

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 22/DB/2015

Anil Kumar aged about 46 years, S/o Late Sri Guljari Lal, Joint Director, Geology & Mining Unit, Directorate of Industries Uttarakhand, Dehradun, R/o Sai Puram, Chanderbani Road, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through its Chief Secretary, Subhash Road, Dehradun.
2. Additional Chief Secretary to the Government of Uttarakhand, Department of Industries Development, Anubhag-I, Subhash Road, Dehradun.
3. Shri S.L. Patrick, Chief Mines Officer, Geology and Mining Unit, Directorate of Industries, Uttarakhand, Bhopalpani, P.O.Barari, Raipur, Dehradun (Service of notice to be effected through the Head of the Department.).

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel for the petitioner

Sri U.C.Dhaundiyal & Sri V.P.Devrani, Ld. A.P.Os.

for the respondents No. 1 & 2

Sri L.K.Maithani, Ld. Counsel for the respondent No. 3

JUDGMENT

DATE: AUGUST 30, 2018

HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed present claim petition for seeking the following reliefs:

“(a) That the impugned seniority list (Annexure: A1) and promotion order dated 23.10.2015 (Annexure: A21) be kindly held violative of fundamental, constitutional and civil rights of the petitioner, against law, rules, orders and principles of natural justice and the same kindly be quashed and set aside;

(b) That Respondent no. 1 and 2 be kindly ordered and directed to place the petitioner senior to respondent no. 3 in the combined seniority list of Joint Director of Geology discipline and of Chief Mines Officer in Mining Discipline;

(c) That Respondent no. 1 and 2 be kindly ordered and directed to consider for promotion to the post of Additional Director only the Joint Director in Geology discipline as per the existing rules;

(d) That any other relief, in addition to or in modification of above, as the Hon’ble Tribunal deem fit and proper be kindly granted to the petitioner against the respondents; and

(e) Rs. 20,000/- as costs of this Claim Petition be kindly awarded to the petitioner against the respondents. ”

2. The facts in brief are that the petitioner was promoted to the post of Joint Director (Geology) on 28.02.2013 in the Geology Wing in the Geology and Mining Unit of the Directorate of Industries, Government of Uttarakhand. Respondent no. 3 who belongs to the Mining Wing was promoted to the post of Joint Director/Chief Mines Officer before the petitioner on 04.02.2013. According to the Uttarakhand Geology and Mining Services (Amendment) Rules, 2015 (hereinafter referred as Rules of 2015), the promotion to the post of Additional Director is made from the substantively appointed Joint Director (Geology) and Joint Director/Chief Mines Officer. The Geology and Mining Wings are the separate Wings upto the post of Joint Director

and thereafter, the combined seniority list of Joint Directors of both the Wings is prepared for promotion to the post of Additional Director, Geology and Mining. The combined seniority list of Joint Directors of both the Wings was issued on 22.05.2015, the same is as under:-

“कार्यालय ज्ञाप संख्या 637 / **VII**-1 / 2015 / 197-ख / 2014 **T.C.-1** दिनांक 22 मई, 2015 का संलग्नक:-

भूतत्व एवं खनिकर्म इकाई, उद्योग निदेशालय, उत्तराखण्ड देहरादून के अन्तर्गत मौलिक रूप से नियुक्त संयुक्त निदेशकों (खनिकर्म शाखा एवं भूवैज्ञानिक शाखा) की संयुक्त अन्तिम ज्येष्ठता सूची।

क्रम संख्या	अधिकारी का नाम	शाखा	संयुक्त निदेशक के पद पर मौलिक नियुक्ति की तिथि
1.	श्री एस0एल0पैट्रिक	खनिकर्म शाखा	04 फरवरी, 2013
2.	श्री अनिल कुमार	भूविज्ञान शाखा	28 फरवरी, 2013

The promotion to the post of Additional Director was made in accordance with the Rules of 2015 which were notified on 22.07.2015. According to Rule 5(1) of the Rules of 2015, the criterion for promotion to the post of Additional Director is seniority and merit. The DPC recommended the Respondent No. 3 for promotion on the post of Additional Director and the Government promoted the Respondent No. 3 vide O.M. dated 23.10.2015.

