

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 164/DB/2019

Vikas Bahuguna, s/o Shri Prem Prakash Bahuguna, r/o Deputy General Manager (Civil), UJVN Limited, presently posted as Addl. General Manager, Civil Rail Vikas Nigam Ltd., Rishikesh, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Ministry of Energy, Secretariat, Uttarakhand, Dehradun.
2. Chairman, Uttarakhand Jal Vidyut Nigam Ltd. UJVNL, Maharani Bagh, General Mahadev Singh Marg, Dehradun.
3. Managing Director, Uttarakhand Jal Vidyut Nigam Ltd. UJVNL, Maharani Bagh, General Mahadev Singh Marg, Dehradun.
4. Director (HR), Uttarakhand Jal Vidyut Nigam Ltd. UJVNL, Maharani Bagh, General Mahadev Singh Marg, Dehradun.
5. General Manager (P & IR), Uttarakhand Jal Vidyut Nigam Ltd. UJVNL, Maharani Bagh, General Mahadev Singh Marg, Dehradun.

.....Respondents

Present: Sri Pankaj Tangwan, Advocate for the Petitioner

Sri V.P.Devrani, A.P.O., for the Respondent No. 1

Sri S.C.Virman, Sri V.D.Joshi & Sri S.K.Jain, Advocates

for the Respondents No. 2 to 5.

JUDGMENT

DATED: JUNE 01, 2022

Per: Mr. Rajeev Gupta, Vice Chairman (A)

By means of the present claim petition, the petitioner seeks the following reliefs:

- a) *To set aside the impugned order dated 12.02.2019 passed by respondent no. 4 (contained as Annexure No. 1 to this petition).*

b) To issue a writ, order or direct in the nature of mandamus directing the respondents to consider the case of the petitioner for promotion on the post of Deputy General Manager (Civil) w.e.f. 01.07.2011 by treating the entire length of services of the petitioner on his parent Department i.e. from 01.04.2005 specifically on the fact the same was on equivalent post alongwith all consequential benefits.

c) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d) Award cost of the petition.

2. Brief facts, as per the claim petition, are as below:

2.1 The petitioner was initially appointed as Engineer Trainee in May 2000 and his services were regularized as Assistant Engineer in May 2001 in Tehri Hydro Development Corporation, carrying the pay scale of Rs. 8600-14500. While the petitioner was serving as Assistant Engineer in Tehri Hydro Development Corporation Ltd. (hereinafter referred as to 'THDC') in the year 2005 as regular employee, the Respondent Department 'UJVNL' issued an advertisement in the year 2005, for the post of Executive Engineer Civil/Electrical & Mechanical on deputation in the pay scale of Rs. 10650-15200. Pursuant to said advertisement, the petitioner appeared before the Selection Committee. Thereafter, vide letter dated 19th September 2005, the petitioner has been selected by the said Committee on deputation for the period of 2 years on the post of Executive Engineer by the respondents. Meanwhile, THDC considered the case of the petitioner for promotion to the post of Engineer from the post of Assistant Engineer in which petitioner was found suitable. Consequently, his parent department vide order dated 16.12.2005 promoted the services of the petitioner on the post of Engineer w.e.f. 01.04.2005 carrying the pay scale of Rs. 10,750-300-16750.

2.2 *Vide* letter dated 04.01.2006, the petitioner was relieved from THDC, Rishikesh to UJVNL, Dehradun. On the same day, the petitioner

joined at UJVNL on deputation as Executive Engineer. On 16.10.2009, an office memorandum was issued by the UJVNL for absorption of personnel take on deputation basis in the Nigam mentioning terms and conditions therein by the Board of Directors. In furtherance of the letter dated 16.10.2009, the petitioner appeared before the selection committee and he has been duly selected on the post of Executive Engineer Civil in the pay scale of Rs. 15600-39100, Grade Pay of Rs. 6600 by the respondents and the petitioner was given the proposal for the same vide letter dated 20.11.2009. The petitioner accepted the proposal given by the respondents subject to the desired formalities and gave his joining on 21.11.2009. Vide letter dated 09.12.2009, the petitioner was relieved *w.e.f.* 26.11.2009 by the parent department extending his deputation till 30.11.2009 subject to his absorption in UJVNL by this date.

