

**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. 15/DB/2015

1. Pankaj Kumar s/o Sri S.S.Beniwal presently posted as Junior Engineer, Chilla Power Station, Chilla, Pauri Garhwal and eight others.

.....Petitioners

VS.

State of Uttarakhand and others.

.....Respondents.

Present: Sri Shashank Pandey & Sri Nishant Chaturvedi, Counsel for the petitioners.
Sri U.C.Dhaundiyal, A.P.O. for Respondent No.1.
Sri V.D. Joshi, Counsel for Respondents No. 2,3 & 4.
None for private respondents.

JUDGMENT

DATED: MAY 31, 2018

Justice U.C.Dhyani (Oral)

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

“ (i) To issue order of direction quashing the seniority list dated 06.02.2010 enclosed as Annexure 1 to the claim petition to the extent the petitioners and private respondents are concerned.

(ii) To quash the order dated 04.02.2010 by which the representation of the petitioners against the interim seniority list is quashed.

(iii) To quash the order dated 16.08.2002 vide which the respondents No. 6 to 11 were regularized by declaring it to be illegal.

- (iii) To give the benefit of seniority for the period spent by the petitioners in on the job training to the petitioners with consequential benefits or in alternative to exclude the period of training of the respondents for the purpose of counting seniority.
- (iv) To give any other relief that the Hon'ble Court may deem fit.
- (v) To give cost to the petitioners".

2. Facts, giving rise to preset claim petition, are as follows:

Petitioners were appointed pursuant to an advertisement issued by Uttarakhand Power Corporation Ltd. (UPCL) in December, 2001. Selection process for regular appointments of Junior Engineers and Assistant Engineers, in various branches, was set into motion, which was to consist of written examination to be conducted by I.I.T. Roorkee followed by an interview. After receiving appointment letters, petitioners joined their duties. They were posted at different places by respondent No.3. They were posted on regular posts of Junior Engineers. They were never sent for any training. During the recruitment year 2002-03, whereby 58 members of Operating Staff, serving in Technician Grade, were promoted to the post of Junior Engineer. Since the petitioners and these persons were promoted in the same recruitment year, therefore, their *inter se* seniority was to be fixed in cyclic order in terms of Regulation 8(3) of the U.P. State Electricity Board Employees Seniority Regulations, 1998 (for short, Regulations of 1998). Since 33.33% vacancies on the post of Junior Engineers were to be filled up by promotion, therefore, the first name in the seniority list should be of a person appointed by promotion during the recruitment year 2002-03, followed by two direct recruits appointed in the same recruitment year and so on and so forth. Thereafter, during the next recruitment year, i.e., 2003-04, 18 members of Operating Staff were promoted to the post of Junior Engineers by a common order dated 30.12.2003. Since these 18 persons were appointed by promotion in a subsequent recruitment year, therefore, they are entitled to be placed *en-block* below the petitioners in the seniority list. Petitioners are entitled to be placed among those, who

were promoted during the recruitment year 2002-03 by following cyclic order as per Regulation 8(3) of the Regulations of 1998. On the contrary, petitioners have been placed below the persons who were promoted during the recruitment year 2002-03, which is contrary to the regulations.

Further, six persons (Respondents No. 6 to 11), who were serving in UJVNL on contract basis, were not entitled for regularization of service, since no Service Rules/ Regulations provide for their regularization. Respondent No.3 regularized six contractual employees against the post of Junior Engineer (E&M) *sans* power, on 16.08.2002, the same year in which petitioners were appointed, by direct recruitment. Surprisingly, these Junior Engineers have been treated *en-block* senior to the petitioners in the seniority list issued on 16.02.2010.

Respondent No. 4 issued a tentative seniority list in respect of Junior Engineers (E&M) *vide* Office Memorandum dated 26.12.2007. Names of Junior Engineers appointed by promotion as well as direct recruitments during recruitment year 2002-03 were placed in cyclic order as per Regulation 8(3) of the Regulations of 1998, but contractual employees, who were regularized on 16.08.2002, were placed *en-block* senior to the petitioners. The petitioners filed their objections against the same. Another tentative seniority list was issued by respondent No.4 *vide* Office Memorandum dated 31.03.2009. In the said tentative seniority list, petitioners were placed amongst persons who were promoted during recruitment year 2003-04. Petitioners again filed their objections, but ignoring the objections of petitioners, respondent No.4, finalized the seniority list on 06.02.2010, in complete disregard to the Service Regulations. Vital facts, which have been taken in paragraph 4(s) of the petition by the petitioner, are excerpted herein below for convenience:

“4(s)-It is also pertinent to point out that 33.33% of the posts were to be filled up by promotion and 67.67% of the posts by direct recruitment. Thus, out of the total sanctioned strength of 218 posts, 72

posts were to be filled up by promotion and 146 posts by direct recruitment. As on 01.07.2002 a total number of 28 posts in promotion quota were already occupied, thus, leaving 44 posts as vacant posts. The total number of promotions made in the year 2002-2003 was 58. Thus, the department exceeded by making 14 promotions above the sanctioned quota of recruitment by promotion. These excess candidates can only be given seniority as and when new vacancies in promotion quota arise”.

