

**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. 68/NB/DB/2022

Piyush Chandra Kapil (Male) Aged about 53 years S/o Sri Ramesh Chandra Kapil
Rio Gali No. 7 Krishna Vihar Lohriyasaal Talla Haldwani Nainital, Presently
Posted as Junior Assistant in the Office of District Ayurvedic Evam Unani Officer
Nainital.

..... **Petitioner**

Vs.

1. State of Uttarakhand through Principal Secretary Ayush, Dehradun.
2. Director General Ayurvedic and Unani Services Uttarakhand Dehradun.
3. Rajendra Prasad Pant S/o Late Sri Ramdutt presently posted as Chief
Administrative Officer in the office of District Ayurvedic and Unani Officer, Office
Almora.
4. Surendra Dutt Bijalwan S/o Late Sri J.P. Bijalwan presently posted as
Administrative Officer in the office of Director Ayurvedic and Unani Services
Dehradun.
5. Deep Chandra Budhlakoti S/o Late Sri Haridutt presently posted as Senior
Administrative Officer in the office of District Ayurvedic and Unani Officer, Office
Pauri.

.....**Respondents**

Present: Sri Harish Adhikari, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents no. 1 & 2
Dr. N.K. Pant, Advocate for the respondents no. 4 & 5

JUDGMENT

DATED: MARCH 06, 2025

Hon'ble Mr. A.S.Rawat, Vice Chairman(A)

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

“(i) To issue order or direction appropriate in nature and set aside the impugned seniority list dated 06-08-2022 (Annexure No.1) along with order dated 06-08-2022 and further direct the respondents to correct the seniority list by placing the petitioner at serial no.4 keeping in view of his initial appointment as well as the order dated 25-10-2011 passed by the earlier director pursuant to the judgment of the Hon'ble High Court, after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.

“(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Brief facts, as per the claim petition are as follows: -

2.1 The petitioner was initially appointed as Junior Clerk on ad-hoc basis in the pay Scale of Rs. 354-550 against permanent and substantive vacancy vide appointment order dated 30-08-1989 by due process of law in the erstwhile State of U.P. and the Rules Known as UTTAR PRADESH REGULARIZATION OF AD HOC APPOINTMENTS (ON POSTS WITHIN THE PURVIEW OF THE PUBLIC SERVICE COMMISSION) Rules 1979 and UTTAR PRADESH REGULARIZATION OF AD HOC APPOINTMENTS (ON POSTS WITHIN THE PURVIEW OF THE PUBLIC SERVICE COMMISSION) (SECOND AMENDMENT) RULES 1989 were applicable in all departments. The erstwhile State of U.P. has not complied the aforesaid Rules and has not regularized the services of the petitioner after completing one year of service on 30-08-1990. The services of the petitioner were terminated vide order dated 30.06.1992 by the Ayurvedic Department in a very cryptic and arbitrary manner.

2.2 The petitioner challenged the termination order dated 30-06-1992 before the Hon'ble High Court of Allahabad by way of filing the Civil Writ Petition no. 5996 of 1996 S/S, which, after creation of State of Uttarakhand, was transferred to Uttarakhand High Court at Nainital and renumbered as Writ Petition no. 6614 of 2001. The Hon'ble High Court of Uttarakhand, Nainital vide its interim order dated

08-07-2002 directed the respondents to reinstate the petitioner in service with all consequential benefits.

2.3 The respondents complied the order of the Hon'ble High Court dated 08-07-2002 and reinstated the petitioner in service vide letter no. 1856-1861/2002-03/ Est dated 20-09-2002 and directed the petitioner to join his service as Junior Assistant in the Regional Ayurvedic and Unani Officer, Office Chamoli Gopeshwar. The petitioner joined his duties at Chamoli Gopeshwar on 23-09-2002 and discharged his duties continuously without any break as adhoc employee.

2.4 The writ petition of the petitioner was finally allowed on 21-09-2011 with the following directions:

"While passing any order, this court has taken a note of the fact during the pendency of the writ petition, proceedings regarding the regularization of the present petitioner are already in process and other similarly situated Co-persons has already been regularized"

Consequently, the impugned order dated 18-06-1992 passed by respondent no.2 and consequential order dated 30-06-1992 passed by respondent no.3 are liable to be quashed and are hereby quashed."

