

**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.94/DB/2019

Deepak Singh Rawat (Male) S/o Late Shri Bachan Singh Rawat, at presently posted as Project Economist (Earth and Statistical Officer) District Rural Development Agency, Pauri, District-Pauri Garhwal.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Rural Development Department, Civil Secretariat, Dehradun.
2. Chief Secretary, Government of Uttarakhand, Secretariat, Dehradun.
3. State of Uttarakhand through Secretary, Rural Development Department, Civil Secretariat, Dehradun.
4. Commissioner, Rural Development Directorate, Pauri, State of Uttarakhand.
5. Director, DRDA, Rural Development Ministry, Krishi Bhawan, New Delhi.

.....Respondents

Present: Sri Vinodanand Barthwal &
Sri Maninder Singh, Advocates for the petitioner.
Sri V.P.Devrani, A.P.O. for the respondents.

JUDGMENT

DATED: JULY 17, 2020

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

1. By way of this petition, the petitioner has sought the reliefs with the following paragraphs:

- (a) *Issue direction declaring the petitioner eligible for the promotion to the post of Project Director In DRDA department as per the rules framed and declared in the response affidavit filed before Hon'ble High Court Nainital on*

dated 01.04.2015 which is contained in Annexure: 7 to this claim petition (which has been mentioned in response affidavit para no. 7 such as it is submitted that the post of project director is the post of DRDA in which the appointments were earlier made from officers of the PDS cadre on deputation basis however, due to the mistake, the post of project director DRDA has been included in the PDS cadre and the same was made a promotional post, which could not have been done. After realizing the aforesaid mistake and the opinion given by the personnel department, the cadre structure of the PDS cadre is still under the organization and after the same is finalized, the officers from the PDS cadre will be given the appointment in their own cadre. It is further submitted that it has also been proposed that out of 13 posts of project directors, 7 posts shall be filled through direct recruitment by project economist and assistant engineers in the ratio of 60:40, meaning thereby 4 posts shall be filled by project economist and 3 posts by assistant engineers and rest 6 posts shall be filled through other services including the PDS cadre through deputation.)

- (b) To issue any other direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- (c) The respondents be directed to give to petitioner the other consequential benefits.*
- (d) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. Briefly stated facts giving rise to the petition are that by way of the Central Govt. Regulations, District Rural Development Authority (in short DRDA) was established in every district and without altering the basic design, its staff was to be taken on deputation basis for a specific period without having any permanent staff. Regulation further stipulates that DRDA will have different wings. The government scheme further provides that in DRDA, Project Director would be its Head who will be of the rank of Additional District Magistrate. It was also provided that preference will be given to the senior members of All India Services or senior officers of State level services, who are having eligibility to be appointed in All India Services. As per the policy decision, there shall not be any permanent staff in DRDA and for a specific period, employees were to be appointed on deputation basis.

3. As per the petition, petitioner was selected through divisional selection committee and was appointed in DRDA, Pauri by Collector, Garhwal as its Chairman on 12.12.1988, on the post of Assistant Statistic Officer and joined his services in Pauri. Thereafter, on 23.07.2001, he was promoted on the post of Project Economist in the pay scale of Rs. 8000-13800 revised to Rs. 15600-39800 with grade pay of Rs. 5400/-. The petitioner was also given charge of Project Director, DRDA on 04.10.2001 consequent upon the transfer of the then District Development Officer holding charge of the Project Director, DRDA.

4. The petition further says that inspite of the Central Govt. direction, the State of Uttarakhand through Notification No. 935/53(05)/2006 dated 27.05.2011 by making the Uttarakhand Provincial Development Service (PDS) Rules, 2011 kept the Project Director post of DRDA in the PDS cadre to be filled by promotion of PDS cadre officers meaning thereby that the petitioner and other similarly situated persons, who are directly recruited by DRDA, are ousted from the zone of consideration for promotion to the post of PD, DRDA. The Chief Development Officer, Pauri directed the petitioner to hold the officiating charge of Project Director on 03.08.2012 and the petitioner is continuing to hold the same since then. The petitioner filed a writ petition (S/B) No. 20 of 2013, wherein learned counsel appearing on behalf of the State, falsely stated that by making the Rules, no attempt was made by the State to usurp any post of any centrally sponsored scheme and, in particular, the post of Project Director available in any centrally sponsored scheme.

