

**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)

EXECUTION PETITION NO. 01 /DB/2022

*(Arising out of judgment dated 05.05.2020,
passed in Claim petition No. 66/DB/2019)*

Harish Lal and others.

.....Petitioners-executioners

vs.

State of Uttarakhand through Secretary, Home, Dehradun, and others.

.....Respondents.

Present: Dr. N.K.Pant, Counsel, for the petitioners-executioners.

Sri V.P.Devrani, A.P.O., for the respondents.

JUDGMENT

DATED: JANUARY 07, 2022

Justice U.C.Dhyani (Oral)

By means of present execution application, petitioners-executioners seek to enforce order dated 05.05.2020, passed by this Tribunal in Claim Petition No. 66/DB/2019, Harish Lal and 03 others vs. State and 25 others.

2. The execution application is supported by the affidavit of Sri Harish Lal, one of the petitioners.

3. Instead of narrating the facts of the petition again, it is better if the facts, as narrated in the decision dated 05.05.2020, along with the reasons, are reproduced herein below for convenience.
4. The judgment dated 05.05.2020 passed in Claim Petition No. 66/DB/2019, reads as under:

“By means of the present claim petition, the petitioners seek to quash the impugned order dated 10.01.2019 of respondent No. 2 and impugned order dated 18.02.2019 of respondent No. 3; issue direction in the nature of declaration that as per condition of appointment letter, the date of substantive appointment of the petitioners and others are the dates when they joined the service; they are entitled to be placed accordingly in the seniority list of Group-D/Messengers; a direction to the respondents to redraw the fresh seniority list and place the name of the petitioners and private respondents in the list as per the dates of their joining and to restore the promotion order of the petitioners with all consequential benefits.

2. Facts, giving rise to the claim petition, are as follows:

A notification was issued on 29.09.2007 by the office of Commandant 40th Battalion, PAC, Haridwar for recruitment on the post of Group-D in *Door Sanchar Wing* of Police. A copy of the Notification dated 29.09.2007 has been brought on record as Annexure No.A-18 to the claim petition. Since the petitioners were fully eligible for the post, they applied for the same and were interviewed from 15.10.2007 to 20.10.2007. After the interview, 29 persons were selected against certain vacancies in Group-D. The result was declared and merit list was issued on 21.10.2007, in which the names of the petitioners were placed at Sl. No. 26, 16, 24 and 2 respectively. Commandant 40th Battalion, PAC, Haridwar, directed the petitioners to appear before him for medical and verification of certificates on 28.10.2007. The copies of the select list and result of examination along with order dated 21.10.2007 of the Commandant 40th Battalion, PAC, Haridwar has been filed as Annexure: A4 and A5 (Colly) to the claim petition. On 28.10.2007, the petitioners were medically examined. Their verification was also conducted vide order dated 01.11.2007 by Commandant 40 Battalion, PAC and joining was given to 29 selected candidates in the headquarters. As such, the petitioners were appointed on the post of Group-D on 01.11.2007. However, the appointment order was issued by the respondent department on 14.11.2007. The copies of General Diary (G.D.) dated 01.11.2007, by which candidates were given joining on the post and order dated 14.11.2007 has been brought on record as Annexures: A6 and A7 to the claim petition.

On 29.09.2007, another notification was issued by the Commandant 31st Battalion, Rudrapur for recruitment to the post of Group-D, in which the selection was made by different selection committees. 20 persons were selected *vide* order dated 23.10.2007 of the Commandant, 31st Battalion, PAC, Rudrapur.

Joining of the private respondents in the department was on 12.11.2007 and 14.11.2007 was after the joining of the petitioners when the appointment order was issued to the selected candidates of the 31st Battalion, PAC, Rudrapur. The combined appointment order was issued on 14.11.2007. Copies of the G.D. dated 12.11.2007 and 14.11.2007 have been filed as Annexure No. A8 to the claim petition.

Respondent department issued appointment order of the petitioners and private respondents on 14.11.2007. In the appointment letter, it was clearly stated that the appointment is given to the selected candidates from the date of joining.

The petitioners had already joined their service on 11.11.2007. While the petitioners had already given joining on 11.11.2007, the selected candidates of 31st Battalion joined their service after joining of the petitioners on 12.11.2007 and 14.11.2007. Hence, as per conditions of appointment, the date of appointment of the petitioners, who were selectees of 40th Battalion, is 01.11.2007, while the date of appointment of the candidates selected by the 31st Battalion, PAC, Rudrapur is 12.11.2007 and 14.11.2007.

The respondents issued a tentative seniority list on 30.05.2011 of Group-D employees whereby the private respondents were shown below the petitioners in the seniority list. Such tentative seniority list has been brought on record as Annexure: A9 to the claim petition. Said seniority list was then finalized by issuing a final seniority list on 01.11.2011, in which those selected by 31st Battalion, PAC, Rudrapur were shown much junior to the petitioners. Final seniority list dated 01.11.2011 has been brought on record as Annexure: A 10 to the claim petition.

