

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman(J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 54/DB/2013

1. Sushil Kumar Lamiyan, S/o Shri Tilak Ram, R/o 85, Rajpur Road, Dilaram Bazar, Dehradun (Presently working as Statistical Officer in the office of the Principal Chief Conservator of Forest, Uttarakhand, Dehradun).

.....Petitioner

VERSUS

1. State of Uttarakhand through its Principal Secretary, Forest & Environment Department, Subhash Road, Dehradun.
2. Principal Secretary to the Govt. of Uttarakhand, Department of Forest & Environment, Anubhag-I, Civil Secretariat, Subhash Road, Dehradun.
3. Shri Dinesh Chandra Pandey, Deputy Director (Statistics), in the office of the Addl. Principal Chief Conservator of Forest (Planning & Finance Management), 85, Rajpur Road, Dehradun.
4. Shri Ramesh Chandra, Deputy Director (Statistics), in the office of Principal Chief Conservator of Forest, 85, Rajpur Road, Dehradun.

.....Respondents

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents No. 1 & 2
Dr. Aparna Singh, Ld. Counsel
for the respondent no. 4

JUDGMENT

DATED: DECEMBER 17, 2016

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

1. The petitioner has filed the claim petition for seeking following relief:-
 - (a) The promotion of Respondent Nos. 3 and 4 to the post of Deputy Director (Statistics) against the vacancies notified in

Recruitment year 2010-11 vide impugned order (Annexure-A1) be kindly held illegal, arbitrary, against rules, orders, principles of natural justice, void and be kindly quashed and set aside:

- (b) Respondents No.1 & 2 be kindly ordered and directed to consider the petitioner for promotion to the post of Deputy Director (Statistics) against the vacancies notified on 21.12.2010 of the Recruitment Year and if the petitioner is found suitable to promote him against one of the above vacancies from the Recruitment Year 2010-11.
- (c) Any other relief in addition to or in modification of above, as this Hon'ble Tribunal deem fit and proper, be granted to the petitioner against the respondents; and
- (d) Rs. 20,000/- as costs of this Claim petition be kindly awarded to the petitioner against the respondents jointly and severally."

- 2.1 The petitioner who belongs to Scheduled Caste (SC) Category was promoted to the post of Statistical Officer on 20.12.2005 against the SC quota in the Department of Forest, Government of Uttarakhand. The private respondent Nos. 3 and 4 who belong to General Category were promoted to the post of Statistical Officer on 19.09.2007 when vacancies for General Category became available.
- 2.2 The next promotion from the post of Statistical Officer to the post of Deputy Director (Statistics) is governed by the Uttar Pradesh Forest Statistical Service Rules, 1982 (as amended in 1985). Under the said Rules, the Statistical Officers, who have put in minimum 5 years service, are eligible for promotion to the post of Deputy Director (Statistics) and the criterion for promotion is seniority subject to rejection of unfit.
- 2.3 Vide Government order dated 20.12.2006, two posts of Deputy Director (Statistics) were created as a result of reorganization of cadres of Uttarakhand Forest Department. Before that, no post of Deputy Director (Statistics) existed in the Forest Department.

- 2.4 The two posts of Deputy Director (Statistics) were filled up in July, 2013. Before that on 21.12.2010, the Principal Chief Conservator of Forest (PCCF) sent a proposal to fill up one post of Deputy Director (Statistics) to the Government (Annexure: A 7). It was also mentioned in this letter dated 21.12.2010 that the seniority list of Statistical Officers has not been prepared as on that date. In the said letter, one post of the Deputy Director (Statistics) reserved for Scheduled Caste was proposed to be considered for the promotion of the petitioner.
- 2.5 The Government while considering the letter/ proposal of the PCCF noted that the seniority list of Statistical Officers does not exist and before taking up the exercise of promotion to the post of Deputy Director (Statistics), it would be appropriate to first prepare the seniority list. The PCCF was directed to send the tentative seniority list of the Statistical Officers on 31.01.2011, the same was sent by the PCCF to the Government. Thereafter, the Government (the Appointing Authority) issued the tentative seniority list and invited the objections on 08.09.2011 and after considering the objections issued the final seniority list on 05.01.2012.
- 2.6. In the final seniority list, the petitioner though was promoted to the post of Statistical Officer (in 2005) before the private respondents (in 2007) yet he was shown below the private respondents as the private respondents were senior to the petitioner in the feeding cadre and according to Rule 6 (and its explanation) of the Uttarakhand Government Servant Seniority Rules, 2002, the private respondents regained their seniority in spite of their promotion after the promotion of the petitioner.
- 2.7 The petitioner submitted a representation against the final seniority list (dated 05.01.2012) which was rejected on 12.06.2013.
- 2.8 After the seniority list of the Statistical Officers was settled, the Government held a meeting of the Departmental Promotion Committee

