

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

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 69/DB/2018

Kuldeep Singh s/o Sri Lakhpati Ram, aged about 50 years at present working and posted on the post of Administrative Officer in the office of Chief Engineer, Level-I, Rural Works Department, Dehradun.

.....Petitioner.

VS.

1. State of Uttarakhand through Secretary, Panchayati Raj and Rural Works Department, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chief Engineer, Level-I, Rural Works Department, Uttarakhand, Tapovan Marg, Raipur Road, Dehradun.
3. Smt. Sunita Thapliyal, presently working and posted on the post of Administrative Officer in the office of Chief Engineer, Level-I, Rural Works Department, Dehradun.

.....Respondents.

Present: Sri S.K.Jain, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondent No.1.
Ms. Anupama Gautam & Sri A.S.Bisht, Counsel for Respondent No.3.

JUDGMENT

DATED: MARCH 25, 2019

Justice U.C.Dhyani (Oral)

By means of present claim petition, principal reliefs, sought for by the petitioner, are as follows:

- “(i) To quash the impugned order dated 21.08.2018 with its effect and operation.*
- (ii) To issue an order or direction to the concerned respondent to grant the benefit of relaxation as per Rules to the petitioner in qualifying service on lower posts as required under the Determination of Qualifying Service Rules.*
- (iii) To declare that the merger of respondent no.3 vide office order dated 20.12.2016 and office order dated 24.04.2018 on the post of Head Assistant in the service of Chief Engineer Cadre, is wrong and illegal and as such she is not entitled to get any benefit of service in the cadre of Chief Engineer.*
- (iv). To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case, in favour of the petitioner.*
- (v) To award the cost of petition”*

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

Petitioner was initially appointed as work charged Junior Assistant in respondent department in 1996. He was appointed as Junior Assistant in the pay scale of Rs.3050-4590/-, vide office order dated 19.05.2001, issued by Executive Engineer, Rural Engineering Service (RES), Gopeshwar Division, Chamoli. Camp office of Superintending Engineer, RES was established in the head office at Dehradun in the year 2002. Petitioner, along with other persons, was transferred to the cadre of Headquarter. Vide office order dated 14.09.2012, the petitioner was promoted to the post of Head Assistant and placed on probation for one year. After completion of probation period, respondent no.2, vide office order dated 09.10.2013, confirmed promotion of the petitioner on the post of Head Assistant. Thereafter, vide office order dated 12.07.2016, issued by respondent no. 2,

petitioner was promoted to the post of Administrative Officer. In Rural Works Department, there are separate cadres for Headquarter/ Chief Engineer and regional and divisional offices and both the cadres have their own seniority lists of their employees. Petitioner is posted at Headquarter since the date of his initial appointment. Ministerial Cadre of Chief Engineer Office and regional/ divisional offices were restructured in the year 2009. The posts were classified for each cadre on the basis of staffing pattern in the year 2005. Government Order of 2015 was subsequently replaced by Government Order of 2017. Services of the employees of Ministerial Cadre are governed by the U.P. Rural Engineering Service Department-Clerical Cadre Service Rules, 1987. For promotion in the Ministerial Cadre, the Government of Uttarakhand framed Determination of Qualifying Service Rules in the year 2011, which were subsequently amended in the year 2015. The nomenclature of the posts of Ministerial Cadre was changed. In other words, the posts were renamed and, for promotion to the post of Senior Administrative Officer (SAO), provision for qualifying service of two years on the post of Administrative Officer (AO) or minimum 20 years of service on the lower posts has been made. Respondent department filled the vacant post of SAO, through deputation. Subsequent thereto, the persons brought in the department through deputation, were merged with the cadre. The petitioner and other employees of Headquarter Cadre made several representations to the respondents, from time to time, but to no avail. Respondent No.3, who was working and posted as Head Assistant in the regional/ divisional cadre, was appointed on the vacant post of Head Assistant in the office of Chief Engineer, on deputation, *vide* office order dated 12.06.2015. Thereafter, her services were merged on the post of Head Assistant in the cadre of Chief Engineer Office, *vide* office order dated 20.12.2016. The date of merger of respondent no.3 was subsequently amended. Previous order dated 20.12.2016 was amended and fresh order was passed on 24.04.2018, whereby the date of merger of services of respondent no.3 was changed retrospectively. *Vide* office order dated

31.07.2018, respondent no.3 has been promoted to the post of Administrative Officer, in the office of Chief Engineer level-II. On 29.06.2018, the seniority list of employees working in the Chief Engineer Cadre, was issued by respondent no.2, in which the name of petitioner is placed above respondent no.3. Petitioner is, therefore, admittedly senior to respondent no.3.

The petitioner was promoted to the post of AO on 12.07.2016, and as such, on the first day of recruitment year 2018-19, i.e., 01.07.2018, he has not completed two years' service on the post of AO, as is required under the Rules of 2011. Petitioner made a representation to the respondents to grant relaxation to the petitioner in qualifying service, required for promotion on the post of SAO, but respondent no.1 denied relaxation to the petitioner in view of existence of Government Order dated 04.09.2017.

