

**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. 13/DB/2018

Kailash Chandra Sharma, s/o Late Sri Brahmanand Sharma aged about 56 years, presently working and posted as Accountant in the office of Chief/ District Development Officer, Roshnabad, District Haridwar.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, Finance, Government of Uttarakhand, Dehradun.
2. Director, Directorate Vibhagiya Lekha Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun.
3. Commissioner, Department of Rural Development, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Counsel for the petitioner.

Sarvsri U.C.Dhaundiyal and V.P.Devrani, A.P.Os., for the Respondents.

JUDGMENT

DATED: JULY 27, 2018

Justice U.C.Dhyani (Oral)

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

“ (i) to quash the impugned order dated 07.03.2018 along with its Annexure No.2 and 3 along with its effect and operation declaring that the respondent No.2 has no authority to challenge the rights of the appointing / competent authority of the petitioner.

(ii) To issue an order or direction to the concerned respondents to include the name of the petitioner and other Accountant of the rural development department in the State seniority list dated 08.03.2018 (Annexure: No. A-2) of accountants working under the various

departments mentioned in the schedule 'Ka' of Amendment Service Rules, 2017 of AAO according to his/their seniority.

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

(iv) To award the cost of the case."

2. Brief facts, giving rise to present claim petition, are as follows:

Petitioner is working and posted as Accountant in the office of Chief Development Officer, Haridwar. Initially, he was appointed as Junior Accounts Clerk in 1991 and was subsequently promoted on the post of Accounts Clerk/ Assistant Accountant in the year 1993. Petitioner, along with other Assistant Accountants, thereafter, was promoted to the post of Accountant, *vide* order dated 30.11.2012. This order was subsequently amended by another order dated 05.10.2013. Notional promotion was granted to the petitioner *w.e.f.* 21.08.2007..

U.P. Assistant Accounts Officers' Service Rules were framed in 1985. Source of recruitment to the post of Assistant Accounts Officer has been prescribed in Rule 5, whereby 50% were to be inducted by direct recruitment and remaining 50% by promotion from the Accountants, who have completed five years' service in respective departments. In Schedule 'Kha' of Service Rules, 1985, Accountant of Rural Development Department was included in the State Seniority list for the purpose of promotion to the post of Assistant Accounts Officer.

On creation of State of Uttarakhand, State Government framed Uttarakhand Assistant Accounts Officer Service Rules, 2003. As per Rule 5 of the said Rules, recruitment to the post of Assistant Accounts Officer is to be made by promotion, 90% from substantively appointed departmental Accountants, Senior Accountants, Senior Auditors of the various departments mentioned in Schedule 'Kha' of the Rules; 5% from the Accountant-cum-Senior Data Entry Operator/ Senior Observers-cum- Data Processing of Director Treasury and Finance Services and 5% from the Accountants-cum- Senior Data Entry Operator-cum- Senior Observers-cum- Data Processing, of Director, Accounts and

Entitlement. For the purpose of promotion to the post of Assistant Accounts Officer, under the quota of 90%, the eligibility of 5 years' qualifying service on the post of Accountant is prescribed. As per Schedule 'Ka' of Service Rules, 2003, in the cadre of Assistant Accounts Officer service, two posts of Assistant Accounts Officer in the department of Commissioner Development were created. In Schedule 'Kha', it was wrongly mentioned at Sl. No. 19 as Commissioner, Agriculture, inasmuch as no such department exists in State of Uttarakhand.

Until 2008, the Accountant of Rural Development Department was included in the seniority list of Assistant Accounts Officer Service Cadre. Seniority list of departmental Accountants/ Senior Accountants has been brought on record as Annexure: A 4 to the petition.

On the recommendation of the Pay Commission, the post of Accounts Clerk was declared as dead cadre *vide* Government Order dated 02.08.2004 and nomenclature of Accounts Clerk was changed to Assistant Accountant. It was provided in the G.O. that those substantively appointed Assistant Accountants, who have passed first departmental examination, up to the completion of three years of service on the post, have been sanctioned the pay scale of Rs.5000-8000/-. *Vide* order dated 21.07.2006, Respondent No.1 granted relaxation to the Assistant Accountant of the department to pass the departmental examination. Uttarakhand Accountant's Cadre (Rural Development Department) Service Rules were framed in 2011. After reorganization of the cadre structure of Rural Department, 274 Assistant Accountants were promoted to the post of Accountant since the date of their joining. In this promotion order, the name of the petitioner was included (Annexure: A 8). Subsequently, *vide* order dated 05.10.2013, promotion order dated 30.11.2012 was modified and notional promotion was granted to the Accountants of Rural Development since 21.08.2007, for the purpose of seniority only. No other benefit was granted for this period (Annexure: A 9). **Commissioner**

