

**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. 30/NB/DB/2018

Pravesh Kumar aged about 36 years (Male) S/o Late Girdhari Lal, serving as Assistant Engineer (Electrical), Rural Works Department, Pauri Circle, Pauri.

.....**Petitioner**

VERSUS

1. State of Uttarakhand through Secretary, Rural Works Department, Government of Uttarakhand, Dehradun.
2. Secretary, Department of Personnel, Government of Uttarakhand, Dehradun.
3. Chief Engineer, Level-I, Rural Works Department, Uttarakhand, Tapovan Marg, Dehradun.
4. Shri Tahseen Ahmed, Executive Engineer (Mechanical) in the office of Chief Engineer, Rural Works Department, Tapovan Marg, Dehradun.

.....**Respondents**

Present: Sri Alok Mehra, Ld. Counsel
for the petitioner.
Sri Kishore Kumar, Ld. A.P.O.
for the Respondent Nos. 1 to 3.
None for the respondent No. 4

JUDGMENT

DATED: NOVEMBER 06, 2019

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

1. Through this claim petition, petitioner has requested to:

“i) Declare the act of the DPC of considering respondent no. 4 alone for promotion to the post of Executive Engineer (Electrical) to the complete exclusion of persons serving as Assistant Engineer, Electrical Branch as unjust and illegal.

ii) *Issue a writ, order of reaction in the nature of certiorari to call for the record and to quash the order dated 27.09.2016, whereby respondent No. 4 was promoted to the post of Executive Engineer (Electrical/Mechanical) in Rural Works Department.*

iii) *Issue a writ, order or direction in the nature of mandamus commanding respondent No. 1 and 2 to hold exercise for promotion to the post of Executive Engineer (Electrical) afresh by considering persons serving in the feeder post of Assistant Engineer (Electrical).*

iv) *Issue a writ, order or direction in the nature of mandamus commanding respondent No. 1 and 2 to consider and promote the applicant to the post of Executive Engineer (Electrical) in view of his seniority amongst persons serving on the feeder post of Assistant Engineer (Electrical).*

v) *Issue any other writ, order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

vi) *To award the cost of the petition in favour of the applicant."*

2. Briefly stated, facts of the petition, are that petitioner is a directly recruited Assistant Engineer (Electrical) through Public Service Commission in the office of Respondent No. 3 w.e.f. 23.12.2011. His department is known as Rural Works Department, which has two independent branches of Electrical and Mechanical, therefore, a person appointed as Junior Engineer/Assistant Engineer (Mechanical) cannot be promoted to the post of Assistant Engineer/Executive Engineer (Electrical) and the promotion can be made within the same branch. As per contention of petitioner, Assistant Engineer (Electrical) alone can be considered and promoted on the post of Executive Engineer (Electrical). The relevant Service Rules applicable in the matter are the Uttarakhand Rural Engineering (Group-A) Service Rules, 2006 (hereinafter referred to as '**Service Rules of 2006**').

3. As per the concerned Services Rules of 2006, prior to the amendment made vide notification dated 04.01.2016, an Assistant Engineer, having seven years of experience, can only be promoted as Executive Engineer whereas, after amendment of Rule 5, Assistant

Engineer, who completed four years of service, was made eligible for promotion.

4. As per the contention of petitioner, Rural Works Department is mainly responsible for construction of the government buildings, unlike Public Works Department, which is responsible for construction/maintenance of roads as well as bridges, heavy machinery etc.

5. On the proposal submitted by the department, the Personnel department of the Government through its approval on 28.11.2014, restructured the department and after detailed consideration of the matter at Government level, only one post of Executive Engineer (Electrical) was approved and created against the demand of two posts. It is also significant to note that before such restructuring, Electrical and Mechanical Branch of Rural Works Department, was having no post of Executive Engineer available for promotion and only one post of Executive Engineer (Electrical) was created for promotion of the Assistant Engineer (Electrical) Division.

6. When respondent No. 4, who is a member of the Mechanical branch, was being considered for promotion, against the post of Executive Engineer (Electrical), then petitioner submitted a representation dated 18.08.2016 to respondent No. 1 with the submission that respondent No. 4, having a diploma in mechanical engineering, cannot be considered for promotion for the Electrical Branch. It was further submitted that holding of promotional exercise before finalization of seniority of Assistant Engineers, is not as per the Rules and without finalizing the tentative seniority list and without considering other members of service by the DPC, the promotion of respondent No. 4 is illegal.

