

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**WRIT PETITION NO 3482(S/S) OF 2018**  
**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 14/NB/DB/2023]**

Deepak Bhatt, aged about 29 years, s/o Sri Kedar Dutt Bhatt,  
presently serving as Junior Engineer (Civil), PMGSY Irrigation  
Division, Irrigation Department, Uttarakhand, Dwarahat, District  
Almora

.....**Petitioner**

**VS.**

1. State of Uttarakhand through Secretary, Irrigation Department,  
Government of Uttarakhand, Dehradun.
2. Engineer-in-Chief, Irrigation Department, Uttarakhand, Dehradun.
3. Uttarakhand Public Service Commission, Gurukul Kangri,  
Haridwar, District- Haridwar, through its Secretary.

.....**Respondents.**

(virtually)

Present: Sri Bhagwat Mehra, Advocate, for the petitioner.  
Sri Kishore Kumar, A.P.O., for Respondents No. 1 & 2.  
Sri Ashish Joshi, Advocate, for Respondent No.3

**JUDGMENT**

**DATED: JUNE 10, 2025.**

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

Hon'ble High Court of Uttarakhand at Nainital, passed an  
order, in WPSS No. 3482/2018 , Deepak Bhatt vs. State of

Uttarakhand through Secretary, Irrigation Department, Dehradun and others, on 09.01.2022, as follows:

*“The present Writ Petition has been filed under Article 226 of the Constitution of India with the following reliefs:-*

- (i) To declare the action of the respondents, particularly respondent no.3, in the matter as arbitrary and illegal.*
- (ii) To issue a writ, order or direction in the nature of certiorari to quash the impugned communication/letter dated 17.09.2018, issued by the respondent no.3 (Annexure No.6 to the writ petition) in so far as it relates to the petitioner i.e. Para 6(iii).*
- (iii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to consider and promote the petitioner to the post of Assistant Engineer (Civil) from due date i.e. from the date when the persons junior to him, promoted to the said post, under Degree holder quota, and also to grant all consequential benefits to him.”*

*2. Heard Mr. Bhagwat Mehra, learned counsel for the petitioner, Mr. N.S. Pundir, learned Deputy Advocate General with Mr. Ajay Singh Bisht, learned Additional C.S.C., Mr. Sushil Vashisth, learned Standing Counsel & Mr. S.M.S. Mehta, learned Brief Holder for the State/respondent nos.1 and 2 and Mr. Ashish Joshi, learned counsel for the respondent no.3.*

*3. Mr. N.S. Pundir, learned Deputy Advocate General for the State, submitted that the present matter relates to the conditions of service of a public servant, therefore, the petitioner has alternate efficacious remedy to raise his grievances before the Uttarakhand Public Services Tribunal.*

*4. Mr. Bhagwat Mehra, learned counsel appearing for the petitioner, agrees to transfer the present matter to the Uttarakhand Public Services Tribunal.*

*5. As the disputes raised in the present writ petition can be effectively adjudicated by the Uttarakhand Public Services Tribunal, with the consent of both the parties, the complete record along with the writ petition, after retaining the copies thereof, is being transmitted to the Uttarakhand Public Services Tribunal for hearing the writ petition as a claim petition in accordance with law.*

*6. The Uttarakhand Public Services Tribunal is also requested to consider entertaining the present matter as a claim petition taking into consideration this fact that the present matter has been pending for past four years.*

*7. The present Writ Petition (S/S No.3482 of 2018) stands disposed of accordingly.”*

2. Writ Petition No. 3482 (S/S) of 2018 is, accordingly, reclassified and renumbered as Claim Petition No. 14/NB/DB/2023. 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. Petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

4. Petition has been contested on behalf of respondents. Separate C.As. have been filed on behalf of respondents. Sri Ranjeet Singh, Deputy Secretary, Department of Irrigation, Govt. of Uttarakhand, Dehradun, has filed Counter Affidavit on behalf of Respondent No. 1. Sri Rajendra Kumar, Secretary, Uttarakhand Public Service Commission, Gurukul Kangri, Haridwar, has filed Counter Affidavit on behalf of Respondent No. 3.

5. Petitioner has stated in the petition that for selecting eligible candidates in Combined Junior Engineer Selection Examination-2011, a written examination was organized in different centers of District Haridwar and Bhimtal (Nainital). Requisite qualifications for the post of Junior Engineer (Civil), Junior Engineer (Electronic) and Junior Engineer (Mechanical) were specifically mentioned in advertisement.

6. The petitioner possessed the requisite qualification to his credit. Public Service Commission (Respondent No.3) rejected candidature of the petitioner on the ground that he has not filled up Item no. 17 in the OMR Application Form. Feeling aggrieved, petitioner approached the Hon'ble High Court, by filing WPSS No. 1469/2012. Petitioner was permitted to appear in the examination, provisionally and he was declared successful in the preliminary examination, main examination and in the interview as well.

