

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U.D. Chaube

-----Member (A)

**CLAIM PETITION NO. 16/N.B./D.B./2014**

Sanjeev Kumar, S/o Shri Som Prakash Gupta, presently posted as Sub Divisional Officer (Civil) Uttarakhand Power Corporation Ltd, 132 K.V. Sub Station Kathgodam, District Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Energy, Secretariat, Dehradun.
2. Uttarakhand Power Corporation Ltd. through its Managing Director, Urja Bhawan, Kanwli, Dehradun.
3. Pradeep Kumar Pant posted as Assistant Engineer (Civil) C/o Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwli, Dehradun.
4. Rakesh Kumar Assistant Engineer (Civil) C/o Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwli, Dehradun.
5. Mohd. Saleem Assistant Engineer (Civil) C/o Managing Director, Uttarakhand Power Corporation Ltd., Urja Bhawan, Kanwli, Dehradun.

.....Respondents

Present: Sri I. P. Gairola, Advocate  
for the petitioner.

Sri V.P.Devrani, Ld. A.P.O.  
for the respondent no. 1

Sri Naresh Pant, Advocate  
for the respondent no. 2.

Sri Alok Mehra, Advocate  
for the respondent nos. 3 & 4.

None for the other respondents.

**JUDGMENT****DATED: NOVEMBER 09, 2016****(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. The petitioner has prayed for a direction to quash the final seniority list dated 19.10.2013 and promotion letter/order of the respondent no. 5 dated 02.08.2014 issued by the respondent no. 2, with a further direction to restrain respondent no. 2 from promoting Assistant Engineers to the post of Executive Engineers during the pendency of claim petition and any other suitable relief along with cost of the petition.

2. Brief facts giving rise to this petition are that the petitioner was appointed as Junior Engineer (Civil) (Trainee) in Uttarakhand Power Corporation Ltd. Vide O.M. dated 10.08.2002 issued by the respondent no.2. After completion of successful training, he was regularized in the cadre of Junior Engineer (Civil) in Uttarakhand Power Corporation Ltd. The petitioner was promoted as Assistant Engineer (Civil) vide O.M. dated 30.06.2009 (Annexure No. 4) and he joined the duties, same day. In the mean time, the respondents no. 3 to 5 were appointed as Assistant Engineer (Civil)(Trainee) by the respondent no. 2 vide O.M. dated 21.06.2008 (Annexure-5). As per terms and conditions of the appointment of Assistant Engineer (Civil), the trainee engineers, were to be substantively appointed on the post, after completion of successful training of one year.

3. The respondent no. 2 vide order dated 30.10.2012 (Annexure-6) issued an inter-se seniority list in which respondents no. 3 to 5 were given seniority as Assistant Engineer (Civil) with effect from the date of joining as Assistant Engineer (Trainee), whereas according to the Seniority Rules, respondents no. 3 to 5 are entitled for their seniority w.e.f. 28.05.2009, 28.05.2009 and 18.06.2009 respectively when they completed their training. The Inter-se seniority of the

petitioners (promotees) vis-a-vis Assistant Engineers (direct recruitees) should be fixed as per rules and against one promotee, second post were to be filled up by direct recruitee and third one by promote, fourth by direct recruitee, fifth by promotee and sixth by direct recruitee. But in the seniority list, the respondents no. 3 to 5 were given seniority from the date of their joining as Assistant Engineer (Trainee) against which representation was made by the petitioner (Annexure-7). The relevant provisions for controlling the recruitment and seniority are contained in U.P. State Electricity Board Service of Engineers Regulations, 1970 and as per rule 5, the initial recruitment to the service shall be made to the posts of Assistant Engineer from amongst trained engineers 50.34% and the trained engineer has been defined in the Regulation 3(30) which reads as under:

*“Trained Engineer” means a “Trained Engineer” who after a course of successful training under the Board is declared fit for appointment as an Assistant Engineer under the Board.”*

Para 11 of the aforesaid Regulations of 1970 also reads as under:

*“On competition of the training and before appointment as Assistant Engineer, a trainee will be required to pass a final test, as may be prescribed. He may also be required to sign a Service Agreement setting forth the terms and conditions of his appointment as may be prescribed.”*

4. According to the petitioner, as per the provisions of Regulations, a trainee engineer does not get appointment automatically when he first joins as trainee on selection. He is appointed as Assistant Engineer only after successful completion of the training, when he is found fit for appointment, which means the date of issuance of substantive appointment and their seniority has to be fixed accordingly, whereas the respondents have given the seniority from the date when they have joined as trainee, which is against the

rules. The Assistant Engineers who were earlier under the control U.P. State Electricity Board have now been absorbed in Uttarakhand Power Corporation Ltd., Uttarakhand Jal Vidyut Nigam Ltd. and PITCUL. In Uttarakhand Jal Vidyut Nigam Ltd. and in PITCUL, the direct recruited Assistant Engineer (Trainee) gets his seniority in the cadre of Assistant Engineers only after completion of one year training period and the petitioners and those engineers are governed by the same Regulations of 1970. The representation of the petitioner against the tentative seniority list dated 30.10.2012 has not been disposed of by a reasoned order and final seniority list was notified vide order dated 19.10.2013, which was not circulated in any office. Therefore, that could not have been challenged by the petitioner.