5. In the year 2015, in writ petition No. 363 of 2014, Sardar Singh Chauhan vs. State of Uttarkahand & others and also in Review Petition MCCMO 175/15, 920/14, through affidavit by the respondent No. 3, it was admitted before the Hon'ble High Court that due to mistake, the post of Project Director, DRDA has been included in PDS cadre and the same was made a promotional post in the Service Rules, which was

wrong, but as per their promise in the affidavit, rectification of the rules has not been made till date. The Hon'ble Supreme Court in Special Leave Petition No. 21970-21971/2015, Deepak Singh Rawat vs. State of Uttarakhand *vide* judgment dated 12.09.2017, directed the State Govt. to take a decision in the matter pending consideration within a period of three months from that date. The State Govt. in furtherance the order of the Hon'ble Supreme Court and the affidavit given by the State before the Hon'ble High Court, are now denying their earlier statement. Feeling aggrieved by the action on the part of the respondents, the petitioner again approached the Hon'ble High Court in writ petition No. 190/2018 whereby, *vide* judgment and order dated 04.07.2019, the petitioner was directed to approach the Tribunal. Hence, in view of the direction of the Hon'ble High Court, present petition has been filed by the petitioner.

6. In the original petition, Union of India was also impleaded as party, but was later on deleted by making an amendment during hearing.

7. Respondents by filing C.A./W.S. opposed the petition with the contention that initial post of petitioner was of Assistant Statistics Officer and then Project Economist, on promotion but he was not a government servant. The post of Project Director had never been the promotional post of the petitioner, which was always to be filled up from IAS or senior PCS cadre. The petitioner was given the charge of Project Director on temporary arrangement basis, after transfer of the then Project Director, which does not give any legal right to him to get promotion to such post. The petitioner was not even a government employee. The respondents also contended that after getting approval from Council of Ministers in the year 2010, the Uttarakhand Provincial Development Service cadre was constituted and the Uttarakhand Provincial Development Service Rules, 2011 were framed, comprising of the posts of Block Development Officer, District Development Officer, Assistant Commissioner, Assistant Project Director, Project Director, Chief Development Officer, Deputy Commissioner, Joint Development Commissioner, Additional

Commissioner. Rule 5 of the said rules specifically provides that the post of Project Director shall be filled up from amongst District Development Officer/ Assistant Commissioner/ Assistant Project Director, who have completed 03 years of service and total 13 years of service as such on the first day of year of recruitment. Provincial service is the State service of which substantive post is Block Development Officer, to be selected through the Public Service Commission. Whereas, the petitioner was never a government employee as the appointment was made by District Level Committee and his scope of work is totally different from the post of Project Director which had never been his promotional post. From very beginning, the post of Project Director was to be filled up from IAS or senior PCS cadre in accordance with the scheme of the government of India, and such scheme never gives any legal right to the petitioner to claim promotion of such post. It is also contended that the post of Project Economist and Assistant Statistic Officer do not come under the provincial service, they have the different source of recruitment, work and the eligibility, as such cannot be equated with the members of provincial development service.

8. The Hon'ble High Court in writ petition No. 20 of 2013, vide order dated 20.05.2013 observed that by making the rules, 2011, no attempt was made by the State to usurp any post of any centrally sponsored scheme and, in particular, the post of Project Director available in any centrally sponsored scheme. Hence, it was held that nothing further was to be done in the writ petition. Respondents also contended that the posts of petitioner was made a government post in the year 2015 and were included in "Garibi Unmulan Kshamta Vikas and Rojgar Prakosth" vide memo no. 1037/XI/15 dated 26.05.2015 by which all working employees of Rural Development Agency have been given the status of government employees and their services have been absorbed in that *Prakosth*. The petitioner was never a government employee and his post has been declared as dying cadre as no fresh recruitments would be made on this post and after retirement of the employees, all the posts

of 'Prakosth' will be filled up as per the requirement of District Rural Development Agency on deputation. The Project Director, who is the head of District Rural Development Agency, was earlier and now also to be filled up from the cadre of IAS or senior PCS cadre. No violation of the government rules and central Govt. scheme has been made. In the exigencies of the government work and in public welfare, it was necessary to hand over the officiating charge of Project Director to the petitioner purely on temporary basis, which never gives any legal right of promotion to the petitioner on said post. The handing over the additional charge to an incumbent does never create any vested right to claim the same hence, the claim of the petitioner is not in right footing and same deserves to be rejected.

