

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 19/NB/DB/2015

Navindra Singh Bora, S/o Shri Chandan Singh Bora, Presently posted as Deputy Commissioner (3rd) Commercial Tax Department, Rudrapur, District Udham Singh Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Finance, Uttarakhand, Dehradun.
2. Secretary, Department of Finance, Uttarakhand Government, Dehradun.
3. Commissioner Tax, Uttarakhand, Dehradun.
4. Additional Commissioner, Sale Tax, Rudrapur, District Udham Singh Nagar.
5. Rajesh Gill, Deputy Commissioner, Assessement, 4th Dehradun.
6. Rakesh Verma, Deputy Commissioner, Assessment, 1st, Haldwani, District Nainital.
7. Arun Kuar, Deputy Commissioner, Assessment, 3rd, Dehradun.
8. D.S.Nabiyal, Deputy Commissioner, Assessment, 2nd, Haldwani, District Nainital.
9. Surendra Singh Negi, Deputy Commissioner, Enforecement, Haldwani, District Nainital.
10. P.S.Dungariyal, Deputy Commissioner, Khatima, Udham Singh Nagar.

11. Sunita Pandey, Deputy Commissioner, Assessment, 4th, Dehradun.
12. Hem Bisht, Deputy Commissioner, Assessment (SIB), Rudrapur, U.S.Nagar.
13. Smita, Deputy Commissioner, Assessment, 3rd Haldwani, District Nainital.
14. R.L.Verma, Deputy Commissioner, Assessment, 2nd Kashipur, District U.S.Nagar.
15. Roashan Lal, Deputy Commissioner, Assessment, 2nd, Kashipur, District Udham Singh Nagar.
16. Sanjeev Solanki, Deputy Commissioner, Assessment, Rishikesh, District Dehradun.
17. V.P.Singh, Deputy Commissioner (SIB) Haridwar.
18. Pramod Kumar Joshi, Deputy Commissioner (SIB), Dehradun.
19. Praveen Kumar, Deputy Commissioner, Enforcement, Dehradun.
20. Nishikant Singh, Deputy Commissioner (Attached) Office of Additional Commissioner, Dehradun.
21. Ranveer Singh, Deputy Commissioner (Attached) Office of Additional Commissioner, Rudrapur.
22. Ajay Kumar, Deputy Commissioner, Assessment 2nd, Dehradun.
23. Anurag Mishra, Deputy Commissioner, Assessment, Haridwar.
24. S.S. Tiruwa, Deputy Commissioner, Assessment, Vikas Nagar, District Dehradun.
25. Rohit Srivastava, Deputy Commissioner, Assessment Kotdwar, District Pauri Garhwal.
26. Shashi Kant Arya, Deputy Commissioner, Enforcement, Haridwar.

.....Respondents

Present: Sri Virendra Singh Rawat, Ld. Counsel
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents No. 1 to 4

None for the respondents No. 5 to 26.

JUDGMENT**DATED: APRIL 26, 2017****(HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J))**

1. The petitioner has filed this claim petition for the relief to set aside the impugned order and seniority list dated 19.02.2015 issued by the respondent no. 2 and to direct the respondents to re-determine the seniority of Assistant Commissioner after taking into consideration of Rule 6 of the Uttarakhand Government Servants Seniority Rules, 2002 along with cost of the petition.

2. Briefly, the facts are that the petitioner joined the service as Sales Tax Officer Grade-II on 01.08.1996 after successfully qualifying the examination held by the U.P. Public Service Commission in 1990. Along with the petitioner, respondent no. 5 to 10 were also selected and they joined the service on the post of Sales Tax Officer Grade-II before the petitioner. Whereas, the petitioner could not join the service on account of laches on the part of the administration, but in the seniority list of Sales Tax Officer, Grade-II later on issued by the department, the name of the petitioner was figured at Sl. No. 7 prior to respondents no. 5 to 10 as they were junior in the select list. Due to delay in joining the service by the petitioner, he could not complete 7 years of necessary service for promotion for the post of Assistant Commissioner, whereas, respondents no. 5 to 10 were promoted in the year 2003.