Being aggrieved with the seniority list, the petitioners approached Hon'ble High Court of Uttarakhand at Nainital, who relegated the matter to this Tribunal, on the ground of alternate remedy. Hence, present claim petition.

3. C.A./W.S. has been filed on behalf of Respondents No. 2, 3 & 4. Other respondents have adopted the same. It has been averred in the C.A. that the claim petition has been filed after nine years without any explanation. The same seniority list was put to challenge by one Rajveer Singh before this Tribunal, which was dismissed *vide* order dated 03.07.2012. All the Junior Engineers, who filed the claim petition No. 13/2011, have been promoted. Since the seniority list has been upheld by this Tribunal in claim petition No. 13/2011, therefore, subsequent challenge to the same seniority list is barred by the principle of *resjudicata*. A few Junior Engineers have challenged the judgment rendered by this Tribunal on 03.07.2012, before Hon'ble High Court, which Writ Petition 367/2014 (S/B) is pending before the Hon'ble Court. Out of 54 Junior Engineers, 45 have been promoted to the post of Assistant Engineers, six have retired, one has died and two are yet to be promoted. *Inter se* seniority of Assistant Engineers has been fixed only on the basis of their substantive appointment. Seniority list was prepared after disposing of the objections by the Engineers concerned, on the same.
4. In a nutshell, according to respondents No. 2, 3 & 4, present petition has been filed by the petitioners challenging the final seniority

list of the Junior Engineers (E&M) issued by General Manager (Personnel & I.R.) *vide* Office Memorandum dated 06.02.2010. Petitioners submitted their objections to the tentative seniority list of the Junior Engineers and the same were disposed of by speaking order and communicated *vide* letter dated 04.02.2010. The challenge thrown by the petitioners to Office Order dated 16.08.2002, is not maintainable, inasmuch as the same is being challenged after nine years without explaining any reason for the delay. They were appointed in UJVNL on 28.10.2002. There is no violation of Subordinate Electrical and Mechanical Engineers Service Regulations, 1972 and the Regulations of 1998.

5. According to Rule 7 of the U.P. Regularizations of Ad-hoc posts (Outside the Purview of Public Service Commission) Rules, 1979, the seniority of such Junior Engineers shall be only from the date of order of appointment and in all cases they shall be placed below the persons appointed in accordance with relevant Service Rules, prior to them. Since the Junior Engineers on contract, were regularized *vide* order dated 16.08.2002, therefore, their date of substantive appointment would be the same, which falls in the selection year 2002-03. Final seniority list was declared on 06.10.2010 after disposing of the objections raised by the Junior Engineers *vide* letter dated 04.02.2010. Seniority of the petitioners was determined after taking into consideration the relevant Service Rules and Regulations. Petitioners also made a representation to review the final seniority list, which, after due consideration, was dismissed. According to respondents No. 2, 3 & 4, petition is barred by principle of *estoppel by acquiescence*, as also by principle of *waiver*, besides principle of *resjudicata*.
6. To recapitulate, the petitioners were appointed as Junior Engineers (Trainees) by direct recruitment in the recruitment year 2002-03. They underwent training for one year. After successful completion of training, they were substantively appointed on the post of Junior Engineer in the year 2003-04. The period of training of the petitioners was not counted for determination of the seniority. In the

year 2002-03, Junior Engineers were also appointed by promotion. Since the promotee Junior Engineers did not require to undergo the training, they were given substantive appointment on the post of Junior Engineer in the year 2002-03 itself. The principal relief which was sought by the petitioners in the claim petition is to provide them seniority from 2002-03 counting their period of training. However, at the time of hearing, learned counsel for the petitioners did not press such relief.

7. Petitioners have now challenged the seniority list only on following two grounds.

8.1 The first ground pertains to the inclusion of those persons (private respondents No. 6 to 11) in the seniority list whose contractual employment was regularized on 16.08.2002 (Annexure: A-8 Colly). The contention of learned counsel for the petitioners in paragraph 4(i) of the claim petition is that these 6 persons were not entitled for regularization of their service, since no Service /Regularization Rules provide for their regularization. The respondent No. 3 had no power to regularize the service of these employees who were appointed on contract basis. These regularized persons have been given seniority from 16.08.2002 and they have been placed above the petitioners in the seniority list issued on 06.02.2010. Learned counsel for the petitioners also submitted that these 6 persons also participated in the regular selection of Junior Engineers in response to the advertisement issued in December, 2001 and were declared unsuccessful.