2.3 Thereafter, on 05.02.2010, an Office Memorandum was issued by which the services of the petitioner were finally absorbed in the respondents department on the post of Executive Engineer (Civil) *w.e.f.* 27.11.2009 subject to the terms and conditions mentioned in the appointment letter dated 20.11.2009 issued by the respondents. Thereafter, the services of the petitioner given with the respondents' department upto 26.11.2009 have been counted on deputation basis on the post of Executive Engineer (Civil). Since 27.11.2009, that is, the time from when the services of the petitioner were transferred from 'THDC' to 'UJVNL' due to absorption and merger till the DPC for the post of Deputy General Manager (DGM) held in 2011, no seniority list was declared by the respondents regarding the seniority of the petitioner. The respondent authorities followed the office memorandum dated 16.03.2010 wherein para no. 2 provided an eligibility criteria for selection to the post of Deputy General Manager from the amongst the Executive Engineers and holders of other equivalent posts who have on July 1 of year of selection put in at least six years' service on post of Executive Engineer and other equivalent post. As per the eligibility criteria prescribed by Respondents, the petitioner fulfills the qualification criteria for the post of Dy. General

Manager as the petitioner is deemed to be working as Executive Engineer w.e.f. 01.04.2005 in the parent department and hence qualified for the post of Deputy General Manager as per the eligibility criteria prescribed by respondents inasmuch as the petitioner has already completed six years of service on 01.04.2011. This time in DPC, UJVNL relaxed the eligibility criteria for the post of DGM (Civil) by 50% *i.e.* from 6 years to 3 years.

2.4 On 24.06.2010, the respondents had issued a seniority list of the Executive Engineers of the respondent department but neither the name of the petitioner was included in the seniority list nor the name of the petitioner was considered in the ongoing promotion process for the post of Deputy General Manager. The respondent authorities failed to consider an important fact that the period of the services rendered by the petitioner on the same post in the parent department *i.e.* 'THDC' on the permanent basis cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and altogether distinct factors. Thus, as per the eligibility criteria prescribed by the respondents, the petitioner is qualified for the post of Dy. General Manager after completion of six years of service which he completed on 01.04.2011.

2.5 Against the above DPC, the petitioner filed writ petition bearing Writ Petition (S/B) No. 394 of 2011, Vikas Bahuguna vs. State of Uttarakhand & others and prayed for issuance of writ order or direction in the nature of mandamus directing the respondents to hold fresh DPC for promotion on the post of Deputy General Manager (Civil), considering the claim of the petitioner for promotion. The Hon'ble High Court after hearing the parties was pleased to dismiss the writ petition preferred by the petitioner vide judgment and order dated 08.07.2013, but in that order dated 08.07.2013, the Hon'ble High Court also accepted this fact that the petitioner was working on the post of Engineer at Tehri Hydro

Development Corporation which is equivalent to the post of Executive Engineer in UJVNL and he became entitled to the pay scale attached to the said post with effect from 1st April, 2005. Feeling aggrieved from the judgment and order dated 08.07.2013, the petitioner approached the Hon'ble Supreme Court by filing a Special Leave Petition. The Hon'ble Supreme Court was pleased to dispose of the petition by setting aside the order dated 08.07.2013 and matter was remanded back to Hon'ble High Court for de-novo consideration in the light of the direction and observations made in its judgment and order dated 01.08.2014.

2.6 After remanding the matter by the Hon'ble Supreme Court, the writ petition no. 394 of 2011 came up for consideration on 01.11.2018 and Hon'ble High Court after hearing the parties was pleased to pass the following order:

*“Mr. Shailendra Nauriyal, Advocate for the petitioner.
Mr. Vikas Pandey, Standing Counsel for the State.
Mr. Vinay Kumar, Advocate for the respondents no. 2 to 4.*

The case of the petitioner, in nutshell, is that present lis is covered by the judgment rendered by the Hon'ble Supreme Court in Civil Appeal No. 6491-6492 of 2014 in the case of Coal India Ltd. & another vs. Navin Kumar Singh on 25.09.2018.

