

**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. 33/DB/2015

1. Deepak Kumar Yadav, aged about 51 years, S/o Shri P.D. Singh, presently posted as Superintending Engineer, ADP (UEAP), Dehradun, R/o Lane No. 2, Ashok Vihar, Ajabpur, Dehradun.
2. Khagendra Prasad Upreti, aged about 53 years, S/o Late Shri Chaturbhuj Das Upreti, presently posted as Superintending Engineer, P.W.D., Dehradun, R/o House No. 466, T.H.D.C. Colony, Banjarawala, Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Secretary, Public Works Department, Subhash Road, Dehradun.
2. Secretary to the Govt. of Uttarakhand, Public Works Department, Anubhag-I, Subhash Road, Dehradun.
3. State of Uttar Pradesh through its Principal Secretary, P.W.D., Civil Secretariat, Lucknow.
4. Shri Arun Kumar Goel, Presently posted as Superintending Engineer Incharge, World Bank, New Tehri.
5. Shri Charu Chandra Joshi, Superintending Engineer, PWD, NH Circle, Haldwani.

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel for the petitioners
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. 4

JUDGMENT**DATE: SEPTEMBER 06, 2018****HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A)**

1. The petitioners have filed the present claim petition for seeking the following reliefs:

“(a) That the impugned orders ANNEXURE-A1 and ANNEXURE-A2 be kindly held in violation of fundamental, constitutional and civil rights of the petitioners, against law, rules, orders and principles of natural justice and be kindly quashed and set aside:

(b) That the respondents no.1 and 2 be kindly ordered and directed not to disturb the already settled seniority of the petitioners and Respondent No.4 in the cadre of Assistant Engineers (Civil) wherein the petitioners are placed senior to respondent No. 4;

(c) 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 petitioners against the respondents; and

(e) Rs. 20,000/- as costs of this Claim Petition be kindly awarded to the petitioners against the respondents. to quash and set aside the order dated 24.06.2015, issued by respondent No. 1.”

2. In brief, the case of the petitioners is as under:-

2.1 The petitioners were directly recruited through U.P. Public Service Commission (PSC). In the year 1989-90, the erstwhile Government of Uttar Pradesh appointed petitioner NO. 1 on 20.09.1990 and Petitioner No. 2 on 06.07.1992 (Annexure: A-3 and Annexure: A4).

2.2 Recruitment year is defined as from 1st July of the year to 30th June of the next year.

2.3 Respondent No. 4 filed a claim petition before the Uttarakhand Public Services Tribunal (No.1 of 2001) which was decided on 16.07.2003. The operative part of the judgment reads as under:

*“So under these circumstances, we find no good reason to deprive the petitioner of his eligibility for promotion from the date of his confirmation, as per rules w.e.f. 01.03.1990. Accordingly, we allow the petition and quash the impugned order dated 06.05.1999 contained in Annexure-1 and direct the Respondents **to reconsider the petitioner’s claim for promotion as an Assistant Engineer in the first batch of promotees chosen and selected in November, 1990 and in case no post was available for him at that time in view of his seniority, to reconsider him in the next selection held in May, 1991.** Obviously if he is found fit for promotion, then his promotion will relate back to the date of availability of the vacancy. As a natural sequence thereto he would also be reconsidered for the promotional post of Executive Engineer on that basis regardless of his having promoted during the meanwhile in the Hill Sub Cadre.”*

2.4 The Government of Uttar Pradesh thereafter, issued G.O. dated 10.06.2009 and the relevant part of it reads as under:-

“याची श्री अरूण कुमार गोयल द्वारा मा० अधिकरण के उक्त निर्णय एवं आदेश दिनांक 16.07.2003 के अनुपालन हेतु मा० लोक सेवा अधिकरण, उत्तराखण्ड, देहरादून में अवमानना याचिका सं०-सी०-100/2004 अरूण कुमार गोयल बनाम् श्री चन्द्रपाल व अन्य योजित की गयी थी। मा० अधिकरण के उक्त निर्णय एवं आदेश दिनांक 16.07.2003 के अनुपालन में शासन के कार्यालय-ज्ञाप संख्या-2008/23-4-2004-11(13)/2001, दिनांक 31.03.2004 द्वारा याची श्री अरूण कुमार गोयल की पदोन्नति पर विचार किया गया एवं यह पाया गया कि चूँकि श्री अरूण कुमार गोयल दि० 01.03.1990 से अवर अभियंता के पद पर स्थायी हुए हैं, अतः व चयन-वर्ष 1988-89 एवं 89-90 की रिक्ति में नियमानुसार पात्र नहीं होते हैं तथा चयन वर्ष 1990-91 की रिक्ति में याची श्री अरूण कुमार गोयल पात्र होते हैं, परन्तु उनकी पदोन्नति हेतु पद उपलब्ध नहीं हैं। मा० लोक सेवा अधिकरण उत्तराखण्ड, देहरादून द्वारा उक्त अवमानना याचिका में दिनांक 10.08.2006 को यह आदेश पारित किए गये कि याची श्री अरूण कुमार गोयल की पदोन्नति पर अधिसंख्य पद सृजित कर विचार किया जाना चाहिए। मा० अधिकरण के उक्त आदेश दि० 10.08.2006 के अनुपालन में शासनादेश सं०-3157/23.04.2006-11(37)/2004, दिनांक 06.09.

