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BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

------ Vice Chairman (J)

Hon'ble Mr. U.D.Chaube

-------Member (A)

CLAIM PETITION NO. 01/N.B./D.B./2015

1. B. M. Bhatt, S/o Shri B. D. Bhatt, presently posted as Sub-Divisional Officer, Uttarakhand Power Corporation Ltd., Tanakpur, District-Champawat (Uttarakhand).
2. Girish Chandra Joshi, S/o Shri Tikamram Joshi, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Haldwani, District Nainital.
3. Vinod Kumar Bisht, S/o Shri Ram Dutt Bisht, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Pihoragarh, District Pithoragarh.
4. Govind Singh Karki, S/o Shri Diwan Singh Karki, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Bajpur, District Udham Singh Nagar.
5. Surendra Singh Bisht, S/o Late Shri Kamal Singh Bisht, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., P. O. Selakuli, District Dehradun.
6. S. P. Kudial, S/o Shri G. N. Kudial, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Mohanpur, Dehradun, District Dehradun.
7. Kishore Kumar Pant, S/o Shri Ramdutt Pant, posted as Assistant Engineer, Uttarakhand Power Corporation Ltd., Haldwani, District Nainital.
8. Shri Vineet Saxena, S/o Late Shri S. M. Lal Saxena, Sub-Divisional Officer, Uttarakhand Power Corporation Ltd., Industrial Area Haridwar, District Haridwar.

15/11/2016.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Secretary, Energy, Secretariat, Dehradun.

2. Uttarakhand Power Corporation Ltd. Through its Managing Director, Urja Bhawan, Kanwli Road, Dehradun.
3. Shri Surya Darshan Singh Bisht, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., 18 EC Road, Dehradun, District Dehradun.
4. Shri Arvind Kumar, Executive Engineer, Office of Superintending Engineer, EDC (Rural), Uttarakhand Power Corporation Ltd., 18-EC Road, Dehradun, District Dehradun.
5. Shri Begraj Singh, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Rudrapur, District-Udham Singh Nagar.
6. Shri Umakant Chaturvedi, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Ranikhet, District-Almora.
7. Shri Prashant Pant, Executive Engineer, Office of Superintending Engineer, (Gramin Vidyut Mandal), 18-EC Road, Dehradun, Uttarakhand Power Corporation Ltd., Dehradun, District Dehradun.
8. Shri Sandeep Kumar Gupta, Executive Engineer, Office of Superintending Engineer, (Gramin Vidyut Mandal), Uttarakhand Power Corporation Ltd., Rudrapur, District Udham Singh Nagar.
9. Shri Dharmveer Singh, Executive Engineer, Office of Superintending Engineer, (Materials Management), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehradun.
10. Shri Pradeep Kumar, Executive Engineer, Office of Superintending Engineer (EDC), Uttarakhand Power Corporation Ltd., Pithoragarh, District Pithoragarh.
11. Shri Jakir Hussain, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Shrinagar, District Pauri Garhwal.
12. Shri Kailash Kumar, Executive Engineer, Office of Superintending Engineer (C & P), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehraun.
13. Shri Deepakpal Arya, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Rudrapur, District Udham Singh Nagar.

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14. Shri Manoj Gusain, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., EDC Shrinagar, District Pauri Garhwal.
15. Shri Anup Kumar, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Shrinagar, District Pauri Garhwal.
16. Shri Deepak Saini, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., EDC Roorkee, District Haridwar.
17. Mohd. Afjaal, Executive Engineer, Office of Superintending Engineer (Project), R-APDRP-Near Sent Paul School, Nainital Road, Haldwani, Uttarakhand Power Corporation Ltd., District Nainital.
18. Shri Nitin Singh Garkhal, Assistant Engineer, Sub-Divisional Officer, Uttarakhand Power Corporation Ltd., Ramnagar, District-Nainital.
19. Shri Harun Rashid, Executive Engineer, Office of Superintending Engineer (C & P), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehraun.
20. Km. Nandita Aggarwal, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., EDC Roorkee, District Haridwar.
21. Shri Gaurav Saklani, Executive Engineer, Office of Superintending Engineer (Project R-APDRP Part-B), Uttarakhand Power Corporation Ltd., Gabbar Singh Bhawan, Kanwli Road, Dehradun, District Dehradun.
22. Smt. Pujarani, Executive Engineer, Office of Superintending Engineer, EDC (Urban), Uttarakhand Power Corporation Ltd., Kaulagarh FRI Dehradun, District-Dehradun.
23. Shri Bhaskar Pandey, Executive Engineer, Office of Superintending Engineer, (Subhash Nagar, Haldwani), Uttarakhand Power Corporation Ltd., Haldwani, District Nainital.
24. Shri Kanhiya Jee Mishra, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., Kashipur, District Udham Singh Nagar.
25. Shri Vivek Kandpal, Executive Engineer, Office of Superintending Engineer, Uttarakhand Power Corporation Ltd., Kashipur, District Udham Singh Nagar.