(DPC) on 12.07.2013 and recommended private respondents No. 3 and 4 for promotion. The minutes of the DPC are reproduced below:-

“वन सांख्यिकी सेवा संवर्ग में सांख्यिकी अधिकारी से उप निदेशक (सांख्यिकी) के रिक्त पदों पर पदोन्नति के संबंध में दिनांक 12.07.2013 को आहूत चयन समिति की बैठक का कार्यवृत्त।

उपस्थिति:-

- | | |
|---|---------|
| 1. श्री एस0 रामास्वामी,
प्रमुख सचिव, वन एवं पर्यावरण। | अध्यक्ष |
| 2. डॉ0 आर0बी0एस0 रावत,
प्रमुख वन संरक्षक, उत्तराखण्ड। | सदस्य |
| 3. श्री एस0टी0एस0 लेप्चा, अपर प्रमुख वन संरक्षक
नियोजन एवं वित्तीय प्रबन्धन, उत्तराखण्ड। | सदस्य |

उत्तराखण्ड वन विभाग के संरचनात्मक पुनर्गठन शासनादेश दिनांक 20.12.2006 के द्वारा वन सांख्यिकी संवर्ग में उप निदेशक (सांख्यिकी) के दो पदों का सृजन किया गया है। यह पद वर्तमान में रिक्त हैं।

2- वन सांख्यिकी सेवा नियमावली संशोधन -1985 के नियम संख्या-9 के अनुसार उप निदेशक (सांख्यिकी) के पद पर पदोन्नति हेतु निम्न प्रकार गठित चयन समिति के माध्यम से “ अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता के आधार पर ” की जायेगी।

1. प्रमुख सचिव, वन एवं पर्यावरण, उत्तराखण्ड शासन।
2. प्रमुख वन संरक्षक, उत्तराखण्ड शासन।
3. अपर प्रमुख वन संरक्षक, नियोजन एवं वित्तीय प्रबन्धक, उत्तराखण्ड।

3- चयन समिति को अवगत कराया गया है कि उप निदेशक (सांख्यिकी) वेतन बैंड -3 वेतनमान रू0 15,600-39,1000, ग्रेड पे रू0 6600/- के पद पर प्रोन्नति हेतु “ऐसे सांख्यिकीय अधिकारी पात्र है, जिन्होंने इस रूप में कम से कम 05 वर्ष की सेवा पूर्ण की हो” पदोन्नति द्वारा।

4- पात्रता सूची निम्नलिखित सांख्यिकी अधिकारियों का नाम रखा गया -

1. श्री दिनेश चन्द्र पाण्डेय
2. श्री रमेश चन्द्र
3. श्री मोनह चन्द्र पंत
4. श्री सुशील कुमार लामियान।

5- चयन समिति को अवगत करया गया है कि पात्रता क्षेत्र में आने वाले अधिकारियों के विरुद्ध वर्तमान में कोई अनुशासनिक कार्यवाही /सतकर्ता जांच प्रचलित /प्रस्तावित नहीं है।