Respondents prepared a tentative seniority list on 23.10.2013 in which the seniority was rightly fixed, as per the date of joining, which is as per conditions of the appointment letter. No one challenged the said seniority list. Copy of tentative seniority list dated 23.10.2013 has been placed on file as Annexure: A11 to the claim petition.

Sri Vivek Kumar, who was placed at Sl. No. 60 and who joined service on 15.11.2007, filed his objections against the tentative seniority list, which objections were decided *vide* order dated 24.09.2015 (Copy: Annexure A12), which order remains unchallenged. Thereafter, the respondents issued final seniority list on 14.08.2015 (Copy: Annexure A13). No candidate ever objected to the final seniority list dated 14.08.2015, which had become final.

In the meanwhile, *vide* order dated 02.11.2015, some of the petitioners *viz*, Sri Ghanshyam Singh, Shaukeen Singh, Harish Lal and Alok Kumar (all posted as Messenger/Class-IV posts) were promoted to the post of Workshop Assistants. Not only that, they were also sent for six months' training (Grade-III) of Operator Course (in central workshop). They completed such training. Copies of the promotion order dated 02.11.2015 have been filed as Annexure: A14. The aforesaid promotion orders were never challenged by any of private respondents.

In the year 2018, Sri Vivek Kumar sought permission for appearing in person before Inspector General of Police, Communication, which permission was granted. Respondent No. 5 then appeared before ASP, Communication in which he objected to the seniority list. The S.P. Communication, Dehradun *vide* letter dated 09.04.2013 clearly informed respondent No. 5 that his objections were already considered and disposed of *vide* order dated 24.09.2015. Aggrieved, Sri Vivek Kumar preferred writ petition WPSS No. 749 of 2018, Vivek Kumar vs. State of Uttarakhand and others before the Hon'ble High Court of Uttarakhand, for directing the respondents to treat the petitioner as appointed on 14.11.2007 and to place him at serial no. 4 in the list dated 27.03.2018. Hon'ble High Court *vide* order dated 20.04.2018 directed the State to file the Counter Affidavit and also directed that the respondents may carry on the promotion exercise, which shall be subject to final outcome of said writ petition. A copy the interim order has been filed as Annexure: A15. In pursuance to the said order dated 20.04.2018, some of the petitioners who had been promoted earlier, *vide* promotion order dated 02.11.2015 (Annexure: A9) and were promoted to the post of Assistant Operator (*Sahayak Paricharak*) *vide* order dated 10.08.2018 and other persons namely Sarvsri Kalam Singh, Nafees Ahmed, Yashpal Singh and Amit Kumar were promoted *vide* promotion order dated 31.10.2018.

WPSS No. 749 of 2018, Vivek Kumar vs. State of Uttarakhand & others was disposed of by the Hon'ble High Court *vide* judgment and order dated 30.10.2018 with the direction to the Inspector General of Police, Tele-Communication as below:

"Before making promotion to the post of Work Hand, the seniority list must be prepared. In case the initial appointment letter of 14.11.2007 is not based on any rational criteria, let the seniority be determined in accordance with the Uttaranchal Government Servants Seniority Rules, 2002. It is further made clear that in case there are candidates who have got equal marks or everything remaining equal between the candidates, what would matter between the candidates is their date of birth. Meaning thereby that a candidate who is senior in age would be given preference of seniority."

Respondent No. 2 issued the impugned order dated January 10, 2019 whereby a joint seniority list, pertaining to two separate lists of Garhwal and Kumoun region was prepared by arranging the seniority in such a manner that first candidate in Rudrapur list will be placed on top, followed by first candidate of Haridwar list and so on. Two separate selections were made against two different maximum marks. Due to said exercise, petitioners' seniority list is being disturbed and they are being deprived of the consequential benefit of seniority.

Petitioners were never impleaded in the writ petition WPSS No. 749 of 2018. They were never provided any opportunity of hearing by the respondent No. 2, hence, the judgment passed in the said writ petition is not applicable to the petitioners. Under compelling circumstances and under duress, without informing the petitioners, they were asked to put their signatures on a printed form/letter dated 04.01.2019. Thereafter, respondent No. 3 *vide* impugned order dated 18.02.2019, reverted the petitioners from their promotional post to the post of Group-D/Messenger in utter violation of the principles of natural justice and service rules. Not only the petitioners have been reverted after issuance of seniority list dated 10.01.2019, they have also become junior to the other persons. The grounds taken by the respondents to pass the impugned orders dated

10.01.2019 and 18.02.2019 are arbitrary and discriminatory. The petitioners and private respondents of 31st Battalion, PAC, Rudrapur are not the selectees of one selection. Two advertisements were issued by separate Battalions and selection of the petitioners and private respondents was made by different selection committees. The result of the petitioners was issued prior to the result of the private respondents.