Rural Development, thereafter, wrote to Respondent No.2 for the inclusion of the names of departmental Accountants in the State seniority list of Accountants/ Senior Accountants. Respondent No.2 raised objection as regards inclusion of Accountants of Rural Department in the State Seniority list. Petitioner also sent a legal notice to Respondents No. 1 & 2, but to no avail. They issued State wise tentative seniority list of Accountants in December, 2017. *Vide* notification dated 18.10.2017, Uttarakhand Assistant Accounts Officer Service (First Amendment) Rules, 2017 came into force, whereby certain amendments were incorporated in the Service Rules of 2003 (Annexure: A 12). A writ petition was filed before Hon'ble High Court, who, *vide* order dated 08.01.2018 gave direction to the respondents to decide the representation of the petitioner. According to petitioner, such representation was dismissed *vide* order dated 07.03.2018 (Annexure: A 1). Such rejection of the representation was illegal. Feeling aggrieved with the same, present claim petition has been filed.

3. W.S./C.A. has been filed by Respondent No.2, on behalf of Respondents No. 1 & 2. Parawise reply of the claim petition has been given in the C.A., justifying rejection of the representation of the petitioner, by a reasoned and speaking order, in accordance with law. In other words, an attempt has been made to justify the order dated 07.03.2018, the order impugned, which is Annexure: A 1 to the petition. This Court does not feel it necessary to reproduce the contents of the counter affidavit for the sake of brevity. Suffice will it be to say that the reasons, which have been assigned while rejecting the representation of the petitioner, are reiterated in C.A./W.S.
4. After hearing the arguments of Ld. Counsel for the parties at length, **we find that Rural Development Department and Finance Department of the State Government have taken different stands. In other words, while Rural Development Department has taken one stand, Finance Department has taken another stand. While Rural Development Department has taken a stand that Accountants of said department should**

be included in the State Seniority list of the Accountants, Finance Department has taken a different stand that they should not be included.

5. It has been observed by the Hon'ble Apex Court in the decision of *ONGC vs. Collector of Central Excise, [1995(1)1995 Supp. (4 SCC) 541]* that no litigation between two departments of the Government should go to the Court.
6. Government of India, Ministry of Law and Justice, Department of Legal Affairs, Judicial Section in its communication dated 07.8.2009, addressed to the Assistant Solicitor Generals of all the High Courts, has desired that all the departments of Government of India as well as the Public Sector Undertakings of the Central Government should resolve dispute amicably by mutual consultations or through the good offices of the empowered agencies of the Government or through arbitration and recourse to the litigation should be eliminated.
7. In the decision of *Mahanagar Telephones Nigam Ltd. vs. Chairman, Central Board of Direct Taxes, (2004) 6 SCC 431*, Hon'ble Supreme Court gave further direction that there is need to set up similar Committees by the State Governments also to resolve the controversy arisen between the Departments of the State or the State and any of its undertakings. The Hon'ble Supreme Court further observed that it would be appropriate for the State Governments to set a Committee consisting of Chief Secretary, Secretaries of the Departments concerned, Secretary of law and where financial commitments are involved, the Secretary of Finance. The decision taken by such a Committee shall be binding on all the Departments concerned and shall be the stand of the State Government.
8. We, therefore, think it proper to relegate the matter to Ld. Chief Secretary to the Govt. of Uttarakhand to make an endeavour to reconcile contradictory views of Rural Development Department and Finance Department, and bring the dispute, between two departments of the State Govt., to a logical conclusion.
9. Ld. Chief Secretary, Government of Uttarakhand is, accordingly, requested to convene a meeting of officers representing Rural

Development Department and Finance Department, within 8 weeks of presentation of certified copy of this order, and resolve the controversy raised in present claim petition, which pertains to inclusion of the Accountants of Rural Development Department in the State seniority list of the Accountants, in accordance with law.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 27, 2018
DEHRADUN

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