7. Petitioner has also contended that in Rural Works Department, Engineering service is divided into three different

branches i.e. Civil, Electrical and Mechanical, and all these three branches are independent of each other, having different promotion avenues, therefore, separate seniority list, in respect of these three branches are required to be prepared. There is no common seniority list in respect of any two or more branches. Respondent No. 3, in the year 2010 issued a final seniority list in respect of Junior Engineers, belonging to Electrical Branch vide order dated 10.01.2010, but respondent No. 3 on 27.09.2016 illegally promoted respondent No. 4 against the vacancy of Executive Engineer (Electrical), which is not as per the Rules.

8. The petitioner filed a writ petition before the Hon'ble High Court, for quashing the promotion order dated 27.09.2016 whereby his matter was decided and relegated on the ground of alternative remedy before this Tribunal hence, this petition was filed by the petitioner for the relief, as mentioned above.

9. Learned A.P.O. on behalf of respondents No. 1 to 3 as well as other private respondent separately, opposed the claim petition with the contention that respondent No. 4 who was substantively appointed on the post of Junior Engineer (Mechanical) in February 1995, was promoted to the post of Assistant Engineer (Mechanical) vide G.O. dated 26.08.2010 and he became Assistant Engineer before the direct recruitment of the petitioner in the service as Assistant Engineer in 2011. The Government vide order dated 27.09.2016, promoted respondent No. 4 to the post of Executive Engineer (Electrical/Mechanical). Earlier, in the department, there was separate wing of Electrical and Mechanical branch in the feeder cadre of Junior Engineer (Mechanical) and accordingly, seniority list was prepared separately, but as per the G.O. dated 03.08.2015, the Rural Works Department's structure was reorganized at the level of the Executive Engineer and the post of Executive Engineer (Civil) and Executive Engineer (Electrical) was created in the said reorganized structure and

on the post of Executive Engineer, the promotion/appointment has been made as per the relevant Service Rules of 2006. Respondents also contended that according to Rule 5-A, the post of Executive Engineer can be filled up by promotion from amongst the existing/working Assistant Engineers, but as per the said amendment, Rule 5-A was substituted as follows *“Executive Engineer (Civil) or Electrical/Mechanical as per the situation civil or Mechanical Branches from the substantively appointed Assistant Engineers, who have completed seven years of service on the date of their selection, filled up by way of promotion.”*

10. After restructuring of the department, through reorganization, the nomenclature of the Assistant Engineer (Electrical) and Assistant Engineer (Mechanical) was changed as Assistant Engineer (Electrical/Mechanical) and accordingly, respondent No. 4 was promoted to the post of Executive Engineer (Electrical/Mechanical) as per the recommendation for promotion to the said post. The order dated 27.09.2016, by which promotion on the post of Executive Engineer(Electrical/Mechanical) has been granted by the respondent No. 1, is as per the rules and law hence, claim petition filed against the said order, has no legal force and the same deserves to be dismissed.

11. The petitioner through his R.A, denied the contention of the respondents and has submitted that there is no post of Executive Engineer (Electrical/Mechanical) in the department and as per the relevant Service Rules of 2006, which were notified on 11.12.2006, there were 14 posts of Executive Engineer in the department, which belong to Civil cadre. Since there was no post of Executive Engineer sanctioned for Electrical branch in the department and the rural department was mainly responsible for construction of government building, therefore, respondent No. 3 sent a proposal for creation of two posts of Executive Engineer (Electrical) in the department. Considering the above proposal, a Government Order dated 03.08.2015

was issued, whereby one post of Executive Engineer (Electrical) was created for the first time in the department and the rules were also amended vide Notification dated 04.01.2016, by which one post of Executive Engineer (Electrical) was included in the Appendix to Rule 4(2) of the said Rules.

12. It is also contended that the post of Executive Engineer (Electrical/Mechanical) does not exist in the department and respondent No. 4, who was working on the post of Assistant Engineer (Mechanical) has wrongly been promoted to the post of Executive Engineer (Electrical). A person serving on the post of Assistant Engineer (Mechanical) cannot be promoted to the post of Executive Engineer (Electrical) which is totally of a different cadre. It has been contended that the provisions of the G.O., cannot override the service rules, which are framed under Article 309 of the Constitution of India. There is no post of Executive Engineer (Electrical/Mechanical), hence, promotion granted to respondent No. 4 is illegal and *dehors* the rules.

