

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. 34/N.B./D.B./2015

Nanda Ballabh Padaliya, S/o Sri Tara Dutt Padaliya, Accountant presently posted at Uttarakhand Transport Corporation, Ranikhet, District Almora.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Transport Department, Dehradun.
2. General Manager (Administration), Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.
3. Sri Ramesh Chand Arya, Accountant, through Head of the Department, Managing Director, Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.
4. Sri Vijay Lal, Accountant, through Head of the Department, Managing Director, Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.
5. Sri Bali Ram, Accountant, through Head of the Department, Managing Director, Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.
6. Sri Surendra Singh Kaniyal, Accountant, through Head of the Department, Managing Director, Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.
7. Sri Brajpal Singh, Accountant, through Head of the Department, Managing Director, Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.

8. Sri Surendra Dutt, Accountant, through Head of the Department, Managing Director, Uttarakhand Transport Corporation, Head Quarter, 1, Raj Vihar, Chakrata Road, Dehradun.

.....Respondents

Present: Sri Mohd. Matloob, Advocate
for the petitioner.

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

Sri Ashish Joshi, Advocate for the
respondent no. 2.

None for the private respondent nos. 3 to
8.

JUDGMENT

DATED: NOVEMBER 09, 2016

(Hon'ble Mr. Ram Singh, Vice Chairman (J))

1. By way of this petition, the petitioner has requested to quash the seniority list dated 04.07.2015 issued by the respondent no. 2 along with direction to the respondents to correct the seniority position of the petitioner declaring him senior to the private respondents no. 3 to 8 and to consider his seniority above the private respondents on the post of Accountant and other necessary relief which the Tribunal may deem fit.

2. As per the facts narrated in the petition, the petitioner was appointed in the department of the respondents on the post of Conductor on 09.11.1976 and got first promotion on the post of Office Assistant Grade-II on 08.1.1991 and thereafter, to the post of Office Assistant Grade-I on 23.10.2009. The petitioner was wrongfully and illegally shown junior to one Sri Bacchi Singh Adhikari and Baldev Singh in the seniority list of Office Assistant Grade-I in contravention to the provisions of Rule 31(2) of the Uttar Pradesh State Road Transport Corporation Employees (other than officers) Service Regulation, 1981.

Aggrieved by the same, the petitioner earlier approached to this Tribunal by filing a claim petition bearing no. 26/NB/2011 challenging the seniority list dated 11.05.2011. The said claim petition was allowed by the Tribunal vide order dated 03.04.2014 directing the respondents to correct the impugned seniority list. In compliance of the order dated 03.04.2014, the respondent corporation vide order dated 08.05.2014 corrected the seniority position of the petitioner on the post of Office Assistant Grade-I by which he was placed senior to the other private respondents and his seniority position was corrected and the seniority list of Office Assistant Grade-I was published vide order dated 11.5.2011 and list was finalized subject to the above correction and consequently, the name of the petitioner was figured at sl. No. 15, whereas all other private respondents were figured below the petitioner. The seniority list of Office Assistant Grade-I was circulated vide order no. 152 dated 20.05.2013 (Annexure: 3), which reveals that the petitioner was quite senior to the private respondents no. 3 to 8 on the post of Assistant Grade-I, which is the feeding cadre for the post of Accountant.

3. To the utter surprise of the petitioner, the respondents have shown him junior to the private respondents no. 3 to 8 on the post of Accountant in the tentative seniority list circulated vide office order no. 126 dated 21.04.2015, which is violative to the seniority Rules of the corporation. Being aggrieved with this tentative seniority list dated 21.04.2015 of Accountants, the petitioner preferred a representation dated 27.04.2015 before the respondent corporation with the request that unlawfully and arbitrarily, he has been shown below to his juniors. The said representation was arbitrarily and unlawfully rejected by the same authority and the same person vide order dated 4.07.2015.

4. The petitioner has submitted that as per Rule 31 (2) of the Uttar Pradesh State Road Transport Corporation Employees (other than officers) Service Regulation, 1981, the seniority of the employees will remain the same on the promoted post as it was in the feeding cadre i.e. the post from which they are promoted. It is also submitted that as per Rule 84 of the said Regulation of 1981, subject to the orders of the Board, in regard to matters not covered by these Regulations or any other Regulations or orders of the Board issued from time to time, decision shall be taken in conformity with the Rules or the Orders applicable to the State Government Employees. Hence, in view of Rule 84 of the said Regulations, the petitioner takes shelter and provisions contained in Rule 6 of the Uttarakhand Government Servants Seniority Rules, 2002, which provides that even if a junior person is promoted from a feeding cadre, the seniority inter-se of persons so appointed shall be the same as it was in the feeding cadre and a person senior in the feeding cadre even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre. The petitioner has also contended that he was senior in the feeding cadre but after his promotion on the post of Accountant, he has been shown junior to the private respondents no. 3 to 8 in utter violation of the rules. Hence this petition.

