

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 10/DB/2019

Smt. Beena Tariyal w/o Sri Gopal Singh aged about 53 years, presently working and posted on the post of Head Assistant, Revenue Records, District Office, Tehri Garhwal.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Revenue, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. District Magistrate/ Collector, Tehri Garhwal,
3. Om Prakash Bahuguna, presently working and posted as Head Assistant, Collectorate, Tehri Garhwal.
4. Dharendra Singh Pundir, presently working and posted as Head Assistant, Collectorate, Tehri Garhwal.

.....Respondents.

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

Sri V.P.Devrani, A.P.O., for Respondents No. 1 & 2.

Sri S.K.Jain, Counsel for Respondents No. 3 & 4.

JUDGMENT

DATED: SEPTEMBER 03, 2019

Justice U.C.Dhyani (Oral)

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

- (i) To quash the impugned order dated 01.03.2018 with its operation and effects.

- (ii) To issue an order or direction to respondents to correct the regularization of the petitioner and grant the benefit of regularization to the petitioner from her initial date of appointment or from the date of regular appointment of the respondent no. 3 & 4.
- (iii) To quash the impugned seniority list dated 07.05.2016 so far as it relates to the petitioner and the private respondents and issue an order or direction to the respondents to correct the seniority position of the petitioner by placing her above to the private respondents in the seniority list.”

2. Facts, giving rise to the present claim petition, as per the version of the petitioner, are as follows:

Petitioner was appointed as Clerk (Judicial Moherrir) against substantive and regular vacancy, on 14.10.1992, in the pay scale of Rs.950-1500/-, at Tehsil Narandra Nagar, Tehri Garhwal. District Magistrate, Tehri Garhwal, on 14.10.1992 issued appointment letter to the petitioner and in pursuance to that order, petitioner joined her duties on 14.10.1992. Respondents No. 3 & 4 were appointed on 21.10.1993 in the similar manner, in the same pay scale, on the post of Clerk-cum-Typist. Petitioner as well as private respondent no. 3 was initially appointed for a period of three months. The term was extended from time to time. Whereas respondent department regularized the private respondents *w.e.f.* 31.12.1993, petitioner's services were not regularized. Aggrieved with the same, petitioner filed a writ petition before Hon'ble High Court of Uttarakhand, who, *vide* order dated 23.03.2002 passed an interim order that,

“in case any person junior to the petitioner, as per final seniority list has been regularized, the case of the petitioner for regularization shall be considered.....”

In compliance thereof, official respondents regularized services of the petitioner *w.e.f.* 31.05.2002, but placed her below the private respondents. The petitioner requested the respondent-authorities to correct their mistake and place her above the private respondents in the seniority list by granting benefit of regularization *w.e.f.* 14.10.1992, but her request was not acceded to. Petitioner then approached Hon'ble High Court, which petition was disposed of on the ground of alternate remedy. The petitioner, thereafter approached this Tribunal and filed claim

petition no. 87/2010. This Tribunal allowed the claim petition *vide* order dated 10.06.2013 and directed Respondent No.2 to regularize the petitioner *w.e.f.* 03.01.1994 by modifying order dated 31.05.2002. This Tribunal also directed the authorities to re-determine the seniority of the petitioner. Respondent No. 1 issued the seniority list on 07.05.2016 and placed the petitioner at Sl. No.11, below the private respondents. Petitioner approached the authority concerned for correcting the seniority list, but all her efforts went in vain. She has laid emphasis on Regularization Rules of 1979 and the selfsame Rules of 2002. According to the pleadings, (official) respondents have circumvented the order of the Tribunal and have not granted legitimate benefit to the petitioner. Aggrieved by the seniority list dated 07.05.2016, petitioner approached Hon'ble High Court, who *vide* order dated 16.11.2017 directed respondents to decide the representation of the petitioner, which representation was rejected by Respondent No.2, *vide* order dated 03.01.2018 (Annexure: A 1 to the claim petition). Hence, present claim petition has been filed on various grounds, which have been cited in the body of the claim petition and shall be dealt with at an appropriate place, if and when so required, during the course of discussion.