2006 द्वारा याची श्री अरुण कुमार गोयल की पदोन्नति पर विचार किए जाने हेतु चयन वर्ष 1990-91 के सापेक्ष सहायक अभियंता (सिविल) का एक अधिसंख्य पद सृजित करते हुए शासन के पत्र सं०-3194/23-4-2006-11(37)/2004, दिनांक 08.09.2006 द्वारा लोक सेवा आयोग, उ०प्र० को याची श्री अरुण कुमार गोयल की पदोन्नति पर विचार किए जाने हेतु प्रस्ताव प्रेषित किया गया। शासन द्वारा प्रेषित उक्त प्रस्ताव के आधार पर दि० 16.12.2008 को लोक सेवा आयोग, उ०प्र० द्वारा आयोजित चयन समिति की बैठक में श्री अरुण कुमार गोयल की पदोन्नति पर विचार किया गया। तदनुक्रम में लोक सेवा आयोग, उ०प्र०, इलाहाबाद के पत्र सं-107/4/पी/एस-6/87-88टीसी-111, दिनांक 23.01.2009 द्वारा श्री अरुण कुमार गोयल को चयन वर्ष 1990-91 की रिक्ति के लिए सहायक अभियंता (सिविल) के पद पर चयन हेतु उपयुक्त पाते हुए नियुक्ति/प्रोन्नति की संस्तुति की गयी है।

2- उपर्युक्त के परिप्रेक्ष्य में लोक सेवा आयोग, उ०प्र., इलाहाबाद की संस्तुति के आधार पर श्री राज्यपाल श्री अरुण कुमार गोयल तत्कालीन अवर अभियंता (सिविल)(सम्प्रति सहायक अभियंता (सि०), लोक निर्माण विभाग, उत्तराखण्ड) को चयन वर्ष 1990-91 की अवर अभियंता (सिविल) डिग्री कोटे की सामान्य श्रेणी की रिक्ति में उक्त शासनादेश दि० 06.09.2006 द्वारा सृजित अधिसंख्य पद के सापेक्ष, सहायक अभियंता (सिविल) के पद पर नोशनल प्रोन्नति प्रदान किए जाने की सहर्ष स्वीकृति प्रदान करते हैं।”

2.5 The respondents issued a tentative seniority list on 12.05.2015 (Annexure: A1), the petitioners filed objections against it, the same were rejected and the final seniority list was issued on 24.06.2015 (Annexure: A2) in which the petitioners have been placed below the respondent No.3.

2.6 The contention of the petitioners is that the respondent No. 4 was notionally promoted against a supernumerary post and, therefore, legally and under Rules, he has no right to have seniority in the cadre of Assistant Engineers.

2.7 The petitioners have vehemently submitted that neither the order of the Tribunal dated 16.07.2003 (reproduced in paragraph 2.3 of this order) nor the G.O. of the U.P. Govt. dated 10.06.2009 (reproduced in paragraph 2.4 of this order) have promoted respondent No. 4 on the post of AE w.e.f. 01.07.1990 but the respondent No. 4 has

been shown to be promoted on 01.07.1990 in the final seniority list dated 24.06.2015 (Annexure: A2) which is patently wrong. The order of the Tribunal as well as G.O. of the U.P. Govt. have only allowed promotion to respondent No. 4 in the recruitment year 1990-91.

2.8 The petitioners have also submitted that the State of Uttarakhand has no power or jurisdiction to determine the seniority of the respondent no. 4. Only respondent No. 3 (State of Uttar Pradesh) has relevant record/data for fixation of seniority of respondent No. 4 *vis-à-vis* other persons and only the State of Uttar Pradesh is competent to determine inter-se seniority for the period prior to formation of the State of Uttarakhand.