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26. Shri Ajeet Kumar Yadav, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., Rudrapur District Udham Singh Nagar.

27. Shri Manoj Kumar, Executive Engineer, Office of Superintending Engineer, (EDC), Uttarakhand Power Corporation Ltd., Ranikhet, District Almora.

28. Shri Ashutosh Tiwari, Executive Engineer, Office of Superintending Engineer, (EDC Urban), Uttarakhand Power Corporation Ltd., Dehradun, District Dehradun.

.....Respondents

Present: Sri I. P. Gairola, Advocate
for the petitioners.

Sri V.P.Devrani, Ld. A.P.O.
for the respondent no. 1

Sri Naresh Pant, Advocate
for the respondent no. 2.

Sri Rakesh Thapliyal, Advocate
for the respondent nos. 10, 14 & 18.

Sri Alok Mehra, Advocate
for the respondent nos. 23, 24, 25, 26, 27 & 28.

Sri Anil Kumar, Advocate
for the respondent nos. 9, 13 & 17.

None for other respondents.

JUDGMENT

DATED: NOVEMBER 09, 2016

(Hon'ble Mr. Ram Singh, Vice Chairman (J)

1. The petitioners have prayed for a direction to quash the final seniority list dated 03.1.2015, select list/recommendation of departmental promotion committee dated 04.01.2015 and the promotion order dated 05.01.2015 issued by the respondent no. 2 and for any other suitable orders along with cost of the petition.

2. According to the averments made in the petition all the petitioners were appointed as Junior Engineer (Trainee) in U.P. State

Electricity Board, Lucknow and after completion of one year successful training, they were appointed in regular cadre. After creation of State of Uttarakhand, the services of the petitioners were merged in Uttarakhand Power Corporation Ltd.

3. The petitioners were promoted as Assistant Engineer (E&M) in Uttarakhand Power Corporation Ltd. Vide O.M. dated 24.05.2008 and O.M. dated 19.11.2008. According to the prevailing rules of the corporation, the petitioner no. 1 comes in the seniority list of 2007-08, whereas for the purpose of seniority list, the calendar year of the corporation is from 01 July to 30th June.

4. The respondent has not issued any combined seniority list of the cadre of Assistant Engineers (E&M) so far. They have issued tentative seniority list of Assistant Engineer of selection year 2007-08 (Annexure-6). In the said tentative seniority list, the respondents no. 3 to 22 were given seniority as Assistant Engineer right from the first day when they had joined as Assistant Engineer (Trainee), whereas, according to U.P. Electricity Board Services of Engineers Regulations, 1970, the direct recruitment on the post of Assistant Engineer shall be made from amongst the trained engineers. The respondents no. 23 to 28 were nowhere in the tentative seniority list dated 26.12.2013, therefore, the petitioner no. 1 had no opportunity to challenge the wrong seniority given to them in the final seniority list dated 03.01.2015. The petitioner filed objections against the tentative seniority list dated 26.12.2013. The objections of the petitioner was decided in a casual manner and the objections raised by the petitioner no. 7 has not been decided as yet and without deciding the objections of the petitioner no. 7, final seniority list dated 03.01.2015 has been issued.

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5. The petitioners approached to Hon'ble High Court of Uttarakhand at Nainital by way of writ petition W.P.SB No. 173 of

2014, which was decided vide order dated 06.06.2014 and the respondents were directed to decide the objections of the petitioners as well as other employees and issue final seniority list within one month from 06.06.2014 with a further direction to proceed further for promotion only after final seniority list is issued, but in gross violation of the order of Hon'ble High Court, final seniority list dated 03.01.2015 has been issued without deciding the objections raised by the petitioner no. 7.