9. The petitioner through R.A. denied the contention of the respondents and it has been contended that till the date of retirement, the post of Project Economist has been kept without promotion while the BDO cadre which is below the rank of Project Economist, has been promoted illegally. The State Govt. has wrongly usurped the post of DRDA giving unnecessary benefit to the B.D.O. cadre. In the petition before the Hon'ble High Court and review petition No. MCCMO 175/15 and 920/14, this was admitted through an affidavit by the respondent No. 3 that due to mistake, the post of Project Director, DRDA has been included in PDS cadre and the same was wrongly made promotional post, but the admission made by the respondents before Hon'ble High Court has not been corrected till date hence, petition should be allowed with appropriate direction to the respondents.

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

11. Admittedly, district level District Rural Development Agency "in short DRDA" was constituted under the scheme of the *Gramya Vikas Mantralaya* of Govt. of India. The scheme also provides for different categories of employees and the DRDA was to be headed by one officer with the name of Project Director, which was to be the Chief Executive

Officer of the agency. In such scheme (Annexure No. 3), the constitution was provided in para 2 of 2.2 (Ka), which reads as under:-

“(क) परियोजना निदेशक—

(i) प्रत्येक जि०ग्रा०वि० अभि० का प्रमुख एक परियोजना निदेशक होगा, जो अतिरिक्त जिला दण्डाधिकारी की हैसियत का हो। परियोजना निदेशक को वरीयतः अखिल भारतीय सेवा का एक वरिष्ठ स्तर का अधिकारी या राज्य सेवा का वरिष्ठ अधिकारी, जो अखिल भारतीय सेवा में नियुक्त किए जाने की पात्रता रखता हो, होना चाहिए। वह जि.ग्रा.वि. अभि. की गतिविधियों का पूर्णरूपेण प्रभारी रहेगा और जिला/राज्य प्रशासन सहित भारत सरकार में संपर्क करने के लिए जिम्मेदार रहेगा। परियोजना निदेशक केवल जि.ग्रा.वि. अभि. का ही कार्य देखे।

(ii) कुछ राज्यों, उदाहरण के लिए महाराष्ट्र जिला परिषद् का मुख्य कार्यपालन अधिकारी ही इसका अध्यक्ष भी होता है। भारत सरकार ने सभी राज्य सरकारों को सुझाव दिया है कि जिला परिषद् के मुख्य कार्यपालन अधिकारी को ही जि.ग्रा.अभि. के परियोजना निदेशक के रूप में पदनामित किया जाना चाहिए।

(iii) प्रत्येक जि.ग्रा.वि.अभि. में निम्नलिखित स्कंध हों:-

(क) स्व-रोजगार स्कंध

(ख) महिला स्कंध

(ग)परिश्रमिकगत रोजगार स्कंध

(घ)अभियांत्रिकी स्कंध

(ङ.)लेखा स्कंध

(च)निगरानी और मूल्यांकन स्कंध, और

(छ) सामान्य प्रशासन स्कंध।”

DRDA was to be constituted in the form of society. As per these guidelines, DRDA is having different ‘Skandh’(branches). The petitioner was appointed in ‘Nigrani Skand’ as Assistant Statistics officer. He was later on promoted as ‘Project Economist’, as mentioned in the structure of the Agency whereas, the Project Director is the head of all the branches. As per the guidelines of the Central Govt. scheme, the post of Project Director was always to be filled up from the officers of IAS cadre or from the cadre of senior PCS (State service cadre). It had never been a promotional post either of Assistant Engineer branch or any other supervisory branch, to which petitioner belongs. The petitioner has come up with the case that at several times, he was assigned the work of Project Director in 2001 and 2012 but it was on account of exigency due to transfer of Project Director, awaiting the new incumbent.

12. We are of the view that this does not give any legal right of promotion to the petitioner because of the following reasons:

- (i) The post of Project Director was to be filled up from a government officer of IAS or PCS cadre whereas, the petitioner was an employee of a Society. He was not even assigned the cadre of government employee by that time.
- (ii) Government in its constitutional powers promulgated the "Uttarakhand Provincial Development Service Rules, 2011" wherein the provincial service cadre was constituted comprising of the posts starting from the post of Block Development Officer with their promotional posts of District Development Officer/Assistant Commissioner/ Assistant Project Director, then next promotion to the post of Project Director, who were to be further promoted to the post of Deputy Commissioner/Chief Development Officer/Joint Secretary and their next promotional post is Additional Commissioner.

