

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL

AT DEHRADUN

Through Audio Conferencing

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

Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CONTEMPT PETITION NO. C-05/DB/20

Arun Kumar Goel aged about 57 years. s/o shri Pooran Mal Goel, r/o Mahadev Vihar General Mahadev Singh Road, Dehradun, employed as Superintending Engineer A.D.B. Circle. Public Works Department, New Tehri.

.....Petitioner

vs.

Shri Om Prakash Additional Chief Secretary, Government of Uttarakhand, Secretariat, Dehradun. . . . Respondent/Opposite party.

....Respondents.

Present: Sri Arun Kumar Goel, Contempt petitioner, in person.
Sri V.P.Devrani, A.P.Os., for the Respondents.

JUDGMENT

DATED: JULY 31, 2020

Justice U.C.Dhyani(Oral)

Present contempt petition has been moved by the contempt petitioner, Sri Arun Kumar Goel, Superintending Engineer, ADB Circle, against Sri Om Prakash, Additional Chief Secretary, Government of Uttarakhand, Dehradun, with the prayer to punish the respondent-opposite party with "suitable punishment for downgrading the dignity of the Hon'ble Tribunal, making hindrance in due course of justice and

committing the willful & deliberate contempt and defiance of the judgment dated 06.09.2018 of the Hon'ble Tribunal and quash the seniority lists dated 03.06.2014 and promotions and consequential benefits arising out of these.”

2. The contempt petitioner has filed a copy of judgment rendered by this Tribunal on 06.09.2018 in Claim Petition No. 33/DB/2015, Deepak Kumar Yadav and Khagendra Prasad Upreti vs. State of Uttarakhand; Secretary to the Government of Uttarakhand in P.W.D.; State of U.P., through Principal Secretary, P.W.D.; Sri Arun Kumar Goel and Sri Charu Chandra Joshi. Present contempt petitioner was respondent no.4 in the aforesaid claim petition. Operative portion of the order dated 06.09.2018 reads as under:

“12. In view of analysis in paragraphs 8 to 11 above, we hold that the State of Uttarakhand could not promote respondent No. 4 as AE w.e.f. 01.07.1990 as it did not have jurisdiction and, therefore, it was not competent to do the same. We also hold that the State of Uttarakhand had no jurisdiction to modify/determine the seniority and, therefore, it was not competent to do the same. We also hold that only the State of Uttar Pradesh had jurisdiction and, therefore, only the State of Uttar Pradesh was competent to act on these issues.

13. For the reasons stated above, the seniority list dated 24.06.2015 is illegal and void and, therefore, it is liable to be set aside.

ORDER

The petition is hereby allowed and the impugned order dated 24.06.2015 (Annexure: A2) is hereby set aside. No order as to costs.”

3. In his contempt petition, the contempt petitioner has traced the genesis of dispute in paragraphs no. 1 to 13. In paragraph no. 14 of the contempt petition, the contempt petitioner has submitted that in the light of judgment dated 06.09.2018, only it was to be decided that who will be placed at A, B, C or D of serial number 50 of seniority list and therefore the matter of determination of inter se seniority of the petitioner and others must have been sent to the State of Uttar Pradesh but the respondent without getting determined the inter se seniority of the petitioner and others by the state of Uttar Pradesh, issued the orders of the promotions

an 24.04.2020 & 25.04.2020 of the persons listed in the seniority lists issued by the Uttarakhand, which is bad in eyes of law and in direct contradiction of judgment dated 06.09.2018.

4. In paragraph 15, according to the petitioner, the seniority list dated 03.06.2014 is invalid and *non-est*.

5. In paragraph 17, according to the petitioner, since he is an employee of State of Uttarakhand, therefore, it was mandatory on the respondents to send the proposal to get the inter se seniority determined by the State of U.P. before making any promotion or any officiating posting on the post of Chief Engineer.

