

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Sri Ram Singh

----- Vice Chairman (J)

&

Hon'ble Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 11/NB/DB/2015**

Sanjay Shah, S/o Late Sri Laxmi Lal Shah, R/o Johari Bazar, Almora,  
District Almora.

.....Petitioner

**VERSUS**

1. Kumaon Mandal Vikas Nigam through its Managing Director, Nainital.
2. Managing Director, Kumaon Mandal Vikas Nigam, Nainital.
3. State of Uttarakhand through Secretary, Tourism, Secretariat, Dehradun.

.....Respondents

Present: Sri Rajendra Dobhal, Ld. Senior Counsel Assisted by

Sri Alok Mehra, Ld. Counsel for the petitioner.

Sri V.P.Devrani, Ld. A.P.O. for the respondent No. 3.

Sri Sandeep Kothari, Ld. Counsel for the respondents No. 1 & 2.

**JUDGMENT**

**DATE: FEBRUARY 23, 2017**

**DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. The petitioner has filed present claim petition for seeking the following relief:

“ I. Issue an order or direction to the respondents to modify the order dated 03/04.09.2013 to the extent it regularizes the service of the petitioner in Group ‘C’ in pay band of Rs. 5200-20200 in grade pay of Rs. 1900/- by substituting it with Group ‘B’ in pay band of Rs. 15600-39100/- grade pay of Rs. 5400.-

II. Issue an order or direction to the respondents to regularize the service of the petitioner on the post of Assistant Engineer, Group ‘B’ post, in pay band of Rs. 15600-39100/- grade pay of Rs. 5400/- and to pay the petitioner his salary regularly every month together with the arrears of the same atleast from 03/04.09.2013 after making necessary directions and to continue to pay the same regularly every month.

III. Issue any order or direction which this Hon’ble Court may deem fit and proper under the circumstances of the case may kindly be passed.

IV. Award the cost of the petition.”

2.1 The main contention of the petitioner is that while regularizing him by the Kumaon Mandal Vikas Nigam (KMVN) under “दैनिक वेतन, कार्य- प्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप में नियुक्त कार्मिकों का विनियमितीकरण नियमावली, 2011” (hereinafter referred to as “Regularization Rules of 2011”), he has been regularized on 03/04.09.2013 on a post in Group ‘C’ in the Pay Band of Rs. 5200-20,200 with Grade Pay of Rs. 1900 while he should have been regularized on the post of Assistant Engineer in Group ‘B’ in the Pay Band of Rs. 15,600-39,100 with Grade Pay of Rs. 5400.

2.2 The petitioner contends that he was appointed on 01.06.1989 as Engineer Supervisor (Assistant Engineer) in KMVN on a consolidated salary of Rs. 2133 by the Managing Director who is the competent authority for appointment on the post of Assistant Engineer. **The petitioner has not annexed his appointment letter to the claim petition.**

2.3 The petitioner in Annexure: 2 (dated 22.02.1991) to Annexure: 20 (dated 01.08.2013) to the claim petition has shown orders of the authorities of KMVN by which various works were assigned to him during 1991 to 2013. The perusal of these orders reveals that the petitioner was addressed by different designations as under:

- (i) वर्क चार्ज अभियंता (Annexures: 19 and 20)
- (ii) कार्य प्रभारित अभियंता (Annexure: 3)
- (iii) वर्क चार्ज सहायक अभियंता (Annexures: 4,8 and 18)
- (iv) प्रभारी सहायक अभियंता (Annexures: 2, 5 and 10)
- (v) सहायक अभियंता (संकलित वेतन) (Annexures: 6 and 7)
- (vi) सहायक अभियंता (Annexures: 9,11,12,13,14,15,16 and 17)

2.4 The petitioner has also contended that after regularization (on 03/04.09.2013) also, he was designated as Assistant Engineer in various orders of the authorities of KMVN while assigning works to him.

2.5 The petitioner has also contended that as per information received by him under the Right to Information Act (Annexure: 26), the post of Assistant Engineer is a Group 'B' post (Pay Band: 15,600-39,100, Grade Pay 5400) and the post of

Junior Engineer is a Group 'C' post (Pay Band 5200-20200, Grade Pay 2800).

2.6 The petitioner has also stated that there are 4 sanctioned posts of Assistant Engineers in the KMVN and 3 posts are already filled up and 1 post is lying vacant.

