

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 05/NB/DB/2014

1. Anirudh Singh Bhandari, Presently posted as Executive Engineer, Provincial Division (PWD), Haridwar.
2. Jagmohan Singh, Presently posted as Executive Engineer, Provincial Division (PWD), Tehri.
3. Anand Ballabh Kandpal, Presently posted as Executive Engineer, Construction Division (PWD), Nainital.
4. L.D. Mathela, Presently Posted as Executive Engineer, N.H., P.W.D., Ranikhet.
5. N.S.Kholia, Presently posted as Executive Engineer, Temporary Division (PWD), Thatur, Tehri Garhwal.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Secretary, Public Works Department, Civil Secretariat, Dehradun.
2. Harish Pangti, Presently posted as Executive Engineer, Provincial Division, (PWD), Ranikhet.
3. J.S.Hayanki, Presently posted as Executive Engineer, Work Book Division, (PWD), Munsiyari (Pithoragarh).
4. Prahalad Singh Brijwal, presently posted as Executive Engineer, (A.D.B.) PWD, Bageshwar.
5. Manohar Singh, presently posted as Executive Engineer (N.H.) PWD, Almora.

6. Rajendra Singh, Presently posted as Executive Engineer, PWD (HQ), HOD Office, Dehradun.
7. Dhan Singh Kutiya, Presently posted as Executive Engineer (T.D.), PWD, Tharali, Chamoli.
8. Ranjit Singh, Presently posted as Construction Division, (PWD), Haldwani.
9. Mukesh Singh Pawar, Presently posted as Executive Engineer, Temporary Division, P.W.D., Sahia, Dehradun.
10. Anil Kumar Pangti, Executive Engineer, Construction Division, PWD (ADB), Udham Singh Nagar.
11. M.S.Rawat, Executive Engineer, Construction Division, PWD, Pauri, District-Pauri Garhwal.
12. Divakaran Singh Hayanki, S.E. (Officiating) PMGSY, Pithoragarh.

.....Respondents

Present: Sri Shobhit Saharia, Ld. Counsel
for the petitioners.

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

None for the private respondents.

JUDGMENT

DATED: JUNE 20, 2018

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioners have filed the claim petition for the following reliefs:

“a) To pass appropriate order and direction quashing the impugned orders dated 12.02.2013 and 13.02.2013, vide which absolutely illegally, improperly and irregularly State Government has granted notional promotion to the private respondents, belonging to S.T. category, to the post of the Executive Engineer w.e.f. 11.12.2009 & 13.08.2010 on the

premise that juniors to them in the A.E. (Civil) P.W.D. have been promoted w.e.f. 11.12.2009.

b) To pass appropriate order and direction prohibiting the State Government from deeming and treating the petitioners as part of A.E. (Civil) PWD cadre after their substantive appointment and promotion to the post and cadre of Executive Engineer (Civil) PWD.

c) To pass appropriate orders and directions which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

d) To award cost of the claim petition to the petitioners.

e) To pass appropriate order and direction quashing the seniority list dated 01.04.2011, annexed as Annexure No. 4 to the claim petition. ”

2. The facts of the matter are that, at the time of creation of the State of Uttarakhand, the petitioners were working as Junior Engineers (Civil) while, the private respondents No. 2 to 12 were in the U.P. Cadre of Assistant Engineers (Civil) through their direct selection by Uttar Pradesh Public Service Commission in the year 1997 and 1999. Private respondents, who belong to Scheduled Tribe category, were not initially allocated to the cadre of Uttarakhand, while the petitioners were allocated in the cadre of Junior Engineers (Civil) in the State of Uttarakhand. Petitioners got their promotion to the post of Assistant Engineer (Civil) in the State of Uttarakhand on 02.11.2002. Thereafter, on completion of 7 years of their service as Assistant Engineer, they further got their promotion to the post of Executive Engineers on 13.08.2010, on the basis of seniority list dated 12.10.2009.

3. After a long litigation before the Hon'ble High Court and the Hon'ble Apex Court, private respondents No. 2 to 12 were allocated

Uttarakhand cadre vide allotment order dated 12.08.2010 passed by the Central Government and in compliance of that, previous seniority list of Assistant engineers issued on 12.10.2009 was revised vide order dated 01.4.2011, which has been challenged by the petitioners. It is also pertinent to mention here that private respondents, who have been now placed above the petitioners in the seniority list, were also granted notional promotion on the post of Executive Engineer vide orders dated 12.2.2013 and 13.2.2013 w.e.f. 11.12.2009, the date when their juniors were promoted.

4. The petitioners have also challenged their notional promotion order dated 12.2.2013 and 13.02.2013 along with the seniority list dated 01.4.2011 on the ground that the said seniority list was amended and prepared illegally and against the rules.

