

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

Through Audio Conferencing

ORDERS

ON

Admission, Condonation of Delay and Interim Relief Application

[In Claim Petition No. 80/DB/2020]

Rajendra Singh Rawat & others **vs.** State of Uttarakhand and others.

Present: Sri Shashank Pandey, Advocate, for the petitioners.
Sri V.P.Devrani, A.P.O., for Respondents No. 1 to 3.
Dr. N.K.Pant, Advocate, for Respondents No. 4 to 23.

DATED: NOVEMBER 10, 2020

Justice U.C.Dhyani(Oral)

By means of present claim petition, Petitioners seek the following reliefs:

- a. To issue order or direction to the respondents no. 1, 2 & 3 to call for records and to quash the seniority list dated 24.04.2020.
 - b. To issue order or direction to the respondents no. 1 & 2 to give promotion to the petitioners from the day the private respondents who are junior to the petitioners were promoted i.e., from 15.09.2014 along with consequential benefits.
 - c. To give any other relief fit and proper in the circumstances of the case.
 - d. To give cost to the petitioners.
2. An application for condonation of delay has been filed to condone the delay of 5 years in filing the present claim petition. An affidavit has been filed in support thereof. Objections have been filed on the same on behalf of some of the respondents.

3. Brief facts, giving rise to present claim petition are as follows:

The petitioners are working as Inspectors in Civil Police in State of Uttarakhand. CP & LIU constitute one cadre. The petitioners were appointed/ promoted as Sub-Inspector in CP before the year 2000 whereas the private respondents were promoted to the post of Sub-Inspector in LIU on 08.11.2002. Thus, admittedly the private respondents were much junior to the petitioners as per the date of appointment which is the criteria for determining seniority under the Seniority Rules of 2002. The private respondents were promoted to the post of Inspector *vide* promotion order dated 15.09.2014 while the petitioners were promoted to the post of Inspector *vide* order dated 15.10.2016. A seniority list has been circulated on 29.04.2020. The petitioners do not even find the place in said seniority list.

4. Sri V.P.Devrani, Ld. A.P.O. and Dr. N.K.Pant, Ld. Counsel for Respondents No. 4 to 23 have vehemently opposed admission of the claim petition on the ground of delay. Reliance has been placed upon the decisions rendered by Hon'ble Apex Court in *Rabindra Nath Bose and others vs. Union of India and others*, AIR 1970 SC 470, *Maloon Lawrence Cecil D' Souza vs. Union of India*, AIR 1975 SC 1269, *Shiba Shankar Mohapatra and others vs. State of Orissa*, AIR 2010 SC 706, *Ram Chandra Shanker Deodhar and others v s. State of Maharashtra and others*, AIR 1974 SC 259, *Union of India and another v s. S.K. Goel and others*, (2007) 14 SCC 641 and *Rajendra Pratap Yadav vs. State of U.P. and others*, (2011) 7 SCC 743, to argue that the settled seniority should not be unsettled after a lapse of time.

5. A look at the prayer clause of the claim petition would reveal that the petitioners have sought two prayers. One of the prayers is that the seniority list dated 24.04.2020 be quashed. The claim petition has been filed on 17.09.2020. The limitation for filing the claim petition before this Tribunal [Section 5(1)(b) of the Act of 1976] is one year. Prayer No.1 in the claim petition, is therefore, within time.

6. The petitioners have sought another prayer for promoting them *w.e.f.* 15.09.2014 along with consequential benefits, when private respondents

junior to the petitioners were promoted. According to sub-section (1) (b) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976, as stated above, the period of limitation for reference shall be one year.

7. It is possible that the petitioners might succeed in establishing a case for Relief No. (1) [quashing of seniority list dated 24.04.2020], even if they are unable to make out a case for Relief No. 2. The Court/ Tribunal can always separate chaff from the grain and therefore, claim petition should not be thrown outright, at the admission stage, on the ground of delay, merely because second relief appears to be barred by limitation. The fact remains that the petitioners have approached the Tribunal well on time for seeking Relief No. 1.

8. This Tribunal is, therefore, of the opinion that since one of the reliefs is within time and Relief No. 2, *prima facie*, appears to be barred by limitation, although it is the contention of Ld. Counsel for the petitioners that the petitioners had no knowledge of the promotion orders of private respondents till seniority list dated 29.04.2020 was circulated. Such plea, which is a mixed question of law and facts, may be adjudicated at the time of final hearing.

9. Admit, subject to limitation.

Ld. A.P.O. accepts notice on behalf of Respondent No.1. He seeks and is granted 8 weeks' time to file C.A./W.S. on behalf of such respondent.

In addition, issue notices to Respondents No. 2 to 23, returnable on or before 05.01.2021. Steps may be taken within a week, through Email, as also by registered post acknowledgement due.

10. Interim relief application is pressed by Ld. Counsel for the petitioners. By way of such interim relief application, petitioners seek to direct the official respondents, not to make any promotion on the basis of impugned seniority list.

