

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 78/DB/2019

Krishna Kavi, aged about 58 years, W/o Sri Kamlesh Kavi, R/o 17, Keshav Road, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary/Secretary Irrigation Department, Uttarakhand, Dehradun.
2. Engineer in Chief/HOD, Irrigation Department, Dehradun, Uttarakhand.
3. Chief Engineer (Mechanical), Irrigation Department, Dehradun, Uttarakhand.
4. Superintending Engineer, Tube Well Division, Roorkee, District Haridwar, Uttarakhand.
5. Executive Engineer, Tube Well Division Roorkee, District Haridwar, Uttarakhand.
6. Mohan Dev Prasad Pandey, working as Senior Assistant, Service through Engineer in Chief/HOD, Irrigation Department, State of Uttarakhand, Dehradun.

.....Respondents

Present: Sri M.C.Pant & Sri L.K.Maithani, Ld. Counsel for the petitioner

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

JUDGMENT

DATED: FEBRUARY 13, 2020

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

1. The petitioner has sought the following reliefs:

“(i) To issue an order or direction, directing to the respondents quashing the impugned order No. 2613A of dated 17.05.2019 by which the petitioner is reverted to the post of Head Assistant from the post of Senior Administrative Officer after calling the entire records and allow the petitioner to continue in the post of

Senior Administrative Officer alongwith all consequential benefits as if the impugned order would have never been in existence or to mould the relief appropriately in view of the body of facts highlighted in the petition.

(ia) To quash the impugned order No. G-135 of dated 17.05.2019 by which the seniority of the petitioner is amended and reverted in seniority by placing him from serial no. 978 to 1211A in the seniority list with its effect and operation and with all consequential benefits.

(ii) To issue any other writ rule or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) Award cost of petition. "

2. As per the contention of the petitioner, she was given *ad hoc* appointment as Junior Clerk in the respondent department on 08.04.1987, which was further continued vide order dated 26.10.1988. It is also contended that in view of the letter dated 30.07.1992 of Engineer-in-Chief of Irrigation Department, Uttar Pradesh, petitioner was allowed to continue in service without interruption at par with the case of Mohan Prasad Pandey (Respondent No. 6). Since then, petitioner was continuously working and discharging her duties till the date of regularization of her service on 28.09.2002.

3. It is also contended that petitioner was promoted on the post of Senior Assistant considering her length of service, since her initial induction on 04.12.2010. On 23.08.2011, a seniority list of the Divisional Ministerial cadre employees was also issued, in which the name of the petitioner figured at Sl. No. 978 by mentioning her initial date of appointment. Petitioner was promoted to the post of Head Assistant vide order dated 15.11.2014. She was further promoted to the post of Administrative Officer vide order dated 06.10.2016. Thereafter, vide order dated 19.03.2018, she was further promoted to the post of Senior Administrative Officer.

4. As per contention of the petition, respondent No. 2 vide order dated 17.05.2019, arbitrarily altered the seniority position of the petitioner from Sl. No. 978 to 1211A in utter disregard to the provisions of law. Her seniority position has now been shown from the date of her regularization

in service. Vide another order of the same date, on the basis of her seniority position *vis-à-vis* other employees, petitioner has been reverted to the post of Head Assistant. However, no order about the recovery of the amount, paid to her on the promoted post, has been made. Hence, by way of this petition, petitioner has challenged the order, passed by the respondents on the ground that the order has been passed in violation of the rules and Article 311 of the Constitution of India and she has been reverted to the post of Senior Assistant from the post of Senior Administrative Officer in utter disregard to the principles of natural justice and without giving any opportunity of hearing, hence, their action is illegal, arbitrary, irrational, discriminatory, malafide and against the principles of natural justice, which needs to be set aside.

5. Respondents have opposed the petition contending that-

(a) the initial appointment of the petitioner was made on *ad hoc* basis and her services were regularized only on 28.09.2002. This date shall be considered as the date of her substantive appointment. As per Rule 7 of the Uttaranchal Regularization of *Ad hoc* Appointments (on posts outside the purview of Public Service Commission) Rules, 2002 (hereinafter referred to as 'Regularization Rules of 2002'), the seniority position of the petitioner can only be fixed from the date of her regularization. The petitioner was placed on the post of Senior Assistant by virtue of order dated 17.05.2019 issued by the respondent No. 2 and the order is simpliciter, which is not punitive in nature and was not issued under any disciplinary proceedings. Therefore, there was no need to afford an opportunity of any show cause notice to the petitioner.

