

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 09/NB/DB/2015

Girish Chandra Punetha, S/o Sri Kedar Dutt Punetha, presently serving as Chief Assistant, in the office of Executive Engineer, Rural Engineering Services Department, Pithoragarh Division, Pithoragarh.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Rural Engineering Services Department, Government of Uttarakhand, Dehradun.
2. Chief Engineer, Rural Engineering Services Department, Uttarakhand, Raipur Road, Tapovan Marg, Dehradun.
3. Superintending Engineer, Rural Engineering Services Department, Kumaon Circle, Nainital.
4. Sri Rajendra Singh Negi,
5. Sri Prem Singh Panwar,
6. Sri Gunanand Gaur,
7. Sri Jai Narain Devrani.
8. Sri Govind Singh Aswal,
9. Sri Rajendra Singh Panwar,
10. Sri Ramesh Chandra Nainwal,
11. Sri Badri Dutt Semalty,
12. Sri Hans Lal,
13. Sri Rajesh Kumar Balmiki,

14. Sri Shankar Dutt Harbola,
15. Sri Tula Ram,
16. Sri Ramesh Chandra,
17. Sri Mispal Singh Bisht.

.....Respondents

Present: Sri Bhagwat Mehra & Sri B.D.Pandey, Ld. Counsel
for the petitioner

Sri V.P. Devrani, Ld. A.P.O.
for the Respondent No. 1, 2 & 3

None for the private respondents No. 4 to 17

JUDGMENT

DATED: JULY 20TH 2017

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

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

- "A. To set aside the impugned final seniority list of Clerical Cadre as circulated vide letter dated 10.2.2015 passed by the Respondent no. 2 (Annexure No. P-1 to Compilation-I).*
- B. To direct the Respondent No. 2 to consider and promote the petitioner to the post of Administrative Officer from the date when junior to him are promoted to the said post.*
- C- To direct the respondent No. 2 to grant all consequential benefits to the petitioner.*
- D. To pass any other suitable order as this Hon'ble Tribunal may deem fit any proper in the circumstances of the case.*
- E. To allow the claim petition with cost. "*

2. The relevant facts in brief are that the petitioner was initially appointed on adhoc basis on the post of Junior Assistant in the office

of the Executive Engineer, Rural Engineering Service Department, Saharanpur on 30.09.1985 (Annexure:2).

3. The department of Rural Engineering Services constituted a committee on 19.07.1990 for regularization of employees who were appointed on adhoc basis. The petitioner by Office Order dated 24.08.1990 (R-1 to the written statement of the state respondents) was regularized on the post of Junior Assistant on the basis of the recommendation of the committee.

4. A final seniority list of Junior Assistants was issued on 12.02.2013 by respondent No. 2 and according to this, the seniority of the petitioner was determined taking date of 30.09.1985 as date of petitioner's substantive appointment. Later, respondent No. 2 cancelled this seniority list and an exercise to prepare the seniority list of Junior Assistants was done again. A tentative seniority list was issued on 28.10.2014 by respondent No. 2 and objections were invited. In this tentative seniority list, the seniority of the petitioner was shown taking 24.08.1990 as date of his substantive appointment. The petitioner filed his objections against the tentative seniority list on 11.12.2014. The petitioner contended in his objections that his date of substantive appointment is 30.09.1985 and it is not proper to take 24.08.1990 as date of his substantive appointment. The objections of the petitioner were rejected by respondent No. 2 vide order dated 10.02.2015 and the final seniority list was issued (Annexure: 1).

5. The contentions of the petitioner are that from 1989 to 2011, the department issued the tentative seniority lists and in 2013, the final seniority list was also issued and in all these lists, his date of substantive appointment was shown as 30.09.1985 and suddenly in the tentative seniority list of 28.10.2014 and the final seniority list dated 10.2.2015, his date of substantive appointment has been changed to 24.08.1990 and, therefore, his long standing date of

substantive appointment was disturbed which is not as per settled legal position; his objections to the tentative seniority list dated 28.10.2014 were rejected without application of mind; he was granted promotional pay scale under the scheme of ACP on the basis of his date of appointment as 30.09.1985; and the state respondents have adopted double standard in fixing the inter-se seniority of the Junior Assistants and different yardsticks have been applied in determining the seniority for similarly situated employees.

