadings of learned Counsel for both the parties, we are of the opinion that the petitioner and the respondent no. 4 were engaged as temporary employees on 04.05.1998 and April 1996 respectively. Petitioner was regularized on 03/04.09.2013 and the respondent no.4 on 24.02.2014.

9. The petitioner is senior to the respondent as she was regularised on the earlier date. Both of them were allocated cadre after their regularisation as the posts were not lying vacant at the time of regularisation. But respondent no. 4 was posted as Receptionist on 24.12.2019 and the petitioner on 01.02.2020. Although respondent was working in the corporate cadre earlier to the petitioner, she was regularised after the respondent no. 4. As the respondents applied roster at the time of regularization and the petitioner belonging to OBC category got regularized prior to respondent no. 4.

10. The postings of the workers in the cadre should have been as per the seniority but respondents have given the post of receptionist to the respondent no. 4 earlier, which is wrong. The petitioner and the respondent both hold diploma in tourism which is a requisite qualification for the post of the receptionist. The seniority list showing respondent no. 4 above the petitioner is not as per the rules of seniority.

11. The case is not covered under the judgment dated 15.10.2024 of this Tribunal passed in Dinesh Chandra Gururani vs. State & others. The facts of this case are different from the above decided case.

12. The plea of learned Counsel for the respondents that they are going to challenge the order passed in Dinesh Chandra Gururani

vs. State of Uttarakhand & others and till the matter is finalized by the Hon'ble High Court, the decision in the case may be put on hold. The plea of the learned Counsel for the respondents is not acceptable, as the aforesaid order has not been challenged in the Hon'ble High Court till the date of hearing.

13. Based on the facts presented, we hold that petitioner has been regularized before the respondent no. 4 and she is senior and both the petitioner and the respondent no. 4 hold diploma in tourism which is a requisite qualification for the post of Receptionist in KMVN. So, she should be given the post of the Receptionist prior to respondent no. 4. The seniority list is required to be modified to this extent.

ORDER

The claim petition is allowed. The respondents are directed to modify the seniority list of 2022 by placing the petitioner above respondent no. 4 in seniority, and give the benefit of seniority to the petitioner. No order as to costs.

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: JANUARY 16, 2025
DEHRADUN.
KNP