Accordingly, the writ petition is disposed of. The respondents are directed to consider the case of the petitioner as per the ratio decidendi to the judgment, within a period of ten weeks from today.

Pending application, if any, stands disposed of.”

2.7 The respondents have again rejected the candidature of the petitioner without adopting the ratio decidendi to the judgment of Coal India Ltd. (*Supra*) vide impugned order dated 12.02.2019. The grounds on which the claim of the petitioner has been rejected are that the factual matrix between the petitioner's case and M/s Coal India case are different and furthermore as per the legal opinion of the Department's Standing Counsel, the petitioner is not entitled for counting his services. Therefore, the order impugned is non speaking order and in fact it is cryptic order and against the law declared by the Hon'ble Supreme Court in the Coal India case and the order passed by the Hon'ble High Court dated 01.11.2018.

The respondents while passing the impugned order completely failed to consider the fact that there is a difference between the seniority and eligibility. In the rejection order dated 12.02.2019 (impugned order), the respondents have mentioned that there are different rules in the UJVNL and THDC, therefore, the petitioner cannot be promoted since 2011 and on the other hand the respondent department has accepted all the service benefits which were available to the petitioner in his parent department *i.e.* THDC. They accepted that the petitioner was Executive Engineer w.e.f. 04.01.2006 in UJVNL and the petitioner was posted as Executive Engineer in the respondent department since 04.01.2006 upto the date of DPC held in December 2011.

2.8 The petitioner was working as Executive Engineer in the respondent department since 04.01.2006, therefore, the criteria of six years of service on the post of Executive Engineer has been completed on 01.07.2012, but the petitioner was promoted on 01.07.2016 while the post of Deputy General Manager (Civil) was vacant in the years 2012, 2013, 2014 and 2015. The respondents had not promoted the petitioner in the year 2012 with *malafide* intention.

2.9 Against the impugned order dated 12.02.2019, the petitioner approached the Hon'ble High Court in Writ Petition no. 561 of 2019 (S/B), Vikas Bahuguna vs. State of Uttarakhand & others, and the Hon'ble High Court of Uttarakhand was pleased to dismiss the writ petition preferred by the petitioner with the observation that the petitioner may approach this Hon'ble Tribunal *vide* order dated 07.12.2019. Hence the present claim petition.

3. Counter Affidavit has been filed on behalf of respondents no. 2 to 5 opposing the claim petition mainly stating that the Writ Petition (S/B) No. 394 of 2011 filed by the petitioner before Hon'ble High Court was dismissed by Hon'ble High Court *vide* its order dated 08.07.2013 observing the following:

“Assuming the post of Engineer at Tehri Hydro Development Corporation Limited is equivalent to the post of Executive Engineer in Uttarakhand Jal Vidyut Nigam Limited, the fact remains that he was made so on 16th December, 2005 but with effect from 1st April, 2005. In the matter of being an Engineer, Tehri Hydro Development Corporation Limited, the date must be counted from 16th December, 2005, although he became entitled to the pay scale attached to the said post with effect from 1st April, 2005. We, accordingly, hold that the petitioner did not put in atleast six years’ service on the post of Executive Engineer and/or other equivalent post on 14th December, 2011.

Accordingly, the writ petition fails and the same is dismissed.”

3.1 On the petitioner’s SLP, the Hon’ble Supreme Court remanded the matter to Hon’ble High Court with the following directions:

“The High Court will, therefore, reconsider the matter in the light of the statements made and the stand taken by the Jal Vidut Nigam in para 15 of the counter affidavit filed before the High Court. We, accordingly, set aside the order of the High Court dated 08.07.2013 and remand the matter for a de novo consideration in the light of the directions and observations above.”

3.2 Para 15 of the Counter Affidavit filed in the High Court in writ petition no. 394 (S/B) of 2011, Vikas Bahuguna vs. State of Uttarakhand & others stated the important fact that while being on deputation, the petitioner was not member of the Service of Civil Engineers which is defined in aforesaid Regulation 3(12) and that the petitioner could have become a member of the “Service” only after his substantive appointment i.e., when he acquired ‘right of post’ w.e.f. 27/11/2009 when he was substantively appointed in accordance with O.M. dt. 16/10/2009 read with letter no. 10556, dt. 20.11.2009.

