

**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)

EXECUTION PETITION NO. EX. 03/DB/2016

Rajendra Shukla, s/o Late Sri Prabhakar Shukla, aged about 58 years, presently posted as Geologist/ Deputy Director, Geology and Mining Unit, Directorate of industries, Bhoalpani, p.O. Barasi via Raipur, District Dehradun and another.

.....PetitionerS.

vs.

State of Uttarakhand through Principal Secretary, Industrial Development, Civil Secretariat, Subhash Road, Dehradun and another.

.....Respondents.

Present: Sri V.P.Sharma, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O. &
Sri Sunil Kumar Gupta, Advocate,
Counsels for the Respondents

JUDGMENT

DATED: JUNE 26, 2018

Justice U.C.Dhyani (Oral)

When claim petition No. 23/DB/14 Rajendra Shukla and another vs. State of Uttarakhand and Others was decided by this Tribunal on 29.09.2015, the following order was passed:

“The petition is allowed. The impugned seniority list (Annexure: A-1) is hereby quashed. The respondents No. 1 and 2 are directed to redraw the seniority of the parties in accordance with Rule-6 (and its Explanation) of the Uttarakhand Government Servants Seniority Rules, 2002 and observations made in the judgment within a period of four months from today after affording opportunity of objections to all concerned parties. The petitioners shall also be entitled for consequential benefit, if any, accrued to them. No order as to costs.”

2. Seniority of the petitioners was re-fixed by the respondents as per Tribunal's order dated 29.09.2015. Since response of the department on the consequential benefits was not clear, therefore, in execution application No. Ex.03/DB/16, Executing Court (this Tribunal) passed the following order on 31.05.2018:

“Ld. A.P.O. was directed to clarify their stand with an affidavit, relating to the remaining compliance of the court order. He has filed an affidavit today. In para 7 of the affidavit, he has stated that respondents are trying to get the status of the writ petition, pending before the Hon'ble High Court.

He has also annexed a copy of the letter issued by the brief holder, working in the High Court. This letter has no relevance, as it was written in the year 2016. Furthermore, it shows that there is no stay order against the order of this Tribunal. In these circumstances, the respondents are required to clear whether any consequential benefits are accrued/ admissible to the petitioner in their opinion, if so, why it has not been granted to the petitioner in spite of the order of the Tribunal, which has not been set aside by the Hon'ble High Court till today. According to the petitioner, there is no stay, order against the judgment of the Tribunal, by the Hon'ble High Court.

On behalf of the respondents, Ld. A.P.O. seeks some more time to clarify their stand by the next date.

The execution/ contempt petitions are for compliance of the judgment passed in the year 2015, which has not been complied with till today and it is very serious matter.

Respondents should also note that the contempt proceedings are pending against them and they are not taking the judgment of the court seriously and they are committing the contempt of the court order continuously. Hence, respondents are directed to come with clear stand before the court by the next date, otherwise, contempt proceedings shall be finalized against them, in case, they do not submit reasonable reply to the same.

Hence, respondents are allowed last opportunity to clarify their stand in writing by 20.06.2018 and the matter be listed on 25.06.2018 for hearing/ further orders.”

3. Respondents have filed compliance affidavit along with documents, on 25.06.2018, to show that the order sought to be executed has been complied with. An affidavit of Sri Rajendra Singh Patiyal, Deputy Secretary, Industrial Development, Government of Uttarakhand has been filed to show the same. Since none was present for the petitioner on 25.06.2018, therefore, this Court thought it fit to postpone the the hearing of Execution application till 26.06.2018, i.e., today, and accordingly, the same has been taken up today in presence of learned counsel for the parties.
4. In paragraphs No. 6, 7 & 8 of the compliance affidavit filed on behalf of respondents, following has been stated:

“6. That while discussing the entire matter related to the notional promotion and consequential benefits of the petitioners/ applicants, the DPC had found that Shri Anil Kumar was promoted to the post of Joint Director (Geology) as on dated 28.02.2013, on the direction of the Hon’ble High Court order dated 18.12.2012. However, the criteria for promotion to the post of Joint Director as per the U.P. Geology & Mining