5. For the first time, the petitioners received a letter dated 30.07.2014 regarding the objections raised by the petitioner, which is not a reasoned order. The respondent no. 2 in an illegal manner has exempted respondents no. 3 to 5 from passing the examination, which is must before making substantive appointment as Assistant Engineers. This action has been taken in order to make the way for the respondents no. 3 to 5 for promotion to the post of Executive Engineer. The provisions of Regulation, 1970 are still in force and therefore, the respondent no. 2 is bound to give seniority to directly recruited Assistant Engineers w.e.f. the date of completion of one year training as Assistant Engineer (Trainee). The respondents are also duty bound to decide the representation of the petitioner by a speaking order which has not been done in the present case and the action of the respondent no. 2 giving seniority to respondents no. 3 to 5 has been creating continuous harm to the petitioner and now the respondent no. 5 has been promoted as Executive Engineer on the basis of impugned seniority list dated 19.10.2013. Hence this clam petition has been filed for the relief sought as above to quash final seniority list dated 19.10.2013 and promotion order of respondent no.

5 dated 02.08.2014 issued by the respondent no. 2 and to pass any other suitable order, along with interim direction restraining the respondents from promoting the Assistant Engineers to the post of Executive Engineers on the basis of challenged seniority list.

6. The respondent State as well as respondents no. 3 and 4 contested the petition stating that the contents of the claim petition are wrong, erroneous and misleading. It has been accepted by the respondents that the service conditions of the petitioner and respondents are governed by the U.P. State Electricity Board Service Regulations, 1970 and Regulation 15 of the said Regulations provides for a combined waiting list for a direct recruits and promotees and there is no provision for trainee Engineers in this Regulation and the respondents were appointed as Assistant Engineer (Civil) and in the department and in clause 7 and 8 of the appointment letter issued on 30.04.2008, it was specifically mentioned that the seniority of Assistant Engineers shall be calculated from date of appointment and it was nowhere mentioned that period of training shall not be calculated towards seniority. The Regulation nowhere provides that seniority shall be given after completion of training period. The Board and its Managing Director have power to exempt the trainee from passing departmental examination. The claim petition is erroneous, misleading and the seniority list dated 19.10.2013 and 4.3.2015 have been issued as per the Regulations of 1998. The petitioners have not challenged the order dated 30.07.2014 by which seniority list was rejected with all these facts, the claim petition be dismissed.

7. The claim petition has also been opposed on behalf of respondents no.2 stating the fact that Hon'le High Court in writ petition No. 167 of 2014 passed an order that without issuing the final seniority list and without deciding the objections against the tentative seniority list further action should not be taken. In compliance of the

order of the Hon'ble High Court, the petitioners were given liberty to challenge the seniority list as well as order passed on their representation before the appropriate forum and the petitioners are now challenging the seniority list dated 19.10.2013 after a period of one year. The seniority has to be fixed as per the Service Regulations of 1998 and after deciding the issue of seniority, the promotion was made. Hence, the petition deserves to be dismissed.

8. The petitioners in their rejoinder affidavit reiterated the facts of their claim petition and have alleged that in the appointment letter of the respondents issued by the corporation, the dates of initial appointment has been mentioned along with the dates of absorption/appointment in the regular cadre and it was clearly mentioned in the appointment letter that probation period will start from the date of substantive appointment, which was mentioned at column no. 8 of the appointment letter dated 30.06.2009 and the seniority can only be given from the date of substantive appointment to the cadre.