(b) the claim petition, challenging the said order has no legal force and is liable to be dismissed. The petition itself reveals that the salary drawn on the basis of services rendered by her on the post of Administrative Officer and Senior Administrative Officer is not to be recovered. The appropriation of salary has been made from the date of repatriation to the post of Head Assistant, determining the

seniority on the basis of the date of regularization i.e. 28.09.2002. The regularization order does not mention any back date, neither it was challenged. The order of regularization has not been filed by the petitioner. The appointment of the petitioner will be deemed to be made only in accordance with the regularization order dated 28.09.2002, and her appointment was not made under the relevant service rules.

(c) the petitioner, initially was not appointed as Junior Clerk on regular basis under the relevant service rules. She was given appointment on ad hoc basis on 08.04.1987, without following the due process of law for a period of three months. Thereafter, her services were terminated vide order dated 08.04.1988. She was again appointed on 12.04.1988 on *ad hoc* basis after a gap of four days. Thereafter, the ad hoc appointment of the petitioner was extended from time to time and till the date of regularization i.e. 28.09.2002, the petitioner continuously worked as Junior Clerk on *ad hoc* basis in the respondent department. The petitioner was erroneously granted the benefits of promotion to the post of Senior Assistant on 04.12.2010, as Head Assistant on 15.11.2014, as Administrative Officer on 06.10.2016 and on the post of Senior Administrative Officer on 19.03.2018 by counting the services rendered by her as ad hoc employee. Hence, such illegality/shortcoming has now been rectified after coming in the knowledge of the competent authority vide order dated 17.05.2019 and said order is legal, correct, perfect, as per rules and valid in the eyes of law, as such, illegality cannot be allowed to be continued.

6. It is also contended that, in the seniority list dated 23.08.2011 of the Ministerial cadre employees, no remark about the date of regularization of the petitioner was mentioned in Column No. 8 and by hiding the facts, such seniority position was issued.

7. It has also been contended that the regularization of private respondent No. 6 was made earlier to the petitioner on 31.03.1989 as mentioned in Column No. 8 of the seniority list dated 23.08.2011, while the date of regularization of the petitioner i.e. 28.09.2002, was not mentioned in the seniority list issued in 2011. The date of ad hoc appointment was shown as the date of her substantive appointment, which was not as per the rules. The wrong placement of the name of the petitioner in the above seniority list cannot be the sole criteria of determination of the seniority, as per rules and the date of substantive appointment (Regularization in case of the petitioner) is the sole criteria for determination of the seniority, and other regular employees who were substantively appointed earlier to the petitioner, cannot be put to the disadvantageous position. As the salary for the services rendered by the petitioner in past on higher posts, is not to be recovered hence, no harsh action has been taken against her. No adverse effect will be put to the petitioner as such action was not taken by way of any punishment on the basis of any disciplinary proceedings, hence, there was no need for providing any opportunity of hearing. The whole action was taken against the petitioner to protect the constitutional right of the similarly situated employees to the cadre of the petitioner. The order dated 17.05.2019 is in accordance with law and is purely justified order to correct the seniority position of the petitioner as well as other similarly situated employees of the petitioner's service cadre w.e.f. the date of their substantive appointment, and by the outcome of such result, the petitioner has been reverted to the post of Senior Assistant as retained by similarly situated employees of her service cadre.

8. Respondents further contended that the Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred to as 'Seniority Rules of 2002') also provides that seniority of the employees is to be fixed from the date of their substantive appointment. The petitioner's substantive appointment was made from the date of her regularization. Moreover, Rule 7 of the Regularization Rules of 2002, itself

provides that seniority can be fixed only from the date of regularization. Hence, the petition has no merit and deserves to be dismissed.

9. Through R.A., the petitioner has reiterated the contents of the petition and also contended that as per Government policy, the petitioner was granted service because her land was acquired under 'Doob Kshetra' and initial appointment was given to her on ad hoc basis following the relevant rules. The benefits of annual increments were also granted to her and now her seniority position has been changed and reversion has been made, without giving an opportunity of hearing. In view of the law settled by the Hon'ble Supreme Court, the services rendered before regularization, should also be counted for seniority and without giving an opportunity of hearing, the benefits already enjoyed by the petitioner cannot be withdrawn and the petition deserves to be allowed.