6- श्री सुशील कुमार लामियान द्वारा शासनादेश दिनांक 05.1.2012 द्वारा निर्गत सांख्यिकी अधिकारियों की अंतिम ज्येष्ठता सूची के विरुद्ध प्रत्यावेदन दिया गया, जिसके क्रम में शासन स्तर पर अभिनिर्धारित किया गया कि आरक्षित पद के विरुद्ध पदोन्नति मात्र से श्री लामियान ज्येष्ठ नहीं हो सकते। शासनादेश संख्या-552/X-1-2013-04(8)/2011 दिनांक 12.06.2013 द्वारा श्री लामियान के उक्त प्रत्यावेदन के सम्यक् विचारोपरान्त

सांख्यिकीय अधिकारियों की दिनांक 05.01.2012 को जारी अंतिम वरिष्ठता सूची को यथावत रखने हेतु प्रमुख वन संरक्षक को निर्देशित किया गया।

7- शासनादेश दिनांक 12.06.2013 के क्रम में श्री लामियान द्वारा मा0 उच्च न्यायालय, नैनीताल के समक्ष रिट पीटिशन संख्या-180/2013(एस/बी) सुशील कुमार लामियान बनाम उत्तराखण्ड राज्य एवं अन्य योजित की गयी, जिसमें मा0 न्यायालय द्वारा पारित आदेश दिनांक 13.06.2013 में 06 सप्ताह के भीतर प्रतिशपथ-पत्र दाखिल किये जाने के निर्देश दिये गये हैं, उक्त रिट याचिका में मा0 न्यायालय द्वारा कोई स्थगन आदेश पारित नहीं किया गया है। एक अन्य रिट याचिका संख्या-198/2013(एस/बी) सुशील कुमार लामियान बनाम उत्तराखण्ड राज्य एवं अन्य में मा0 उच्च न्यायालय द्वारा अपने आदेश दिनांक 01.07.2013 में उक्त रिट याचिका को निरस्त किया गया है। सांख्यिकीय अधिकारी से उप निदेशक (सांख्यिकी) के पद पर की जा रही उक्त पदोन्नतियां मा0 न्यायालय के समक्ष विचाराधीन उक्त रिट याचिका संख्या-180/2013(एस/बी) सुशील कुमार लामियान बनाम उत्तराखण्ड राज्य एवं अन्य में पारित अंतिम निर्णय के अधीन रहेंगी।

8- चयन समिति द्वारा पात्रता सूची में रखे गये अधिकारियों की विगत 05 वर्षों की गोपनीय प्रविष्टियों तथा अन्य सुसंगत अभिलेखों पर विचार करने के उपरान्त रिक्तियों की संख्या के आधार पर पात्र अधिकारियों को उनके नाम के सम्मुख अंकित श्रेणी में वर्गीकृत किया गया।

9- उपरोक्त वर्गीकरण के आधार पर चयन समिति द्वारा क्रमांक-01 तथा 02 पर अंकित सांख्यिकीय अधिकारियों को उप निदेशक (सांख्यिकी) वेतनमान रू0 15,600-39,100 ग्रेड पे रू0 6600/- के पद पर पदोन्नति किये जाने की संस्तुति की जाती है:-

कं0सं0	अधिकारी का नाम	जन्म तिथि	अभ्युक्ति
1.	श्री दिनेश चन्द्र पाण्डेय	09.10.1957	उपयुक्त
2.	श्री रमेश चन्द्र	01.06.1959	उपयुक्त
	(एस0टी0एस0 लेप्चा) अपर प्रमुख वन संरक्षक, नियोजन एवं वित्तीय प्रबन्धन, उत्तराखण्ड	(आर0बी0एस0 रावत) पमुख वन संरक्षक उत्तराखण्ड	(एस0 रामास्वामी) प्रमुख सचिव, वन पर्यावरण उत्तराखण्ड शासन

2.9 Accepting the recommendations of the DPC, the Government issued the promotion order of the respondents No. 3 and 4 on 13.07.2013 (Annexure: A 1)

2.10 Perusal of DPC (quoted above) reveals that two posts of Deputy Director (Statistics) were created on 20.12.2006 and these posts were vacant. The criterion of promotion was seniority subject to rejection of unfit. The DPC considered 4 eligible Statistical Officers who had worked for minimum 5 years on the post and found respondent Nos. 3 and 4, who were the senior most, suitable for the promotion.