8.2 In reply to the averments made by the petitioners in paragraph 4(i) above, the State Respondents No. 1 to 4 have submitted in paragraph 14(xiii) of C.A./W.S. that the Junior Engineers who came in service through regularization have been treated to be substantively appointed on the post of Junior Engineers from 16.08.2002, the date of their regularization. According to Rule 7 of the U.P. Regularization on Ad hoc Appointments (Outside the Purview of Public Service Commission) Rules, 1979, the seniority of the regularized Junior

Engineers has been counted from the date of order of their regularization for determining their seniority. Since regularization of the contractual service of these 6 Junior Engineers was made on 16.08.2002, therefore, they have been given seniority in the selection year 2002-03.

8.3. The respondents have not mentioned specifically that the regularization of these 6 employees was done under the Regularization Rules of 1979. The regularization order dated 16.08.2002 (Annexure: A8 Colly) also does not mention the Rules under which the regularization was made. The regularization order dated 16.08.2002 has given reference of the 4th and 8th meetings of the Board of Directors on 29.04.2002 and 24.07.2002 in which decision was taken to regularize the persons working on contract/daily wages. The petitioners have not filed any rejoinder affidavit to counter the averments of the State respondents in their written statement in this regard. The petitioners have sought the relief “ to quash the order dated 16.08.2002 *vide* which the respondents No. 6 to 11 were regularized by declaring it to be illegal.” The petitioners have, neither in their pleadings nor at the time of hearing, been able to establish that the regularization of these 6 persons was illegal. We have no sufficient material on record to adjudicate upon the validity of regularization after more than 15 years. We, therefore, leave this matter here and would not go into this further.

9.1 The second ground on the basis of which learned counsel for the petitioners has challenged the seniority list is that the respondents have promoted the Junior Engineers on the post of Assistant Engineer in the selection year 2002-03 in excess of promotion quota. The contention of the petitioners in this regard has been stated in paragraph 4(s) of the claim petition, and is being quoted herein below for convenience:-

“That, it is also pertinent to point out that 33.33% of the posts were to be filled by promotion and 67.67% of the posts by direct recruitment. Thus, out of the total sanctioned strength of 218 posts, 72 posts were to be filled by promotion and 146 posts by direct recruitment. As on 01.07.2002 a total number

of 28 posts in promotion quota were already occupied, thus, leaving 44 posts as vacant posts. The total number of promotions made in the year 2002-2003 was 58. Thus, the department exceeded by making 14 promotions above the sanctioned quota of recruitment by promotion. These excess candidates can only be given seniority as and when new vacancies in promotion quota arise.”

9.2 The respondents No. 1 to 4 have refuted the contention of the petitioners and have stated in their Counter Affidavit/Written Statement in paragraph no. 13(xix) that the promotions made in 2002-03 were not made in excess of promotion quota and submitted the following table of promotions made in the selection year 2002-03:-

Dates of Promotion orders	Number of posts of Promoted Quota	Number of persons working in Promoted Quota	Total vacancies available in Promoted Quota	Total number of Promotee Personnel
31-12-2002	*72	34	38	37
19-06-2003	*72	63	09	09

* Correct figure is 73

9.3 **The petitioners have not filed any rejoinder affidavit to counter the averments made by the respondents in their written statement. We do not have adequate material to adjudicate upon the vacancies in 2002-03 and the promotions made in excess of quota.**

10. Respondents No. 2 to 4 have also pleaded in paragraphs 5 and 8 of the Counter Affidavit/Written Statement that on the basis of the seniority list dated 06.02.2010, all the petitioners have already been promoted in the year 2010, 2012 and 2013 (Annexure: R-1 to R-4 to the W.S.) and 45 out of total 54 private respondents have also been promoted (Annexure: R-5 to R-8 to the W.S.). 6 private respondents have retired and one private respondents has died.

11. Learned counsel for the respondents No. 2 to 4 has stated, at the time of hearing that apart from the petitioners and private respondents, many other persons have also been promoted on the posts of Assistant Engineers on the basis of the seniority list dated 06.02.2010. The contention of learned counsel for the respondents No.

2 to 4 is that due the promotions of the petitioners, private respondents and others, the seniority list dated 06.02.2010 has already been given effect to. The petitioners have not challenged the promotion orders given to the private respondents and others. Unless the promotion orders are challenged, the relief sought for quashing the seniority list dated 06.02.2010 cannot sustain in the eye of law. Quashing of seniority, as prayed by the petitioners, without challenging the promotion orders cannot be allowed as the promotions on the post of Assistant Engineer have already taken place long back from 2010 to 2013 on the basis of the seniority list dated 06.02.2010.

12. We are inclined to agree with the contention of learned counsel for the respondents no. 2 to 4 that in the absence of challenge and prayer to quash the promotions already made from 2010 to 2013, the seniority list should not be interfered with by the Tribunal.

13. At this stage of dictation, Ld. Counsel for the petitioners seeks to withdraw the claim petition with liberty to file the same afresh, with better particulars, in accordance with law.

14. The claim petition is disposed of as withdrawn with liberty, as above.

15. It is made clear that we have not expressed any opinion on the merits of the case.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 31, 2018
DEHRADUN

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