

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. 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, Ld. Counsel
for the petitioner.

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

Sri D.S.Patni, Ld. Counsel
for the respondent no. 2.

Ms. Rangoli Purohit, Ld. Counsel
for the respondent nos. 3 & 5.

Sri Arun Pratap Singh Sah, Ld. Counsel
for the other respondent No. 4.

JUDGMENT**DATED: NOVEMBER 07, 2017****(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 alongwith cost of the petition.
2. The petitioner who was appointed as Junior Engineer (Civil) in Uttarakhand Power Corporation has staked his claim against the respondents on the basis that private respondents, who were directly recruited as Assistant Engineer (Civil) (Trainee) by the respondent no. 2 on 21.06.2008, will get their seniority only after completion of the successful training of one year as Assistant Engineer (Trainee), whereas, in the seniority list issued by the respondent no. 2, they have been assigned the seniority from the date of their joining as Assistant Engineer (Trainee). The petitioner has taken a stand that after completion of training, their appointment will be counted as substantive appointment and they will get seniority only after completion of training as Assistant Engineer (Trainee). According to the petitioner, the service conditions are regulated by the U.P. State Electricity Board Assistant Engineers (Civil) Service Regulations, 1970.
3. The claim has been contested by the respondent department as well as private respondents mainly on the ground that relevant regulations for the post of Assistant Engineers (Civil) is the U.P. State Electricity Board Assistant Engineers (Civil) Service Regulations, 1970

and the U.P. State Electricity Board Assistant Engineer Regulations, 1970, are not applicable to the Civil Engineers but are applicable to the cadre of Mechanical & Electrical Engineers only and in the relevant regulations for the Civil Engineers, there is no provision of training and the source of recruitment for the Assistant Engineers (Civil) is by way of the direct recruitment as per Appendix-A while the procedure for promotees is laid down in Appendix 'B'. Unlike the Assistant Engineers in Electrical & Mechanical Branch, there is no definition of trained engineer in the Rules and training has not been prescribed under the Rules before any substantive appointment, hence, according to the respondents, the seniority has been fixed as per relevant rules and the petition deserves to be dismissed.

4. The matter was decided once by this Tribunal, but the relevant rules were not submitted by the Corporation before the court and the Hon'ble High court after setting aside the decision has remitted it for fresh hearing.
5. Both the parties as well as interveners' were heard.
6. The petitioner has staked his claim on the basis of Rule 19 of the Uttar Pradesh State Electricity Board Service Engineer Regulations, 1970 which pertains to the cadre of the Electrical & Mechanical wing of Engineers in the Uttarakhand Power Corporation Ltd. The respondents have submitted that for the Engineers in the Civil Branch, separate rules were framed and the same were submitted before the court. The court is of the view that the U.P. State Electricity Board Service Engineers Regulations, 1970 pertains to the Electrical & Mechanical cadre of engineers and the relevant service rules for the Assistant Engineers (Civil) branch is the Uttar Pradesh Electricity Board Assistant Engineer (Civil) Service Regulations, 1970 (hereinafter referred to as the relevant Regulations).

7. It is an admitted fact that on 01.10.2006, Uttarakhand Power Corporation issued an advertisement for the post of Assistant Engineer (Civil) for the recruitment year 2006-07 and the private respondents appeared for the same. The petitioner, Sanjeev Kumar was promoted as Assistant Engineer (Civil) after getting some relaxation against the promotion quota vacancy in the recruitment year 2008-09.

8. In the relevant Service Regulations of 1970, the source of recruitment has been mentioned in Regulation-5, which reads as under:

“5. Source of Recruitment:-(1) Recruitment to the Service, in any year, shall be made as follows:-

(i) By direct recruitment in accordance with the rules and procedure laid down in Appendix ‘A’ 65½%

(ii) By promotion of Junior Engineers (Civil) in the manner prescribed in Appendix ‘B’ 33 1/3%

(iii) By promotion from amongst the confirmed and qualified Computers (Selection Grade) (Civil) in the manner prescribed in Appendix ‘B’

It makes clear that unlike the source of recruitment of Electrical & Mechanical Engineers, relevant Regulations, 1970 for Civil Engineers provides for direct recruitment in accordance with the procedure in Appendix ‘A’ upto 65½% of the posts. Whereas, in the concerned Regulations of 1970, for Electrical & Mechanical Engineers, the word ‘direct recruitment’ has not been used and their source of recruitment is from amongst the trained engineers. For Civil Engineers, there is no definition for trained engineers in the rules. It makes a basic difference between two rules.

9. The court is of the view that the relevant Regulations for the post of Assistant Engineer (Civil) to which the petitioner belongs is the Uttar

Pradesh Electricity Board Assistant Engineer (Civil) Service Regulations, 1970 and its Regulation 18, provides for seniority in service and it says that the seniority shall be determined according to the date of appointment in a substantive vacancy in the cadre of the Service. The rules prescribes the direct recruitment for the post of Assistant Engineer and neither there is provision of training in the rules nor there is any definition of any trained engineers unlike the Regulations of Assistant Engineers for the Electrical & Mechanical Branch. It reveals that the private respondents were substantively appointed through direct recruitment quota posts on 30.04.2008 during the selection year 2007-08.