2.11 The promotion order of the respondent Nos. 3 and 4 was subject to the writ petition No.180/2013 (SB) Sushil Kumar Lamiyan Versus State and others pending before the Hon'ble High Court at Nainital. The petitioner had filed this writ petition on 11.06.2003 and the same was decided by the Hon'ble High Court at Nainital on 13.08.2013. It would be appropriate to reproduce the judgment of the Hon'ble High Court. The same is quoted below:

“JUDGMENT

Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble Servesh Kumar Gupta, J.

Barin Ghosh, C.J. (Oral)

“In paragraph 7 of the writ petition, it has been stated by the petitioner that he is the only candidate, who has completed 5 years as permanent Statistical Officer and , accordingly, he is the one and the only eligible person for being considered for promotion to the post of Deputy Director (Statistics) . No counter affidavit has been filed. According to the Rule, for promotion to the post of Assistant Director, which post is now known as the post of Deputy Director (Statistics), the required qualification is 5 years' continuous service as permanent Statistical Officer and the criterion for promotion is seniority subject to rejection of unfit. In the circumstances, in the writ petition, petitioner has sought for a direction for considering the petitioner for being promoted to the post of Deputy Director (Statistics.)

2. However, during the pendency of the writ petition, a seniority list has been prepared, where it has been shown that others are senior to the petitioner in the post of Statistical Officer and those have been promoted to the post Deputy Director (Statistics). Their promotion is subject to the outcome of the present writ petition. The learned counsel for the petitioner submitted that the petitioner has already approached the Tribunal challenging the said seniority list.

3. In the circumstances, this writ petition is disposed of by directing maintenance of status quo until disposal of the matter pending before the Tribunal. It is made clear that, in the event, petitioner succeeds in challenging the seniority list before the Tribunal, the Tribunal shall be entitled to pass such appropriate order, including quashing of the promotion of those persons.

(Servesh Kumar Gupta,J.)

(Barin Ghosh, C.J.)

13.08.2013

13.08.2013”

- 2.12 The petitioner had filed the claim petition No. 23?DB/2013 before this Tribunal (the reference of which was given by the Hon’ble High Court in the last paragraph of its order above) wherein, the petitioner had challenged the seniority list of Statistical Officers dated 05.01.2012. The Tribunal dismissed the claim petition on 22.12.2014 and held that the seniority list did not call for any interference by the Tribunal as the same has been rightly prepared/ issued under the relevant Rules. The petitioner, therefore, did not succeed in the claim petition in which he had challenged the seniority list of the Statistical Officers.
3. The petitioner in this claim petition has challenged the promotion order of the private respondents No.3 and 4 (Annexure: A 1) solely on the ground that the proposal of promotion of the petitioner was sent by the PCCF to the Government on 21.12.2010 and at that time only the petitioner was eligible to be considered for promotion to the post of Deputy Director (Statistics) as only he had completed 5 years of service on the post of Statistical Officer. The petitioner has contended in the claim petition that since the proposal for promotion was sent by the PCCF on 21.12.2010, the year 2010-2011 (1st July, 2010 to 30th June, 2011) was the relevant recruitment year and the eligibility of candidates for promotion was to be seen by the DPC taking 1st July, 2010 as the reference date and only the petitioner was eligible on that date and as the private respondents had not completed 5 years of the service as on 01.07.2010, they could not be included in the zone of consideration for the recruitment year 2010-2011 and the promotion of the private respondents could not be recommended by the DPC which met on 12.07.2013 and, therefore, accepting the recommendation of the DPC, the issuance of the promotion order of the private respondents No. 3 and 4 by the Government on 13.07.2013 is illegal.
4. State respondents (No.1 and 2) and the private respondent No. 4 have filed their written statements in which they have opposed the claim

petition. It has been contended by them that the DPC for promotion took place on 12.07.2013 and the private respondents No.3 and 4 were eligible for promotion as they had completed more than 5 years of service when the DPC met and they were the senior most Statistical Officers according to the final seniority list and after due consideration by the DPC, they were found suitable and promoted by the Government on 13.07.2013. The petitioner was junior to the private respondent Nos. 3 and 4 and there was no reservation in promotion when the promotions were made.