Service Rules 1983 was "Seniority, subject to rejection of unfit" and for such promotion **he should have completed 05 years of service as on the year of promotion, i.e., 1st July of the year, on the post of Geologist.** However, the applicants were promoted to the post of Geologist on 28.04.2010, accordingly, they had not completed their 05 years as on that date i.e. 28.02.2013. However, since the consideration for promotion of the applicants was being done by the DPC meeting as on June 2018, by which time the **new Rules i.e. Uttarakhand Geology & Mining Service (Amendment) Rules, 2015 have come into force,** accordingly, the DPC being considerate towards the applicants have applied the subsequent rules of Uttarakhand **which provided for the minimum service of 03 years on the post of Geologist for promotion to the next post i.e. Joint Director,** which was held by Shri Anil Kumar, **but even then the applicants were not found fulfilled the criteria of 03 years as being eligible for promotion to the post of Joint Director (Geology) as on 28.02.2013.**

7. That the DPC, in the light of the judgment of this Hon'ble Tribunal dated 29.09.2015 and the relevant rules and the seniority list had also come to the conclusion that in case the applicants are being considered for notional promotion w.e.f. 28.02.2013 on the post of Joint Director then **in that case also three other persons senior to Shir Anil Kumar i.e. namely Shri Ganga Dhar Prasad, Shri Dinesh Kumar and Dr. Deepak Hatwal would also be in the line of notional promotion, since still in service, although there exists only one post of Joint Director (Geology), which though is not vacant.**

8. That the DPC was also concerned with the facts that **since the applicants have superannuated in the year 2015-16, they cannot avail the promotional post and on notional promotion,** the process for grant of consequential benefits has to be earmarked/ confirmed and for that the opinion of the line Departments i.e. Personnel, Law & Finance Departments have to be obtained, since the matter involved financial implications too. Accordingly, as per the minutes of the DPC meeting dated

22.06.2018, the clear opinion/ advice of the Line Departments have been recommended.”

5. Thus, it is the stand of the respondents that the petitioners are not entitled to any consequential benefit.
6. Ld. Counsel for the respondents have submitted that Sri Anil Kumar, respondent No.3, has filed writ petition No. 457/SB/15, which is pending adjudication before Hon’ble High Court of Uttarakhand. **Ld. Counsel for the parties have also pointed out that there is no stay of the Hon’ble Court in the aforesaid writ petition.**
7. It is settled law that the Executing Court cannot go beyond what was directed by the Court/ Tribunal in the claim petition while deciding *a lis*. The words ‘consequential benefit, if any, accrued to them’, have been used by this Tribunal while delivering the judgment on 29.09.2015 in claim petition No. 23/DB/14. **Although, it is the stand of respondents that no consequential benefits are due to the petitioners, but, contrary stand of the petitioners is that consequential benefits have accrued in their favour.** Thus, whether the consequential benefits have accrued to the petitioners, has become a contestable issue, which cannot be decided by the Executing Court, but can be agitated by the petitioners by filing a fresh claim petition, on fresh cause of action, in accordance with law, if they are so advised.
8. The execution application, thus, stands disposed of, in the light of the above. Petitioners are at liberty to approach this Tribunal, with definite pleadings in the claim petition, as to what consequential benefits have accrued to them, on fresh cause of action, in accordance with law, if they are so advised .

1. **Contempt petition No.C- 02/DB/2016 Rajendra Shukla vs. S.Bagauli**
2. **Contempt petition No.C- 03/DB/2016 Y.S.Sajwan vs. S.Bagauli**

In continuation of Court’s aforesaid order in Execution Petition No. Ex.03/DB/2016, which may also be treated as part of this order, this Tribunal finds that there is no willful and deliberate disobedience of

order, passed by this Tribunal on 29.09.2015 in claim petition No. 23/DB/14 by alleged contemnors.

The contempt proceedings against alleged contemnors-respondents are, accordingly, dropped. Notices issued to them are hereby discharged.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 26, 2018
DEHRADUN

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