3. It may be noted, at the very outset, that the petitioner had filed claim petition No. 87/10 against State of Uttarakhand and five private respondents, before this Tribunal. Such claim petition was decided on 10.06.2013. Certified copy of such decision has been brought on record as Annexure: A 7 to the claim petition. The operative portion of the judgment rendered by this Tribunal on 10.06.2013 reads as below:

“The petition is allowed. The respondent no. 1 is directed to regularize the petitioner *w.e.f.* 03.01.1994 by modifying the impugned order (Annexure-1) and to further re-determine her consequential seniority within a period of three months. She is also entitled for any service benefit, if any, accrued to her during that period. No order as to costs”

4. The aforesaid order, passed in claim petition No. 87/10 has not been assailed by any of the parties before Hon'ble High Court of Uttarakhand at Nainital. Ld. A.P.O. has submitted that the same has been

complied with by the respondent department. The judgment dated 10.06.2013 has, therefore, attained finality.

5. It will be apposite to quote some of the important observations and findings recorded by the Tribunal, while deciding claim petition no. 87/2010, herein below for convenience:

9. It is further contended on behalf of the petitioner that the petitioner was appointed on 14.10.1992 and copy of the order of appointment has been annexed as Annexure-4 while the private respondents no. 2 to 6 were appointed vide order dated 20.10.1992. All these employees were appointed for a period of three months, but it was extended time to time. However, the respondent no. 2, Guru Prasad Mangain was regularized on 03.01.1994 under the quota for handicapped. Respondent no. 3, Sri Omprakash Bahuguna was regularized on 31.12.1993. The respondent no. 4, Sri Surender Dutt Bijalwan was regularized on 05.02.1994, while the respondent no. 5, Km. Indira Kanthura was regularized being woman and on humanitarian ground on 28.6.1994. respondent no. 6 Sri Rajendra Prasad Uniyal, was regularized under the quota for dependant of freedom fighters on 29.6.1994. While the petitioner was not regularized for the reasons best known to the respondents. She has not even been considered; therefore she had to approach to Hon'ble High Court by way of writ petition no. 196(SB) of 2002 Smt. Beena Tariyal Vs. State of Uttaranchal & others. Hon'ble High Court was pleased to issue directions to the respondents to consider the case of the petitioner for regularization within a period of one month in case juniors of the petitioners were regularized. After the judgment of the Hon'ble High Court, the petitioner was also regularized but with effect from 31.05.2002. The ground mentioned in the impugned order that the petitioner could not be regularized because at the relevant time, she was working as Wasil Baki Nawis and no person in that department was given promotion. As the petitioner was working in another department she is not entitled to claim parity with the private respondents. In fact, the important fact is that the petitioner was appointed as Junior Clerk prior to the private respondents who were also appointed as Junior clerks, so it is obligatory upon the respondents to consider the claim of the petitioner for regularization with the private respondents. She was merely posted in Tehsil, which does not mean her re-appointment. Merely because the petitioner was posted as Assistant Wasil Baki Nawis does not mean that she has lost her seniority. The petitioner was not appointed as Wasil Baki Nawis rather she was appointed as Junior Clerk therefore, she should have been considered for regularization at the time when the junior officials were considered for regularization, which has not been done in the present case and therefore, the impugned order of regularization dated 31.05.2002 (Annexure-1) appears to be not justified to that extent only.

11.The petitioner has claimed regularization only as against the private respondents and there is no question of disturbing the long

standing seniority as the petitioner is continuously praying for her regularization from the due date and to re-fix the consequential seniority.

12. On the basis of the above discussion, the petition deserves to be allowed and the petitioner should be treated as regularized *w.e.f.* 03.01.1994 and not from 31.05.2002. She is further entitled for re-determination of consequential seniority.”

6. When the petitioner moved representation, as per the direction dated 16.11.2017, passed in WPSS No. 3297 of 2017 (Copy: Annexure-A 8), an explanation was sought from the petitioner on 18.12.2017, as to whether she is accepting her date of seniority to be reckoned with from 03.01.1994 or not. She did not reply to such query. The representation was dismissed by Respondent No.2, by an elaborate and reasoned order dated 03.01.2018 (Copy :Annexure- A1)

