

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 47/SB/2016

Dr. Sunil Kumar Agarwal S/o Late Shri Ram Kishore Agarwal aged about 48 years R/o 87, Engineers Enclave, Phase-III, G.M.S. Road presently posted and working as Senior Dental Surgeon under the respondents in the District Government Hospital, Uttarkashi

.....Petitioner

vs.

State of Uttarakhand and Others.

.....Respondents.

Present: Sri B.B.Naithani, Counsel
for the petitioner.
Sri U.C.Dhaundiyal, A.P.O.
for the Respondents No.1 & 2.
Sri S.C.S.Bhandari, Counsel
for Respondent No.3.

JUDGMENT

DATED: APRIL 25, 2018

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks following reliefs:

“ (a) To issue an order or direction to quash the order dated 15.02.2016 and order dated 07.03.2016..

(b) To issue an order or direction to the respondent authorities to decide the issue of seniority *vis-a-vis* the petitioner and the private respondent afresh in the light of the proviso of Rule 5 of Uttarakhand Government Servant Seniority Rules, 2002..

(c) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of case.

(d) To award the cost of the petition to the petitioner.”

2. Facts in brief, giving rise to the present claim petition are that, petitioner, who, at present is a Senior Dental Surgeon, was selected to the post of Dental Surgeon in the year 1997 along with private respondents, *vide* order dated 06.06.1997 (Annexure- A 3). In the appointment order/ letter dated 06.06.1997, there was a condition for the recruits, that they shall join the services within one month from the date of issuance of the appointment order. Such time was never extended.
3. Petitioner joined the service on 24.06.1997 while Respondent No.3 joined his service after the time limit, prescribed in the appointment letter, elapsed. Therefore, in view of Rule 5, respondent No.3 had lost his seniority. On 31.12.2010, a tentative seniority list of Dental Surgeon cadre was issued, wherein name of respondent No.3 figured above the petitioner. Petitioner submitted his objection dated 28.08.2011, against the tentative seniority list. On 07.03.2013, final seniority list of Dental Surgeon Cadre was issued without considering the representation of the petitioner. Petitioner again submitted representation dated 29.09.2015 (Annexure: A 7) to Respondent No.1, against the final seniority list dated 07.03.2013. Such representation of the petitioner was rejected by Respondent No.1 *vide* order dated 15.02.2016. Aggrieved with the order of Respondent No.1, petitioner approached Hon'ble High Court of Uttarakhand at Nainital by filing W.P. (S/B) 202 of 2016 which was relegated to this Tribunal. Hence, this petition.
4. After arguing the claim petition at some length, Ld. Counsel for the petitioner has confined his prayer only to the extent that, subject to filing a fresh representation by the petitioner, the same may kindly be directed to be decided by the respondent No.1, by a reasoned and speaking order, in accordance with law.

5. Ld. A.P.O. has no objection to such innocuous prayer but at the same time he has submitted that present claim petition is not maintainable. Considering the facts of the case, we think that the innocuous prayer made by the petitioner, is worth accepting. There is no harm, rather, it seems to be necessary in the interest of justice, if respondent No.1 is directed to look into the matter afresh, in view of new factual and legal grounds taken by the petitioner before this Court. The Court does not think it necessary to mention those grounds, for those will be taken up by the petitioner in his representation.
6. Claim petition is, accordingly, disposed of by directing petitioner to move a fresh representation before the respondent No.1, along with a copy of this Order. Respondent No.1, thereafter, is directed to decide such representation of the petitioner, by a reasoned and speaking order, in accordance with law, at the earliest possible but not later than eight weeks of presentation of certified copy of this order along with a copy of representation.
7. Needless to say that the decision so taken, shall be communicated to the petitioner soon thereafter.
8. It is made clear that we have not expressed any opinion on the merits of the claim petition.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 25, 2018
DEHRADUN

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