Rule-5 of the Uttaranchal Government Servants Seniority Rules, 2002 provides for determination of seniority by direct recruitment. Rule 5 of the said Rules is important in this context, as per the pleadings of the petitioners. There was a stipulation in the appointment letter that the candidates will be appointed on the post on the date of their joining. The petitioners were also promoted as Workshop Assistants. The petitioners' reversion order was passed without affording any opportunity of hearing to them. The criteria for determining the seniority is not mentioned in the statutory rules. Therefore, the entire exercise of preparing seniority list and thereafter, reverting the petitioners on the basis of alleged merit list is wholly illegal and not tenable in the eyes of law.

3. C.A./W.S. has been filed by respondents No. 1, 2 & 3, denying the allegations made in the claim petition. Certain documents have also been filed by learned A.P.O. along with the C.A. of the respondents No. 1 to 3. Separate C.A./W.S. has been filed on behalf of respondents no. 4,5,6,10,12 and 19, which appears to be more or less on the lines of C.A./W.S. filed on behalf of respondent State. Rejoinder affidavits thereto have been filed on behalf of the petitioners, reiterating the facts contained in the claim petition.

4. The issue, precisely, in this claim petition is merger of selection lists of two parallel selections for the posts of Messenger/ Mess follower/ Orderly/Peon/ Gardner, which were conducted by 40th Battalion PAC, Haridwar and 31st Battalion PAC, Rudrapur, on the instructions of the Police Communication Headquarters of the State. Both the PAC Battalions issued notifications of the selection on the same date, i.e., 29.09.2007. The results of selection were declared on 21.10.2007 by the Commandant, 40th Battalion PAC, Haridwar, and on 23.10.2007 by Commandant, 31st Battalion PAC, Rudrapur. Since it was basically one selection, the combined seniority list was prepared, which was challenged before Hon'ble High Court of Uttarakhand in Writ Petition No. 749/(S/S)/2018. The Hon'ble High Court, *vide* its judgment and order dated 30.10.2018 directed to prepare the seniority list, in accordance with Uttaranchal Government Servants Seniority Rules, 2002 (for short, Seniority Rules of 2002). Hon'ble Court further directed the seniority to be determined after hearing all the stakeholders and it was made clear that the date of joining would not be relevant date for determining the seniority.

5. In furtherance of the above order of the Hon'ble High Court, all the selected persons were heard on 04.01.2019 by five officers, who also called for the lists of maximum marks given in the interviews to the selected candidates, in the two selections, from both the PAC Battalions. Both the Battalions, in the reports, could not give the details of the maximum marks fixed for the interviews and the 40th Battalion PAC, Haridwar further informed that the concerned selection file has been weeded out in 2013. The candidates selected by the 31st Battalion PAC, Rudrapur, got maximum 34 marks and minimum 28 marks. The candidates selected by the 40th Battalion PAC, Haridwar, got maximum 25 marks and

minimum 18 marks. Even the selected candidates were unaware of the maximum marks. These officers, then informed the employees the marks given to them in the interview. It was clarified to them that according to the merit list, prepared on the basis of each selection, a joint merit list shall be prepared by taking the first selectee of the seniority list of 40th Battalion PAC, Haridwar, as first in the joint seniority list followed by the first selectee of the seniority list of 31st Battalion PAC, Rudrapur at Sl. No.2 of the merit list (in order of their date of birth). The second person in the seniority list of 40th Battalion PAC, Haridwar, was placed at sl. No.3 and 2nd selectee of 31st Battalion PAC, Rudrapur was placed at sl. No.4 and so on the combined seniority list was prepared by taking one selectee alternatively from both the merit lists. This was done on the basis of written consent of all the selectees.

6. This joint seniority list was notified *vide* order dated 10.01.2019 (Annexure: A 1). Petitioners of present claim petition had been promoted on 02.11.2015 as workshop assistant, subject to the final decision of the pending writ petition in the Hon'ble High Court. In compliance of the order dated 30.10.2018 of the Hon'ble High Court, the revised seniority list issued on 10.01.2019 changed the seniority position of the petitioners making them junior to others and they were reverted to their original posts *vide* order dated 18.02.2019 (Annexure: A-2).