2.7 The petitioner has also pointed out Rule 17(3) of Kumaon Mandal Vikas Nigam General Service Rules, 1982 which reads as under:

***“Rule 17(3):** “Fifty percent of the Group-B posts will be filled by open market selection and other fifty percent reserved for being filled up by promotion from eligible employees within the Corporation. If, however, at any time it is found that sufficient number of employees are not available for filling in the quota by promotion the Corporation may fill those posts also by open market selection. There will thus be no rigidity about quota for direct recruitment or by promotion and there will not be any carry over of vacancies to subsequent years.”*

2.8 The petitioner has further contended that in spite of his continuous service against the post of Assistant Engineer since 1989, he was not regularized on this post which is a post in Group 'B'. He was not even regularized on the post of Junior Engineer (a Group 'C' post) having a Grade Pay of Rs. 2800. He has been regularized on a Group 'C' post with Grade Pay of Rs. 1900.

2.9 After the regularization of the petitioner on 03/04.09.2013, he gave a representation to the M.D. of

KMVN on 30.12.2013 (Annexure: 25) and requested to sanction him the pay scale of Assistant Engineer.

2.10 Thereafter, the petitioner filed a Writ Petition No. 109/2015 (S/B) before the Hon'ble High Court at Nainital and the matter was relegated by the Hon'ble High Court to the Tribunal vide order dated 24.03.2015 (Annexure: 27). Hence, this petition.

3. Respondent Nos. 1 and 2 have opposed the claim petition and have contended in their joint written statement as under:-

3.1 The petitioner on one hand has accepted the terms and conditions of regularization order (Annexure: 1) and he is receiving the salary and other benefits in terms of the Regularization Order without any demur and simultaneously challenged the same order claiming that he may be regularized on a higher post.

3.2 The petitioner has failed to demonstrate that he fulfils eligibility criteria to be regularized on the post of Assistant Engineer under the "Regularization Rules of 2011".

3.3 **Respondents No. 1 and 2 have contended that no Appointment Letter whatsoever has been issued by the KMVN on 01.06.1989 in favour of the petitioner.** The petitioner was only a 'contractual employee' and he was paid remuneration on monthly basis.

3.4 Respondents No. 1 and 2 have contended in para 13 of their joint written statement as under:

*“13. It is most respectfully submitted that total 33 persons were regularized in the class III posts in the answering respondents corporation in the pay band of Rs. 5200-20200 grade pay Rs. 1900 and further none of the persons had been regularized on priority on the basis of having higher educational qualification or eligibility and the same has been regularized only considering the regularization Rules framed in this regard. **After the regularization order has been passed in favour of the petitioner no representation as against the said regularization was made and further the petitioner has voluntarily accepted the order and received the same and only an afterthought exercise at belated stage the claim petition has been preferred.** Further it is most respectfully submitted that it has been decided that the respective designation to these persons shall be provided and as of now no particular designation has been provided to any of the persons who had been regularized and only a general order has been passed that all the persons have been regularized in class III vacancies.”*

3.5 Respondents have also pointed out the following condition laid down in the Regularization Order (Annexure: 1):-

“शासनादेश के अनुसार उपरोक्त कर्मियों को तृतीय श्रेणी का वेतनमान/वेतन बैंड रू0 5200–20200 ग्रेड 1900 में ही अनुमन्य होगा तदुपरान्त संकलित पारस्परिक ज्येष्ठता सूची एवं परीवीक्षा अवधि सन्तोषजनक होने के उपरान्त उपलब्ध पदवार/वेतनबैंड वार कार्यवाही नियमानुसार की जायेगी ।”

3.6 Respondent Nos. 1 and 2 have also contended that the claim petition is time barred under the Public Services Tribunal Act.

3.7 It has been further stated that merely by mentioning the designation of the petitioner in various orders (mentioned in paragraph 2.3 of this order) does not lead to conclude that the status of the appointment of the petitioner was different from that of a contractual employee.

3.8 It has also been contended that the petitioner was never appointed against the substantive vacancy of Assistant Engineer. The claim is misconceived and the petitioner is not entitled to any relief.

4. The petitioner as well as respondent Nos. 1 and 2 have also filed supplementary affidavits/documents. The petitioner has also filed rejoinder and the same averments have been made and elaborated in it which were stated in the claim petition.

5. We have heard learned counsels for the petitioner as well as respondent Nos. 1 and 2 and perused the record including original file of regularization proceedings.

6. Learned counsel for the petitioner has argued the same points which are stated in paragraphs 2.1 to 2.10 of this order. Learned counsel for the respondent Nos. 1 and 2 has refuted the arguments of learned counsel for the petitioner and submitted in his counter arguments, the same points which have been stated in paragraphs 3.1 to 3.8 of this order.