3.3 The Hon’ble High Court after hearing the parties disposed of the writ petition no. 394 (SB) of 2011 *vide* its order dated 01.11.2018 directing the respondents to consider the matter of the petitioner according to the Ratio Decidendi of the Hon’ble Apex Court in Coal India Ltd. & another Vs. Navin Kumar Singh. In compliance of this order of the Hon’ble High Court, vide impugned Memorandum dated 12.02.2019, the matter was disposed of holding that the ratio of the Decidendi of Hon’ble Apex Court in Civil Appeal No. 6491-6492 of 2014, Coal India Ltd. & another vs. Navin Kumar Singh, is not applicable in the matter of the petitioner.

3.4 The petitioner filed a contempt petition No. 85 of 2019 in Hon'ble High Court which was dismissed by the Hon'ble High Court *vide* order dated 01.07.2019. The petitioner again filed writ petition no. 561 (SB) of 2019 in the Hon'ble High Court against the order dated 12.02.2019 which was dismissed by Hon'ble High Court *vide* its order dated 07.12.2019 observing that the petitioner has an effective and efficacious alternative remedy of making a reference of claim to this Tribunal for redressal of his grievance and left it open to the petitioner to approach the Public Services Tribunal.

3.5 Now, the present claim petition has been filed before the Public Services Tribunal. According to the Section 5(b)(1) of the U.P. Public Services Tribunal Act, 1976, the time limit to file the claim petition is one year. The present claim petition is against the DPC held on 14.12.2011. Hence the petition is time barred and is liable to be dismissed on the point of limitation.

3.6 The petitioner joined UJVNL as Executive Engineer on 04.1.2006 on deputation. The Memorandum dated 16.10.2009 laid down the conditions for absorption of the officers working on deputation in the services of the Corporation. After acceptance of those conditions by the petitioner, appointment letter dated 20.11.2009 in the form of direct recruitment has been issued to the petitioner, who after accepting all the conditions of this letter has joined on the post of Executive Engineer on 27.11.2009. Para-8 of this appointment letter stipulated the condition that according to the conditions of the Office Memorandum dated 16.10.2009, the absorption in the corporation will be from the date of assuming the charge and from that date, the *lien* in the parent department shall be deemed to have ended and the *inter-se* seniority shall be fixed at the bottom of the functionaries already working on that date. After acceptance of all these conditions, the petitioner has joined on the post of Executive Engineer on 27.11.2009 and he was kept on probation for one year. For further promotions, the petitioner is given the benefit of

qualifying service from 27.11.2009 and after completion of 6 years of qualifying service as Executive Engineer, he has been promoted on 01.07.2016 to the post of Deputy General Manager, which has been accepted by him. The petitioner has neither challenged the memorandum dated 16.10.2009 nor the appointment letter dated 20.11.2009 and, therefore, he is bound to accept all the conditions of these letters. The Counter Affidavits of respondents refer to many paras of the Counter Affidavit filed by the respondents before the Hon'ble High Court in writ petition No. 394 (SB) of 2019 which assert the following:

That the Petitioner is relying on the amended regulation issued vide O.M. No: 16-03-2010 in which it has been said that for the purposes of being considered for promotion, the employee should have rendered 6 years service on the post of Executive Engineer. The Petitioner is relying on the language of the Regulation which is 'six year service' on the post of Executive Engineer. However the service has to be interpreted as defined in the regulation. For promotional purposes, the benefit of service would be accrued to the petitioner only when he becomes member of the service and not otherwise. It is submitted that before being regularly appointed w.e.f. 27.11.2009, the petitioner was working on deputation and could not have been considered as a member of service because petitioner was not substantively appointed in the respondent Corporation. The terms 'Service' used in the existing regulation has to be read in harmony with the definition as given in the regulation. The Petitioner was appointed as Executive Engineer on the basis of deputation (as a one-time measure) and he cannot become regular member of service and part of regular establishment against the aforesaid regulations of 1970. Hence, in accordance with the regulation, his services cannot be counted for the purposes of promotion w.e.f. joining in the respondent corporation i.e. 04.01.2006 on the deputation basis. But instead of that, the services can be counted for the purposes of promotion w.e.f. 27.11.2009 only when he was substantively appointed. If the service is reckoned from 04.01.2006 i.e. date of deputation for of promotion, this would be against the regulation by which the services of the petitioner are being governed at present.