5. In spite of sufficient service, the private respondent No.3 has not filed any written statement.
6. The petitioner has filed rejoinder affidavit against the written statements of Respondent Nos. 1, 2 and 4 and the same averments have been made and elaborated in it which were stated in the claim petition. The private respondent No.4 has also filed some documents which have been rebutted by the petitioner.
7. We have heard learned counsels of both the parties and also perused the record. The original file related to the proceedings of the DPC was also summoned and the same has also been perused by us.
8. Learned counsel for the petitioner has argued that the proposal for promotion from the post of Statistical Officer to the post of Deputy Director (Statistics) was sent by the PCCF on 21.12.2010. According to him, by this proposal, the vacancies were notified for the year 2010-2011. These vacancies, learned counsel for the petitioner argued, could be filled from amongst the Statistical Officers who had requisite eligibility as on 01.07.2010. It was further contended by him that during the recruitment year 2010-2011, only the petitioner was eligible for considering for promotion as only he had completed 5 years of service on the post Statistical Officer and respondent Nos. 3 and 4 had not completed minimum 5 years of service in 2010-2011 and they were not eligible and, therefore, could not be promoted to the post of Deputy

Director (Statistics). Learned counsels for the respondents have refuted the argument of learned counsel for the petitioner and have contended that when the proposal of promotion was sent by the PCCF on 21.12.2010, the seniority list of Statistical Officers did not exist and therefore, the promotions could not be made without the seniority list. The seniority list of the Statistical Officers was finalized and issued on 05.01.2012. According to the seniority list, the private respondents No. 3 and 4 were senior to the petitioner. The petitioner represented against the seniority list and his representation was rejected on 12.06.2013. After that the DPC met on 12.07.2013 and found the private respondents No.3 and 4 suitable as they were eligible (had completed more than 5 years of service on the post of Statistical Officer) and senior to the petitioner. It was also contended by the learned counsels for the respondents that it is wrong to say that the vacancies pertained to the year 2010-2011 or the vacancies were notified on 21.12.2010 by the letter of the PCCF.

- 9.1 By perusal of record, we find that two posts of Deputy Director (Statistics) were created on 20.12.2006. These posts were to be filled by the method of promotion. These posts were kept vacant in the recruitment year 2006-07, 2007-08, 2008-09, 2009-10, 2010-2011, 2011-12 and 2012-13. Finally, promotion on these two posts was made in the recruitment year 2013-14 (on 13.07.2013). Thus, after creation of posts in 2006, first time these were filled in 2013. Perusal of file relating to the DPC proceedings reveals that the PCCF sent proposal to fill up the posts in 2010 as well as in 2011 and 2012 to the appointing authority (the Government) and various correspondence took place between the Forest Department and the Government during 2010 to 2013 but ultimately promotions were made in July 2013. Under these circumstances, it is difficult to agree with the contention of learned counsel for the petitioner that the vacancies pertain to the year 2010-11 and the DPC which took place on 12.07.2013 could consider the eligibility with reference to the recruitment year 2010-11 only.

9.2 The petitioner in his claim petition has annexed a letter of the PCCF written to the Government on 21.12.2010 (Annexure: A 7) in which it was proposed to fill up vacancies of the Deputy Director (Statistics) by promotion. It has also been mentioned in the letter that the seniority list of the Statistical Officers does not exist. The perusal of the file related to the DPC proceedings reveals that the appointing authority decided to first draw the seniority list of the Statistical Officers before promotions to the post of Deputy Director (Statistics) are made. The PCCF sent the tentative seniority list of Statistical Officers which was circulated by the appointing authority on 08.09.2011 and objections were invited. After considering the objections against the tentative seniority list, the final seniority list was issued by the Government on 05.01.2012. The petitioner represented against the final seniority list. His representation was rejected on 12.06.2013. After that, the DPC met on 12.07.2013 and the Government issued the promotion order on 13.07.2013. It is clear from above that the promotions could take place only in 2013 when the seniority list was finally settled. Under these circumstances, merely by a proposal of the PCCF dated 21.12.2010, it cannot be accepted that the recruitment year for the promotion in question was 2010-11.