6. In paragraph 18 of the contempt petition, it has been averred that on 24.04.2020, respondents convened a DPC and issued the orders of promotion of the persons listed in the seniority list issued by the State of Uttarakhand and, therefore, respondents willfully and deliberately committed defiance of the judgment dated 06.09.2018 of the Tribunal. According to the contempt petitioner, he sent letters to the respondents to cancel the aforesaid seniority list and promotion, but to no avail. The cause of action, according to him, arose on 24.04.2020. Petitioner has already filed claim petition No. 22/DB/2020 Arun Kumar Goel vs. State for the following reliefs:

“ (i) That this Hon'ble Tribunal may graciously be pleased to declare that the petitioner is eligible and entitled for consideration for promotion on the post of Chief Engineer Level-2 and accordingly issue an order or direction to the respondents to convene a review D.P.C. and consider the petitioner on the post of Chief Engineer Level-2 considering his annual character rolls and service records in accordance to the Uttaranchal Government Servant (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules 2002 and Uttarakhand Government Servant (Disposal of Representation against Adverse, Bad, satisfactory, good, very good and outstanding Annual Confidential Reports and Allied Matters) Rules 2015 with all consequential benefits on the post of Chief Engineer Level-2 w.e.f. 25.04.2020.

(ii) That this Hon'ble Tribunal may further graciously be pleased to take the action against the respondents and other persons who have made exploitation and gross injustice against the petitioner.

(iii) That this Hon'ble Tribunal may further graciously be pleased to pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

(iv) That this Hon'ble Tribunal may further graciously be pleased to allow this petition with cost as quantified Rs 51,000=00.”

7. Obliquely, seniority of the petitioner, vis-à-vis others, is in the teeth of claim petition no. 22/DB/2020, which is under adjudication. Contempt petition No. C-01/DB/2020 has also been filed by the present contempt petitioner on 05.05.2020, for (alleged) defiance of the order dated 06.09.2018, but against the officers of U.P. Govt. The same has been listed on 12.08.2020 for arguments on the maintainability of the contempt petition.

8. In claim petition no. 33/DB/2015, no direction was given to the State of Uttarakhand. It was only held that the State of Uttarakhand could not promote respondent no.4 as Assistant Engineer *w.e.f.* 01.07.1990, as it did not have jurisdiction and, therefore, it was not competent to do the same. It was also held that only State of U.P. had jurisdiction. Seniority list dated 24.06.2015 was held illegal and void and was, accordingly, set aside.

9. This Tribunal, therefore, in its order dated 06.09.2018 made a declaration regarding competence of the State of Uttarakhand. The Tribunal did not direct State of Uttarakhand to do something or not to do something. Neither it was in the nature of *mandamus*, nor in the nature of *prohibition*. No defiance, as such, appears to have been committed by the State of Uttarakhand, much less respondent-opposite party.

10. Moreover, seniority list dated 24.06.2015 was set aside by the Tribunal. According to the contempt petitioner, the seniority list dated 24.06.2020 is wrong. The stand of the contempt petitioner, while contesting claim petition no. 33/DB/2015 has been mentioned in Para 4 of the judgment dated 06.09.2018, as follows:

“4. Private respondent no. 4 has also opposed the claim petition and filed a detailed written statement. In nutshell, the contention of private respondent no.4 is that the seniority list dated 24.06.2015 is consequential to the order of the Tribunal dated 16.07.2003 and the U.P. Govt. G.O. dated 10.06.2009 and these have attained the finality and, therefore, the seniority list been rightly prepared as per the judicial order.”

The question of respondent-opposite party committing willful disobedience of the order of the Tribunal, therefore, in the peculiar facts of the case, does not arise.

11. The contempt action may be initiated only when there appears to be willful or deliberate disobedience on the part of the respondent-opposite party. The same is not reflected from the documents filed by the contempt petitioner in this contempt petition. Contempt petitioner was respondent in claim petition No. 33/DB/2015. Petitioners were somebody else. Contempt is a matter between Tribunal/ Court and alleged contemnor. Contempt action cannot be permitted to be initiated to wreck vengeance against the Government officials. There is no expediency or propriety of taking action under the Contempt Act.

12. Contempt petition, therefore, fails and is dismissed at the admission stage.

13. Let a copy of this order be uploaded on the Website of the Tribunal. Contempt petitioner may also obtain certified copy of this order from the Registry of the Tribunal on 04.08.2020 [because 1st, 2nd and 3rd of August, 2020 are holidays].

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 31,2020
DEHRADUN

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