

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

**Through Audio Conferencing**

**INTERIM RELIEF APPLICATION**

**ORDERS**

**[ In Claim Petition No. 68/DB/2020 ]**

Umesh Kumar Tripathi      vs.    State of Uttarakhand and another.

Present: Sri Shashank Pandey, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for Respondents No. 1 & 2.  
Ms. Seema Sirohi, Advocate, for private respondents.

**DATED: OCTOBER 09, 2020**

**Justice U.C.Dhyani(Oral)**

1.      Petitioner has filed present claim petition for directing the respondents to quash the seniority list dated 27.08.2020, issued by Respondent No.2 (Copy: Annexure-A 1). The petitioner has also sought direction to the Respondents No. 1 & 2 to prepare fresh seniority list taking into account the officiating service of the petitioner and to follow the Rota-Quota Rule, while making promotion to the post of Regional Manager.
2.      Seniority list dated 27.08.2020, issued by Respondent No.2, is sought to be quashed, primarily on the ground that the same has been prepared on the basis of the Uttarakhand Government Servants Seniority Rules, 2002, which is not applicable to the Uttarakhand Forest Development Corporation.
3.      An interim relief application has been filed with the prayer that interim direction be given not to make any promotion on the basis of impugned seniority list. The same is supported by an affidavit.

4. Objections have been filed against the interim relief, on behalf of Respondents No. 1 & 2 and Respondents No. 3 to 11, by separate applications.
5. A writ petition (S/B) No. 165 of 2020 was filed by the selfsame petitioner before Hon'ble High Court of Uttarakhand at Nainital on 16.07.2020. A copy of the said writ petition has been placed before this Tribunal.
6. The prayers sought for in writ petition (S/B) No. 165/2020, Umesh Kumar Tripathi vs. State, are as follows:
  - (i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 10.06.2019 (Annexure: A 1).
  - (ii) Issue a writ order or direction in the nature of mandamus commanding the Respondents No. 1 & 2 to promote the petitioner on the post of Regional Manager against one post falling within the category of 4% reservation under the Right of Persons With Disabilities Act, 2016 (RPWD Act) from the post of Divisional Sales Manager which is occupied by the petitioner, who is a physically disabled person with benchmarked disability and is occupying the same on merit, which is a post of feeding cadre of the post of Regional Manager.
  - (iii) .....
  - (iv) ....."
7. Copies of few orders, passed by Hon'ble High Court, have been brought on record on behalf of Respondents No. 1 & 2, along with objections against interim relief application. The same are described as below:
  - i) In WPSB No. 498/2017 Division Bench of Hon'ble High Court passed an order on 03.11.2017, as below:  
 "5. Whatever that be, since there a representation addressed, we feel that a decision must be taken on the same within a time limit. Accordingly, the writ petition is disposed of by directing Respondent No.2 to consider and take a decision on Annexure: 9, representation of the petitioner, in accordance with law, within a period of two weeks from the date of production of a certified copy of this judgment. We leave open all the contentions of the petitioner and also the right to

approach this Court again, if necessary, seeking the same reliefs. It is made clear that till the decision is taken on Annexure-9 representation of the petitioner, DPC will not be held.”

- ii) In WPSB No. 539 of 2017, Umesh Kumar Tripathi vs. State and others, the Hon’ble Court passed an order on 25.09.2018, as follows:

“19. We, therefore, dispose of the writ petition with the direction to Respondent No.3 to issue the necessary instruction regarding reservation in promotion to persons with disability in terms of first proviso of Section 34 of the Right of Persons With Disabilities Act, 2016, within 3 months, from the date of production of certified copy of this order. Till necessary instructions are issued by the State Government, the existing vacancies of the promotion quota post of Regional Manager shall not be supplied.”

- iii) In CLCON No. 258 of 2019, the Hon’ble Court, on 17.06.2019 passed the orders, as below:

“ .....

Since the necessary exercise has not been completed, therefore, nothing survives in this contempt petition. Accordingly, the contempt petition is dismissed.

Contempt notice issued to Opposite Party No. 1, is hereby discharged.

Ld. Counsel for the petitioner then submits that entire promotional exercise for the post of Regional Manager in Uttarakhand Forest Development Corporation has been installed due to delay in earmarking of the post.

Since the earmarking has now been opened, therefore, this Court hopes and expects that promotional exercise would be completed as early as possible.”