6. The facts as narrated also states that the respondents were appointed as Assistant Engineer vide order dated 30.06.2009 (Annexure-8), which clearly shows that the date of their inclusion in regular cadre is mentioned in column 8 and according to the date as mentioned in column 8, appointments of all the respondents fall in the selection year 2008-09. The last line of said order dated 30.06.2009 further states that the probation period shall start from the date mentioned in the column-8. Hence, the seniority to the direct recruits as Assistant Engineer should be given after completion of their training as Assistant Engineer. Hence, all the respondents from sl. No. 3 to 28 shall fall in the selection year 2008-09, but in gross violation of the U.P. State Electricity Board Services of Engineers Regulations, 1970 (hereinafter referred to as Regulations of 1970), they have been given seniority from the date they have joined as Assistant Engineer (Trainee) in the selection year 2007-08. The respondents no. 23 to 28 were not placed in the tentative seniority list for the year 2007-08, hence petitioners had no opportunity to file objections against them and as per settled law, the tentative seniority list should be finalized only after affording opportunity to challenge the same but in the present case, the petitioners had no opportunity to challenge the final seniority list of respondent no. 23 to 28.

7. Vide order dated 03.01.2015, final seniority list was issued and it was uploaded on the website of the corporation on Sunday i.e.

4th January, 2015 at 11:53 PM and the select list prepared by the departmental promotion committee was uploaded on the website of the corporation on Sunday 4th January 2015 at 11:57 PM., which shows that within a time of four minutes, final seniority list was issued; meeting of departmental promotion committee was convened; its minutes were prepared and after completing the whole exercise of promotion, recommendations were sent, which is next to impossible, and it shows that the select list and the recommendations by DPC were prepared in July, 2014 and just for an eyewash, it has been shown to be done on 04.01.2015, just to show the compliance of order of the Hon'ble High Court by which the respondents were directed to proceed further for DPC only after the final seniority list is issued. Hence, the seniority list dated 03.01.2015, select/recommendations of committee dated 4.01.2015 and the promotion order dated 5.1.2015 on the basis of DPC issued by the respondent no. 2 deserves to be set aside.

8. Respondent no. 2 and some of the private respondents have contested the petitioner and accepted this fact that the service conditions of the Assistant Engineers and higher posts are governed by the Uttar Pradesh State Electricity Board Services Engineers Regulation, 1970, but after enforcement of Uttar Pradesh State Electricity Board Employees Seniority Regulations, 1998, on February 24, 1998, the seniority of employees of the Uttar Pradesh Electricity Board is governed by the Seniority Regulations of 1998. The final seniority list of Assistant Engineer has already been issued, which is under challenge but as per Rule 8 of Regulations of 1998, the seniority is to be taken from the date of issue of appointment letter and as per the merit cum seniority list prepared by the selection committee. The recruitment to the post of Assistant Engineer has to be made by appointment from amongst trained engineer and by promotion from amongst members of junior engineers and qualified computer Junior

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Engineers of 10 years service. Regulation 15 provides for preparing combined waiting list for Assistant Engineers. Regulation 17 provides that the appointments shall be made in the same order in which the names appear in the combined wait list. Respondents have submitted that all the respondents were appointed vide order dated 30.4.2008 meaning thereby their recruitment year is 2007-08 and accordingly, the seniority list was rightly issued. The claim petition deserves to be dismissed.

9. Private respondents have also opposed the petition on the same lines and alleged that the selection was commenced pursuant to the advertisement issued in October 2006 and the private respondents were appointed as trainee engineers vide O.M. dated 30.4.2008, followed by another O.M. dated 30.06.2009, hence the selection of the private respondents pertains to recruitment year 2007-08 and they were given the status of trainee engineers which was made from the date of appointment as trainee engineers of 30.06.2009. The seniority in the cadre of Assistant Engineer shall be determined from the date of appointment as trainee engineer. The petition is misconceived and deserves to be dismissed.