6. Respondents No. 1, 2 & 3 have opposed the claim petition and stated in their joint written statement that the final seniority list dated 10.02.2015 has been issued by respondent no. 2 as per Seniority Rules. The date of substantive appointment of the petitioner is 24.08.1990 and his seniority has been fixed on the basis of this date. The petitioner was not substantively appointed on 30.09.1985 as is being claimed by the petitioner. The appointment of the petitioner was not a regular appointment vide order dated 30.09.1985. It has further been contended by the respondents No. 1, 2 & 3 in the written statement that after issuing the seniority list on 12.02.2013, it came to the notice of the Department that the list was not prepared correctly on the basis of dates of substantive appointments of various employees and, therefore, this seniority list was cancelled and the exercise to prepare the correct seniority list was done again. After issuing the tentative seniority list on 28.10.2014, the objections were invited and after considering the objections (including the objections of the petitioner), final seniority list was issued on 10.02.2015. The seniority list has been prepared according to dates of substantive appointments of the employees as per the Uttarakhand Government Servants Seniority Rules, 2002 (herein after referred as Seniority Rules of 2002). Respondents No. 1, 2 & 3 have contended that the claim petition is devoid of merit and, therefore, liable to be dismissed.

7. In spite of sufficient service, private respondents No. 4 to 17 have not filed any written statement.

8. The petitioner has also filed the rejoinder affidavit and the same averments which were stated in the claim petition have been reiterated and elaborated in it. State respondents have also filed supplementary written statement alongwith the documents.

9. We have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of respondents No.1 to 3 and also perused the record carefully.

10. Learned counsel for the petitioner argued that the petitioner was appointed substantively from 30.09.1985 and, therefore, the petitioner is entitled to get seniority from this date. Learned A.P.O. refuted the argument and contended that 'substantive appointment' has been defined in the Seniority Rules of 2002 and in the light of the definition, the petitioner's appointment on 30.09.1985 was not a 'substantive appointment' and, therefore, the petitioner is not entitled to get seniority from 30.09.1985.

11. It is admitted to both the parties that the 'seniority' is required to be fixed according to the Seniority Rules of 2002. The Seniority Rules of 2002 have over-riding and retrospective effect. Rule 3 of the Seniority Rules of 2002 reads as under:-

“3. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made here to before.”

It is also admitted to both the parties that the relevant date to fix the seniority of an employee is the date of 'substantive appointment.' While the contention of the learned counsel for the petitioner is that the date of substantive appointment of the petitioner is 30.09.1985, the learned A.P.O. contended that the appointment of the petitioner

on 30.09.1985 is not substantive appointment according to the Seniority Rules of 2002.

12. **Rule 4(h) of the Seniority Rules of 2002 defines the 'substantive appointment' as under:-**

“(h) “substantive appointment” means an appointment, not being an ad hoc appointment, on the post in the cadre of the service, made after selection in accordance with the service rules relating to that service.”

Before the Seniority Rules of 2002, the “Uttar Pradesh Government Servants Seniority Rules, 1991” were in force. Rules of 1991 and 2002 are identical. Rules of 1991 also had the same over-riding/retrospective effect as the Seniority Rules of 2002 have. Similarly, the definition of ‘substantive appointment’ above in the Seniority Rules of 2002 was also exactly the same in the rules of 1991.

13. Above definition of ‘substantive appointment’ makes it clear that an ad hoc appointment is not a ‘substantive appointment’. It is also clear from Rule 4(h) above that in order to be a ‘substantive appointment’, an appointment should have been made after selection in accordance with the Service Rules relating to that service.

14. In the light of the definition of ‘substantive appointment’ above, the appointment of the petitioner on 30.09.1985 has been examined. The appointment letter of the petitioner (Annexure: 2) is reproduced below:-

“ कार्यालय अधिशासी अभियन्ता, ग्रामीण अभियन्त्रण सेवा, सहारनपुर।

पत्रांक: / गप्र0अ0से0/स्था0/नियुक्ति/85-86 दिनांक: सितम्बर 30, 1985

कार्यालय आदेश

श्री गिरीश चन्द्र पुनेठा पुत्र श्री केदार दत्त पुनेठा, ग्राम सिलपाटझ, डा0- पिथौरागढ़ जिला पिथौरागढ़ की नियुक्ति कनिष्ठ लिपिक के पद पर वेतनक्रम 354-10-424-द0रो0-10-454-12-514 द0रो0-12-550 के अर्न्तगत तदर्थ रूप से अग्रिम आदेशों तक की जाती है। इन्हें उत्तर प्रदेश शासन द्वारा समय-समय पर देय महंगाई भत्ते एवं अन्य भत्ते

देय होंगे। इनकी सेवायें पूर्ण रूप से अस्थाई हैं तथा किसी भी समय बिना किसी पूर्व सूचना के समाप्त की जा सकती हैं। इनको नियुक्ति स्थान पर योगदान करने के लिये कोई यात्रा भत्ता देय नहीं होगा।

