

**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. 122/DB/2022**

Manoj Kumar, aged about 38 years, s/o Shri Satish Chandra, Presently posted as Assistant Engineer/ Sub Divisional Officer, Electricity Distribution Sub-Division, Srinagar, Pauri Garhwal.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Energy, Civil Secretariat, Dehradun.
2. Uttarakhand Power Corporation Ltd. Kanwali Road, Dehradun.
3. Director (HR), Uttarakhand Power Corporation Ltd. Kanwali Road, Dehradun.

.....Respondents.

Present: Sri M.C.Pant & Sri Abhishek Chamoli, Advocates,  
for the petitioner.

Sri V.P.Devrani, A.P.O. for the Respondent-State.

Sri Manish Kumar Singh, Advocate, for Respondents No.2 & 3.

**JUDGMENT**

**DATED: FEBRUARY 06, 2022.**

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

Hon'ble High Court of Uttarakhand at Nainital passed an order on 13.09.2022 in WPSB No. 07 of 2018, Manoj Kumar vs. State of Uttarakhand and others, by which the Writ Petition was transferred to this Tribunal. The order dated 13.09.2022 reads as under:

“The petitioner has preferred the present writ-petition for the following relief:-

“i) Issue writ, rule or direction in the nature of the certiorarified mandamus commanding to the respondents to treat the petitioner as substantively appointed w.e.f. 2008 and being considered as Executive Engineer by review DPC dated 04.01.2015 w.e.f. 2008 along with all consequential benefits and stepping up of pay as given to his juniors along with all arrears and service benefits after calling the entire records from the respondents ii) Issue any other writ rule or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The petitioner is a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ-petition.

Considering the fact that the petition is pending since 2018 and pleadings have been completed, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

We request the Tribunal to endeavor to dispose of the petition at an early date, considering that the writ-petition is pending since 2018.

This petition stands disposed of.”

2. WPSB No. 07/2018 is, accordingly, reclassified and renumbered as Claim Petition No. 122/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. Facts, necessary for adjudication of present petition, are as follows:

3.1 The petitioner was initially appointed as Junior Engineer in the respondent department on regular substantive vacancy and since then he is discharging his duties satisfactorily.

3.2 On 16.11.2005, when the petitioner was posted in Dehradun, an FIR was registered against him under the Prevention of Corruption Act, 1988. In the year 2006, the respondent department issued an advertisement for appointment on the post of Assistant Engineer (A.E.). The petitioner, being an eligible candidate, responded to the same as departmental candidate. In the year 2008 the respondent department issued a list of the successful candidates for the post of A.E. The petitioner was also declared successful. When the respondent department did not issue appointment letter to the petitioner, he represented to the authorities and requested for issuance of appointment letter, as the petitioner wanted to join on the post from the same day when other similarly situated junior persons were permitted to join. Petitioner was informed *vide* letter dated 07.10.2008 (Annexure No. 2), that since the criminal proceedings are pending against him, therefore, his matter is kept pending. Petitioner approached the Hon'ble High Court by filing WPSS No. 237/2008, which was decided by the Hon'ble Court on 23.12.2009. Hon'ble High Court was of the view that there are sufficient reasons with the respondent not to issue appointment letter to the petitioner till he gets acquitted from the competent Court. The petition was dismissed (Copy: Annexure No. 3).

3.3 *Vide* order dated 22.08.2013, the petitioner was acquitted of the charges levelled against him under the Prevention of Corruption Act, 1988 (Copy: Annexure No. 4). After the decision of Trial Court, respondent department issued the appointment letter on 18.12.2013 (Copy: Annexure No.5) in pursuance of the Selection of the year 2008. Petitioner joined as A.E. on 27.12.2013.