3. Opposing the claim petition, respondents No. 1 and 2 and Respondent No. 3 have filed separate written statements. The petitioner has also filed rejoinder affidavits against the written statements filed by the Respondents no. 1 and 2 and Respondent No. 3. Respondents No. 1 & 2 and Respondent No. 3 have also filed Additional written statements. We have heard both the parties and perused the record.

4. The petitioner has challenged the seniority list of Joint Directors mainly on the ground that the promotion of Respondent No. 3 to the post of Joint Director/Chief Mines Officer is illegal. The

respondent No. 3 was not eligible for promotion as he had not completed 5 years on lower post in the recruitment year 2012-13; period of substantive appointment on lower post of Respondent No. 3 should be counted from 22.02.2011 rather than 08.01.2008, the date of his notional promotion; respondent No. 3 is not eligible for promotion in spite of relaxation granted to him in minimum prescribed length of service for promotion to the post of Joint Director; etc.

5. Respondents No. 1 to 3 have opposed the claim petition and have explained in detail that the promotion of Respondent No. 3 was in order and after promotion of the petitioner as well as Respondent no. 3 on the post of Joint Director, a combined seniority list was issued in accordance with Rule 7 of the Uttarakhand Government Servants Seniority Rules, 2002.

6. **The petitioner in his pleadings has taken the ground of illegal promotion of Respondent No. 3 on the post of Joint Director on 04.02.2013 but we notice that the petitioner has not sought any relief for quashing the promotion of Respondent No. 3 on the post of Joint Director/Chief Mines Officer. The petitioner has sought relief to quash the seniority list without seeking any relief for quashing the promotion of the Respondent No. 3 on the post of Joint Director/Chief Mines Officer. On this ground alone, the relief sought by the petitioner for setting aside the seniority list cannot sustain in the eye of law and, therefore, the prayer of the petitioner to set aside the seniority list dated 22.05.2015 is not acceptable. Without any prayer for quashing the promotion of Respondent No. 3 on the post of Joint Director/Chief Mines Officer, the claim petition is not tenable in so far as relief regarding quashing of seniority list is concerned and, therefore, we feel that we need not go further to examine the issue of legality/illegality of promotion of respondent No. 3 on the post of Joint Director/Chief Mines Officer when no relief has been sought by the petitioner for setting aside the promotion of respondent No. 3 on the**

post of Joint Director/Chief Mines Officer. When no relief has been sought by the petitioner in respect of basic (promotion) order, the subsequent/consequential order (seniority list) neither can be challenged nor be examined by the Tribunal.

7. Learned counsel for the petitioner has also argued that the promotion of Respondent No. 3 on the post of Additional Director vide O.M. dated 23.10.2015 is illegal because the Service Rules of 1983 as amended in 2000 had no cadre of Additional Director, Geology and Mining. It has been further submitted by learned counsel for the petitioner that in the absence of any such cadre in the Rules, Respondents had neither any power nor authority to create post of Additional Director, Geology and Mines. In their counter arguments, the respondents have stated that by G.O. dated 22.12.2011, the post of Additional Director, Geology and Mines was created under Rule 4 of the Uttar Pradesh Geology and Mining Service Rules, 1983. The Rule 4 of the Service Rules of 1983 is reproduced below for convenience:-

“4-सेवा का संवर्ग—(1) सेवा की सदस्य-संख्या और उसमें प्रत्येक श्रेणी के पदों की संख्या उतनी होगी जितनी राज्यपाल द्वारा समय समय पर अवधारित की जाय।

(2) जब तक कि उपनियम (1) के अधीन परिवर्तन करने के आदेश न दिये जायें, तथा सेवा की सदस्य-संख्या और उसमें प्रत्येक श्रेणी के पदों की संख्या उतनी होगी जितनी नीचे दी गयी है:-

.....

परन्तु राज्यपाल—

(1) किसी रिक्त पद को बिना भरे हुए छोड़ सकते हैं या उसे अस्थगित रख सकते हैं, जिससे कोई व्यक्ति प्रतिकर का हकदार न होगा; या

(2) ऐसे अतिरिक्त स्थायी या अस्थायी पदों का सृजन कर सकते हैं, जिन्हें वह उचित समझें।”

We agree with the contention of the respondents that under Rule 4 of the Service Rules of 1983, the State Government has power to create additional posts and reorganize the strength of the service and, therefore, the posts created vide G.O. dated 22.12.2011 are in order

and the contention of the learned counsel for the petitioner that the post of Additional Director, Geology and Mines was not listed in the Service Rules of 1983 as amended in 2000 is misconceived and it cannot sustain.