3. After completing 7 years of service on the post of Sales Tax Officer Grade-II, the petitioner submitted representation in the year 2004 with the request that he has completed 7 years of

qualified service in August, 2003 so, he be promoted on the post of Assistant Commissioner, but the DPC was not constituted and the promotion of the petitioner was delayed till the year 2006-07, when he got his promotion.

4. In May, 2009, the department prepared a tentative seniority list of promotees as well as direct recruitees Assistant Commissioner (earlier called Sales Tax Officer) and the objections were invited. In the tentative seniority list, the petitioner's name was figured at sl. No. 32 and 55. Hence, he submitted his objection that his name may be placed at sl. no. 32 in the seniority list.

5. In the year 2005, the respondents no. 11 to 26 were directly recruited on the post of Assistant Commissioner (Sales Tax Officer) on the basis of examination conducted by the Public Service Commission, Uttarakhand Haridwar and their names were also included in the tentative seniority list. After considering objections filed by the petitioner, Principal Secretary, Finance vide order dated 14.11.2009 issued a final seniority list and the name of the petitioner was placed at sl. No. 32 and his name at sl. no. 55 was removed and a valid and legal reason was given in that order. On the basis of the order of the Principal Secretary, Finance, the final seniority list of Assistant Commissioner was prepared and finalised in 2009. Thereafter, on 26.4.2011, the petitioner was also given promotion on the vacant post of Deputy Commissioner, to which he joined accordingly.

6. Almost after 4 years of finalization of final seniority list in the year 2009, the respondents No. 11 to 26 submitted their representations in 2013 seeking amendment in the final seniority

list and considering the representation, the Secretary Finance, vide order dated 07.03.2013 held that the petitioner's seniority will reckon from the date of substantive appointment on the post of Assistant Commissioner i.e. 30.06.2007 and the settled seniority list of the petitioner in 2009 was re-disturbed vide order dated 19.2.2015. Whereas, against the representation of the respondents no. 11 to 26, the petitioner had earlier filed a representation that his seniority may not be changed and he may not be placed junior to his companion, but the impugned order was passed in a very cursory manner and the petitioner was placed at sl. No. 54A in the seniority list. Aggrieved by this order, the petitioner has filed this claim petition for the relief mentioned above.

7. The respondents no. 1 to 4 opposed the petition, whereas, other respondents did not appear inspite of service and matter was heard ex-parte against them.

8. In written reply, respondents no. 1 to 4 have submitted that the respondents no. 5 to 10, who were recruited with the petitioner had completed 7 years of required qualified service for promotion before Sri Bora and respondents no. 5,6,8,9 and 10 were promoted on 20.1.2003 whereas, respondents no. 7 was promoted in July, 2004 and by that time, the petitioner had not completed desired 7 years of service and consequently, he was promoted in the year 2007 against the selection year 2006-07. The post of Assistant Commissioner was to be filled up by direct recruitment as well as by promotion and their seniority was to be determined in accordance with the Uttarakhand Government Servant Seniority Rules, 2002. The seniority was to be determined

on the basis of year of their substantive appointment. As the petitioner was substantively appointed on 30.06.2007 on the post of Assistant Commissioner, therefore, his seniority shall be counted from that date. His contention that he should be placed senior to the respondents No. 5 to 10, cannot be accepted because the petitioner was not promoted/selected alongwith the respondents No. 5 to 10 on the post of Assistant Commissioner. The respondents No. 11 to 26 were directly recruited in the year 2005 and had joined service on 18.07.2005. Hence, the impugned order was passed keeping in view of the earlier order of substantive appointment of respondents no. 11 to 26 as the cadre of Assistant Commissioner is different and recruitments are made by promotion as well as direct recruitment. According to respondents, the impugned order was passed to revise the seniority and the petitioner's claim petition has no merit and is liable to be dismissed.

9. We have heard learned counsel for the petitioner as well as learned A.P.O. for the respondents No. 1 to 4. None has appeared on behalf of rest of the respondents before the court.