13. At the time of promulgation of the Rules of 2011, the petitioner was not even a member of government service. As per the contention of the respondents, he was given the government service cadre only by a notification dated 26.05.2015, "*Garibi Unmulan Kshamta Vikas and Rojgar Prakosth*" was created, and he was made a part of it. It is nowhere disputed that the appointment of the petitioner was made by a committee of the district/divisional level, without any regular competitive examination. He was not a government employee till the year 2015 and even as per the scheme of the Central Govt., the post of Project Director was never to be filled up by promotion of other employees of the DRDA. The post of Project Director was always to be filled up separately from the officer of IAS or senior PCS cadre hence, petitioner could not establish his legal/vested right to such post.

14. The petitioner's case is based only on the fact that he was given charge of Project Director two times and continued on the same post for a long period, but such temporary appointment by which he was given the charge of Project Director to fill up the time gap of outgoing and incoming officers, never gives any legal right to the petitioner to get any promotion on such post. Hence, in this respect, the petitioner has failed to establish his claim to get promotion on the post of Project Director.

15. In this petition, the petitioner has based his claim mainly on the admission made by the Secretary to the Government in his affidavit filed before the Hon'ble High Court in writ petition No. 363 of 2014 and the response affidavit on behalf of the respondent No. 1 in review petition No MCCMO 175/15/920/14 (Annexure: A7) wherein the Secretary to the Rural Development, Govt. of Uttarakhand, Sri Vinod Fonia vide his affidavit dated 01.04.2015 before the Hon'ble High Court in para 7 had written as under:

"That further, it is submitted that the post of the Project Director is the post of DRDA in which the appointments were earlier made from officers of the P.D.S. Cadre on deputation basis, however, due to the mistake, the post of Project Director, D.R.D.A., has been included in the PDS cadre and the same was made a promotional post, which could not have been done. After realizing the aforesaid mistake and on the opinion given by the Personnel Department, the cadre structure of the P.D.S. cadre is still under reorganization and after the same is finalized, the officers from the P.D.S. cadre will be given appointment in their own cadre. It is further submitted that it is also been proposed that out of 13 posts of Project Directors, 7 posts shall be filled through direct recruitment by Project Economists and Assistant Engineers in the ratio 60:40, meaning thereby, 4 posts shall be filled by Project Economists and 3 posts by Assistant Engineers and rest 6 posts shall be filled through other services including the P.D.S. cadre through deputation. However, it will take some time to finalize the amendment of the rules and for reorganizing the cadre structure."

The petitioner's objection has been that the post of Project Director has wrongly been included in the cadre of P.D.S. (under the 2011 rules) and admission on behalf of the Secretary to the Government about this mistake, has not been corrected as yet. Petitioner has also contended

that promise was made by the government to rectify the rules, which has not been done. Whereas, learned A.P.O. on behalf of the respondents has contended that the matter was thoroughly considered at the level of the government and vide order dated 11.12.2017 (Annexure: A9) detailed order was passed wherein it was held that there is no need to amend the rules of 2011, as after filing of the affidavit before the Hon'ble High Court, the circumstances were changed because vide order No. 1037/XI/15 dated 26.05.2015, the other employees of the DRDA were given the government status and they were absorbed in a "*Prakosth*". The posts of this *Prakosth* have been declared as dying cadre and after retirement of the present employees, the vacant posts shall not be filled by new appointment and as per the requirement of DRDA, the employees of the Rural Development Department shall be taken on deputation.

16. We are of the view that although there was an affidavit filed by the Secretary to the Government before the Hon'ble High Court that they are going to rectify the rules, but after considering all circumstances and the status of employees of the Agency (DRDA) in 2015, the amendment was not made. The court cannot direct to amend such rules. Prayer of the petitioner to include or to declare any of their right, to claim promotion to the post of Project Director cannot be accepted in view of the fact that (i) neither from the inception of the DRDA, nor (ii) at the time of promulgation of the 2011 Rules, nor (iii) thereafter, the post of Project Director has been a promotional post of any employee of DRDA. It was always to be filled up from the officers of IAS cadre or senior PCS cadre on deputation. The petitioner was having no claim or having no legal right to promotion on the said post.

17. Hence, inspite of the affidavit filed by the Secretary before the Hon'ble High Court, petitioner's claim of promotion to that post is not established. Furthermore, when the government, by making rules in its constitutional powers, has reconstituted a cadre, we hold that it is a

policy matter, in which this court cannot interfere and direct the government to change its policy and amend the rules, so as to include petitioner's right of promotion to the post of Project Director, to which he was never entitled before promulgation of the rules. In such circumstances, we are of the view that the petition of the petitioner fails and the relief claimed by him cannot be granted. The following order is hereby passed.

ORDER

The petition is devoid of merit and is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JULY 17, 2020
DEHRADUN.

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