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

11. It is an admitted fact to the petitioner that her appointment as Junior Clerk was made on 08.04.1987 (Annexure: A4). The appointment letter makes it very clear that such appointment was made for a period of three months, purely on temporary basis with the order that her services were liable to be terminated at any time, without any further claim. The appointment of the petitioner was made as per the policy of the government in compliance of the G.O. (Annexure: A2) to give preference in the employment to the persons whose land was acquired under the Tehri Dam project. Her appointment was not made as per the relevant services rules applicable to the post. It is also admitted fact that *ad hoc* appointment of the petitioner was allowed to continue till the date of her regularization in service on 28.09.2002.

12. The respondents have contended that ad hoc services of the petitioner was terminated vide order dated 08.04.1988 (Annexure CA-R-2). However, petitioner was further admitted in service like other employees. Respondents have contended that she was further appointed

to the post to work as an *ad hoc* employee, after a gap of four days. While, the petitioner has contended that four days gap was exonerated by granting some leave. This fact is not disputed that *ad hoc*/temporary services of the petitioner were regularized under the Regularization Rules of 2002. The petitioner herself in her petition has also submitted that in the Regularization Rules of 2002, under Rule 4 to 7, a procedure is prescribed, which has been cited in the petition itself.

13. We find that as per Rule 4 of the Regularization Rules of 2002, the regularization of the employee working on ad hoc basis, before 30.06.1998 and continuing in service as such on the date of commencement of the Rules can be made under the Regularization Rules of 2002, through a Selection Committee. However, none of the parties have filed her regularization order. It is not disputed that the services of the petitioner were not made under the relevant service rules, but her appointment was regularized under the Regularization Rules of 2002 from 28.09.2002.

14. The contention of the petitioner has been that after regularization, she was promoted on the post of Senior Assistant in 2010 on the basis of seniority and her length of service since her initial induction and she was also allowed further promotion on that basis. The contention of the petitioner has also been that a seniority list of the Divisional ministerial cadre was issued on 23.08.2011, in which her name figured at sl. No. 978 by mentioning the initial date of appointment, which has now been changed to Sl. No. 1211A by settling the seniority on the basis of the date of regularization.

15. The respondents have contended that in the seniority list of 2011, the date of appointment of the petitioner was wrongly shown and there was no mention about her date of regularization in service. Hence, the illegality was committed by wrong placement of the fact while in Column No. 8, the date of regularization of respondent No. 6 was mentioned but the date of regularization of the petitioner was not mentioned in Column No. 8, which was necessary to be shown as the date

of her substantive appointment. According to the respondents, the illegality has now been corrected and the constitutional rights of other employees have been allowed by doing the whole exercise by settling the seniority as per the rules and law.

16. The court has to consider the controversy on basis of two criteria. Firstly, whether the earlier seniority was as per the rules and secondly whether the seniority settled by the respondents can be corrected later on as per the law and rules.

17. The rule position is very much clear that the seniority of the employees can be fixed as per the date of their substantive appointment. The substantive appointment is the appointment in a service made as per following the procedure of relevant service rules. Admittedly, the petitioner was not appointed under the relevant service rules, applicable to the post. Her appointment was made purely on ad hoc basis in 1987, which was continued till she was regularized on 28.09.2002 under the Regularization Rules of 2002. Hence, we hold that substantive appointment of the petitioner will be deemed to be made w.e.f. 28.09.2002 under the Regularization Rules of 2002.

18. As per rule 7 of the Regularization Rules of 2002, the seniority of such employees can only be fixed from the date of order of appointment after selection in accordance with the Regularization Rules. The law makes it very clear that if the petitioner was regularized on 28.09.2002, she is entitled to the seniority only from that date and she will be placed below other persons appointed in accordance with the relevant service rules prior to her appointment by regularization. Similarly, as per Uttaranchal Government Servants Seniority Rules, 2002, an employee is entitled to seniority only from the date of his substantive appointment and substantive appointment means an appointment made under the relevant rules. In both the circumstances, the petitioner is entitled to get her seniority from the date of her substantive appointment, which is the date of her regularization i.e. 28.09.2002. Hence, if any seniority list of 2011 was issued by hiding the date of her regularization, such exercise was not

as per the rules and if it is rectified now for protecting the constitutional rights of other employees, the petitioner cannot be allowed to take the shelter of the prior illegality, committed in her favour.