10. We have heard learned counsel for both the sides and perused the record.

11. The main issue to be decided by this Tribunal is as to what date should be considered as the date of substantive appointment to the service for direct recruits. The petitioners have come up with the case that the selection of the respondents, which was made for the purpose of training for the year 2007-08, was not the substantive appointment to the service and as per Regulation of 1970, the substantive appointment to the cadre of Assistant Engineer is to be made from amongst the promotee junior Engineers and from amongst the trained engineers after completion of their one year training. The

respondent no. 2 has also submitted that Service Regulations of 1970 has no effect now and Regulation of 1998 is the relevant law according to which, the seniority is to be counted from the date of appointment in the cadre. What should be considered the date of appointment in corporation is crucial issue to be decided. According to the petitioners, it is the date by which the direct recruits were absorbed in the cadre after completion of their successful training period and not the date of their selection as trainee engineer, whereas, the respondents have come up with the case that their appointment for the purpose of training is the relevant date.

12. The petitioners referring to the Rules and Regulations as well as appointment orders issued by the respondents have stated that the Regulations of 1970 is the relevant law for the purpose of recruitment, and appointment to the service and for recruitment purpose, a combined list is required to be prepared, which was not done as per the law and in combined select list, the quota is prescribed for the promotees as well as for direct recruits. Regulation 15 specifically mentions that appointment against direct recruits quota has to be made from the trained engineers. The words trained engineers gives a different meaning then a selected engineers for training and as per the departmental training procedure, they have to pass certain departmental examination and after completion of training period, their appointment shall be made.

13. Undoubtedly, the Board or its authorized Managing Director may grant some relaxation from examination, but period of training is must to become a trained engineer. Petitioners have filed the appointment letter issued by the respondent/department vide order dated 30.06.2009 (Annexure-8) in which the names of private respondents are mentioned regarding their appointment. In the appointment letter, it is clearly mentioned that after completion of their training and after finding them fit, the trained engineers are

being appointed to the post as temporary Assistant Engineer (E) from the date as mentioned in clause -8 to the regular cadre. This letter makes it very much clear that the respondents were first selected for training on 30.04.2008 and as mentioned in Clause-6 they assumed the charge for training on the date mentioned in Clause-7. The appointment letter (Annexure-8) issued on 30.06.2009 clearly mentions the date of their absorption in regular cadre ismentioned in Clause-8, which is the date almost after one year of their assuming the charge as trainee engineers. This appointment letter also clarifies that probation period for the appointee engineers will start from the date mentioned in clause-8 i.e. the date of substantive appointment to the service, which was after completion of one year training. This letter (Annexure-8) leaves no doubt to this fact that substantive appointment of the respondents to the regular cadre of Assistant Engineer (civil) was made not from the date of their selection for training but from the date after completion of their one year training period. Hence, the court is of the view that substantive date of appointment of the respondents to the service, is clearly mentioned in the column-8 and it is the actual date of appointment to the service, from which the period of probation was to be counted as specifically mentioned therein. Hence, the petitioners' contention is correct that the date of appointment to the service of the direct recruits can be counted only from the date of their appointment in the cadre after completion of training. As per Regulation, the quota of direct recruits shall be filled up from the trained engineers, i.e. who have completed their training period, to the satisfaction of the department.

14. In our view, the date of appointment to the corporation as per Regulation of 1998, for the purpose of seniority shall be the date of substantive appointment after completion of training. Hence the direct recruits engineers after completion of training can only be given seniority from the date of their substantive appointment and not from

the date of selection for training. Hence, the contention raised by the petitioners is correct and as per law and the action of the respondents by which they have given seniority to the direct recruits from the date of their selection for training, is not as per rules.

15. Learned counsel for the petitioners has also argued that the respondent no. 2 has also flouted the order of the Hon'ble High Court. Hon'ble High Court issued a direction to the respondents to decide the representation of the petitioners and to finalize the seniority list after decision on their representation and then to take promotional exercise. The record reveals that this seniority list was shown to be finalized on 03.1.2015 which was uploaded on the website next day i.e. 4.1.2015, which was Sunday and after 4 minutes of such uploading, the DPC was held, its recommendations were forwarded and very next day i.e. 5.1.2015, promotion order was issued.

16. The respondent/corporation is a government body, which observes Sunday as holiday. Although any quick action of the respondent in its working is welcomed and appreciable, but in this case, action of the respondents has been so quick and fast, which is surprising for anyone. What was the necessity to convene the DPC on Sunday at 11:57 PM after uploading the seniority list on the website at 11:53 PM and within four minutes, the constitution of DPC and completion the whole exercise of promotion by DPC, might be history in the government/public body. So fast working of respondent shows that all things were not done in a manner, in which it has been shown and it appears that things were already decided but it has been shown to be completed in different manner as appeared therein. Even if, this exercise is considered to be done and they have normally complied with the order of the Hon'ble High Court to finalize the seniority list before taking promotional exercise, respondents were required to follow the Rules and Regulations as well as conditions of appointment letter issued by the department, which were totally ignored. Hence,

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the whole promotional exercise by DPC and the appointment issued therein, are not on the basis of the appropriate seniority list and this also deserves to be set aside. In the result, the petition succeeds with the following orders.