श्री गिरीश चन्द्र पुनेठा को योगदान करते समय निम्नलिखित प्रमाण-पत्र प्रस्तुत करने होंगे।

- (1) किन्ही दो राजपत्रित अधिकारी/विधान सभा/विधान परिषद/लोकसभा के सदस्यों से प्राप्त चरित्र प्रमाण पत्र जो अभ्यर्थी को व्यक्तिगत रूप से प्रमाण देने की तिथि से 5 वर्ष से जानता हो।
- (2) यदि विवाहित हों तो जीवित पत्नी के संबंध में घोषणा पत्र।
- (3) मुख्य चिकित्सा अधिकारी द्वारा प्रदत्त स्वास्थ्य प्रमाण पत्र।
- (4) शैक्षिक योग्यता तथा आयु संबंधी प्रमाण पत्र।
- (5) यदि किसी विभाग में कार्यरत हों तो उस विभाग का कार्यमुक्त प्रमाण पत्र।

ह0/—

(विनय कुमार अग्रवाल)
अधिसासी अभियन्ता
ग्रामीण अभियन्त्रण सेवा,
सहारनपुर।”

15. The underlined parts of the appointment letter are crucial to understand the nature of appointment made on 30.09.1985. These are given below:-

- “(i) श्री गिरीश चन्द्र पुनेठा.....की नियुक्ति कनिष्ठ लिपिक के पद पर.....तदर्थ रूप से अग्रिम आदेशों तक की जाती है।
- (ii) इनकी सेवायें पूर्ण रूप से अस्थाई हैं तथा किसी भी समय बिना किसी पूर्व सूचना के समाप्त की जा सकती हैं।”

Above conditions in the appointment letter lead to draw an inference that the appointment is not regular and it is an adhoc arrangement. The appointment could be withdrawn at any time as the appointment was till further orders and purely temporary. The counsel for the petitioner could also not demonstrate that the appointment of the petitioner was made after selection of the petitioner in accordance with the service rules which govern the recruitment/appointment on the post of Junior Assistant in the Department. Therefore, on the basis of the record made available to the Tribunal, the appointment of the petitioner on 30.09.1985 cannot be said to be a ‘substantive

appointment' as defined under Rule 4(h) of the Seniority Rules of 2002 and it was an adhoc appointment.

16. It is pertinent to note here that the petitioner, who was appointed on adhoc basis on 30.09.1985, was later on regularized on 24.08.1990 vide Officer Order dated 24.08.1990 (Annexure R-1 to the written statement) which is reproduced below:-

“ कार्यालय अधिशासी अभियन्ता, ग्रामीण अभियन्त्रण सेवा, पिथौरागढ़।

पत्रांक: कैम्प-21 / ग्रा0अ0से0/एक0-स्था0/नियमितिकरण/90-91 दिनांक 24.08.90

कार्यालय आदेश

अधिशासी अभियन्ता, ग्रामीण अभियन्त्रण सेवा, सहारनपुर के आदेश सं0 997/ग्रा0अ0से0/स्था0/नियुक्ति/85-86 दिनांक 30.09.85 द्वारा श्री गिरीश चन्द्र पुनेठा की नियुक्ति तदर्थ रूप से कनिष्ठ लिपिक (परिवर्तित पदनाम कनिष्ठ सहायक) के पद पर हुई है। इन आदेशों के परिपालन में श्री पुनेठा द्वारा दिनांक 1-10-85 की पुर्वान्ह में योगदान किया गया है।

श्री पुनेठा दिनांक 1-10-85 से अनवरत रूप से स्वीकृत अस्थाई नियमित पद के विपरीत तदर्थ रूप से कार्यरत हैं। इनको कार्यरत पद के विपरीत अस्थाई नियुक्ति के लिये नियमितिकरण हेतु इस कार्यालय के आदेश संख्या 585/एक0-स्था0/नियमि0/90-91 दिनांक 19-7-90 द्वारा समिति का गठन किया गया। इनको अस्थाई नियमित नियुक्ति प्रदान करने की उक्त समिति की सुस्पष्ट संस्तुति प्राप्त होने के परिणामस्वरूप इनका कनिष्ठ सहायक के पद पर नियमितिकरण करते हुये अस्थाई नियमित नियुक्ति प्रदान की जाती है।

(के0एस0 नागर)
अधिशासी अभियन्ता,
ग्रामीण अभियन्त्रण सेवा
पिथौरागढ़।”

Perusal of the regularization order above makes it clear that the appointment of the petitioner has been made regular only in 1990 and the initial appointment of the petitioner in 1985 was merely an adhoc appointment. It is, therefore, clear that the date 30.09.1985 cannot be treated as date of the substantive appointment.

