

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A. S. Nayal

-----Member (A)

**CLAIM PETITION NO. 23/NB/DB/2015**

Krishna Pal Singh, S/o Late Sri Badan Singh, R/o D-504, Sansad Vihar,  
Plot No. 2, Sector-3, Dwarka, New Delhi.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through its Principal Secretary, Irrigation Department, Civil Secretariat, Dehradun.
2. Chief Engineer, Irrigation Department, Dehradun.
3. State of U.P. through Secretary, Irrigation Department, Government of U.P., Lucknow.
4. Engineer-in-Chief, Irrigation Department, U.P., Lucknow.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel  
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents.

**JUDGMENT**

**DATED: FEBRUARY 13, 2019**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. The petitioner has filed this petition for the following reliefs:

*“A. To set aside the impugned order dated 23.01.2015 (contained in Annexure No.1 to Compilation-I)*

*B. To direct the Respondent Authorities to grant the benefit of Government Order dated 10.04.2007 by granting the Selection Grade to the petitioner.*

*C. To direct the Respondent authorities to notionally promote the petitioner on the post of Superintending Engineer w.e.f. 24.02.2004 when his Junior i.e. Sri Anand Ballabh Pathak (standing at Serial No. 42 of the seniority list) was promoted on the said post & further to grant the selection grade to the petitioner, in accordance with rules as are being given to his juniors at the earliest, within the time framed by this Hon’ble Court and/or*

*D. To direct the Respondent Authority to grant all consequential benefits to the petitioner.*

*E. To pass any other suitable order as this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*

*F. To allow the claim petition with cost. ”*

2. Briefly, the facts are as follows:

The petitioner joined U.P. State Service of Engineers in Irrigation Department as Assistant Engineer (Civil) on 21.10.1972. He was promoted to the post of Executive Engineer in 1988. After creation of the State of Uttarkahand, petitioner opted for newly carved State of Uttarakhand and he served in Uttarakhand much before the creation of State, till his retirement on 31.01.2005 as Superintending Engineer (Civil).

3. Thereafter, vide order dated 10.04.2007, in view of the recommendation of Samta Samiti, U.P. 1989 and U.P. Government G.O. dated 11.04.1990 and Uttarakhand Government G.O. No. 1014/01/Finance. 2001 dated 12.03.2001, Government sanctioned the selection grade to the Superintending Engineers, serving and retired both. Option of the petitioner for Uttarakhand was finalized on 11.05.2006 w.e.f. 09.11.2000. A final seniority list of the engineers in Uttarakhand was also issued in 2009 in which the name of the petitioner was figured at sl. No. 27. It has been the contention of the petitioner that the persons who were at lower serial number to him in the said seniority list, have been granted the benefit of the G.O. dated 10.04.2007, but despite the fact that the petitioner figured at higher serial number, he was not granted the benefit of the said G.O.

4. After submitting several reminders and finding no favour from the Government, the petitioner filed a WP (SB) No. 123 of 2014, Krishna Pal Singh Vs. State & others, in the High Court, which was decided vide order dated 04.08.2014 (Annexure: A-6), with the direction to the respondents that the representation of the petitioner to this effect should be decided in accordance with law, within a period of three months, from the date of presentation of copy of the judgment.

5. In compliance of the order of the Hon'ble High Court dated 04.08.2014, the representation of the petitioner was considered and decided by the respondents vide impugned order dated 23.01.2015 (Annexure: A1) and the prayer of the petitioner was rejected on the ground that till his retirement on 31.01.2005, he was not allocated to State of Uttarakhand cadre and his promotion was also made in U.P., where none of his juniors was granted the benefit of such scale, hence, treating him under the Government of U.P. for all purposes, his representation was rejected.

6. The order of the Government dated 23.01.2015 was challenged by the petitioner before the Hon'ble High Court on the ground that, much before creation of the State of Uttarakhand; he was working in the area allotted to Uttarakhand. His option to State of Uttarakhand was finalized w.e.f. 09.11.2000; his name was also figured in the seniority list, issued by the State of Uttarakhand on 28.07.2009, wherein, his name was figured at sl. No. 27 and other persons, namely Anand Kumar Agarwal placed at Sl. No. 40, Sri Adeel Ahmed at sl. No. 41 and Anand Ballabh Pathak at sl. No. 42, junior to him ,were granted the same benefit, but the petitioner has been denied wrongly, both from promotion and the benefit of selection grade from the date of his juniors, whereas, same has been paid to the similarly situated persons juniors to him. No plausible reason has been mentioned, while rejecting the claim of the petitioner, hence, according to him, impugned order, passed on the basis of conjecture and surmises, deserves to be quashed. Not granting the selection scale to the petitioner, even after giving this facility to his juniors, is totally arbitrary, unfair, illegal and unconstitutional. Hence, the petitioner again approached the Hon'ble High Court, through writ petition No. 79 of 2015, from where, he was directed to approach the Tribunal. Thereafter, petitioner filed this petition before this Court, which was entertained in the court accordingly.