19. Learned counsel for the petitioner has argued that her initial service should be allowed to be counted for seniority, in view of the judgment of the Hon'ble Apex Court in the case of **Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others (1990)2 SCC, 715**. We have gone through the facts of this case and the facts of the matter before the Hon'ble Apex Court and find that in this case, the facts are totally different. The Hon'ble Apex Court clearly laid down that if the incumbent is appointed to a post in accordance with the rules, his seniority is to be counted from the date of such appointment and not from the date of confirmation. Here in this matter, the issue is not about the date of confirmation. **The Hon'ble Apex Court clearly observed that where initial appointment is only ad hoc, made as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority.** The petitioner's case comes under this category hence, the petitioner is not entitled to any benefit of the law laid down by the Hon'ble Supreme Court because of the reasons that initial appointment of the petitioner was not as per the relevant service rules. Her appointment was ad hoc and she was substantively appointed under the Regularization Rules, 2002 w.e.f. 28.09.2002, and accordingly that date will be considered for settling her seniority. The facts of the case cited before us were totally different from the facts of the case in hand. The case of the petitioner is not covered under the law laid down by the Hon'ble Apex Court.

20. Learned counsel for the petitioner has also argued that settled seniority was unsettled and the petitioner was reverted to two positions lower without giving her an opportunity of hearing, which is against the principles of natural justice. Respondents have submitted that the seniority list of 2011 was settled by concealing the facts of the regularization of the petitioner and the date of regularization was not

mentioned in Column No. 8 of the seniority list like other respondent (Private respondent No. 6). The said seniority was settled fully against the provisions of seniority rules of 2002 as well as Regularization Rules of 2002. Such illegality cannot be allowed to continue and has now been corrected, simpliciter, without punishing the petitioner. Now, the seniority has been fixed strictly in accordance with the rules and law and constitutional rights of the other employees have been protected over illegality already committed. As this action was not done by way of any punishment or in any disciplinary proceedings, hence, there was no need to give any opportunity of hearing to the petitioner and no injustice has been done to her.

21. We also hold that this action, correcting the seniority has been taken to protect the constitutional rights of the similarly situated employees of the cadre. The petitioner is reverted to the post of Senior Assistant as retained by the similarly situated employees of the service cadre. Hence, no arbitrarily discrimination has been made. We hold that by correcting the seniority position, the injustice done to the other similarly situated employees have been undone and seniority has been fixed as per the rules and law. As the salary of the petitioner for the services rendered in past, has not been ordered to be recovered due to this change, hence, no harsh action has been taken against her. Therefore, no adverse effect lies on the petitioner. We hold that this proceeding was not done as a matter of any disciplinary proceedings. Hence, even if opportunity of hearing was not given, it does not violate any principles of the Constitutional rights and the natural justice and by way of impugned order, continuing illegality was corrected and it was made in consonance with the provisions of law.

22. We hold that on this basis, the petitioner is not entitled to any relief.

23. Furthermore, in relation to the arguments of opportunity of hearing, it has been argued by learned A.P.O. on behalf of the respondents that petitioner was although not having statutory remedy

but was granted opportunity by this Court in the first instance to avail departmental remedy by moving representation but the order of this court was challenged before the Hon'ble High Court from where, directions were issued to decide the matter on merit. Hence, now court has to consider the case of the petitioner on the merit as to whether the seniority has rightly been fixed and order has been passed accordingly.

24. We find that earlier seniority of the petitioner was not as per the rules, which has now been corrected and on the basis of the seniority, other employees who were to be placed above the petitioner were denied their legal right. The respondent department is always under obligation to fix the seniority as per rules and to grant equal avenues to all, as per rules, and if rights of the other similarly situated employees were denied then, it should be allowed to be corrected now.

25. We hold that as the petitioner has not been reverted on account of any disciplinary proceedings, and simpliciter order has been passed as per the seniority position and further an order about non-recovery of the amount already paid to her, on the promoted post has been made, hence, her right has been protected. She was paid salary for the higher job done and in this respect, the orders of the respondents are also justified.

26. Considering all the circumstances of the case, we hold that the petition has no merit and the same deserves to be dismissed.

ORDER

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: FEBRUARY 13, 2020
DEHRADUN.
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