13. It is also contended that previously issued, proposed tentative seniority list was not finalized and adverse entries' record was never communicated to him. The real controversy in the matter is, whether the person, who was serving as Assistant Engineer (Mechanical), could be granted promotion on the post of Executive Engineer (Electrical) in the absence of any provision to this effect. Accordingly, the promotion of respondent No. 4, is not as per the relevant service rules, hence, claim petition deserves to be allowed.

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

15. Certain facts are admitted to the parties. It is admitted that the concerned Rules are the Uttarakhand Rural Engineering (Group-A) Service Rules, 2006 and in its amended Annexure under Rule 4(2), the post of Executive Engineer and above cadre upto the level of Chief Engineer Level-1 are mentioned. The petitioner is a direct recruits to

the post of Assistant Engineer (Electrical) whereas, respondent No. 4 was a promotee officer from the cadre of Junior Engineer (Mechanical) and his promotion to the post of Assistant Engineer (mechanical) was made in 2010 before the entry of petitioner into service in 2011. Upto the level of Assistant Engineer, the services are governed by other concerned Service Rules of 2006 and its Annexure under Rule 4(2), provides for 53 posts of Assistant Engineers in which 49 posts are of Civil Branch, 02 of Electrical Branch and 02 of mechanical branch.

16. The actual controversy to be considered by this court is, whether an Assistant Engineer of **Mechanical Branch** can be promoted to the post of **Executive Engineer, Electrical Branch**. The concerned Service Rules of 2006 of Group-A were amended vide Notification No. 15/XII-2/2016/92(09)/2006 dated 04.01.2016, by which the Appendix under Rule 4(2) was substituted as under:

“अधिसूचना

राज्यपाल, ‘भारत का संविधान’ के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्ति का प्रयोग कर उत्तराखण्ड ग्रामीण अभियन्त्रण (समूह ‘क’) सेवा नियमावली, 2006 में संशोधन करने की पुष्टि से निम्नलिखित नियमावली बनाते हैं।

उत्तराखण्ड ग्रामीण अभियन्त्रण (समूह ‘क’) सेवा (संशोधन) नियमावली, 2016

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.....

परिशिष्ट

{नियम 4(2) देखिये}

पद नाम	पदों की संख्या		
	स्थायी	अस्थायी	कुल
अधिसासी अभियन्ता(सिविल)	21	01	22
अधिसासी अभियन्ता(विद्युत)	—	01	01
अधीक्षण अभियन्ता	05	—	05
मुख्य अभियन्ता स्तर-2	01	—	01
मुख्य अभियन्ता स्तर-1	—	01	01

(शैलेश बगौली)
सचिव”

Its English version was also published under the provisions of clause (3) of Article 348 of the Constitution of India in the name of the Governor with the following Notification No. 15/XII-2/2016/92(09)/2006 dated 04 January, 2016 and the Appendix. In English, it is written as under:

“In exercise of the powers conferred by the proviso to Article 309 of “the Constitution of India”, the Governor is pleased to make the following rules with a view to amend the Uttarakhand Rural Engineering (group ‘A’) Service Rules, 2006”

The Uttarakhand Rural Engineering (Group “A”) (Amendment) Service Rules, 2016.

.....
.....

*“Annexure
[see rule 4(2)]*

Name of post	Number of posts		
	Permanent	Temporary	Total
<i>Executive Engineer (Civil)</i>	21	01	22
<i>Executive Engineer (Electric/Mechanical)</i>	-	01	01
<i>Superintending Engineer</i>	05	-	05
<i>Chief Engineer, Level-2</i>	01	-	01
<i>Chief Engineer, Level-1</i>	-	01	01

*By order,
(Shailesh Bagauli)
Secretary”*

17. The controversy in this matter is on account of discrepancy in the amended schedule of the original text in Hindi and of its English translation. In Hindi, sanctioned one post, is in the name of अधिशासी अभियन्ता(विद्युत) whereas, in the English version, ‘**Executive Engineer (Electric/Mechanical)**’ is mentioned.

18. The petitioner has contended that one such post was created in Electrical Branch, as is evident from the amendment as well as from the proposal moved by the department and its sanction, granted at the level of the government. Respondents have argued that this post of Executive Engineer was for both the branches, **Electrical as well as**

Mechanical Branch), as mentioned in the English version of the amended rules.