8. When the petitioner could not obtain the desired relief from the employer, he filed yet another writ petition being WPSB No. 165 of 2020, in which Hon’ble High Court was pleased to pass the following order on 20.08.2020 (Copy: Annexure-CA 5):

“ .....

Issue Rule Nisi.

Post for hearing in the usual course.

**Promotions, if any, shall be subject to further orders of this Court.**

Stay application (CLMA No. 5160 of 2020) is disposed of accordingly.”

[Emphasis supplied]

9. The petitioner is occupying the post of Divisional Sales Manager. Promotion to the post of Regional Manager in Uttarakhand Forest Development Corporation is under adjudication in WPSB No. 165/2020 before Hon'ble High Court. When the claim petition has been filed by the selfsame petitioner before this Tribunal and an interim relief application has also been filed with the prayer **to issue an interim direction not to make any promotions on the basis of impugned seniority list**, the question is, whether it would be appropriate on the part of this Tribunal to grant interim relief, as prayed for by the petitioner, in view of the order dated 20.08.2020, passed by Hon'ble High Court in WPSB No. 165/2020?
10. Petitioner is seeking relief for promotion to the post of Regional Manager in Uttarakhand Forest Development Corporation before Hon'ble High Court. He has also filed claim petition before This Tribunal for seeking his promotion to the post of Regional Manager in Uttarakhand Forest Development Corporation. Although his prayer in claim petition is couched in different words, but the net result of the both (writ petition as well as claim petition) would tantamount the same.
11. Regarding adaptation of the Uttarakhand Governments Seniority Rules, 2002 stand of the parties has not been consistent, as reflected in order dated 06.09.2018 of the Hon'ble Court in WPSB No. 459 of 2016 and the Tribunal in its order dated 28.11.2018. Relevant extracts of the judgment of Hon'ble High Court and this Tribunal are reproduced herein below for convenience:

“WPSB No. 459 of 2016, Order dated 06.09.2018:-

.....

Heard.

There was *inter se* dispute of seniority between the petitioner and the private respondents.

Petitioner has challenged the seniority list dated 06.01.2015, before the Uttarakhand Public Services Tribunal by way of filing Claim Petition No. 18/DB/2016. Learned Tribunal dismissed the same vide judgment dated 18.11.2016. Learned Tribunal has wrongly invoked

the Uttaranchal Government Servants Seniority Rules, 2002 to determine the *lis*.

Learned counsel for the respondent no. 2-Corporation submits that the Corporation has only adopted the Uttar Pradesh Forest Corporation Service Regulations, 1985. The seniority of the employees is to be determined as per Regulation 24. In view of the subsisting specific regulations adopted by the Uttarakhand Forest Development Corporation, the Uttaranchal Government Servants Seniority Rules, 2002 have wrongly been applied by learned Tribunal. Uttaranchal Government Servants Seniority Rules, 2002 and Uttar Pradesh Forest Corporation Service Regulations, 1985, operate in different fields.

Accordingly, the writ petition is allowed. Impugned judgment dated 18.11.2016, passed by learned Tribunal in Claim Petition No. 18/DB/2016, is quashed and set-aside. The matter is remitted back to the Uttarakhand Public Services Tribunal to determine the *lis* afresh by applying the Uttar Pradesh Forest Corporation Service Regulations, 1985.

Since it is an old matter, learned Tribunal is requested to decide the *lis* within a period of two months from the production of certified copy of this order.

Pending application, if any, also stands disposed of accordingly.”

“Claim petition No. 18/DB/2016, judgment dated 28.11.2018:

7. It is surprising to note that while the respondent No. 2 (Uttarakhand Forest Development Corporation) and the petitioner both had relied on the Seniority Rules of 2002 in their pleadings before the Tribunal and both the parties also admitted at the time of hearing that the Seniority Rules of 2002 are applicable in the present case and their such admission was also recorded by the Tribunal in its judgment dated 18.11.2016, they took a different stand before the Hon’ble High Court. While giving the statement by the Corporation before the Hon’ble High Court, the Corporation led the Hon’ble High Court to hold that the Seniority Rules of 2002 are not applicable while the fact is that the respondent No. 2 (Forest Corporation) has applied the Seniority Rules of 2002 for determining *inter-se* seniority between the petitioner and the private respondents which is evident from the contents of the W.S. and the Annexure: A2. The petitioner also in his Rejoinder Affidavit fully relied on the Seniority Rules of 2002. Petitioner as well as respondents had also filed the Seniority Rules of 2002 in support of their contentions. Thus, parties took one stand before the Tribunal and another stand before the Hon’ble High Court. We are constrained to observe that by their contradictory conduct, the parties attempted to mislead the Tribunal as well as the Hon’ble High Court by not disclosing the full facts and correct position with regard to applicable rules as pleaded by them in the claim petition before the Tribunal. We, however, leave this matter here without going into further details in this regard.