5. That respondents no. 1 & 2 have contested the petition and according to the respondent no. 2, the services of the employees working in the corporation is being governed by the Uttarakhand Transport Corporation Employees (other than officers) Service Rules, 2015 and the seniority has been prepared as per the said Rule 31 of the said Service Rules of 2015. According to the Seniority Rules, the seniority of the employees will remain the same on the promoted post as it was in the feeding cadre. The petitioner was promoted on the post of Office Assistant Grade-I on 23.10.2009, whereas, other private

respondents were promoted on the same post before the petitioner. Hence the petitioner was junior to private respondents at the time of issuing of final seniority list dated 04.07.2015 and accordingly, his representation was rejected. The tentative seniority list dated 31.07.2015 of the Accountant was issued as per the provision of Rule 31(2) of the Regulation and the petitioner was rightly placed at sl. No. 13 on the basis of appointment/promotion on the post of Office Assistant Grade-I. There is no illegality in the seniority list. Hence, the claim petition is liable to be dismissed.

6. The petitioner has submitted in his rejoinder affidavit that the previous seniority list of Office Assistant Grade-I was challenged before the Tribunal and the same was allowed, and in compliance of the Tribunal's order, the seniority position was corrected, but the respondents have not considered the changed position of seniority of the petitioner while issuing seniority list of Accountant. This fact has been ignored that even though juniors were promoted earlier to the petitioner but being senior, the petitioner will regain his seniority on the promoted post. The contention made in the counter affidavit are misconceived, misgiving and are specifically refuted.

7. We have heard both the parties and perused the record submitted before the court.

8. Undoubtedly, the petitioner was senior to the other private respondents on the initial post of Conductor in the department. He was also senior on the post of Office Assistant Grade-II for the next higher post of Office Assistant Grade-I. But, in the seniority list, he was shown junior to the private respondents and the same was challenged before the Tribunal in claim petition no. 26/NB/2011. The said petition was allowed vide order dated 03.04.2014 with the direction to the respondents to correct the impugned seniority list and to place the petitioner above the private respondents according to the initial

seniority of Conductors. In compliance of the order of the Tribunal, an order was issued to correct the seniority position of the petitioner vide order dated 08.05.2014. The record reveals that vide Tribunal's order dated 3.4.2014, the seniority list dated 11.5.2011 was ordered to be corrected to the extent that the petitioner should be shown senior to the private respondents in the seniority list of Office Assistant Grade-I and the petitioner be held senior to the private respondents in compliance of the order of the Tribunal's order on the post of Office Assistant Grade-I. The record reveals that the petitioner was also promoted on the post of Accountant, but in the seniority list of Accountant, of which the feeding cadre is the Office Assistant Grade-I and the petitioner was shown junior to the private respondents. Whereas, the petitioner has stated that he is senior on the basis of the Regulation 31 (2) of the Uttar Pradesh State Road Transport Corporation Employees (other than officers) Service Regulation, 1981, which reads as under:

"31(2). Seniority in any category of posts shall be determined from the date of continuous service followed by regular appointment and, if more than one persons are appointed on the same date from the order in which their names are arranged in the appointment order:

Provided that:-

- (i) The inter se seniority of the persons appointed directly shall be the same as determined at the time of selection and mentioned in the merit list.*
- (ii) The inter se seniority of persons appointed by promotion shall be the same as it was in the post from which they were promoted.*
- (iii) Where appointments are made both by promotion and direct recruitment in the same grade and on the same date*

the seniority shall be determined by arranging the names of the persons in the cyclic order in accordance with Regulation 23.

Provided further that the inter se seniority of the persons who were employees of the State Government and have opted for the service of the Corporation shall be the same as it was or would have been in their parent department under the State Government."