That it is further submitted if the service of the petitioner is to be counted from 04.01.2006 for the purposes of promotion, this would give rise to anomalous situation that petitioner was simultaneously maintaining lien on two posts in two different corporations for the period from 04.01.2006 to 27.11.2009 which cannot be possible. Furthermore, the petitioner has accepted the order dated 16.10.2009, the order of absorption which clearly says that absorption would be effected from prospective date *i.e.* the date of absorption which is 27.11.2009, the petitioner has not challenged the order the dated 16.10.2009. Hence the service of six years as given in regulation has to be reckoned from the date of absorption when the petitioner became member of service in accordance with regulations.

That the entire writ petition has been filed by the petitioner on the assumption and belief that his candidature has wrongly been not considered by the answering respondents though he fulfilled the eligibility criteria prescribed for promotion to the post of Deputy General Manager (Civil). At the outset it is submitted that the said contention of the petitioner is devoid of merit and is liable to be rejected. Furthermore petitioner does not fulfill the eligibility criteria prescribed for promotion to the post of Deputy General Manager (Civil), accordingly his candidature was rightly not considered for promotion on the said post. That the contention of the petitioner in the writ petition that eligibility and seniority are two distinct features of Service Jurisprudence and cannot be read as synonymous to each other, being distinct features is not admissible. It is submitted that as per the Office Memorandum dated 16.03.2010 unless the Executive Engineer has worked for six years he cannot be held eligible for consideration for promotional post of Deputy General Manager. It is reiterated that six years of service have to be counted in respect of period of service done after substantive appointment. That the writ petition filed by the petitioner for relief claimed herein is not maintainable for the reason that petitioner has not challenged the terms of office memorandum No. 9574, dated 16.10.2009 *i.e* policy of absorption as well as letter No. 10556, dated 20.11.2009 whereby he was issued offer of appointment for absorption from deputation and kept on probation for a period of one year. In absence of any challenge being thrown to the said documents, petitioner is bound by the conditions mentioned therein having accepted the same.

3.7 Learned A.P.O. on behalf of respondent no. 1 has adopted the Counter Affidavit filed on behalf of respondent no. 2 to 5.

4. R.A. has been filed by the petitioner mainly reiterating the contentions made in the claim petition. The R.A. also quotes the case of Sri P.S. Berfwal whose services were merged in UJVNL *w.e.f.* 01.01.2003 and who was further promoted to the post of Executive Engineer (Civil) on 01.12.2006 *i.e.* on completion of 3 years & 11 months of service after absorption. This is against the fact that promotion from Assistant Engineer to Executive Engineer is after seven years of regular services on 1st day of July in UJVNL. Accordingly, Shri P.S. Berfwal was promoted taking into consideration his earlier services as Assistant Engineer in UPJVNL otherwise he could not be promoted to the post of Assistant Engineer before 1st July 2009. Accordingly, the petitioner is seeking similar status of counting his services rendered in the grade of Executive Engineer or equivalent grade.

5. Additional C.A. has been filed on behalf of the respondents no. 2 to 5 in reply to the R.A. filed by the petitioner highlighting the following:

5.1 Appointment on deputation: In the case of appointment on deputation an employee is treated on loan to another employer and can be recalled with the consent of the employee as well as employer to whom his services are lent. So long as an employee is on deputation, he retains lien with the previous employer and his lien is kept in the service of the previous employer. However, in case if appointment of an employee is made by transfer to another department, then in appointment by transfer, he ceases to be an employee of the previous department. The employee on deputation is liable to be recalled and the services on deputation is to be counted as service in the parent department. If rules provide, the employee would be entitled for deputation allowance. The seniority in the parent department is to be maintained and is to be resorted as and when the employee is called back and joins back the parent department. He would also be entitled to all promotions in the parent department on the basis of the service record as per prevailing rules of that department. The departmental action can be taken only by the parent department.