7. Before the rival contentions of the parties are discussed, it will be appropriate to look at the relevant rule 4 of the “Regularization Rules of 2011” which is reproduced below:

दैनिक वेतन, कार्य- प्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप में नियुक्त कार्मिकों के विनियमितीकरण नियमावली के लिए शर्ते-

“4. इस नियमावली के अधीन ऐसा कार्मिक विनियमितीकरण हेतु अर्ह होगा:-

(1) जो दिनांक 01.11.2011 से 10 वर्ष पूर्व अर्थात् 01.11.2001 तक दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप में नियुक्त हुआ हो और इस नियमावली के प्रारम्भ के दिनांक को, उस पद या समकक्ष पद पर, निरन्तर सेवारत रहा हो;

(2) जो उपनियम (1) में सन्दर्भित ऐसी नियुक्ति के समय रिक्त/स्वीकृत पद के विरुद्ध नियुक्त किया गया हो और नियुक्ति के समय पर पद हेतु प्रचलित सेवा नियमों में निर्धारित शैक्षिक एवं अन्य योग्यताएं तथा आयु सीमा सम्बन्धी शर्ते पूर्ण करता हो, तथा

(3) जिसको विनियमित करने हेतु इस नियमावली के प्रख्यापन की तिथि को उस संवर्ग में पद स्वीकृत एवं रिक्त हो।

(4) उप नियम (1) में निर्धारित तिथि तक पात्रता सूची में अंकित सभी कार्मिकों को पद रिक्त होने तक विनियमित किया जायेगा।”

8. Perusal of Rule 4 of the “Regularization Rules of 2011” reveals that according to sub-rules (2) and (3) of Rule 4, the essential conditions for regularization are that

- (i) the initial appointment of the employee must be on a vacant and sanctioned post; and
- (ii) the post on which regularization is to be made must also be vacant and sanctioned on the date when “Regularization Rules of 2011” came into force (which is 21.11.2011).



9. Perusal of original file of regularization proceedings reveals that the respondents have regularized employees in Group 'C' and Group 'D'. The regularization has not been done in respect of posts in Group 'B'. The petitioner has been considered for regularization on a post in Group 'C'. The respondents have treated the petitioner as a Group 'C' employee.

10. The contention of the petitioner is that he fulfills the qualification of Assistant Engineer; he has worked continuously as Assistant Engineer and there is vacancy of Assistant Engineer and, therefore, he should have been regularized on the post of Assistant Engineer which is a post in the category of Group 'B'. The respondents have contended that the petitioner was not initially appointed on a post in Group 'B' and he does not fulfill all the eligible criteria for regularization on the post of Assistant Engineer in Group 'B'.

11. In spite of Tribunal's insistence, some essential information could not be provided by the petitioner/respondents. Some of these informations which were crucial to adjudicate the issue in the case at hand are as under:

- (i) The initial appointment letter of the petitioner dated 01.06.1989.
- (ii) The structure of Group 'B' posts in KMVN.
- (iii) Total sanctioned, filled up and vacant posts of Assistant Engineer on 01.06.1989 when the initial appointment of the petitioner was made.

- (iv) Total sanctioned, filled up and vacant posts of Assistant Engineer on 21.11.2011 when the “Regularization Rules of 2011” came into force.
- (v) Rules regarding recruitment of Assistant Engineer as framed by the KMVN in respect of eligibility, sources and method of recruitment, qualification etc.

12. According to the petitioner, apart from Group ‘C’ and Group ‘B’, “Regularization Rules of 2011”, are also applicable for regularization of an employee on Group ‘B’ post. The petitioner has also stated that he has requisite qualification/eligibility to be regularized on the post of Assistant Engineer (Group ‘B’ post) or on the post of Junior Engineer, which is a Group ‘C’ post. As has been stated by the respondent Nos. 1 and 2 in paragraph 13 of their written statement, after regularization, the petitioner is yet to be designated with name of appropriate post. Thus, it is still open for the respondents to designate him with a particular post and the representation in this respect needs to be decided by the department first.

13. Since the subject matter of the claim petition needs scrutiny of facts and appreciation of evidence, we find it more appropriate and in the interest of justice that the controversy in question is first considered by the appropriate authority at the Kumaon Mandal Vikas Nigam level by disposing of the representation of the petitioner dated 30.12.2013 (Annexure: 25) which the respondents, as stated in their written statement, have not received or which is not against the regularization.

14. In view of above, we allow the petitioner to avail an opportunity to make a representation afresh within twenty one days from the date of receipt of the certified copy of this order to the Managing Director of Kumaon Mandal Vikas Nigam to modify the regularization order dated 03/04.09.2013 who, after receiving the representation, will decide the same in accordance with relevant rules within a period of three months by passing a speaking order.

The petition is disposed of accordingly. No order as to costs.

RAM SINGH  
VICE CHAIRMAN (J)

D.K.KOTIA  
VICE CHAIRMAN (A)

*DATED: FEBRUARY 23, 2017*  
*NAINITAL.*

*KNP*