

**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. 138/NB/DB/2022

1. Lalit Tewari (Male) aged about 43 years S/o Sri Hari Dutt Tewari R/O Lohariyasal Malla, Gali No.4, Krishna Colony, Post Office Katghariya, Haldwani District Nainital.
2. Pushpendra Kumar Mishra (Male) aged about 45 years S/o Sri M.N. Mishra R/o 123/4A Prem Kunj, Near Salonipuram, Roorkee, District Haridwar.
3. Satish Chandra Bhatt (Male) aged about 47 years S/o Late Sri Jawahar Lal Bhatt R/o Roop Nagar, Lane No.5 Near Rawat Farm, Badripur, Dehradun.
4. Dheeraj Gupta (Male) aged about 53 years S/o Sri Suresh Chandra Gupta R/o 56 D.L. Road, Near Hari Mandir, Dehradun.

.....Petitioners

Vs.

1. State of Uttarakhand through its Secretary, Public Works Department, Secretariat, Dehradun.
2. Engineer in Chief and Head of Department, Public Works Department, Uttarakhand Dehradun.

.....Respondents

Present: Sri A. K. Joshi, Advocate for the petitioners
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: FEBRUARY 18, 2025

The petitioners have filed this claim petition for the following reliefs:

“i) Issue an order or direction, directing the respondents to grant the benefit of notional promotion to the petitioners from the date of occurrence of the vacancy.

ii) Issue an order or direction, directing the respondents to fix the seniority of the petitioners on the basis of their year of selection.

iii) Issue any other or further order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv) To award the cost of the petition in favour of the petitioners.

2. Facts, in brief, of the claim petition are that the petitioners were appointed as Junior Engineer on the basis of competitive examination conducted by Uttarakhand Public Service Commission and were appointed vide appointment order dated 10-08-2004 and were posted as Junior Engineer (Civil). The State Government promulgated the Service Rules governing the service conditions of Assistant Engineer known as Uttarakhand Public Works Department Assistant Engineer (Civil) Service Rules 2003. As per Rule 5 of the aforesaid rules as amended on 28.11.2014, the post of Assistant Engineer (Civil) is to be filled by two channels i.e. direct recruitment and promotion. As per rules 40% of the posts are to be filled by direct recruitment made by Uttarakhand Public Service Commission. 45% of the posts are to be filled by promotion from the substantively appointed Junior Engineer (Civil) and Additional Assistant Engineer (Civil) who has completed 7 years of satisfactory service. 5% of the posts is to be filled by promotion from the substantively appointed Junior Engineer (Technical/Computer) and Additional Assistant (Technical/Computer) Engineer who have completed 7 years of satisfactory service. 8.33% of the posts is to be filled by promotion substantively appointed Engineer (Civil) from the Junior and Additional Assistant Engineer (Civil) who have completed 5 years of satisfactory service and is having the additional qualification as described in Rule 8 i.e. the degree passed in Civil or Technical from Institute of Engineers (India) or equivalent. 1.67% of the posts are to be filled by promotion from the substantively appointed Junior Engineer (Technical/Computer) and Additional Assistant Engineer (Technical/Computer) who have completed 5 years of satisfactory services and possess educational qualification as mentioned in Rule 8. The petitioners were given charge of Assistant Engineer and they continued as In-charge Assistant Engineer till their regular promotion as Assistant Engineer.

Since the promotion of the petitioners to the post of Assistant Engineer was delayed by the State Government inspite of the fact that the vacancies were available from selection year 2011-12 and the petitioners were eligible for promotion as evident from the recommendation made by Uttarakhand Public Service Commission and the petitioners should have been the notional promotion from the date of occurrence of the vacancy as they have been promoted against the vacancies available in the year 2011-12, 2012-13 and 2013-14 and in past also the notional promotion has been given from the date of occurrence of the vacancy, therefore the petitioners moved a representation dated 6.8.2021 before the Secretary, Public Works Department followed by reminder dated 13.9.2021 but all in vain.

It is further submitted that one Sri Neeraj Kumar Agarwal who was promoted on 06.01.2020 has been granted notional promotion from 09.12.2011 on the basis of his year of selection vide order dated 22.02.2021. It has also been submitted that the petitioners are legally entitled for notional promotion from the date of occurrence of the vacancy as they have been denied their right for consideration for promotion at the relevant time and the recruitment has been made in all these years from other channel of promotion except the channel of promotion for degree holder Junior Engineer which is not only against the service rules but also violative of Article 14 and 16 of the Constitution of India.

3. After hearing learned Counsel for the petitioners to some extent, he confined his prayer to the extent that he will move a fresh detailed representation to the respondent department, stating all the relevant facts, mentioned in the claim petition, which may kindly be directed to be decided by the respondent No. 1 within a stipulated time, by a reasoned and speaking order.

4. Learned A.P.O. has no objection to the innocuous prayer of learned Counsel for the petitioners.

5. In view of the above, the petitioners shall move a detained fresh representation to the Respondent No. 1 enclosing copy of the same to respondent No. 2 within 15 days and the Respondent No. 1 shall decide the

representation of the petitioners, in the light of Rules 5, 6, 7 and 16 of the Uttarakhand Public Works Department Assistant Engineer (Civil) Service Rules 2003, by a reasoned and speaking order within 60 days, from the date of presentation of certified copy of this order along with fresh representation.

6. Accordingly, the claim petition is disposed of. No order as to costs.

A.S.RAWAT
VICE CHAIRMAN (A)

RAJENDRA SINGH
VICE CHAIRMAN (J)

DATED: FEBRUARY 18, 2025
NAINITAL.
KNP