2.5 After the judgment of the Hon'ble High Court, the respondent no.2 vide order dated 25-10-2011 observed that in view of the order of the Hon'ble Court, the petitioner is entitled for all services benefits and salary of the period w.e.f. 30-06-1992 and also sanctioned all the service benefits to the petitioner. Thereafter, the respondents vide order dated 28-01-2013 regularized the services of the petitioner pursuant to the Regularization Rules of 2002 w.e.f. 28-01-2013. The petitioner who served for almost 24 years has not opposed his date of regularization w.e.f. 28-01-2013 but orally conveyed his objections to the authorities about his regularization w.e.f. 28-01-2013, whereas his initial appointment was 30-08-1989. But at that time, the authorities have assured that his seniority will be intact w.e.f. 30-08-1989 as upheld by the Hon'ble High Court. The authorities also said that the

benefit of all three ACPs is given to the petitioner by counting his service from his initial date of appointment, the first Time Scale is given to the petitioner in September 2003, the Second ACP was allowed to the petitioner on 01-09-2008 and the IIIrd ACP on 01-09-2015 after completing 26 years of satisfactory and regular service and also given the service benefits to the petitioner. On the assurance of the authorities that the seniority of the petitioner will be kept intact, the petitioner has not challenged the date of his regularization.

2.6 The petitioner on 06-11-2020 made a detailed representation stating therein that his seniority and promotion and other benefits should be granted in the true spirit of the order dated 25-10-2011 of the Director. On the representation of the petitioner, the then Director constituted a Committee for disposal of the representation of the petitioner, but till date, the Committee has not taken any decision on the same. Without waiting or asking for decision of the Committee, the respondent no 2 vide order dated 16-04-2022 issued tentative seniority list of the Clerical cadre and invited objections thereon. The petitioner after looking into the tentative seniority list found that he has been placed at serial no. 67 but as per his initial appointment, he has to be placed at serial no. 4.

2.7 The respondent ignored the objections of the petitioner and vide order dated 06-08-2022 rejected the objections of the petitioner in stereotype and cursory manner without considering the judgment of the Hon'ble High Court as well as the orders of the earlier director dated 25-10-2011 and issued the final seniority list on the same day i.e. 06-08-2022.

2.8 The State of U.P. by relying on the provisions of the Uttar Pradesh Regularization of Ad-hoc Appointments (on posts within the purview of the public service commission) Rules 1979, regularized the services of the similarly situated persons in State of U.P. but in the said regularization process, the petitioner was left out without any reason. Various Junior persons appointed after 1990 on ad-hoc basis

were regularized. Thus, in view of the facts stated above it is clear that the petitioner was deprived of the benefit of seniority w.e.f. 1989 because the state government has regularized his services in the year of 2013.

2.9 The petitioner who faced the selection process in the year of 1989 has been deprived of the seniority in spite of the judgment of the Hon'ble High Court in his favor for granting all the service benefits from the initial date of appointment. The act of the respondents is arbitrary, malafide and illegal and against the provisions of the article 14, 16 and 21 of the constitution of India and also opposes to the public policy which is violative to the article 23 of the contract Act.

3. C.A./W.S. has been filed on behalf of private respondents no. 4 & 5 stating therein that no evidence has been submitted by the petitioner regarding his appointment made under the due process of law while the private respondents have been appointed by due process of law. It is further stated that the services of the petitioner have been regularized from 28.01.2013, hence his seniority is rightly determined by the respondents. The claim petition is baseless and is not legally maintainable hence, liable to be dismissed.

4. R.A. has also been filed by the petitioner to the C.A./W.S. filed on behalf private respondents no. 4 & 5, stating that in compliance of the judgment of Hon'ble High Court, the then Director formed a three members Committee on 12.02.2021, to take decision as per the judgment and before getting the recommendation of the said Committee, seniority cannot attain the finality.

5. Respondent no. 3 did not file C.A/W.S. despite sufficient service and giving several opportunities. This Tribunal vide order dated 28.08.2024 decided to proceed ex-parte against respondent no. 3.

6. C.A./W.S. has also been filed on behalf of respondents no. 1 & 2 and it has been contended that-

6.1 The respondents agree to the statements in the claim petition regarding initial appointment, order of the respondents for his reappointment in compliance of the order of the Hon'ble High Court of Uttarakhand, Nainital.

6.2 The Respondent no. 2 issued an order dated 25.10.2011, rescinding the termination order dated 18.06.1992 of the petitioner and reinstating his services to the post of Junior Assistant. The said order explicitly stated that: *The appointment made by the Director, Ayurvedic and Unani Services, Uttar Pradesh, Lucknow, order number Camp/89 (01) dated 30.08.1989 shall remain effective.* Furthermore, "The period from the date of termination on 30.06.1992 to the date of assuming charge upon reinstatement in accordance with the interim order passed by the Hon'ble Court on 23.09.2002, shall be treated as continuous service for all purposes".