10. After considering all the facts of the case and the relevant law, rules and regulations, this court is of the view that the petitioner's claim is sustainable for the following reasons. The petitioner has raised a plea that he was senior to the respondents no. 5 to 10 in the seniority list prepared by the Commissioner at the time of their initial appointment as Sales Tax Officer Grade-II and his seniority prepared by Commission cannot be disturbed as per Rules even though his juniors were promoted in 2003 prior to him. It is acceptable to both the sides that the

petitioner is having unblemished record of his service. He was not superseded in 2003, but he could not be considered for promotion on account of non-completion of qualified service of 7 years, due to his late joining in 1996, whereas, his other counterparts joined their services earlier. The reasons for not joining the service immediately were on account of laches on the part of the respondents. The petitioner had completed qualified service of 7 years in August, 2003 and till then respondent no. 7, Arun Kumar was also not promoted and he got promotion in the year 2004 and at that time, the petitioner was also qualified to be considered for promotion. Why he was not considered, has not been explained. It was also argued that vacancy against general quota was also available and once the petitioner completed qualified period for promotion, he should have been considered along with respondent no. 7 for promotion and that period was certainly before the other respondents no. 11 to 26 entered in the service because they joined the service in the year 2005. Not only this, the petitioner submitted his representation in July 2004 mentioning all these facts and requested for his promotion. When his juniors were earlier promoted and after completing his qualifying service, one more person was promoted in 2004, the petitioner must have been promoted by the respondents with that date and in such situation the question of seniority vis-a-vis direct recruits has never been arisen. The Rule 6 of the Uttarakhand Government Servants Seniority Rules, 2002 is very much relevant in the matter, which reads as under:

“6- जहां सेवा नियमावली के अनुसार नियुक्तियां केवल एक पोषक संवर्ग से पदोन्नति द्वारा की जानी हों वहां इस प्रकार नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जा पोषक संवर्ग में थी।

स्पष्टीकरण- पोषक संवर्ग में ज्येष्ठ कोई व्यक्ति, भले ही उसकी पदोन्नति पोषक संवर्ग में उससे कनिष्ठ व्यक्ति के पश्चात् की गयी हो, उस संवर्ग में जिसमें उसकी पदोन्नति की जाय, अपनी वही ज्येष्ठता पुनः प्राप्त कर लेगा जो पोषक संवर्ग में थी।”

According to this Rule, when a junior person recruited by the same recruitment has got his promotion later in time, he will regain his seniority and the concerned Rule relating to the petitioner is the Uttar Pradesh Sales Tax Service Rules, 1983 and according to Rule 22, the seniority of persons in any category of posts shall be determined from the date of the order of substantive appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order, but there are two proviso to Sub Rule 1 and proviso -1 clearly mentions that if the appointment order specifies a particular back date with effect from which a person is substantively appointed, that date will be deemed to be the date of his substantive appointment. Hence, this proviso authorizes the appointing authority to issue substantive appointment from any back date. Learned counsel for the petitioner has argued that although the promotion of the petitioner was issued in 2007 later in time but he must have been granted notional promotion from the year 2003-04 when his juniors were promoted and he completed the qualifying service by that time. The court is in agreement with argument of the petitioner. Furthermore, Sub Rule (3), clearly mentions that the

seniority inter-se of the persons appointed by promotion shall be the same as it was in the cadre from which they were promoted. Hence, according to this, the petitioner cannot be placed junior to the respondents No. 5 to 10. The combined effect of the concerned rule and the Uttarakhand Government Servants Seniority Rules, 2002 is very much clear. The petitioner cannot be placed junior to the respondents No. 5 to 10.

11. Learned counsel for the petitioner has argued that he might have got his promotion in 2003 along with his junior, had the respondents offered his appointment in time. He has referred to a judgment of Hon'ble Supreme Court passed in **Pilla Sitaram Patrudu vs. State of India, 1997 (1) A.W.C. 75 (S.C.)** wherein it was held that the seniority of the persons selected by direct recruitment who were entitled according to the rules and the appointment is delayed for no fault of the appointee then appointee is entitled to ranking given in select list. Hence in no circumstances, the seniority of the petitioner cannot be placed below respondents no. 5 to 10.