3.4 After joining on the post of A.E., the petitioner submitted a representation on 04.01.2014, for reckoning his seniority *w.e.f.* the date when his juniors were allowed to join pursuant to the selection process of 2006 and also requested them to grant the benefit of salary and seniority. The petitioner continued to submit representations to grant the benefits of the

Uttar Pradesh Electricity Board Seniority Rules, 1988, which provides that the person who has been selected in earlier selection, will be treated as senior to the person who has been selected in later selection process. The petitioner is, therefore, eligible to be declared as senior from the persons who were appointed through later selection.

3.5 The respondent department issued a seniority list on 03.01.2015 and placed the petitioner by reckoning his length of service as per the merit list of 2007-08 amongst the directly recruited A.Es. and also adhered to the Rules for quota of promoted and directly recruited. But despite his seniority, petitioner's case for promotion on the post of Executive Engineer was not considered on the ground of non-qualifying the requisite length of service as A.E., keeping in view his delayed appointment on the post of A.E. in the year 2013. The petitioner again moved representation highlighting all the grievances, mentioned that juniors to the petitioner, as per merit list, have been promoted and the same benefit may also be given to him. The petitioner is getting lesser salary than his juniors.

3.6 Petitioner again moved representation highlighting all the factual and legal aspects and also referred decisions of the Hon'ble Apex Court in Pilla Sitaram Patradu and in the case of State of Delhi vs. Rakesh Beniwal, claiming the consequential benefits of notional appointment, which was given to him *w.e.f.* 2008 by awarding him notional seniority and for considering him for promotion on the post of Executive Engineer. Petitioner did not conceal any fact regarding pendency of criminal proceedings. He was also not responsible for delay in his appointment. No departmental proceedings were initiated against the petitioner.

3.7 Petitioner also relied upon Office Memorandum No. 1801/Karmik-2/2002 dated 23.06.2003 (Annexure No.6) and Govt. Order dated 30.05.2005 (Annexure No.7), details of which have been given in Paras 20 & 21 of the petition respectively.

3.8 The respondents themselves reckon the seniority of the petitioner *w.e.f.* 2008, therefore, for all the practical purposes, the date of substantive appointment would relate back to 2008 and the petitioner is entitled for all consequential benefits *w.e.f.* 2008.

3.9 In earlier round of litigation, Hon'ble High Court itself observed that till the time of acquittal there was justification on the part of the respondent department for denying the appointment to the petitioner. It is the submission of Ld. Counsel for the petitioner that petitioner is entitled for all benefits on the basis of doctrine of '*quantum meruit*' and for consideration of promotion from the date when the same was given to his juniors and in this regard review D.P.C. may kindly be directed. A reference of various Rules and decisions has been given in the petition, which are part of record. The Tribunal does not think it necessary to reproduce the same, for the sake of brevity.

4. Sri Kailash Bihari Chaubey, General Manager, Human Resources (In-charge), Uttarakhand Power Corporation Ltd. has filed Counter Affidavit on behalf of Respondents No. 2 & 3. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. Relevant documents have also been filed in support of such C.A. Rejoinder Affidavit thereto has also been filed by the petitioner.

4.1 In Para 4 of the C.A. it has been stated that the petitioner, while he was caught red-handed on 16.11.2005 on the charge of taking bribe, remained in jail. He was suspended. Subsequently he was released on bail and was attached to the office of Executive Engineer, EDD (Rural), Dehradun. A charge-sheet was filed in the Court of Special Judge, Anti-Corruption, Dehradun. Since the petitioner has joined as A.E. on 27.12.2013, hence, the question of giving seniority from back date does not arise.

5. Copy of decision rendered on 22.08.2013 by Special Judge, Anti-Corruption, Dehradun has been brought on record to show that the petitioner was acquitted of the charges under Section 7/13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, levelled against him. *Vide* Office Memorandum No. 96 dated 03.01.2015 of Uttarakhand Power Corporation, the petitioner was placed at Sl. No. 2 in the final seniority list, in compliance of the decision/ order dated 06.06.2014 of the Hon'ble High Court of Uttarakhand, passed in Writ Petition No. 173/2014 and subject to the decision of Hon'ble Apex Court in pending SLP No. 18754/2012.