8 The case (after remand) was taken up by the Tribunal for hearing on 01.10.2018. The counsel for the petitioner, learned A.P.O. (on behalf of respondent Nos. 1 and 2) and learned counsel for private

respondents No. 3 to 11 and 13 were heard. Learned counsel for the petitioner stated that the counsel for the respondent No. 2 (Forest Corporation) submitted before the Hon'ble High Court that the Corporation has only adopted the Uttar Pradesh Forest Corporation Service Regulations, 1985 and the seniority of the employees is to be determined as per Regulation 24. Learned A.P.O. (representing respondents No. 1 and 2) while expressing surprise on the stand of respondent No. 2 before the Hon'ble High Court submitted that earlier all matters pertaining to the seniority of employees have been decided by the Uttarakhand Forest Development Corporation according to the Uttarakhand Government Servant Seniority Rules, 2002 only and it is for the first time that the Corporation has stated that the Regulations of 1985 will apply to determine the seniority. All parties, however, stated that they have not to plead any further or file any new document except what is already there on the record and submitted that the claim petition may be decided by the Tribunal as per the direction of the Hon'ble High Court."

12. Sri V.P.Devrani, Ld. A.P.O. submitted that Rule 6 of the Seniority Rules, 2002 is identical to Section 24(2) of the Forest Corporation Act, 1975 and Rule 24(2) of the Forest Corporation Rules, 1985, and have been adapted by the State Government, after its creation. Sri Shashank Pandey, Ld. Counsel for the petitioner contested the same.
13. Whether the Uttarakhand Government Servants Seniority Rules, 2002, are applicable to the respondent Uttarakhand Forest Development Corporation or not, requires scrutiny at the time of final hearing. Mere statement, in this particular case, will not serve any purpose. This Tribunal has noted above that the stand of the parties, as regards the applicability of the Uttarakhand Government Servants Seniority Rules, 2002, has been inconsistent in the past. The Tribunal would, therefore, examine whether or not the Rules of 2002 are applicable to the Respondent Corporation, at an appropriate stage. The Tribunal would also require to examine as to which other Rules are applicable for determination of *inter se* seniority, if the Rules of 2002 are found inapplicable.
14. The petitioner is approaching two forums, for seeking promotion to the post of Regional Manager in Uttarakhand Forest Development Corporation in truncated form, although, technically, he can do it. Had the provisions of the Code of Civil Procedure, 1908, been applicable to

this Tribunal, we would have stayed the proceedings of this claim petition under Section 10 of the Code, and wait for the decision of WPSB No. 165/2020, but since the provisions as such are not strictly applicable, therefore, we refrain from passing such order.

15. This Tribunal has observed above that the promotion to the post of Regional Manager is under adjudication in WPSB No. 165/2020 before the Hon'ble High Court and indirectly the same relief (interim relief) has been sought by the petitioner before this Tribunal, albeit on different ground. As per verdict of Hon'ble Apex Court in L. Chandra Kumar vs. Union of India and others, 1997 SCC (L&S) 577, the jurisdiction of this Tribunal is supplemental to the High Court. The Tribunal is not a substitute to the High Court.

16. Therefore, it will not be appropriate, on the part of this Tribunal, to grant the desired interim relief to the petitioner at this stage. This Tribunal, however, taking a leaf out of Hon'ble Court's order dated 20.08.2020, disposes of the interim relief application of the petitioner (and objections thereon) by directing that the promotions, if any, to the post of Regional Manager in Uttarakhand Forest Development Corporation, on the basis of the impugned seniority list, shall be subject to the final outcome of present claim petition. It is made clear that while deciding the claim petition, this Tribunal shall abide by the directions and observations, if any, made by the Hon'ble Court while deciding the WPSB No. 165/2020.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: OCTOBER 09, 2020*  
*DEHRADUN*

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