7. Hon'ble High Court *vide* judgment dated 26.08.2013, allowed the writ petition with the direction to the Commission to recommend the name of such candidates, like the petitioner for appointment to the State Govt. , if they are successful in final result.

8. Respondent No.2 issued appointment order in respect of 332 candidates out of 358 recommended by the Commission. No appointment letter was issued to the petitioner, despite several requests. The persons placed much below the petitioner in the merit list, were given appointment. The petitioner filed Contempt Petition No. 366/2013 against Respondents No. 1 & 2. Petitioner also filed WPSS No. 558/2014. The respondents issued appointment letter to the petitioner too only on 16.08.2014. Writ petition was rendered infructuous. The petitioner joined duties in the department on 22.08.2014. Thereafter, the department prepared seniority list of Junior Engineers, in which the petitioner was given due seniority as per the merit list prepared by the Commission for the selection in question, since 2023.

9. Surprisingly, Respondent No.3 issued a letter on 17.09.2018 to Respondent No.1, that the name of the petitioner be removed from the eligibility list, as he has not completed three years' qualifying service. Petitioner was aspirant for promotion to the next higher post of Assistant Engineer (Civil), under the prescribed quota of 7.33% meant for degree holder Junior Engineers.

10. Petitioner, therefore, prays for directing respondents, particularly Respondent No.3 to include the name of the petitioner within the zone of eligibility for promotion to the post of Assistant Engineer (Civil) in the degree holder quota.

11. Ld. A.P.O., relying upon the contents of C.A., filed on behalf of Respondent No.1, stated that Respondent No. 3 has rightly directed the department to send fresh amendment requisition along with eligibility list after removing the name of the petitioner in the eligibility list. The petitioner has joined his duty in the department on 22.08.2014 . He has not completed three years of qualifying service

on 01.07.2017, *i.e.*, on the first day of recruitment year 2017-18, hence, his candidature could not be considered for promotion for the year 2017-18.

12. Ld. A.P.O., on the strength of Para 11 of the C.A. filed on behalf of Respondent No.1, submitted that Annexure: 5 to the petition is not an eligibility list, but is the list of educational qualification/ degree possessed by the candidates.

13. Sri Ashish Joshi, Advocate, relying upon the contents of C.A., filed on behalf of Respondent No.3, stated that the Commission is selection agency, which proceeds in the matter of promotion/ selection on the basis of requisition sent by the State Govt., along with relevant records and service Rules, etc.

14. It is an admitted fact that the petitioner has been given seniority, as prayed for by him, by the respondents. The limited question, which arises for consideration of the Tribunal is, if the seniority has been given to someone, whether the same should not be counted for the purpose of length of service.

15. The Tribunal has decided almost identical issue in the following decisions:

- (i) Claim Petition No.61/DB/2020, Ashish Bhatt & others vs. State of Uttarakhand and others, on 22.03.2021, and
- (ii) Claim Petition No.122/DB/2022, Manoj Kumar vs. State of Uttarakhand and others, on 06.02.2023.

16. It has been observed by the Tribunal in para 16 of the judgment rendered in Ashish Bhatt' case (*supra*) that:

“16. Admittedly, the petitioners' juniors have been promoted. It is settled law of the land that the senior should be placed above the juniors, if they have been promoted. Uttarakhand Public Service Commission had already filed an affidavit before Hon'ble High Court in WPSS No. 114/2012, Mukesh Kumar vs. State and others that horizontal reservation could not be carried forward and UPSC had started the process of filling up those carried forward posts on the

basis of merit of the candidates belonging to the category in question. Petitioners should not be allowed to suffer on account of mistake committed by the Respondent State/ UPSC, for no fault of them. The decisions rendered by Hon'ble Supreme Court in *Pilla Sitaram Patrudu & others vs. Union of India & others*, 1996(4) Supreme 544, by Hon'ble Delhi High Court in *W.P.(C) 7423/2013, C.M. No. 15903/2013, Govt. of NCT of Delhi & others vs. Sh. Rakesh Beniwal & others* illustrate this legal proposition.”

17. In Para 15 of the decision rendered in Manoj Kumar (*supra*), the Tribunal has observed, as under:

“ 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.

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.”