6. Provisional Select List of Assistant Engineer (Trainee), Electrical, issued by Director (H.R.), UPCL, reads as below:

Sl. No.	Control	Roll No.	Name	Category	Sub- cate	Writte n marks	Interview Marks	Total Marks
1	110392	711100951	Manish Pratap	Gen		129	21.16	150.16
2	110018	71110102	Manoj Kumar	Gen.		129	19.60	148.60
3	110248	72110478	Karpoor Chandra Yadav	Gen		131	16.17	147.17
...	.....	.....	.....	.....	...	.....	.....	.....
28	.....	.....	.....	.....	.....	.....	.....	.....

7. It is the submission of Ld. Counsel for the petitioner that the petitioner has been given seniority *w.e.f.* his selection year 2007-08, as is evident from O.M. dated 03.01.2015, in compliance of the decision dated 06.06.2014 of Hon'ble High Court of Uttarakhand passed in Writ Petition No. 173/2014 and subject to the decision of Hon'ble Apex Court in pending SLP No. 18754/2012, therefore, respondent department is required to treat the petitioner as substantively appointed *w.e.f.* 2008 and should consider his promotion as Executive Engineer by review DPC dated 04.01.2015 along with all consequential benefits and stepping up of pay as has been given to his juniors along with all arrears and service benefits after calling the entire records from the respondents.

8. The petitioner was selected as Assistant Engineer in the U.P.C.L. against the vacancies of Selection year 2007-08. When the petitioner was not given appointment letter, he made a representation on 28.05.2008 (Annexure:A-1) (received in the office of the respondents on the selfsame date) for issuing appointment letter.

9. According to the representation dated 28.05.2008 (Annexure: 1), the petitioner was called for interview on 17.03.2008. The result was declared on internet. Petitioner was declared successful and got second position in order of merit. According to the representation, when the petitioner did not get the appointment letter, he went to *Urja Bhawan* on 21.05.2008, only to find out that all the successful candidates have given

their joining. The petitioner met Deputy General Manager (H.R.), who assured that appointment letter shall soon be issued to him. When petitioner did not receive any letter, he moved representation on 28.05.2008 (Annexure: 1). Finally, the petitioner was given joining on 27.12.2013.

10. One day before the petitioner was given joining on 27.12.2013, a tentative seniority list was issued on 26.12. 2013, against which WPSB No. 173/2014 was filed, in which the Hon'ble High Court of Uttarakhand was pleased to pass an order on 06.06.2014, as follows:

“Counsel for petitioners contends that a tentative seniority list was issued on 26.12.2013 by the respondents Authority, against which the petitioners and others submitted their objections, but final seniority list has yet not been issued. Counsel for the petitioners contends that the respondents, without issuing final seniority list, are going to make promotions. In our view, before making any promotion, the respondents should have decided the objection filed against the tentative seniority list, inasmuch as, should have issued final seniority list.

Accordingly, we direct the respondents to decide the objections of the petitioners as well as other employees and issue final seniority list within one month from today. The respondents are further directed to proceed further for promotions, only after final seniority list is issued.

This disposes of the writ petition.

Interim relief application also stands disposed of.”

11. *Vide* Office Memorandum No.96 dated 03.01.2015, petitioner's name figured at Sl. No. 02 in the final seniority list, issued by UPCL. *Vide* Office Memorandum No.96 dated 03.01.2015, the final seniority was issued in compliance of order dated 06.06.2014 passed in WPSB No. 173/2014 and was made subject to the decision of Hon'ble Supreme Court in SLP No. 18754/2012. When final seniority list was issued by the UPCL on 03.01.2015, Sri Gopal Mohan Sharma, Sl. No. 01, stood retired on 29.12.2007. Although the petitioner was second in order of merit, but when Sri Gopal Mohan Sharma retired on 29.12.2007, the petitioner remained on the top of the final seniority list dated 03.01.2015. The respondent department (UPCL) itself acknowledged that the petitioner stood at the top of the final seniority after the retirement of Sri Gopal Mohan Sharma on 29.12.2007. His name figured at Sl. No.02 in the provisional select list of Assistant Engineers (Trainee Electrical) also.