7. On behalf of respondents No. 1 & 2, learned A.P.O. submitted C.A/W.S. and opposed the petition on the ground that the order dated 23.01.2015 is patently legal, perfect and valid in the eye of law. The selection scale was not permissible to the petitioner on 10.04.2007 in the State of Uttarakhand because by then he was retired from the government service on 31.01.2005 and final allocation order, in favour of the petitioner was issued thereafter on 11.05.2006. In 2004, when the selection grade was implemented

and same was granted to the Superintending Engineers of U.P., the petitioner was not covered in the criteria, on account of number of posts of Executive Engineers as he was not covered under 15 % of this selection grade post and as selection scale in the State of U.P.. He is also not entitled for such selection scale in Uttarakhand, as the grant of selection scale was implemented in 2007 after his retirement. The petitioner was promoted to the post of Executive Engineer on 10.04.2004 in U.P. where none of his junior was granted selection scale till his retirement. According to the respondents, his petition has no merit and same deserves to be dismissed.

8. Initially, State of U.P. was not impleaded, but later on, they were impleaded as Respondents No. 3 & 4. In their C.A/W.S., similar contention has been raised that, such grade was not granted to any of his juniors and the petitioner is not entitled for selection grade as per the relevant G.O. It was granted in 2007 by the State of Uttarakhand, to the serving engineers, hence, accordingly, claim of the petitioner was rightly rejected. The selection grade was implemented by the State of U.P. and same was to be given to the ratio of 15% of the number of posts of Executive Engineer and in U.P., as such post was not vacant, hence, the petitioner was not entitled for selection grade in U.P.

9. Petitioner has also filed rejoinder affidavit, in which the same fact have been reiterated which have been mentioned in the claim petition. Petitioner in his R.A. has controverted the version of respondents on the ground that for all purposes, he shall be treated an employee of Uttarakhand as his allocation will relate back to the date of creation of State i.e. 9.11.2000. His name was also figured in seniority list issued in 2009 in which he was shown at sl. No. 27 and his juniors have been granted such benefit and also the date of promotion of his junior, Adeel Ahmed was also preponed. Hence, his claim deserves to be allowed.

10. We have heard both the sides and perused the record.

11. It is not disputed that the petitioner joined the services in 1972 as Assistant Engineer. He was promoted as Executive Engineer in 1988 and completed 14 years of service as Executive Engineer in 2002, which was the requirement of grant of selection scale. It is also evident from the record that petitioner opted for Uttarakhand and his posting was in State of Uttarakhand, in Roorkee/ Haridwar since August, 1994. That means, at the time of creation of State of Uttarakhand, he was working in Uttarakhand. He was an optee for the new State although, final allocation was made on 11.05.2006, but it was made effective from 11.09.2000. The allocation order dated 11.05.2006 reads as under:-

“संख्या 27/2/2006-एस0आर0(एस0)  
भारत सरकार  
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
(कार्मिक एवं प्रशिक्षण विभाग)

लोक नायक भवन, तीसरा तल,  
खान मार्किट, नई दिल्ली-110003  
दिनांक मई, 2006

आदेश 02/2006

उत्तर प्रदेश पुनर्गठन अधिनियम, 2000 की धारा 73 की उपधारा (2) के अधीन, प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा यह निदेश देती है कि इस आदेश के संलग्नक में निर्दिष्ट प्रत्येक व्यक्ति, जो 9.11.2000 के ठीक पहले विद्यमान उत्तर प्रदेश राज्य के क्रियाकलापों के सम्बन्ध में सेवा कर रहा हो, एवं उपर्युक्त अधिनियम की धारा 73 की उपधारा (1) के अधीन, उत्तरवर्ती उत्तर प्रदेश राज्य या उत्तरांचल राज्य के क्रियाकलापों के सम्बन्ध में यथास्थिति, 9.11.2000 से ही अन्तिम रूप से सेवा कर रहा हो, को, उत्तरवर्ती उत्तरांचल राज्य यथास्थिति, 9.11.2000 से सेवा के लिए अन्तिम रूप से आवन्तित समझा जायेगा:

परन्तु ऐसा प्रत्येक व्यक्ति, जिसने न्यायालय से अंतरिम स्थगन आदेश प्राप्त किया हो, उसका अंतिम आबंटन, न्यायालय के स्थगन आदेश के रदद होने के बाद ही प्रभावी होगा अथवा जहाँ न्यायालय के द्वारा, इस सम्बन्ध में कोई निर्देश