9.3 The counsel for the petitioner has also argued that the proposal of the PCCF dated 21.12.2010 was a “notification” of vacancies to be filled in the recruitment year 2010-11. It will be pertinent to mention here that the PCCF is not the appointing authority of Deputy Director (Statistics). The Government is the appointing authority for this post. Number of vacancies and the relevant recruitment year can be determined by the appointing authority only. Rule 14 of the Uttar Pradesh Forest Statistical Service Rules, 1982 (Annexure: A 2) provides thus:-

“14. **Determination of Vacancies-** The appointing authority shall determine the number of vacancies to be filled during the course of the year of recruitment.....”

In the present case, the Government decided to make promotion on the post of Deputy Director (Statistics) after finalization of the seniority list of Statistical Officers in 2013. The perusal of the minutes of the DPC held on 12.07.2013 also shows that the promotion exercise has been done in the recruitment year 2013-14. The minutes of the DPC nowhere has recognized the year 2010-11 as the recruitment year for the promotions. The promotion order dated 13.07.2013 (Annexure: A1) also shows that these promotions have been made on 13.07.2013 and the promotions are not in respect of the recruitment year 2010-11. Thus, the proposal of the PCCF dated 21.12.2010 does not determine 2010-11 as the recruitment year and the argument of learned counsel for the petitioner that the proposal of the PCCF dated 21.12.2010 is “notification” of vacancies and it determines 2010-11 as the recruitment year cannot be accepted. In fact, the PCCF was not the competent authority to determine the vacancies/ recruitment year as he was not the appointing authority. The PCCF merely sent a proposal to the Government for promotion without determining the year of recruitment.

- 9.4 There is another aspect also which is related to the concept of the “recruitment year”. The issue of recruitment year is relevant when vacancies of more than one year are filled. When recruitment of vacancies of many years is made together, the issue of “recruitment year” becomes relevant to link vacancy with the year of vacancy so that zone of consideration of eligible candidates for promotion is determined according to vacancies of different years. Thus, the rationale behind the concept of the “recruitment year” is to prepare the year-wise “eligibility list” of candidates for the year wise vacancies. It would be pertinent here to look at the “उत्तरांचल (लोक सेवा आयोग के क्षेत्र के बाहर के पदों पर) चयनोन्नति पात्रता-सूची नियमावली, 2003” (Annexure: A 8). Rule 4 and Rule 5 of the said rules are quoted below:-

“4. जहां पदोन्नति के लिए मानदण्ड योग्यता हो, वहां नियुक्ति प्राधिकारी ज्येष्ठतम अभ्यर्थियों की एक पात्रता-सूची तैयार करेगा, जिसमें नाम, यथासम्भव रिक्तियों की संख्या के तीन गुना, किन्तु कम से कम आठ, रखे जायेंगे।

परन्तु यदि भर्ती ऐसी रिक्तियों के लिए, जो भर्ती के एक वर्ष से अधिक अवधि के दौरान हुई हों, की जानी हो, तो प्रत्येक ऐसे वर्ष के सम्बन्ध में पृथक-पृथक पात्रता सूची तैयार की जायेगी और ऐसी स्थिति में भर्ती के द्वितीय और अनुवर्ती वर्षों के लिए पात्रता -सूची तैयार करते समय पात्रता-सूची में सम्मिलित किये जाने वाले अभ्यर्थियों की संख्या निम्नलिखित होगी-

(1) द्वितीय वर्ष के लिए-उक्त अनुपात के अनुसार संख्या और प्रथम वर्ष की रिक्तियों की संख्या का योग