7. It appears to be a case of admission and avoidance. While filing claim petition No. 87/10, it was admitted by the petitioner that Sri Om Prakash Bahuguna (respondent no.3 in both the claim petitions, i.e. claim petition no. 87/10 and present claim petition no. 10/DB/2019) was regularized on 31.12.1993. Respondent No.2 in claim petition no. 87/10 was since regularized on 03.01.1994, therefore, this Tribunal directed the respondents to regularize services of the petitioner *w.e.f.* the selfsame date, i.e., 03.01.1994 and further, to redetermine her consequential seniority. It was the contention of the petitioner, in earlier round of litigation, that although the petitioner was regularized *w.e.f.* 31.05.2002, but her junior respondent no. 3 was regularized *w.e.f.* 31.12.1993. Based on the above noted facts, this Tribunal, while rendering decision on 10.06.2013, found it to be a case of interference and directed the respondents to correct the date of regularization of the petitioner, as 03.01.1994. It is trite law that seniority could be determined only after the date of regularization. Once the petitioner had admitted that the date of regularization of respondent no.3 was 31.12.1993, how could she be now permitted to change the date of her regularization and the date of regularization of respondent no.3, which has been fixed as 03.01.1994 and 31.12.1993, in the earlier round of litigation.

8. District Magistrate (Respondent No.2), while deciding the representation of the petitioner on 03.01.2018 (Annexure: A 1), has mentioned in her order impugned that if the petitioner was not satisfied with Tribunal's order dated 10.06.2013, she ought to have assailed the same before Hon'ble High Court. It has also been noted in the last page of the order dated 03.01.2018, that not only the date of regularization of the petitioner has been changed from 31.05.2002 to 03.01.1994, she has also been granted all the benefits arising therefrom. Respondent No.2 was correct in saying that she had no authority to supersede Tribunal's order dated 10.06.2013. Petitioner was asked to explain as to whether she was accepting her date of seniority to be reckoned with from 03.01.1994 or not, but she did not reply. The history of petitioner's case leading to dismissal of her representation, may be traced at Annexure No. A 1 to the claim petition.
9. Annexure: A 2 would indicate that the petitioner was appointed for three months as Judicial Moherrir in Tehsil Narendra Nagar, *vide* order dated 14.10.1992 of Respondent No.2. The copy of order dated 23.03.2002, passed by Hon'ble High Court of Uttarakhand, may be found at Annexure: A 3, in which a direction was given that in case any person junior to the petitioner, as per final seniority list, has been regularized, the case of the petitioner for regularization shall also be considered. Petitioner was appointed as Junior Clerk in the pay scale of Rs.3050-4590/- in the office of SDM, Ghansali, on temporary basis, *vide* order dated 31.05.2002. This was done in compliance of Hon'ble High Court's order dated 23.03.2002, passed in WPSB No. 196/2002. Private Respondents No. 3 & 4 are shown to be retrenched employees of Census Department. Their services were adjusted on regular vacancies *vide* order dated 31.12.1993 of D.M., Tehri Garhwal, which fact is reflected in the office order dated 03.01.1994, issued by the selfsame D.M., Respondent No.2. Since the petitioner, in earlier round of litigation, had accepted the date of regularization of the private respondents as 31.12.1993, therefore, petitioner is estopped from evidencing that private respondents were regularized on 03.01.1994, the same date on which petitioner was regularized, as per Tribunal's direction dated 10.06.2013, to contend that she is senior to the private respondents.

When her date of regularization was changed from 31.05.2002 to 03.01.1994, as per earlier directions of the Tribunal, she accepted all the service benefits arising therefrom. Now she cannot be permitted to take a stand different from what was taken by her earlier. Since any administrative order before 03.01.1994 has not been put to challenge in present claim petition, therefore, we do not propose to discuss the legality or otherwise of any document, filed in present claim petition before such date. We are moving ahead of Tribunal's order dated 10.06.2013, in which the petitioner was directed to be regularized *w.e.f.* 03.01.1994, noticing the fact that the private respondents here were regularized on 31.12.1993. It is being said, at the cost of repetition, that the order dated 10.06.2013 passed in claim petition no. 87/2010, has attained finality and, therefore, the task of deciding the present claim petition has become easier for us, in the sense that we only proceeded to examine as to whether any fresh right has accrued in favour of the petitioner, once the order dated 10.06.2013 of the Tribunal remained unchallenged and has attained finality. Also, it is beyond one's comprehension to understand as to how the petitioner is entitled to the benefit of Regularization Rules of 1979 or 2002, as claimed by her in the claim petition.

10. We do not find that any fresh right, either in terms of regularization or seniority has accrued in favour or the petitioner.
11. The claim petition, therefore, fails and is dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 03, 2019
DEHRADUN

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