दिया गया हो, ऐसे प्रत्येक व्यक्ति का आबंटन न्यायालय के अन्तिम आदेश के अधीन होगा:

परन्तु ऐसा प्रत्येक व्यक्ति, जिसने न्यायालय से आबंटन से मुक्त रहने का स्थगन आदेश प्राप्त किया हो, को न्यायालय के आदेश प्रभावी रहने तक आबन्धित नहीं समझा जायेगा।

परन्तु संबंधित सेवा/पद के शेष बचे हुए कार्मिक जिनका अंतिम आबंटन उत्तरवर्ती उत्तरांचल राज्य के लिए नहीं किया गया है, उत्तरवर्ती उत्तर प्रदेश को अंतिम रूप से आबंटित समझे जायेंगे जब तक कि नियमानुसार अन्यथा निर्णय नहीं लिया जाता।

(मनीष मोहन)

उप सचिव, भारत सरकार”

12. In the list attached to the allocation order, petitioner's name was at sl. No. 13, whereas, the name of other Executive Engineer, Adeel Ahmed, to whom he referred in his petition, was at sl. no. 31. Other optee, Anand Kumar Agarwal, name was figured at sl. No. 21. By the final allocation order issued on 11.05.2006, the petitioner was treated to an officer under the newly created State of Uttarakhand, although in the mean time, his promotion was made in the State of Uttar Pradesh as Superintending Engineer in August 2004, but he was posted and allowed to work in Uttarakhand accordingly, on the same post. Hence, for all practical purposes, i.e. according to 15% of selection post in relation to the petitioner, the cadre of Uttarakhand is the relevant cadre, hence, in view of the court, grounds of rejection of representation, as narrated by the respondents in the impugned order dated 23.01.2015, are not sustainable.

13. It is evident from the record and also it is not denied by the respondents that a seniority list of the officers of the Uttarakhand was issued on 28.07.2009 (Annexure: A4) in which the name of the petitioner was specifically mentioned as an officer of Uttarakhand at sl. No. 27, whereas, the name of Sri Anand Kumar

Agarwal was placed at Sl. No. 40, name of Sri Adeel Ahmed at sl. No. 41 and of Sri Anand Ballabh Pathak at sl. No.42. Hence, the contention of the petitioner is correct that he was senior to all of them.

14. In view of the court, he is also entitled to get facilities which were granted to his juniors from that date. Petitioner has also submitted that this facility was also granted to Adeel Ahmed notionally from 24.02.2004 like Sri Anand Ballabh Pathak , vide order dated 05.06.2011 (Annexure: A8). Although, it was granted by the respondents in compliance of the order passed by the Hon'ble High Court in writ petition No. 304 of 2010 (S/B), Adil Ahmed vs. State of Uttarakhand & others, decided on 06.01.2011 (Annexure: A7). On the same analogy, learned counsel for the petitioner has argued that as the petitioner was in the cadre of Uttarakhand, since the very inception of the State i.e. 09.11.2000, hence, he is entitled to get such promotion and scale which was granted to his juniors. Admittedly, Sri Adeel Ahmed, Sri Anand Ballabh Pathak and Anand Kumar Agarwal had been his juniors in the seniority list issued by the State of Uttarakhand on 28.07.2009 (Annexure: A4), hence, this court finds that the petitioner is also entitled to the notional promotion and benefits of selection scale w.e.f. 24.02.2004, from the date when his juniors were allowed.

15. We do not agree with the argument of the respondents that as none of the juniors of the petitioner were granted such scale in U.P. as there was no vacant posts of selection scale, in view of 15% of total posts hence, petitioner is not entitled to the same. This contention cannot be accepted at all because for all purposes, the petitioner will be treated as an officer of the Uttarakhand cadre w.e.f. 09.11.2000 and his seniority will be seen vis-à-vis other persons of his service in Uttarakhand and not in U.P. and the representation of the petitioner was rejected on irrelevant, wrong



and untenable grounds. Accordingly, the impugned order dated 23.01.2015 deserves to be set aside and there is a need for a direction to the respondents to grant the benefit of the G.O. dated 10.04.2007 for grant of promotion and selection grade to the petitioner w.e.f. 24.02.2004, when his juniors, Anand Ballabh Pathak and Adeel Ahmed were granted such benefit and the petition deserves to be allowed accordingly.

**ORDER**

The claim petition is allowed. The impugned order dated 23.01.2015 (Annexure: A1) is hereby set aside. Respondents are directed to grant the benefit of G.O. dated 10.04.2007 and allow notional promotion and all the benefit of the selection grade to the petitioner w.e.f. 24.02.2004, when his juniors were granted the same along with all other consequential benefits, within a period of four months from the date of presentation of copy of this judgment.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: FEBRUARY 13, 2019*  
*NAINITAL*

KNP