(2) तृतीय वर्ष के लिए - उक्त अनुपात के अनुसार संख्या और प्रथम और द्वितीय वर्ष की रिक्तियों की संख्या का योग, और इसी प्रकार आगे भी:

परन्तु यह और की जिन अभ्यर्थियों को प्रथम दृष्टया, पदोन्नति के लिए उपयुक्त न समझा जाय, उनकी गणना उक्त अनुपात के लिए नहीं की जायेगी और उनके नाम के सामने उनके सम्बन्ध में इस प्रकार विचार न किये जाने के आशय की एक टिप्पणी लिख दी जायेगी।

5. (1) जहां पदोन्नति का मानदण्ड अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता हो, वहां नियुक्ति प्राधिकारी प्रत्येक श्रेणी अर्थात् सामान्य अनुसूचित जाति और अनुसूचित जनजाति के लिए अभ्यर्थियों की अलग-अलग तीन सूचियां उक्त श्रेणी के लिए उपलब्ध रिक्तियों को दृष्टि में रखते हुए तैयार करेगा जो ज्येष्ठतम अभ्यर्थियों की पात्रता -सूची कही जायेगी, जिसमें, यथासम्भव निम्नलिखित अनुपात में नाम दिये जायेंगे:

1 से पांच रिक्तिया के लिए -रिक्तियों की संख्या का दुगना, किन्तु कम से कम 5।
5 से अधिक रिक्तियों के लिए - रिक्तियों की संख्या का डेढ़ गुना, किन्तु कम से कम 10।

(2) नियम 4 के परन्तुक में दिये गये उपबन्ध इस नियम के अधीन पात्रता- सूची तैयार करने में यथावश्यक परिवर्तन सहित लागू होंगे।”

Rule 5 above is related to the promotion to be made according to the criterion of “seniority subject to rejection of unfit”. It has been mentioned in Rule 5(2) that the “proviso” under Rule 4 is also applicable to Rule 5 for preparing the “eligibility list” of candidates to be considered for promotion. The “proviso” under Rule 4 describes the method to prepare the eligibility list when vacancies are related to more than one recruitment year. In the present case, the vacancies were not related to more than one recruitment year. The two posts of Deputy Director (Statistics) were created in 2006 and they remained

vacant for many years. Finally, these two posts were filled up in 2013. Therefore, the question of “recruitment year” in the present case for the purpose of promotion is not relevant.

9.5 Learned counsel for the petitioner has also argued that the Government did not make promotions timely and deliberately delayed the promotions without any just and proper reasons. As has been mentioned earlier, the promotions, after the proposal sent by the PCCF on 21.12.2010, could not be made as no seniority list of the Statistical Officers existed and promotions were made in 2013 after the seniority issue was settled. In any case, it is in the appointing authority/ Government domain to fill the vacancy or leave any vacant post unfilled. Rule 4 of the Uttar Pradesh Forest Statistical Service Rules, 1982 reads as under:-

“4. Cadre of Service—(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time.

(2) The strength of the service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given in Appendix A:

Provided that—

(1) The appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post without thereby entitling any person to compensation, or

(2) The Governor may create such additional permanent or temporary posts from time to time as he may be considered proper.”

In view of above, there is no force in the argument of learned counsel for the petitioner that the respondent Nos. 1 and 2 failed in their duties and obligations by not filling the vacant posts and deprived the petitioner of his rights.

9.6 Learned counsel for the petitioner has cited the following case-laws:-

(i) Ramarao and Others Versus All India Backward Class Bank Employees Welfare Association and Others 2004 SC-SLR 267.

(ii) State of Bihar and Others Versus Mithilesh Kumar (2011) 1 Supreme Court Cases (L&S) 403.

We have gone through each of above cases and find that these cases are not related to the controversy involved in the present case. The facts and circumstances in the case at hand are entirely different and, therefore, above cases are not relevant and of no help to the petitioner.

10. In the light of discussion and findings in the preceding paragraphs, we are of the view that no relief can be granted to the petitioner. The petition is devoid of merit and the same is liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: DECEMBER 17, 2016
DEHRADUN

VM