6.3 The nature of services of the petitioner had been ad-hoc and temporary as per the terms and conditions contained in the appointment order dated 30.08.1989. The services of the petitioner were regularized with immediate effect on 28.01.2013. The petitioner has neither filed any objection nor any representation against his regularization order before the respondents. He has not challenged it before any Hon'ble Court or forum also. After the gap of 7 years, the petitioner submitted a representation dated 06.11.2020 requesting the respondent no 2 to determine his seniority by considering his services with full service period for all purposes and to provide promotion and other benefits.

6.4 According to the petitioner, the date of his original appointment is the date of initial ad-hoc and temporary appointment 30.08.1989, the basis of which is the order of the Directorate dated 25.10.2011 in compliance of the final judgment of the Hon'ble Court dated 21.09.2011. The regularization of the petitioner's services was done in accordance with the departmental order dated 28.01.2013 and not by the Directorate's order dated 25.10.2011.

6.5 On 16.04.2022, the Directorate of Ayurvedic and Unani Services issued tentative seniority list of Ministerial cadres, wherein the petitioner's name is listed at serial number 67. Subsequently, the petitioner submitted an undated objection letter addressed to the Director of Ayurvedic and Unani Services, Uttarakhand, Dehradun, regarding his objection to the final seniority. In the objection letter, the petitioner referred to his previous application dated 06.11.2020 and cited departmental order number-12707-14/05E-85/Adhi dated 25.10.2011 in support of his request for determination of seniority while considering his services as continuous for all purposes.

6.6 A meeting was held by the Committee constituted by the Director, Ayurvedic and Unani Services Uttarakhand Dehradun for the disposal of objections sent by the petitioner as well as other employees as per rules. The Committee disposed off the representation and decided that seniority of the petitioner has been determined as per rules from the date of the original appointment i.e. the date of regularization of his services 28.01.2013.

6.7 The petitioner has filed the present claim petition before the Hon'ble Public Service Tribunal, Nainital on the ground that his representation dated 06.11.2020 has not been disposed of and no action has been taken by the Committee constituted by the department to dispose of his representation, and the final seniority list of ministerial personnel was issued by the department on 06.08.2022. In which the petitioner was placed at Sl. No. 68 whereas on the basis of his initial, ad-hoc appointment he was to be placed at Sl. No. 04.

6.8 The revised Committee was again constituted to consider the representation dated 06.11.2020 of the petitioner, and after reviewing all facts and records in accordance with the department's letter dated 22.12.2023, the petitioner Shri Piyush Chandra Kapil (petitioner) appeared before the committee on 27.12.2023 and presented his case vide letter dated 27.12.2023. The Committee duly decided the petitioner's representation dated 06.11.2020 along with

the letter dated 27.12.2023 vide the Office Memorandum number 9478-81/5A-85/2023-24/Adhi dated 20.01.2024 issued by the Directorate's Office decided the representation that no action is required to be taken on the representation of the petitioner. Thus, on this count, the claim petition has no legal force and same is liable to be dismissed with cost.

7. The petitioner has also filed R.A. to the Counter Affidavit filed on behalf of respondents no. 1 & 2, in which, he has reiterated the averments already mentioned in the claim petition.

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

9. Learned counsel for the petitioner has pleaded that the petitioner was appointed on ad-hoc basis vide order dated 30/8/1989. Erstwhile state of UP did not regularize the services of the petitioner after completing one year of service on 30/8/1990 and terminated his services on 30/6/1992 by the Ayurvedic and Unani Department. Hon'ble High Court of Uttarakhand, Nainital directed the respondents to reinstate the services of the petitioner with all consequential benefits. The petitioner was reinstated subject to the final outcome of the writ petition. The petitioner joined the service again on 23/09/2002. The petitioner was regularized in the service w.e.f. 28/01/2013. He objected to the date of his regularization orally. The Director Ayurvedic and Unani Services in view of the order dated 29.09.2011 of the Hon'ble High Court of Uttarakhand, Nainital issued the order dated 25/10/2011 vide which the period between 30/06/1992 to 23/09/2002 has been considered continuous in service and sanctioned the pay and other service benefits for this period. The services of the petitioner were considered w.e.f. 30/8/1989 till his date of regularization for the benefit of 1st, 2nd & 3rd ACP in September 2003, September 2008 and September 2015 subsequently. But he has been denied the benefit of seniority w.e.f. 30/8/1989.