2.9 It has also been stated by the petitioners that according to the Rules, the seniority of the persons promoted to the post of Assistant Engineer for recruitment year 1990-91 is to be determined as per their inter-se seniority in the feeding cadre of the Junior Engineer. Respondent No. 5 was senior to the respondent No. 4 (and there were other persons also who were senior to the respondent No. 4 in the feeding cadre) and, therefore, respondent no. 4 has wrongly been shown above respondent no. 5 in the final seniority list dated 24.06.2015.

3. Respondents No. 1 and 2 have opposed the claim petition and have mainly stated in their joint written statement that the final seniority list dated 24.06.2015 has been issued in compliance of Tribunal's order dated 16.07.2003 (reproduced in paragraph 2.3 of this order) and the G.O. of the U.P. Govt. dated 10.06.2009 (reproduced in paragraph 2.4 of this order).

4. Private respondent No. 4 has also opposed the claim petition and filed a detailed written statement. In nutshell, the contention of private respondent No. 4 is that the seniority list dated 24.06.2015 is consequential to the order of the Tribunal dated 16.07.2003 and the U.P. Govt. G.O. dated 10.06.2009 and these have

attained the finality and, therefore, the seniority list has been rightly prepared as per the judicial order.

5. The petitioners have also filed rejoinder affidavits against the written statements filed by the respondents. Additional written statement (by respondent No. 4) and additional rejoinder affidavit (by the petitioner) against it have also been filed. Parties have also filed certain documents.

6. Private respondents No. 5 and respondent No. 3 (State of Uttar Pradesh) have not filed any written statement and it was decided to proceed ex-parte against them.

7. We have heard all the parties and perused the record.

8.1 The first question before us for examination is whether the Government of Uttarakhand is competent to promote respondent No. 4 from 01.07.1990 when the Tribunal in its judgment dated 16.07.2003 (reproduced in paragraph 2.3 of this order) and the Government of Uttar Pradesh by its G.O. dated 10.06.2009 (reproduced in paragraph 2.4 of this order) have directed to promote respondent No. 4 on the post of AE in the recruitment year 1990-91 which starts from 1st July, 1990 and ends on 30th June, 1991. The petitioner No. 1 (and others) have also been promoted on the post of AE during the recruitment year 1990-91. The question is whether that date of promotion of respondent No. 4 (pertaining to the recruitment year 1990-91) as 01.07.1990 can be decided by the State of Uttarakhand or it could be decided by the Govt. of Uttar Pradesh only as the date of 01.07.1990 is a date prior to the creation of State of Uttarakhand. In the absence of any specific date as the date of promotion of respondent No. 4 between 01.07.1990 to 30.06.1991 (recruitment year 1990-91) in the Tribunal's order dated 16.07.2003 or in the Govt. of U.P. G.O. dated 10.06.2009, the date of 01.07.1990 which is the date anterior to the appointed day (09.11.2000) under the Uttar Pradesh Reorganization Act, 2000, in our considered view, cannot be determined by the State

of Uttarakhand and only the State of Uttar Pradesh is competent to decide the same.

8.2 Apart from the date of 01.07.1990 as the date of promotion, the second question which arises is whether the State of Uttarakhand was competent to decide/modify the seniority list of the petitioner and the private respondents pertaining to the period prior to the creation of the State of Uttarakhand. On this question also, we are of clear view that it was outside the jurisdiction of the State of Uttarakhand to change the seniority of the petitioners/respondents related to the period 1990-91 when the Uttarakhand State was not even in the existence. While vide Govt. of U.P. G.O. dated 10.06.2009, the notional promotion of respondent No. 4 has been made by creating a supernumerary post of A.E. for the recruitment year 1990-91, the seniority between the petitioners (and others) *vis-à-vis* respondent No. 4 has not been determined. The exercise to determine the seniority for the period related to 1990-91 could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttarakhand which was formed on 09.11.2000.

9. We refer to the judgment of the Hon'ble Apex Court in the case of **State of Uttarakhand and another Vs. Umakant Joshi reported in 2012 (1) U.D. 583**. It is sufficient that we advert to paragraph nos. 11 and 12 of the said judgment only. The same read as follows:

"11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of

Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1..