12. Relevant provisions of the Uttar Pradesh Electricity Board Services of Engineers Regulations, 1970 read as below:

**“ 17. Appointment to the Cadre of Assistant Engineer:-**

(1)A person finally selected for appointment to the Service in the manner prescribed in these Regulations shall be appointed thereto by the appointing authority (unless he subsequently becomes disqualified for appointment) on the occurrence of a vacancy. The appointments shall be made in the same order in which the names appear in the combined waiting list prepared under Regulations 15.

**19. Seniority:-**

.....

Provided thirdly that the relative seniority of members of the Service who are appointed by direct recruitment shall be in accordance with the order of preference in which they are placed by the Selection Committee at the time of selection, as approved by the Appointing Authority.

.....”

13. The Uttarakhand Government Servant Seniority Rules, 2002, are general in nature. The Tribunal has highlighted relevant provisions of the Regulations of 1970 in the foregoing paragraph of this judgment, still it can hold that the seniority of the petitioner is deducible on the strength of the Regulations keeping in view of Rules 5 & 8 of the Seniority Rules, 2002, which run as below:

**“5. Seniority where appointment by direct recruitment only--**

Where according to the service rules appointments are to be made only by the direct recruitment the seniority *inter se* of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list prepared by the commission or the committee, as the case may be :

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the decision of the appointing authority as to the validity of reasons, shall be final:

Provided further that persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a previous selection.

**Explanation--**Where in the same year separate selection for regular and emergency recruitment, are made, the selection for regular recruitment shall be deemed to be previous selection.

**8. Seniority where appointment by promotion only from and direct recruitment--**

(1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or

more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of order :

Provided further that a candidate recruitment directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority *inter se* of persons appointed on the result of any one selection--

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in rule 6 or rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees *vis-a-vis* direct recruits shall be determined in a cyclic order the first being a promotee as far as may be , in accordance with the quota prescribed for the two sources."

The same is the spirit of Rules 5 & 8 of the *Uttar Pradesh Rajya Vidyut Parishad Sevak Jyeshthata Viniymawali*, 1998.

14. It is a case of admission and avoidance on the part of Respondent Corporation. On one hand they have acknowledged that the petitioner, who was given joining on 27.12.2013, stood second (in fact, first, after retirement of Sri Gopal Mohan Sharma) in the final seniority list, yet they are contesting the claim of the petitioner that he should be substantively appointed w.e.f. 2008 and should be considered as Executive Engineer by review D.P.C. dated 14.01.2015 w.e.f. 2008, and stepping up of pay, as given to his juniors. When the Respondent Corporation itself has acknowledged that the petitioner is at Sl. No. 02 in the final seniority list despite his being given appointment on 27.12.2013 whereas his juniors were given appointment in the year 2008, it cannot, now, take a different stand by denying the reliefs claimed by him in the petition. The petitioner has successfully been able to make out a case.

15. Petition is disposed of with the following directions:

(i) The petitioner shall be deemed to be appointed as Assistant Engineer from 2008.

(ii) He shall be given notional seniority and counting of length of service from 2008 to 2013.

(iii) A review D.P.C. shall be held. On the basis of his A.C.Rs. for the relevant period, irrespective of the fact whether he has actually worked as J.E. or A.E., if the petitioner is found fit for promotion, he shall be given notional promotion to the post of Executive Engineer from the date his junior was promoted and actual promotion to the post of Executive Engineer with immediate effect, after the review D.P.C. No order as to costs.

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

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

*DATE: FEBRUARY 06, 2023*  
*DEHRADUN*

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