ORDER

The claim petition is allowed. The final seniority list dated 03.1.2015 issued by the respondent no. 2, select list/ recommendations of DPC dated 4.1.2015 and the promotion letter/order dated 5.1.2015 issued by respondent no. 2 are hereby set aside.

The respondent no. 2 is hereby directed to prepare a fresh seniority list according to the Rules and Regulations and as per the observation made above, treating the appointment of the respondents (direct recruits) from the date of their substantive appointment to the cadre, after completion of their training period for the purpose of seniority, within a period of three months from the date of receipt of copy of this order and after publishing the seniority list, the promotional exercise can be taken accordingly as per law. No order as to costs.

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: NOVEMBER 09, 2016
NAINITAL

KNP

Checked by, Law Clerk

Certified True Copy as under the authority of the Registrar

15/11/16

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 460 of 2016 (S/B)

Asutosh Tiwari & another .....Petitioners

Versus

State of Uttarakhand and others ...Respondents

Mr. S.S. Yadav, Advocate for the petitioners.
Mr. C.S. Rawat, Additional Chief Standing Counsel for the State of Uttarakhand.
Mr. I.P. Gairola, Advocate respondent nos.6 to 13.
Mr. D.S. Patni, Advocate for respondents-Uttarakhand Power Corporation.

With

Writ Petition No. 247 of 2016 (S/B)

Narayan Singh Chauhan .....Petitioner

Versus

State of Uttarakhand and others ...Respondents

Mr. Rajendra Dobhal, Senior Advocate assisted by Mr. Devang Dobhal, Advocate for the petitioner.
Mr. C.S. Rawat, Additional Chief Standing Counsel for the State of Uttarakhand.
Mr. D.S. Patni, Advocate for respondent-Uttarakhand Power Corporation.
Mr. Piyush Garg, Advocate for respondent nos.25 & 26.

With

Writ Petition No. 451 of 2016 (S/B)

With

(Impleadment Appl. No.12287 of 2016)

Kanhaiya Ji Mishra & Another .....Petitioners

Versus

State of Uttarakhand and others ...Respondents

Mr. Piyush Garg, Advocate for the petitioners.
Mr. C.S. Rawat, Additional Chief Standing Counsel for the State of Uttarakhand.
Mr. D.S. Patni, Advocate for respondent-Uttarakhand Power Corporation.
Mr. I.P. Gairola, Advocate for respondent nos.3 to 10.

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Mr. Shashank Pandey, Advocate for the applicants in the impleadment application.

With

Writ Petition No. 453 of 2016 (S/B)

With

(Impleadment Appl. No.2214 of 2017)

Umakant Chaturvedi & others .....Petitioners

Versus

B.M. Bhatt & others ...Respondents

Mr. Alok Mehra, Advocate for the petitioners.
Mr. I.P. Gairola, Advocate for respondent no.1 to 8.
Mr. C.S. Rawat, Additional Chief Standing Counsel for the State of Uttarakhand.
Mr. D.S. Patni, Advocate for respondent-Uttarakhand Power Corporation.
Mr. Shashank Pandey, Advocate for the applicants in impleadment application.

With

Writ Petition No. 455 of 2016 (S/B)

With

(Impleadment Appl. No.2213 of 2017)

Pradeep Kumar & others .....Petitioners

Versus

B.M. Bhatt & others ...Respondents

No representation for the petitioners.
Mr. C.S. Rawat, Additional Chief Standing Counsel for the State of Uttarakhand.
Mr. D.S. Patni, Advocate for the respondent-Uttarakhand Power Corporation.
Mr. I.P. Gairola, Advocate for respondent nos.1 to 8.
Mr. Shashank Pandey, Advocate for the applicants in the impleadment application.

With

Writ Petition No. 467 of 2016 (S/B)

Deepakpal Arya .....Petitioners

Versus

State of Uttarakhand & others ...Respondents

Mr. Rakesh Thapliyal, Advocate for the petitioners.