5.2 It is further stated that the both the corporations (THDC and UJVNL) are working under separate departments and governed by separate service rules. The service on deputation is deemed to be the service rendered in the parent department because the employee is considered to be on 'loan' in the other department and his lien is retained with the earlier department and the person sent on deputation can any time be called back by the parent department. Therefore, the service rendered in the parent department cannot be counted for granting seniority in the other department.

5.3 The similarity of the petitioner's case with the case of Sri P.S. Berfwal presented in the rejoinder affidavit is incorrect as Sri P.S. Berfwal was working on the post of Assistant Engineer in a Hydro Electric Project situated in Uttarakhand State. He was an employee of UPSEB and was

transferred to UPJVNL under the provisions of the U.P. Electricity Reforms Act 1999 and the U.P. Electricity Reforms Transfer Scheme 2000 and thereafter, according to order of Govt. of India dated 05.11.2001, his services were transferred to UJVNL. Service conditions of such personnel had statutory protection which was continued vide O.M. dated 16.12.2002 of UJVNL.

5.4 The Additional C.A. further states that THDC is a company of Govt. of India while UJVNL is a company of Uttarakhand Govt. which has adopted the orders of UPSEB and UPJVNL. THDC is a joint enterprise of Govt. of India and U.P. Govt. while UJVNL is an enterprise of Uttarakhand Govt. The engineers of both these organizations are governed by separate service conditions. The names of posts of both the organizations are also different and there are no orders for equivalence of services and names of posts of the two organizations.

6. We have heard the learned Counsel for the parties and perused the record. Written arguments have also been filed on behalf of the petitioner and on behalf of respondents no. 2 to 5.

DISCUSSION

7. The petitioner has challenged the O.M. dated 12.02.2019 of UJVNL (Annexure No. 1 to the claim petition). The present claim petition has been filed in December 2019 which is well within one year of the date of this order. The respondents' contention that the petitioner's challenge is to his non-inclusion for consideration of promotion in the DPC dated 14.12.2011 which is therefore, beyond the period of limitation of one year for filing claim petition before this Tribunal is not acceptable inasmuch as the petitioner in between has approached the Hon'ble High Court and Hon'ble Supreme Court and against the impugned order (Annexure No.1) he has again approached the Hon'ble High Court wherein he has been given the liberty to approach this Tribunal. The petitioner could also have straightaway challenged the impugned order dated 12.02.2019 without

going to Hon'ble High Court against the same and the limitation for such challenge would have been upto 12.02.2020 while the claim petition has been filed in December 2019 and is well within the limitation.

8. *Vide* the impugned O.M. dated 12.02.2019 it has been held that the factual position of the case of the petitioner is different from the facts of the case of M/s Coal India Limited, for example, the deputation of the petitioner was not from that company where both the organizations have similar rules. This order also refers to the para 15 of the Counter Affidavit of the respondent corporation filed in writ petition no. 394 (SB) of 2011 and states that the petitioner was not covered by Regulation 3(12) of the Assistant Engineers (Civil) Regulations, 1970 and his absorption was done according to the conditions of notification dated 16.10.2009. Therefore, the factual position of Sri Vikas Bahuguna is different from the Civil Appeal NO. 6491-6492 of 2014. It has been held that the services of the petitioner in UJVNL on the post of Executive Engineer before the date of his absorption on 27.11.2009 cannot be considered for promotion.

9. A perusal of the Judgment dated 25.09.2018 of the Hon'ble Supreme Court in Civil Appeal No. 6491-6492 of 2014, Coal India Ltd. & Anr. Vs. Navin Kumar Singh, shows that the matter under consideration there, was of transfer of the respondent from Dankuni Coal Complex (for short 'DCC') of the appellant company to Central Mine Planning and Design Institute Ltd. (for short 'CMPDIL'), a subsidiary of the appellant company, in his existing capacity *i.e.* E-2 Grade, on the request of the respondent. There was a policy for determination of seniority of executives on inter-company transfers specifying that the name of the officer transferred on his own request will be placed at the bottom of the seniority list in his/her grade in the new company. Paras 14, 15 and 16 of this judgment of the Hon'ble Supreme Court are reproduced herein below:

"14. Indubitably, the respondent is not claiming seniority over any person already working in the new company (CMPDIL) before the date on which he assumed charge thereat on 15th May, 1991. The limited claim of the respondent however, is that

the service rendered by him in the parent unit (DCC) from 4th August, 1990 in E-2 Grade be reckoned for the purpose of determining his eligibility for promotion to the post of E-3 Grade whilst working in CMPDIL. The High Court justly accepted the claim of the respondent that for determination of his eligibility for promotion, his length of service in DCC must be reckoned. That cannot be confused with the issue of seniority in CMPDIL as they are two different and distinct factors. The policy in the form of clause 11 deals with the latter. There is no express stipulation in the policy – be it clause 11 or any other official document – to even remotely suggest that on seeking inter-company transfer on personal grounds, the executive concerned would lose even his past service rendered by him in the parent unit (DCC) for all purposes. In absence of such a stipulation, the claim of the respondent could not have been rejected by the department. This proposition is reinforced from the dictum in C.N. Ponnappan (supra), which has been noted with approval in V.M. Joseph (supra). The two-Judge Bench of this Court in C.N. Ponnappan (supra), observed as follows:

*“4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. **The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred.** In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.”*

(emphasis supplied)

15. This view has been restated by another two-Judge Bench of this Court in V.M. Joseph (supra), in paragraph 6 which reads as follows:

“6. From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Storekeeper on the ground that he had

completed 3 years of regular service as Storekeeper on 7-6-1980 and, therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Storekeeper for the period from 27-4-1971 to 6-6-1977. The appellants contended that, since the respondent had been transferred on compassionate grounds on his own request to the post of Storekeeper at Cochin and was placed at the bottom of the seniority list, the period of 3 years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than 3 years of service as a Storekeeper. **Even if an employee is transferred at his own request, from one place to another on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors."**

(emphasis supplied)

16. In the present case, there is no dispute that the respondent had rendered service in E-2 Grade on regular basis in DCC from where he was transferred to CMPDIL, on personal grounds. The service rendered by him in DCC can be and ought to be taken into account for all other purposes, other than for determination of his seniority in E-2 Grade in the new company i.e. CMPDIL. Indeed, his seniority in CMPDIL in E-2 Grade will have to be reckoned from the date of his assumption of charge on 15th May, 1991, but that can have no bearing while determining his eligibility criterion of length of service in E-2 Grade for promotion to E-3 Grade. For determining the eligibility for promotion to E-3 Grade, the service rendered by him in DCC in E-2 Grade with effect from 4th August, 1990, ought to be reckoned. The view so taken by the High Court commends to us. Hence, no fault can be found with the direction given by the High Court to assign notional date of promotion to the respondent in E-3 Grade with effect from 12th November, 1993."

The above makes it amply clear that in cases where transfer of service from one organization to another is involved, counting of service rendered in the earlier organization to determine the eligibility for promotion should not be confused with seniority, as they are two different and distinct factors.

10. There is no doubt that the seniority of the petitioner in the instant claim petition in UJVNL shall be counted from the date of his absorption in UJVNL *i.e.* 27.11.2009 which is as per the conditions laid down in the relevant O.M. dated 16.10.2009 and the appointment order dated 20.11.2019 of the petitioner, which have been accepted by the petitioner. The issue to be decided is whether his past services can be counted for determining his eligibility for promotion to the post of DGM in UJVNL.

11. The argument advanced by leaned Counsel for respondents No. 2 to 5 is that if such past services are counted, it will amount to accepting the lien of the petitioner in both the organizations at the same time. With all humility we hold that this argument and corresponding averment is against the *ratio decidendi* of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 6491-6492 of 2014 (*Supra*) inasmuch as such a situation would always arise whenever the issue of adding past services of one organization comes for consideration of eligibility of promotion in the subsequent organization.

12. The respondents are correct in stating that the service rules of THDC and UJVNL are different and the names of posts in the organizations are also different and therefore, the past services rendered in THDC cannot be counted for determining the eligibility of the petitioner for promotion to the post of DGM in UJVNL. The petitioner is claiming that his services on the post of Engineer in THDC and further the service rendered by him on the post of Executive Engineer in UJVNL on deputation be counted for and added to his

further service as Executive Engineer in UJVNL after substantive appointment to make up the requisite 6 years of service as Executive Engineer in UJVNL to make him eligible for promotion to the post of DGM.