11. Objections have been filed on the same on behalf of the respondents. Respondents have vehemently opposed interim relief application of the

petitioners. When the claim petition was taken up by the Tribunal for the first Time, the following order was passed:

“Dated:21.09.2020

Present: Sri Shashank Pandey, Advocate, for the Petitioners.
(through audio conferencing).

Sri V.P.Devrani, A.P.O., for Respondents.

There is delay in filing the claim petition for which delay condonation application has been moved. Ld. A.P.O. seeks and is granted two weeks’ time to file objection on the same.”

List on 06.10.2020 for hearing on delay and objections thereon/ admission”

12. Subsequently, following orders were passed:

Dated 06.10.2020

Present: Sri Shashank Pandey, Advocate, for the Petitioner.
(through audio conferencing).

Sri V.P.Devrani, A.P.O., for Respondents.

Objections to the delay condonation and interim relief have filed by Ld. A.P.O. The same are taken on record.

List on 14.10.2020 for hearing on delay condonation as well as interim relief and objections thereon.

Dated 14.10.2020

Present: Sri Shashank Pandey, Advocate, for the Petitioner.
(through audio conferencing).

Sri V.P.Devrani, A.P.O., for Respondents.

Sri Shashank Pandey, Ld. Counsel for the petitioner prays for and is granted time up to 27.10.2020 to go through the Objections filed by Ld. A.P.O. He submitted that although Ld. A.P.O. had filed the objections earlier, but could not be received by his Clerk.

Acceding to his request, list on 27.10.2020 for hearing on delay condonation as well as interim relief and objections thereon.”

13. In the meanwhile the petitioners approached the Hon’ble High Court in Writ Petition (S/B) No. 326 of 2020. The prayers sought in that writ petition were as follows:

“a. To issue order or direction in the nature of mandamus directing the Ld. Public Services Tribunal to hear the case on merit and decide it as expeditiously as possible.

b. To give any other relief fit and proper in the circumstances of the case.

c. To give cost to the petitioners.”

14. Hon’ble High Court was pleased to dispose of the writ petition by passing the following order on 21.10.2020:

“This petition has been filed seeking for a writ of mandamus to direct the Public Service Tribunal to hear the case on merits and decide it as expeditiously as possible.

2. We do not find it expedient to entertain this petition, in view of the fact that the petitioner is always entitled to move the tribunal for early hearing of the matter. Having not done so, we do not find it necessary to entertain this petition and the same is dismissed.”

15. Coincidentally, Sri Shashank Pandey, Advocate also filed claim petition no. 25/DB/2020, Sandeep Negi and others vs. State and others before this tribunal for seeking the following reliefs:

“a. To issue order or direction to call for records and set aside the seniority list dated 29.04.2020 to the extent the petitioners and private respondents are concerned.

b. To issue order or direction to quash order dated 02.05.2020 vide which the representation of the petitioners has been rejected.

c. To issue order or direction directing the respondents to fix the seniority of the petitioners above the private respondents as per Rule 7 of the Seniority Rules, 2002.

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16. Interim relief application in claim petition No. 25/DB/2020, Sandeep Negi and others vs. State and others was disposed by this Tribunal on 18.08.2020, as follows:

“Present: Sri Shashank Pandey, Advocate, for the Petitioner.
(through audio conferencing).

Sri V.P.Devrani,. A.P.O., for Respondents/ State.

Dr. N.K. Pant, Advocate, for Respondents No. 4 to 17.
(through audio conferencing).

Ld. A.P.O. and Ld. Counsel for private respondents, both seek and are granted further 4 weeks time to file C.A/W.S.

List on 16.09.2020.

Ld. A.P.O., on seeking instructions from the respondent department, submitted that promotional exercise for the post of Dy. S.P. is being undertaken by Police Headquarters. Both Sri Shashank Pandey, Ld. Counsel for the petitioners and Dr. N.K. Pant, Ld. Counsel for Respondents No. 4 to 17, agree that the such promotional exercise shall be subject to the final outcome of present claim petition.

It is, accordingly, directed that the promotional exercise for the post of Dy. S.P. shall be subject to final decision of present claim petition.

Petitioner is directed to provide hard copies of the petition to the Registry of this Tribunal, without further delay.”

17. The prayers in present claim petition and claim petition no. 25/DB/2020 Sandeep Negi and others vs. State and others, are almost identical, although Sri Shashank Pandey, Ld. Counsel for the petitioners would disagree to it.
18. Should this Tribunal, therefore, pass one order in one claim petition and another order in another claim petition? It goes without saying that the promotional exercise is the same. This Tribunal should, therefore, pass similar orders in identical cases in which same selection process is under challenge.
19. Interim relief application is, accordingly, disposed of by directing that the promotional exercise for the post of Dy. S.Ps. shall be subject to final decision of present claim petition.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 10, 2020
DEHRADUN

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