7. The main contention of the petitioners is that under compelling circumstances and duress, without informing them the contents of letter dated 04.01.2019, they were asked to put their signatures on a printed form, which has now been treated as their consent to the principle adopted in making joint seniority list on 04.01.2019. They have also contended that their selection was done by 40th Battalion PAC, Haridwar and their result was declared earlier, while result of the 31st Battalion PAC, Rudrapur was declared later. Hence, their selection was a previous selection as compared to the selection by PAC Rudrapur and as per Rule 5 of Seniority Rules of 2002, the persons appointed on the result of subsequent selection, shall be junior to the persons appointed on the result of a previous selection. Hence, determination of seniority of the selected candidates by merging the seniority lists of two selections, taking one selectee each from each selection list and amalgamating both the lists *vide* impugned order dated 10.01.2019, is wrong and illegal.

8. The contention of Ld. A.P.O. and Ld. Counsel for private respondents no. 4,5,10,12 & 13 is that the merger of the two lists has been done with separately written consent of each selectee and every person in his written consent has expressed full satisfaction with the idea taken for making the combined seniority list. It is also argued by them that the selection process was only one, conducted at two different places, notifications of which were issued on the same date by both the PAC Battalions and mere difference of two days in announcement of result will not make them two different selections.

9. This Tribunal summoned the relevant records from both the Battalions of PAC and Police Communication Headquarters, but was unable to find any evidence of the maximum marks fixed by each Battalion in conducting the interviews. As stated earlier, the concerned selection file of 40th Battalion PAC, Haridwar, has already been weeded out in 2013. Had the maximum marks been known,

then, on the basis of percentage of marks obtained by each candidate, an overall seniority list could have been prepared, keeping the candidate having higher percentage higher in the merit list and where percentage of two candidates is equal, keeping the person whose date of birth is earlier, at higher position in comparison to the other person. It was the just and rightful way of preparing overall merit list which, unfortunately, is not feasible due to unavailability of the maximum marks. It is appalling to note the height of carelessness adopted by both the Battalions in not keeping any record of maximum marks and (further) the carelessness of the Police Communication Headquarters in overlooking this fact at the time of receipt of results.

10. Consent of each employee to the amalgamation process adopted on 04.01.2019, on similarly written and photocopied sheets, cannot be deemed to be a fair exercise even if it was not obtained under duress. And the preparation of the joint seniority list, on the basis of such consents, which is devoid of any rational principle, cannot be upheld by this Tribunal.

11. This Tribunal fully agrees that it was a single selection, conducted at two different places but is unable to lay down a criteria for amalgamating the two merit lists into a joint merit list. In these circumstances, we find it fit and proper to direct the Home Secretary of the State to summon all the members of the then Selection Committees of the two Battalions and the then concerned officers of Headquarters, record their statements and peruse all relevant records of the Battalions and similar selections held by them around that time and make a sincere attempt to find out the maximum marks adopted by them in the selection process. If this exercise is not fruitful, the Home Secretary, in consultation with the Law Department of the State, may work out a formula for rationalization of their marks seeing that the spread of marks of the selected candidates in the selection done by 40th Battalion PAC, Haridwar, is from 25-18 and spread of marks of the selected candidates in the selection done by 31st Battalion PAC, Rudrapur, is from 34-28, to neutralize the difference arising in the marks due to adoption of different maximum marks. If this is also not possible, the Home Secretary, should get a special dispensation approved from the appropriate level in Government to resolve this controversy in a fair manner as the provisions of Seniority Rules of 2002 do not offer a solution in the matter. Let an endeavour be made to complete such exercise within 6 months of the date of this order.

12. The order dated 10.01.2019 (Annexure: A-1) issuing the joint seniority list is hereby quashed, consequent to which, the order dated 18.02.2019 (Annexure: A-2) would also require to be held in abeyance. After finalization of the joint seniority list by the Home Secretary, as detailed in the previous paragraph, exercise of promotion be done afresh on the basis of the seniority list thus finalized.

13. Order accordingly.

14. The claim petition thus stands disposed of. In the circumstances, no order as to costs."

5. Ld. Counsel for the petitioners-executioners submitted that despite service of order dated 05.05.2020 upon the official respondents, the same has not been complied with. It is the submission of learned counsel for the petitioners/ executioners that casual approach on the part of opposite parties/respondents should not be tolerated and strict action should be initiated against them.
6. Considering the facts of the case, this Tribunal directs the official respondent(s) concerned to comply with the order dated 05.05.2020, passed by this Tribunal in Claim Petition No. 66/DB/2019, Harish Lal & others vs. State & others, if the same has not been complied with so far, without further loss of time, failing which the concerned respondent(s) may be liable to face appropriate action under the relevant law governing the field.
7. Petitioners/ executioners are directed to place a copy of this order before the authority(ies) concerned by 18.01.2022, to remind that a duty is cast upon said authority(ies) to do something, which has not been done.
8. Execution application is, accordingly, disposed of at the admission stage.
9. Let a copy of this order be supplied to Ld. Counsel for the petitioners/executioners and Ld. A.P.O., by 10.01.2022, as per Rules.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 07,2022
DEHRADUN

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