8. Learned counsel for the petitioner has also argued that the petitioner had been working in Geology discipline whereas, Respondent No. 3 is of Mining discipline and, therefore, seniority of the petitioner and respondent no. 3 could not have been clubbed. We are not impressed by this argument of learned counsel for the petitioner as Rule 7 of the Uttarakhand Government Servants Seniority Rules, 2002 which clearly provides that when appointments are to be made only by promotion but from more than one feeding cadres, the *inter-se* seniority of persons shall be determined according to the date of order of their substantive appointments in their respective feeding cadres. In the case in hand, there are two feeding cadres namely, Joint Director (Geology) and Joint Director/Chief Mines Officer for promotion to the post of Additional Director and, therefore, the seniority of the petitioner and respondent No. 3 has been rightly clubbed under the Rules.

9. Learned counsel for the petitioner has also argued that promotion from the post of Joint Director to the post of Additional Director is made according to the criterion of seniority and merit and the petitioner was better than the respondent no. 3 in so far as merit is concerned as per the Uttarakhand (Outside the Purview of Public Service Commission) Procedure for Selection by Promotion in State Services Rules, 2013. In his pleadings or argument, learned counsel for the petitioner has not been able to show as to how the petitioner is better merit-wise as compared to the respondent no. 3 and which provision of Rules of 2013 shows that the petitioner is more meritorious than the respondent no. 3. The petitioner has miserably failed to establish that the petitioner is more meritorious than the respondent no. 3 or the Rules of 2013 have not been followed or to produce any

material on record to substantiate his claim for promotion *vis-à-vis* respondent No. 3 according to the Rules of 2013.

10. Learned counsel for the petitioner has also argued that the promotion on the post of Additional Director should have been made according to the old Rules and not according to the Rules of 2015. The petitioner has not specified which Rules were required to be followed. The Service Rules of 1983 do not provide the post of Additional Director in the cadre structure. The cadre strength under amended Rules of 2000 provides the post of Additional Director which was to be filled up from the substantively appointed Joint Directors and Deputy Directors. The G.O. dated 22.12.2011 was issued and the cadre structure of the Geology and Mining Wings of Directorate of Industries was re-organized and after that, Service Rules were amended in 2015. Before 2015, Government chose not to fill up the post of Additional Director which is permissible under Rule 4 of the Service Rules of 1983 and no person was promoted to the post of Additional Director. Learned counsel for the petitioner has not been able to demonstrate as to how the G.O. dated 22.12.2011 and Amendment Rules, 2015 are not applicable for the purpose of promotion from the post of Joint Director to the post of Additional Director. It is a settled law that the employees are bound by the Rules framed by the Government from time to time regarding service conditions of its employees.

11. In view of above, we do not find any infirmity in the G.O. dated 22.12.2011 and Rules of 2015 and, therefore, the promotion of respondent No. 3 on the post of Additional Director, Geology and Mining vide O.M. dated 23.10.2015 should not be interfered.

12. Learned counsel for the petitioner has also referred the following case laws:-

- i. State of U.P. and others vs. Mahesh Narain (Supreme Court)[2013(137)FLR 316]

- ii. Ram Shankar Bhattacharjee vs. Gauhati High Court, 2005 LAB, I.C. 456.
- iii. Udhay Pratap Singh and others vs. State of Bihar and others, 1995 Supreme Court Cases (L&S) 85
- iv. Y.V.Rangaiah and others vs. Sreenivasa Rao and others (1883)3 SCC, 382
- v. A.Manoharan and others vs. Union of India and others (2008)1 Supreme Court Cases (L&S)870

We have gone through the above referred case laws. The facts and circumstances in above cases are entirely different as compared to the case in hand. Above case laws are not applicable in the present case and they are of no help to the petitioner.

13. For the reasons stated above, we do not find any merit in the claim petition and the same is liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: AUGUST 30, 2018
DEHRADUN
KNP