12. In view of the above, we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors.”

10. In the case of **Dr. Kamaljeet Singh and another versus State of Uttarakhand and others, Writ Petition No. (S/B) No. 102 of 2017 decided by the Hon’ble High Court at Nainital on 08.03.2018**, the order of the State of Uttarakhand to absorb a Homeopathic Doctor (who was respondent No. 3 in the Writ Petition) w.e.f. 28.10.1992 was challenged and the relevant paragraphs Nos. 11,12,18,19 and 20 of the judgment are quoted below:-

“11. From the aforesaid statements of law contained in paragraph nos. 11 and 12 of the judgment of the Hon’ble Apex Court (Umakant Joshi case), we can deduce two principles, as laid down by the Hon’ble Apex Court. Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the

State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter. Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh.

12. *Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by Mr. Rajendra Dobhal, learned senior counsel for the petitioners, we would think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh. On this short ground, the writ petition is only to be allowed.*

18. *Therefore, we find no merit in the contentions of Mr. B.N. Molakhi, learned counsel for the third respondent or of Mr. Pradeep Joshi, learned Standing Counsel for the State/respondent nos. 1 and 2. Accordingly, the conclusion is inevitable that sans authority, the impugned order has been passed by the State of Uttarakhand. On this short ground only, we interfere with the impugned order.*

19. *Accordingly, the writ petition is allowed. The impugned order dated 20.01.2017 giving benefit of absorption to the third respondent and that too with financial benefits cannot be sustained and the same will stand quashed. There will be no order as to cost.*

20. *We, however, make it clear that we have not gone into various other contentions, which have been raised by the parties."*

11.1 Now, we would like to take up a judgment of the Hon'ble High Court at Nainital which is directly related to the present claim petition. Sri Arun Kumar Goyal (the respondent No. 4 in this claim petition) filed a Writ Petition (S/B) of 2011, Arun Kumar Goyal Versus State of Uttarakhand & another which was decided by the Hon'ble High Court on 21st June, 2018. The petitioner (Sri Arun

Kumar Goyal) had approached the Hon'ble High Court at Nainital seeking the following reliefs:-

"i) Issue a writ, order or direction in the nature of mandamus commanding/ directing the respondents to give all service benefits including salary etc. to the petitioner from the date of promotion w.e.f. 1.7.1990 on the post of Assistant Engineer and the salary to be paid to the petitioner alongwith penal interest.

ii) Issue a writ, order or direction in the nature of mandamus commanding / directing the respondent no. 1 to fix the seniority of the petitioner as Assistant Engineer with effect his promotion as Assistant Engineer on 1.7.1990.

iii) Issue a writ, order of direction in the nature of mandamus commanding / directing the respondents to prepone the promotion of the petitioner on the post of Executive Engineer w.e.f. 6.9.1997, when his promotion was due on the post of Executive Engineer.

iv) Issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 3.3.2010 passed by the Learned Tribunal to the extent denying the service benefits. (Annexure No. 20 to this writ petition)."

11.2 It is clear from the above reliefs that the Sri Arun Kumar Goyal (who is respondent No. 4 in the claim petition before the Tribunal) in the writ petition before the Hon'ble High Court in relief (ii) had prayed to fix his seniority as AE w.e.f. 01.07.1990 by the Govt. of Uttarakhand.

11.3 The Hon'ble High Court at Nainital in paragraphs 8 & 9 of its judgment dated 21.06.2018 held as under:-

*"8.....We have already noticed the absence of parties, who might be affected by granting such relief. We further bear in mind a judgment passed by the Apex Court in the case of **State of Uttarakhand & another vs. Umakant Joshi**, reported in 2012 (1) UD 583.*

"9. In such circumstances, we do not think that we should grant relief as sought for by the petitioner. Without prejudice to any other remedy, which the petitioner has in any forum, we decline jurisdiction and dismiss the writ petition. No order as to costs."

12. In view of analysis in paragraphs 8 to 11 above, we hold that the State of Uttarakhand could not promote respondent No. 4 as AE w.e.f. 01.07.1990 as it did not have jurisdiction and, therefore, it was not competent to do the same. We also hold that the State of Uttarakhand had no jurisdiction to modify/determine the seniority and, therefore, it was not competent to do the same. We also hold that only the State of Uttar Pradesh had jurisdiction and, therefore, only the State of Uttar Pradesh was competent to act on these issues.

13. For the reasons stated above, the seniority list dated 24.06.2015 is illegal and void and, therefore, it is liable to be set aside.

ORDER

The petition is hereby allowed and the impugned order dated 24.06.2015 (Annexure: A2) is hereby set aside. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: SEPTEMBER 06, 2018
DEHRADUN
KNP