17. Learned counsel for the petitioner has also contended that the petitioner was granted the benefit of Assured Career Progression (ACP) scheme of 08.03.2011 after completion of 26 years of service

from 30.09.1985 Learned A.P.O. stated that the scheme under which the petitioner has been benefited has no connection with the determination of the seniority of government employees. We tend to agree with the contention of the learned A.P.O. The perusal of the ACP scheme of the government dated 08.03.2011 reveals that it is related to the assured career progression of government employees and the seniority is not governed by the scheme. Paragraph 3(7) of the government order dated 08.03.2011 makes it clear that the ACP scheme has no relation with the seniority. The paragraph 3(7) of the GO is reproduced below:

“इस योजना के अन्तर्गत प्राप्त वित्तीय स्तरोन्नयन पूर्णतयः वैयक्तिक हैं और इसका कर्मचारी की वरिष्ठता से कोई संबंध नहीं है। कोई कनिष्ठ कर्मचारी इस व्यवस्था के अन्तर्गत उच्च वेतन/ग्रेड वेतन प्राप्त करता है, तो वरिष्ठ कर्मचारी इस आधार पर उच्च वेतन/ग्रेड वेतन की मांग नहीं कर सकेगा कि उससे कनिष्ठ कर्मचारी को अधिक वेतन/ग्रेड वेतन प्राप्त हो रहा है।”

In the light of above, granting of benefits to the petitioner under the scheme of the government on completion of 26 years of service (after 1985) does not entitle him to claim the seniority from the year 1985.

18. Learned counsel for the petitioner has also contended that the impugned order has disturbed the settled and universally admitted long term seniority in the department. In his counter argument, learned A.P.O. has stated that the earlier seniority list was issued on 12.02.2013 and after issuing this seniority list, it came to the notice of the department that the list was not prepared correctly on the basis of substantive appointment of various employees and, therefore, this seniority list was cancelled and the exercise to prepare the correct seniority list was done again. Learned A.P.O. further stated that in order to do this exercise, a tentative seniority list was issued on 28.10.2014, the objections were invited and after considering the objections of the petitioner alongwith the objections of other employees, the final seniority list was issued on 10.02.2015 (Annexure: 1) on the basis of dates of substantive appointments of the employees

according to Rule 4(h) of the Seniority Rules of 2002. We have carefully gone through the record and there is nothing on record to suggest that any final seniority list was issued in respect of the cadre of the Junior Assistant in the department during the period 1985 to 12.02.2013. We find that the seniority list issued on 12.02.2013 has been rectified by the department by issuing the tentative seniority list on 28.10.2014 and the final seniority list on 10.02.2015. Learned counsel for the petitioner could not demonstrate that any final seniority list was issued between 1985 and 2013 and the settled and long-term seniority list was disturbed. We are, therefore, of the opinion that the seniority list was rectified by the department without unreasonable delay and the case in hand is not a case where a settled seniority list has been disturbed.

19. Learned counsel for the petitioner has also argued that the state respondents have adopted double standard in fixing the inter-se seniority of Junior Assistants. Different yardsticks have been applied for similarly situated Junior Assistants. The petitioner in his claim petition has referred 5 Junior Assistants at Serial Nos. 2,24,25,32 and 34 in the final seniority list dated 10.02.2015 (Annexure:1) and has stated that their dates of adhoc/temporary appointments have been taken as the dates of substantive appointments while they were regularized at a later date and in case of the petitioner, the date of regularization has been taken as the date of substantive appointment. The Tribunal directed learned A.P.O. to submit the regularization and appointment orders of the above mentioned Junior Assistants to clarify the position regarding allegation of discrimination levelled by the petitioner. Learned A.P.O. filed the letters of adhoc appointments and regularization orders of 5 Junior Assistants referred to by the petitioner through a supplementary affidavit (R-6 to R-10). The perusal of these documents reveals that the Junior Assistants at Serial Nos. 2, 24, 25, 32 and 34 (in the seniority list dated 10.2.2015) have been included in the

final seniority list at the correct positions on the basis of the dates of their substantive appointments and, therefore, the contention of the petitioner that double standard/different yardsticks have been adopted for different employees is factually not correct and the final seniority list has been rightly made on the basis of the dates of substantive appointments of all the Junior Assistants.

20. For the reasons stated above, we do not find any merit in the claim petition 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)

DATED: JULY 20TH 2017
NAINITAL

KNP