13. The Tribunal observes that the service of the petitioner before joining UJVNL on deputation cannot be added for such qualifying service as the same is under different service rules of THDC and on a different post (Engineer of THDC). However, the service rendered after joining UJVNL on deputation on 04.01.2006 has been rendered on the post of Executive Engineer in UJVNL itself. It is unfair to say that this part of service should be deemed to have been done under the parent organization (THDC) and then to say that such service cannot be counted as service done on the post of Executive Engineer in UJVNL as THDC is different organization having different service rules and different post nomenclatures. Therefore, service rendered on deputation as Executive Engineer UJVNL should be added to the further service done after substantive appointment to determine the eligibility of the petitioner for promotion to the post of DGM in UJVNL, according to the ratio of the judgment of Hon'ble Apex Court in Civil Appeal No. 6491-6492 of 2014 (*Supra*).

14. The argument that before his substantive appointment in UJVNL the petitioner was not a member of the service of UJVNL and was not covered by its Regulations and therefore, his past services cannot be added for consideration of his eligibility of promotion is also against the *ratio decidendi* of the judgment of Hon'ble Supreme Court in Civil Appeal No. 6491-92 of 2014, Coal India Ltd. & another vs. Navin Kumar Singh (*Supra*). Such a situation would generally arise when past services of a person in one organization on a particular post are considered to be added to the services of that person in an equivalent post in another organization where his services are transferred for determining his eligibility for further promotion in that organization, as

the two organizations would have different regulations. Therefore, such consideration should not come in the way of counting the services of the petitioner as Executive Engineer in UJVNL on deputation basis towards his eligibility for promotion to the post of DGM in UJVNL.

15. It can be argued that the service rules/conditions of Coal India Ltd. and its subsidiary Company would have been similar, while the service rules/conditions of THDC and UJVNL are quite different. Therefore, counting of past service rendered in THDC for considering the eligibility of promotion in UJVNL is not in line with the spirit of the judgment of Hon'ble Supreme Court in Civil Appeal No. 6491-6492 of 2014. Keeping the same in mind, we have already observed in para 13 of this judgment that the service of the petitioner before joining the UJVNL on deputation, which is the service actually done in THDC cannot be added as qualifying service for promotion in UJVNL. However, the service done after deputation to UJVNL from 04.01.2006 as Executive Engineer upto the substantive joining on 27.11.2009 is actually the service done in UJVNL itself, and to exclude such service on the ground that it should be deemed to have been done in the parent organization i.e. THDC is unfair as stated in para 13 of this judgment. Such service on deputation may not count for seniority but should definitely be accounted for in the length of service to determine the eligibility of the petitioner for promotion to the post of DGM in UJVNL.

16. In view of the above, the Tribunal holds that the services of the petitioner rendered on deputation in UJVNL shall also be counted and added to the service rendered after absorption in UJVNL for determining his eligibility for promotion to the post of DGM in UJVNL. The petitioner joined UJVNL on deputation on 04.01.2006 on the post of Executive Engineer and was substantively absorbed in that post on 27.11.2009. Therefore, his 6 years' period of working as Executive

Engineer to fulfill the eligibility for promotion to the post of DGM ends on 04.01.2012. The petitioner be considered for promotion to the post of DGM at the earliest thereafter. The respondents may also consider giving him relaxation in qualifying service so as to make him eligible for the DPC which was held on 14.12.2011 and accordingly hold a review DPC meeting for considering his promotion to the post of DGM. It is reiterated that his seniority will be counted only from the date of his substantive joining the UJVNL *i.e.* 27.11.2009 onwards and persons appointed and working substantively in UJVNL as Executive Engineer prior to this date shall be considered senior to him. With these directions, the impugned Office Memorandum dated 12.02.2019 (Annexure No. 1 to this claim petition) is hereby set aside and the claim petition is accordingly disposed of.

No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 01, 2022.

DEHRADUN

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