10. To determine the seniority, the said Regulation 18 lays down the procedure for determination of seniority and 4th proviso provides that between the candidates who are appointed by direct recruitment and who are recruited by promotion in the same year, the seniority shall be determined in the order in which their names are arranged in the Combined waiting list, prepared under Regulation 15.
11. Regulation 18 further provides that if, in any year, it has not been possible to prepare the Combined Waiting List due to late selection either from J.E. (C) or from Computer (S.G) (Civil) or from outside or due to any other unavoidable reason, the names in the gradation list shall be arranged in the same order in due course in respect of the vacancies allotted to each of the categories of candidates in that particular year, as in the Combined Waiting List, and seniority determined accordingly. This rule provides that in any year recruitment for a particular source fall short of the number of vacancies then the names in the gradation list shall be arranged in the same order in due course in respect of the vacancies allotted to each of the categories of candidates in that particular year, for determining of vacancies.

12. In the present case, private respondents were appointed against the vacancies of 2006-07 pursuant to the order dated 30.04.2008 while the claim petitioner was promoted as Assistant Engineer (Civil) with one time relaxation on 30.04.2009 against the promotion quota. The petitioner has also argued that the Regulations, 1998 shall be applied for determination of seniority. Although, this Regulation 18 of the relevant Regulations was not amended by the Regulation of 1998 like the amendment in Regulation 19 of the Regulation concerning to Electrical & Mechanical Engineers. However, Rule 3 of the 1998 Regulation provides that Regulation 1998 will have overriding effect only upto the inconsistency of earlier Regulations. Whereas in the present case, 1970 Regulations of Civil Engineers are not inconsistent with 1998 Regulations. Even if 1998 Regulations are applied for determination of the seniority, it makes no difference because as per proviso-II of Rule 8 (III) where appointments from any one source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees. Hence, according to Regulation of 1998, if the persons appointed against their quota in the later year, they will get their seniority, not from the year of vacancies but from the year of substantive appointment vis-à-vis other appointees of that year, but they will rank en block senior to other. This is the law position set out by the Rules.
13. The petitioner has also argued that the appointment to the private respondents can be given only after training and their appointments were made so by the different appointment order. Learned counsel for the private respondents has argued that in the relevant

Regulations neither there is provision of training nor there is any such provision which makes it clear that after direct recruitment, their appointment will not be made in the department unless training is completed, hence, training will make no difference. The respondents have argued that the matter of Assistant Engineer (Civil) cannot be governed by the Regulations applicable to the Assistant Engineers (Electrical & Mechanical) branch, in which for the source of recruitment, it is clearly mentioned that the appointment shall be made from the trained engineers and the training is must for them. We agree with the argument of the respondents because of the reasons that in the relevant Regulations, the recruitment of service as per Regulation 5(1)(i) of the relevant Rules, which reads as under:

“5. Source of Recruitment:- (1) Recruitment to the Service, in any year, shall be made as follows: (i) By direct recruitment in accordance with the rules and procedure laid down in Appendix ‘A’ 65½%.

(ii).....”.

In the Rules of Electrical & Mechanical Engineers, the source of recruitment is from amongst the trained engineers.

14. This court is of the view that for the Engineers in the Civil branch, training is not must as per the relevant Regulations. Appendix-‘A’ to the U.P. State Electricity Board Assistant Engineers (Civil) Service Regulations, 1970, lays down the procedure of direct recruitment but does not prescribe any type of training nor any precondition of completion of training before the appointment to the cadre of service. Appendix-‘B’ lays down the procedure for promotion and Regulation 15 lays down the manner in which the list of direct recruits and promotees selection during one selection year shall be maintained according to which the appointment shall be made and

no provision for training is mentioned. Learned counsel for the private respondents have also argued that the Civil Engineers are concerned with construction activities etc, therefore, training for civil engineers cannot be a pre-condition apart from the rules and after appointment of the private respondents, they were posted in the field and performed all the duties as regular Assistant Engineer. The respondents have also argued that the petitioner has no locus standi to challenge the appointment of direct recruits particularly when the petitioner was appointed on promotion against the subsequent year vacancies accrued in 2008-09. Whereas, the private respondents were appointed by direct recruitment on 30.04.2008 against the vacancies of previous year before the petitioner.

15. The court is of the view that the claim petitioner was promoted against the vacancies of 2008-09 and was promoted in the last of selection year 2008-09 and cannot claim seniority over the private respondents. It has also been contended that the corporation had issued a final seniority list on 19.10.2013 in which claimant was not included, as the said seniority list was in respect of Assistant Engineers (Civil) appointed upto selection year 2007-08. The petitioner was promoted in the selection year 2008-09, and there is no occasion for him to challenge the seniority list dated 19.10.2013, in which his name was not included.
16. This Court is of the view that when the petitioner was appointed through promotion against the vacancies of later year, he cannot claim seniority against the private respondents who were recruited against the vacancies of earlier year and even before the appointment of the petitioner. Even if the petitioner was appointed before the private respondents in the same year but private respondents who were appointed against the vacancies of previous year, will rank enbloc senior to the petitioner as per the rules. In these circumstances, the contention of the petitioner is not

sustainable. The appointment of private respondents on the post of Assistant Engineer (Civil) is a direct recruitment on substantive vacancies of the previous year whereas, the appointment of the petitioner is against the vacancies of later year. The claim petition filed by the petitioner has no force and deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

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

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 07, 2017
NAINITAL

KNP