19. We have gone through both the Notifications, original made in Hindi, and in the English translation, and noted that the posts of Executive Engineer of different branch, were sanctioned, 22 posts for Civil Branch, one post for Executive Engineer (Electrical) branch. There is no post of Executive Engineer sanctioned for Mechanical branch, in the original Notification, made in Hindi. It has been argued that in the English translation of this notification dated 04.01.2016, the word 'Mechanical' has been written wrongly and in case of discrepancy, Hindi version has to be followed.

20. Petitioner has also referred to the laws laid down by the Hon'ble Supreme Court, in the case of **Commissioner of Trade Tax, Uttar Pradesh vs. Associated Distributors Limited (2008) 7 SCC, 409** and **Park Leather Industry (P) Ltd. vs State of U.P. and others (2001) 2 SCC 135**, wherein the Hon'ble Apex Court has held that if the official language of the State is Hindi and if there is discrepancy in the original text in Hindi and its English translation, then Hindi version would be applied.

21. In the present case, there is discrepancy between the original text of Notification made in **Hindi** and its English translation published under Article 348 of the Constitution of India, and in such situation, this court is of the view that the original text made in Hindi would be followed because of the above case laws and also because of the fact that the official language of the State of Uttarakhand is Hindi. The amendment made in 2016, in the original Rules of 2006 was also in Hindi and in comparison to the English translation, the original text made in the Hindi would be followed.

22. Learned counsel for the respondents has also argued that the English version should be followed. We do not agree with their

arguments for the reasons mentioned above, as well as keeping in view of this fact that the proposal submitted from the department to the government was for sanction of post of Executive Engineer (Electrical), mentioning the requirement of the department for electrical works. Annexure: 7 is the proposal submitted by the Chief Engineer of the department, whereby, it was specifically mentioned that most of the work of the department is construction of buildings in which, for electric work, posts of Junior Engineer and Assistant Engineer are sanctioned, but there is no post of Executive Engineer (Electrical) hence, a request was made to create two Posts of Executive Engineer (Electrical) one each for Garhwal and Kumoun region.

23. The petitioner also submitted the extract of the proceedings and order sheets taken at the government level (Annexure-8, 9 and 10), which reflect that the proposal was moved at every level to create the posts of **Executive Engineer for the Electrical works** and this was approved upto the level of Cabinet. Thereafter, a notification dated 03.08.2015 was issued at the Government level by which the reorganization of the department was made (Annexure: 11) and the Schedule of the said G.O. specifically mentions that one post of Executive Engineer (Electrical) is created whose office will be at headquarter of the department. Hence, all the proceedings also make the intention of the Government clear, that this post was created for the persons of the Electrical branch. We are of the view that the post of Executive Engineer (Electrical) was created only for the electrical branch and the in the English version of the amendment in the rules, the word 'Mechanical' does not find place in the original text of the amendment in Hindi version. The contention of the petitioner is acceptable that this post was not for promotion of the Mechanical branch.

24. It is admitted fact that the respondent No. 4 who has been promoted to the post of Executive Engineer (Electrical), was previously

a Junior Engineer (Mechanical) and he was promoted as Assistant Engineer (Mechanical) in 2010 whereas, he has been granted promotion vide order dated 27.09.2016 against the post of Executive Engineer (Electrical), taking the assumption that this post is also for Mechanical branch, which is not as such according to the rules.

25. Hence, promotion of respondent No. 4 against the sanctioned post of Executive Engineer (Electrical), is not as per the rules. To this extent, petition deserves to be allowed, as it has been the intention of the rules that promotion to this post will be made from the officers of the Assistant Engineer (Electrical) cadre after finalizing their seniority and by adopting due legal process for promotion as per the rules. Accordingly, petition deserves to be allowed and the following order is hereby passed.

ORDER

The claim petition is allowed.

The promotion order dated 27.09.2016 of the respondent No. 4 to the post of Executive Engineer (Electrical) in the respondent department is hereby set aside.

The respondents are directed to fill up this post of Executive Engineer (Electrical) from amongst the person of Assistant Engineer (Electrical) cadre, after finalizing their seniority and by adopting the due process for promotion as per the rules.

No order as to costs.

Sd/-

(A.S.NAYAL)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 06, 2019
NAINITAL
KNP