According to the said Rule, the initial seniority of the employees should be maintained even after his promotion, which was not done in the present case. The respondents in their Counter Affidavit has mentioned that the services of the employees working in the corporation is now being governed by the Uttarakhand Transport Corporation Employees (other than officers) Service Rules, 2015 and the seniority has to be prepared as per Rule 31(4) of the said Rules, which is quoted below:

“31(4) जहां सेवा नियमावली के अनुसार नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जानी हों, वहां इस प्रकार नियुक्त व्यक्तियों की ज्येष्ठता उनकी मौलिक नियुक्ति के आदेश के दिनांक से निम्नलिखित उप नियमों के उपबन्धों के अधीन अवधारित की जायेगी और यदि दो या अधिक व्यक्ति एक साथ नियुक्ति किए जाए तो उस क्रम में अवधारित की जायेगी जिसमें उनके नाम नियुक्त के आदेश में रखे गये हैं।

परन्तु यह कि यदि नियुक्ति के आदेश में कोई ऐसा विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट हो जिसमें कोई व्यक्ति मौलिक रूप से नियुक्ति किया जाए, तथा वह दिनांक मौलिक नियुक्ति के आदेश का दिनांक माना जाएगा और अन्य मामलों में इसके आदेश जारी किए जाने के दिनांक से होगा।

परन्तु यह और कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो सकता है, यदि किसी रिक्त पद का उसे प्रस्ताव किये जाने पर वह विधिमान्य कारणों के बिना कार्यभार ग्रहण करने में विफल रहता है, कारणों की विधिमान्य के सम्बन्ध में नियुक्ति प्राधिकारी का विनिर्दिष्ट अन्तिम होगा।

(ब) किसी एक चयन के परिणाम स्वरूप—

(एक) सीधी भर्ती के नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जैसी यथास्थिति नियम द्वारा तैयार की गई योग्यता सूची में दिखाई गई हो।

(दो) पदोन्नति द्वारा नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वहीं होगी जो इस व्यक्ति के अनुसार कि पदोन्नति एक पोषक संवर्ग से या अनेक पोषक संवर्ग है यथा इस स्थिति में नियम 2 या नियम 3 में दिये गये सिद्धान्तों के अनुसार अवधारित की जायेगी।”

9. This rule also clarifies that the seniority of the persons promoted from one feeding cadre shall be the same as it was in the feeding cadre. The feeding cadre for the post of Accountant is Office Assistant Grade-I. Undoubtedly, the petitioner was senior to the private respondents on the post of Office Assistant Grade-I and in compliance of the Tribunal’s order, a correction order was passed by the corporation, but while issuing the seniority list, the corporation did not take note of this fact and the seniority list was issued, perhaps on the basis of that seniority list of Office Assistant Grade-I which was challenged before the Tribunal in the earlier claim petition No. 26/NB/2011 and the same was allowed. Hence, as per Service Regulations of 1981 and Service Rules of 2015, the petitioner will regain his seniority on the promoted post according to his seniority of his feeding cadre.

10. The Rule 84 of the Regulations 1981 further provides that in regard to the matters not covered by these Regulations or any other Regulations or orders of the Board from time to time, decision shall be taken in conformity with the Rules or the orders applicable to the **“State Government Employees”**. Hence, in view of the above Uttarakhand Government Servants Seniority Rules, 2002, will also cover the matter of the petitioner because there is no other Regulations or directions of the Board issued in regard to the principle of regaining of seniority position and the Rule 6 of the Uttarakhand Government Servants Seniority Rules, 2002, specifically provides that where the appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so

appointed shall be the same as it was in the feeding cadre. Hence, it is provided that even if a junior is promoted from the feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre and a person senior in the feeding cadre even though promoted after the promotion of a junior person in the feeding cadre, shall in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

11. In view of the above, the petitioner's claim is sustainable and seniority list of Accountant issued by the respondent no. 2 on 04.07.2015 is liable to be quashed with the direction to the respondents to correct the seniority position of the petitioner declaring him senior to the private respondents no. 3 to 8 and to issue order to correct the seniority list of Accountant for all purposes.

ORDER

The claim petition is allowed. The impugned seniority list dated 04.07.2015 issued by the respondent no. 2 is hereby quashed. The respondent no. 2 is directed to correct the seniority position of the petitioner declaring him senior to the private respondents no. 3 to 8 and to issue order to correct the seniority list of Accountant for all purposes within a period of three months from the date of receipt of copy this order. No order as to costs.

(U.D.CHAUBE)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: NOVEMBER 09, 2016
NAINITAL

KNP