18. The issue is no longer *res integra*. Hon'ble Supreme Court in the decision rendered on 15.03.1996, in *Pilla Sitaram Patrudu & others vs. Union of India & others*, 1996 (8) SCC 637, has observed that:

“It is contended by the learned counsel for the petitioners that since the inter-re seniority as Asstt. Engineers was left open in the order, the directions given by the Tribunal to consider the case as Executive Engineer and determine his seniority on the basis of the promotion, is not valid in law. We find no force in the contention. Once he is found to be eligible according to the rules, then his seniority is required to be determined as per the procedure prescribed in the rules in vogue. It is further contended that the fifth respondent was not qualified since he had not completed 8 years of required service. The Tribunal has recorded a finding that two years period is relaxable in the case of the reserved candidates. The inter se seniority as Asstt. Executive Engineer is required to be determined; he joined service in 1981 and, therefore, he did not have the requisite service. We find no force in the contention. Since he was selected by direct recruitment, he is entitled to be appointed

according to rule. His appointment was delayed for no fault of him and he came to be appointed in 1981, he is, therefore, entitled to the ranking given in the select list and appointment made accordingly. Under these circumstances, we do not find any illegality in the order.

The special leave petition is accordingly dismissed.”

19. Hon’ble Delhi High Court has made the following observations in the decision rendered on 04.08.2014 in W.P.(C) 7423/2013, Govt. of NCT of Delhi and others vs. Rakesh Beniwal and others :

“10. The dispute herein requires resolution of two important questions:

(a) Whether applicants who are deprived of joining service are entitled to be considered for promotion on the date which their immediate juniors were promoted and;

(b) Whether as a consequence, the respondent/applicants are entitled for all consequential benefits and arrears of pay for the period that they were deprived of being in service at the requisite position in the organizational hierarchy.

16. The appointment of the respondent/applicants took place 7 years after the examination was conducted. Their juniors were naturally eligible for promotion having completed the requisite qualifying period. However they-for no fault of their own-were retained in the same grade as a consequence of their late appointment. The right of equality before law spelt out by Article 14 of the Constitution of India dictates that all individuals must be treated equally before law. If the respondents are denied promotion on the ground that they are still serving their probation period as a consequence of their appointment in 2009, the same cannot be said to be fair treatment of all the employees by the petitioners. In the present case, the rule requiring fulfilment of qualifying service is not an immutable condition, incapable of being relieved. The Office Memoranda quoted by the Tribunal, and extracts reproduced above, disclose that promotions can be given to seniors whose claims are unjustly ignored, to start with. Therefore, this Court finds no infirmity with the direction to grant promotion to the applicant/ respondents.

26. The delay in appointment and the consequential denial of benefits is the direct corollary of the inaction of the petitioners; consequently, they cannot take advantage of their own delays in declaring results and issuing appointment letters to deny promotion to the respondents. The Supreme Court has observed in this regard in the matter of Baij Nath Sharma v. Hon’ble Rajasthan High Court at Jodhpur, 1988 SCC (L&S) 1754, “But here the appellant has been deprived of his promotion without any fault of his. High Court said that it might be sad state of affairs that the name of the appellant was not considered for promotion till he retired. High Court may feel anguish but it gives no comfort to the appellant. At least for future such an unfortunate thing should not happen to any other officer similarly situated. This malaise which abysmally afflicts any service when there is recruitment from different sources when there is

recruitment from different sources crops up in the one form or the other with great disadvantage of one or the other. But then service is not constituted merely for the benefit of the officers in the service but with a certain purpose in view and in the present case for dispensing justice to the public at large.”

27. The circumstances surrounding the present matter reflect a casual and indifferent attitude on part of the petitioners, which borders on being callous. The respondents have had to, in the interregnum, not only go through the ignominy of working under their juniors, but also, despite admittedly being senior to them, still continue to draw lesser pay. In the economic scenario prevailing in the country, where prices of even essential commodities have gone skyrocketing, not from year to year or month to month, but from day to day, the respondents have had to manage his affairs with a far lower pay packet than they might have got on the promotional post.”

20. As has been noted above that the seniority has been given to the petitioner as per the merit list issued by the Public Service Commission, Respondent No.3. Length of service should, therefore, be counted from the date petitioner’s juniors were appointed. Seniority & length of service cannot be segregated. The qualifying service should be counted on the basis of the same. In other words, length of petitioner’s service shall be counted from 31.10.2013, the date his juniors, namely, Sri Farzan Khalid & Sri Pankaj Negi were appointed.

21. A direction is, therefore, given to the respondent department to hold Review DPC for the post of Assistant Engineers under degree holder quota and if the petitioner is found fit for promotion, he shall be given notional promotion to the post of Assistant Engineer (Civil), from 22.01.2019, the date his juniors were promoted.

22. The communication dated 17.09.2018 (Annexure: 6) is set aside.

23. Petition thus stands disposed of. No order as to costs.

**(ARUN SINGH RAWAT)**  
VICE CHAIRMAN (A)

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

*DATE: JUNE 10, 2025*  
*DEHRADUN*