12. The petitioner has further argued that seniority of the promotees as well as direct recruitees were earlier finalised in 2009 after issuing the tentative seniority list on 18.05.2009. Objections were invited and on that list, the name of the petitioner was placed at two places at sl. No. 32 and 55 against which objections were submitted. The Principal Secretary, Finance (respondent no. 2) had considered the representation of the petitioner and specifically dealt with in its order dated 14.11.2009 (Annexure: 7). The Principal Secretary, Finance specifically mentioned this fact that the petitioner's name which

was figured at sl. No. 32 and 55 in the tentative seniority list needs correction and the seniority vis-a-vis his batch mates i.e. promotee officers respondents no. 5 to 10 were also settled. It was specifically mentioned that the petitioner could not be promoted along with his junior on account of non-completion of the required period of service and he was not superseded at that time and got his promotion later in time so his name was placed at sl. No. 32, whereas, respondents no. 5 to 10 were placed below in sl. No. 33 to 38. At the time of finalization of the seniority list, the names of the direct recruitees were also included in the tentative seniority list as well as final seniority list. The seniority list of Assistant Commissioner was finalized on 14.11.2009 by the respondents and there was no occasion to re-disturb and revise it because none of the parties has approached the court or any other authority, challenging the order of the respondents dated 14.11.2009. The respondents cannot disturb the final settled seniority at its own after a lapse of 4-5 years on the basis of representation of the direct recruits who were also considered in 2009. Hence, the impugned order suffers from this defect and cannot be allowed to stand.

13. This court is of the view that the seniority of the petitioner cannot be placed below his juniors, respondents no. 5 to 10. The settled seniority cannot be reopened even if representation was made by the direct recruitees to the respondents. Learned counsel for the petitioner has argued that the direct recruitees joined their service in 2005 whereas the petitioner and his junior were promoted in 2003 and the petitioner was eligible for promotion in August, 2003 and he made his representation and according to the rules when a cadre

is to be filled up from promotes as well as direct recruitees then the respondents are bound to made this simultaneously according to Rule 8 of Uttarakhand Government Servants Seniority Rules, 2002. Also, according to Rule 18 of the Uttar Pradesh Sales Tax Service Rules 1983, a combined select list of recruitment was essential to be prepared by taking the names of candidates from the relevant lists, and when the recruitment of direct recruitees was made in 2005, it was obligatory for the State to prepare a combined list and if that exercise was taken as per rules in 2005, the petitioner was eligible for promotion. He was senior most in the list and as per Sub-rule 3 of Rule 8 of Uttarakhand Government Servants Seniority Rules, 2002, the seniority should be fixed as per the quota to be filled up and their seniority shall be determined according to this Rule and the promotee officers will get the first place before the direct recruitees. As the respondent government had not followed the relevant rules for recruitment in 2005 and the petitioner who was eligible in promotion quota before the year 2005, was left out, disobeying the rules hence, he was eligible to be notionally promoted as per Rule 22 of the Sales Tax Service Rules, 1983 w.e.f. August, 2003. Hence this court is of the view that on the basis of the representation moved by the respondents no. 11 to 26, the petitioner's seniority settled earlier in 2009 cannot be disturbed in any circumstances. The court is of the view that the petition succeeds and the petitioner is entitled for the relief as sought for.

ORDER

The claim petition is allowed. The impugned order and seniority list dated 19.2.2015 (Annexure No. 1) issued by the

respondent no. 2 is hereby set aside. The respondent is directed to re-determine the seniority of the Assistant Commissioner according to Rule 6 of the Uttarakhand Government Servants Seniority Rules, 2002 and in view of the observation made in the body of the judgment. No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN(J)

DATE: APRIL 26, 2017
NAINITAL

KNP