10. Learned Counsel for the petitioner has relied on the following judgements:

(a) The judgment of Hon'ble High Court of Punjab and Haryana, passed in State of Haryana & Ors Vs Devi Lal in RSA -752-2012 dated 15/01/2025. In para 20 of the judgment, it has been held as under:

“(20). Similar view has been taken by a Division Bench of this Court, in Letters Patent Appeal No. 886 of 2011 titled "State of Haryana & ors. Vs. Surindra Kumar Mishra & Ors." decided on 13.10.2011 by dismissing the Letters Patent Appeal and upholding the order of the learned Single Judge directing the respondent - State of Haryana to count the ad hoc service rendered by the writ petitioners - respondents towards their seniority in the cadre of Lectures in Government Colleges in Haryana. The Division Bench showed its agreement with the findings of the learned Single Judge on the issues debated and decided observing that if the foundational fact of status of first entry into service is legal and valid which is commensurate with Article 14&16(1) of the Constitution, the consequences of seniority would automatically follow from the initial date. Hence, this Court does not find any illegality and infirmity in the impugned judgment of the appellate court. Conclusion.”

(b) The Judgment of this Tribunal passed in Claim Petition No 96 of 2009, Mohan Singh Bist Vs. State of Uttarakhand and others. This Tribunal has referred the judgement of the Hon'ble High Court of Uttarakhand at Nainital in the writ petition No 806 (s/s) of 2005, the relevant portion of the judgement is as under:

I agree with the contention of the learned Counsel for the petitioner that when the regularization orders are passed on the different dates but indicate that the persons are regularized are so regularize w.e.f same day, the earlier appointed ad- hoc supply inspectors cannot be placed below the supply inspector s appointed on the later date only for the reason that the order of regularization is dated prior to the order regularizing the services of the supply inspectors appointed later on.

11. He has further pleaded that impugned order may be quashed and the claim petition may be allowed.

12. Learned A.P.O. pleaded that the petitioner has been regularized vide the rules of the regularization dated on 28.01.2013. As per the Rule 10(1) of Regularization Rules 2013, the seniority of the person can be determined from the date of regularization and that will be the date of his substantive appointment. The appointment of the petitioner is not as per the Regularization Rules, 2002 and the seniority is determined as per provisions of the Uttaranchal Govt. Servant Seniority Rules, 2002 and he cannot be given the seniority w.e.f.30/08/1989.

13. Based on the pleadings of both the parties and the documents presented, we are of the opinion that the petitioner was appointed on ad-hoc basis on 30/8/1989 on the post of the Junior Clerk. He was reappointed by the respondents on the order of the Hon'ble High Court, was treated as on the job from the date of termination (on 30.06.1992) to his rejoining on 23.09.2002 for which he was paid salary and other consequential benefits also.

14. By the order of the Hon'ble High Court, the ad-hoc service of the petitioner from date of his initial appointment on 30/8/1989 till date of regularization on 28.01.2013 has become continuous. The respondents have considered this period for grant of ACP also. The order of regularization mentions that the seniority of the petitioner will count from the date of his regularization and the respondents did not accept the representation for granting the seniority from his date of adhoc appointment.

15. The judgement of this Tribunal in the matter of Mohan Singh vs State of Uttarakhand is not applicable in this case, as it deals with seniority of the persons who were appointed on the different dated but regularized from the same date by different orders. Here the petitioner and private respondents were regularized from different dates by different orders.

16. The judgment as cited by the petitioner in the case of State of Haryana & Ors vs. Devi Lal (*supra*) is applicable in the case of the

petitioner, as portioner has worked continuously w.e.f. 30/8/1989 till his regularization.

17. On the basis of the above, we hold that the impugned order dated 06.08.2022 is liable to be modified treating the seniority of the petitioner from 30.08.1989, the date of his initial appointment and the seniority list dated 06.08.2022 is liable to be modified to the extent that the petitioner is placed at Sl. No. 4 above Shri Rajendra Prasad Pant.

ORDER

The impugned order dated 06.08.2022 is hereby modified treating the seniority of the petitioner from 30.08.1989, the date of his initial appointment. Accordingly, the respondents are directed to modify the impugned seniority list dated 06.08.2022, placing the petitioner at Sl. No 4 above Sri Rajendra Prasad Pant. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

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

DATE: MARCH 06, 2025
NAINITAL
KNP