The aforesaid G.O. dated 04.09.2017 was quashed by Hon'ble High Court of Uttarakhand on 23.03.2018. The fact that the G.O. has been quashed by Hon'ble High Court was mentioned in the recommendation dated 25.07.2018 of Chief Engineer Level-I, but the same has been considered by the Government while refusing relaxation to the petitioner *vide* order dated 21.08.2018 (Copy: Annexure A-1). Hence, present claim petition.

3. Respondents have filed separate written statements/ counter affidavits. As per the averments contained in the counter affidavit of respondent no.3, the petitioner is not eligible to be appointed on the post of SAO, because he has neither completed two years of service on the post of AO, nor has he completed 20 years of service. The absorption of respondent no.3 in the department is perfectly legal. It has also been averred that eligible and competent persons are available in the department to fill up the post of SAO.
4. Respondent-department has echoed the averments contained in the affidavit of respondent no.3. In other words, the contents of written

statements/ counter affidavits, filed on behalf of respondent department and respondent no.3 are almost identical on material facts.

5. A perusal of G.O. dated 21.08.2018, Annexure: A-1 would indicate that decision was taken by the Government solely on the basis of Government Order No. 257/2017 dated 04.09.2017 (Annexure: A-18), whereby relaxation in eligibility condition for officiating promotions was kept in abeyance. This Tribunal has noticed that G.O. No. 257/XXX-2/17/03(06)2013TC dated 04.09.2017 (Annexure: A-18) has been set aside by Hon'ble High Court of Uttarakhand on 23.03.2018, which was passed in WPSS No. 3510 of 2017. The relevant paragraphs of the aforesaid decision are being reproduced here in below for convenience:

“The name of the petitioners were recommended for consideration for the post of Assistant Engineer vide letter dated 25.10.2017. The process was stayed vide letter dated 04.09.2017 issued by the Chief Secretary.

It is evident from the language employed in the communication that a Committee has been constituted to remove the anomalies in the Recruitment and Promotion Rules. The Committee, till date, has not made its recommendation.

The fact of the matter is that the petitioners' name for consideration have been sent vide Annexure No. 8 dated 25.10.2017 by invoking Rules of the year 2010, further amended in the year 2015. The operation of the Recruitment and Promotion Rules cannot be stayed merely by issuing executive instructions. Still, there is no amendment in the Recruitment and Promotion Rules .

The case of the petitioners should have been considered on the basis Annexure No.8 dated 25.10.2017. The petitioners do not have a right to be promoted but at least have a right to be considered for promotion.

Accordingly, the writ petition is allowed. Impugned Annexure dated 04.09.2017 is quashed and set aside. The respondents are directed to take necessary steps on the basis of Annexure No.8 dated 25.10.2017 within a period of ten weeks from today.”

6. When G.O. dated 04.09.2017 was set aside, Chief Engineer, Level I/HOD, Rural Works Department, wrote a letter (Annexure: A-19) to the Additional Secretary, Panchayati Raj, Rural Works Department, Government of Uttarakhand, Dehradun, on 25.07.2018 that G.O. dated 04.09.2017 has been set aside by Hon’ble High Court. H.O.D., by the selfsame letter, enclosed a representation of the petitioner and requested the Government to issue directions to the department on such representation. Petitioner had requested for relaxation of 12 days to enable him to get promotion to the post of Senior Administrative Officer. The Government, in the Panchayati Raj Department, took decision on 21.08.2018, on the basis of a G.O. which was already set aside and a reference of which was already given by H.O.D. in his letter dated 25.07.2018. What this Tribunal wants to emphasize is that the decision ought to have been taken by the Government independently of G.O. dated 04.09.2017, which stood set aside by Hon’ble High Court. Surprisingly, the decision was taken on the basis of an overruled G.O., which *per se* is bad in law and should not be allowed to sustain.
7. This Tribunal, therefore, has no option but to direct Respondent No.1 to take a fresh decision on the representation dated 21.07.2018 (Annexure: A-19 Colly) of the petitioner, duly forwarded by Chief Engineer, Level-I/ HOD, Rural Works Department, *vide* letter dated 25.07.2018, as per Rules. Annexure: A-1, in the circumstances, calls for interference and should be set aside.
8. The claim petition is disposed of by setting aside order dated 21.08.2018 (Annexure : A-1) and directing Respondent No.1 to take a fresh decision on representation dated 21.07.2018 (Annexure: A-19 Colly) of the petitioner, duly forwarded by Chief Engineer, Level-I/ HOD, Rural Works Department, *vide* letter dated 25.07.2018, in accordance

with law, at an earliest possible, but not later than twelve weeks of presentation of certified copy of this order. The Tribunal will appreciate if an opportunity of hearing is granted to the petitioner, as well as to respondent no.3, before taking such a decision, as per Rules, known as *Uttarakhand Sarkari Sevak Padonnati Ke Liye Arhakari Seva Mein Shithilikaran Niymawali, 2010* and *Sanshodhit Seva Niymawali, 2015*.

9. It is made clear that we have not expressed any opinion on the merits of the case.
10. Let a copy of this order be supplied to the petitioner today itself, as per Rules.

(A.S.NAYAL)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 25, 2019
DEHRADUN

VM