9. We have heard both the parties and perused the record.

10. The basic question to be decided by this Tribunal on the basis of pleadings of both the parties is that as to from which date the directly recruited Engineers should be treated in service for the purpose of seniority. Undoubtedly, as per relevant Rules and Regulations, the seniority has to be counted from the date of substantive appointment to the cadre. The Regulation of 1970 is the relevant Regulations for the purpose of appointment of the petitioners and respondents. Regulation 15 of the said Regulations of 1970 specifically provides that a combined waiting list will be prepared on the basis of the list finally drawn under clause 5 of Appendix 'A' and the 'Select List' referred to in clause 6 of Appendix 'B' by taking candidates in such a way that every first and fourth vacancy is filled by a promoted officer (J.E. or Computer supervisor as the case may be)

and the remaining vacancies are filled up by **trained Engineers** and as per Regulation 17, the appointment has to be made in the same order in which the names appear in the waiting list prepared under regulation 15. As per Regulation 18, the seniority of officers on their appointment to the service shall be determined according to the date of the order of appointment in a substantive vacancy in the cadre of the Service. As per Regulation 19, every candidate shall on appointment to a post in the service in or against a substantive vacancy, be placed on probation for a period of two years from the date of taking over charge of the appointment and as per Regulation, 20, confirmation of a probationer shall be made after completion of his probation or the extended period at probation, as the case may.

11. The whole scheme for appointment suggest that there are two sources of appointments for Assistant Engineers (Civil), one from promotes Junior Engineers (Civil) and another from directly recruited trained Engineers. The selection for the purpose of training, is a different exercise, whereas substantive appointment to the service after completion of training period, is a different one. The petitioner has submitted copy of an appointment letter (Annexure-4) addressed to Gajendra Kumar Varshney, which prescribes that he has been selected as trainee engineer for the purpose of appointment to the service and in para 7(iv) of this letter, specifically written as under:

“7(iv) सहायक अभियन्ता के संवर्ग में आपकी वरिष्ठता कारपोरेशन में नियुक्ति की तिथि से नियमानुसार अनुमन्य होगी।”

Hence after training, appointment to any post in the corporation has to be made by a specific order. The petitioner has filed the appointment order of some of the direct recruits including respondent no. 3 dated 30.06.2009 and this order clearly mentions the name of trainee engineer with father name, Roll No., date of initial appointment as trainee, date of taking charge and date of regular appointment to the

cadre in Clause no. 8 of the table mentioned in the appointment letter and in the letter it is specifically mentioned that probation period of the Assistant Engineer will start from the date mentioned in clause no. 8 which is the date of substantive appointment after completion of the training. It clarifies the intention of the Regulation, which makes it abundantly clear is that the appointment to the cadre and the start of probation period, was not the date of selection as trainee engineer, but it was the date of appointment after completion of the training period (i.e. one year training). Hence, the date of substantive appointment of the trainee engineer was itself clarified by the appointment order issued by the department, which was after a period of one year from the date of their selection as trainee engineer. The Rules as well as appointment letter clarify that probation period of the Assistant Engineer (Civil) shall be counted from the date substantive appointment after completion of training period and this date should also be counted for the purpose of seniority.

12. The source of appointment as per Regulation also mentions that the appointment to the cadre shall be made from the promotee Junior Engineers and quota of direct recruitees shall be filled up from the trained engineers and the word 'trained engineers' cannot be read as a 'selected engineer for training' and after completion of training period, persons become qualified to be appointed against the post of direct recruits. The rules prima-facie prescribes that after completion of training, there shall be some examination and after passing the same, he shall be called as a trained engineer. The Board and authorized Managing Director was authorized to grant relaxation in this examination, but it does not mean that for the purpose of seniority, the service shall be treated to start from the date of selection for training. The respondents have fixed the seniority from the date of their selection as trainee which is not as per the Regulation, and is against the conditions mentioned in appointment letter. If the service



of direct recruits were to be started from their initial selection, then there was no need to issue subsequent appointment letter specifying a period of probation with the date of its start as mentioned in clause-8 of the appointment letter dated 30.06.2009.

13. The court is of the view that for the purpose of seniority of direct recruits, the date of substantive appointment to the regular cadre, shall be the date after completion of training. Hence, the seniority fixed on the basis of date of selection for training, is not as per Rules. The petition succeeds accordingly and the seniority list dated 19.10.2013 deserves to be set aside along with promotion letter/order dated 02.08.2014.

**ORDER**

The claim petition is allowed. The final seniority list dated 19.10.2013 and the promotion letter/order date 02.08.2014 of the respondent no. 5 issued by the respondent no. 2 are hereby quashed.

The respondent no. 2 is directed to issue a fresh seniority list, as per Rules and Regulation and in the light of observation made above, treating the appointment of direct recruits, from the date they were substantively appointed to the cadre after completion of their training period, within a period of three months from the date of receipt of copy of this order. The respondents may start further promotional exercise accordingly thereafter. No order as to costs.

**(U.D.CHAUBE)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN(J)

*DATE: NOVEMBER 09, 2016*

*NAINITAL*

KNP