5. According to petitioners, private respondents were allocated Uttarakhand cadre vide order dated 12.08.2010 (Annexure: A1) in which it was specifically mentioned that in case number of persons now allocated exceed the posts allotted to Uttarakhand earmarked for S.C./S.T. categories, in such an event, excess personnel may be adjusted in future recruitment. The petitioners have contended that at that time total number of vacancies were 204 out of which 4 were of S.T. category and against their quota, 4 persons were already working and 13 (private respondents) persons were allocated in excess. Petitioners contended that the persons allocated in excess of the vacancies could become the member of service only on their substantive appointment in the cadre of service against future vacancies and their seniority could only be counted from the date of their substantive appointment in future. According to the petitioners, the private respondents, who were allocated in excess of the vacancies of their quota, will be deemed in service later in time and they should be placed below the petitioners and they submitted their

representations to this fact. Notional promotion of the private respondents, belonging S.T. category vide order dated 12.2.2013 and 13.02.2013 to the post of Executive Engineer was illegal, improper and irregular and the seniority list dated 01.4.2011 needs to be quashed and appropriate direction has been sought for the abovementioned reliefs.

6. The petition was opposed by the State respondent no. 1 with the contention that private respondents were allocated to the cadre of Uttarakhand vide Government of India order dated 12.08.2010 and much before the creation of State and their allotment to the cadre of Uttarakhand, the private respondents were directly/substantively appointed as Assistant Engineers whereas, the petitioners were promoted to the cadre of Assistant Engineer later in time and their seniority has been fixed on the basis of their appointment on the post of Assistant Engineer. Private respondents were in the cadre of Assistant Engineer, prior to the creation of State and their allotment was made in compliance of the order of the Hon'ble High Court and Hon'ble Supreme Court. As the private respondents were senior to the petitioners, hence, they were granted notional promotion from back date i.e. the date of promotion of their juniors. Respondent has also contended that vide order dated 18.09.2006, the cadre of Assistant Engineer (Civil) was reorganized and total sanctioned posts became 297. Respondents have contended that petitioners have filed their petition with wrong facts stating that at the time of allotment of cadre to the respondents, the cadre strength was 204. According to the respondent, when private respondents were allocated to the cadre of Uttarakhand, there were sufficient numbers of vacancies. The petitioners borne in the cadre of Assistant Engineer (Civil) in the year 2002, whereas, private respondents were born in the cadre of Assistant Engineer in 1997 and 1999 through direct selection by Public Service Commission, hence, they were senior to the

petitioners in the cadre. As per the contention of respondent, several other persons also challenged the allotment of respondents to the cadre, which were dismissed by the Hon'ble Court. The petition is based on misconception and deserves to be dismissed.

7. We have heard parties present before the court and perused the record.

8. It is an admitted fact that when the State of Uttarakhand was created, the petitioners were working on the post of Junior Engineers (Civil) and the private respondents were working as directly recruited Assistant Engineers (Civil) in the original State of Uttar Pradesh. Respondent No. 12 was selected in the year 1997 and remaining respondents No. 2 to 11 were selected in the year 1999, but their allotment to the State of Uttarakhand took place later in time, after a long litigation and in compliance of the order of the Hon'ble Supreme Court and Hon'ble High Court, the Central government passed their allocation order on 12.08.2010.

9. It is an admitted fact that the petitioners were borne in the cadre of Assistant Engineers (Civil) on the basis of their promotion in the State of Uttarakhand on 2.11.2002 and before this date, the private respondents were already working on the post of Assistant Engineer (Civil), obviously in the undivided State of Uttar Pradesh. Learned A.P.O. has submitted that through the allotment order was passed in 2010, but the allotment of respondents will relate back to the date of creation of State of Uttarakhand and the seniority of the persons in the new State of Uttarakhand will be determined on that basis.

10. Learned counsel for the petitioners has based his claim petition on the ground that the allocation order dated 12.08.2010 clearly mentions that the allotment of respondents to the Uttarakhand was made with the condition that the persons in excess of the

vacancies, will be adjusted against the future vacancies. Learned counsel for the petitioners has argued that their substantive/ initial appointment of private respondents to the cadre of Assistant Engineer (Civil) will be counted only from that date when the vacancies in the S.T. cadre will accrue in future, whereas, learned A.P.O. has argued that the order to adjust the excess personnel against the future vacancies will not defer their direct and regular appointment made in the year 1997 and 1999 to some indefinite period later in time. This will only have the effect that the future vacancies of S.T. category will be deemed to be filled up by the persons already allocated to the cadre and no new appointment will be made from the persons of S.T. category against new posts till the previously allotted persons are adjusted.

11. The court is of the view that the persons who were in the cadre of Assistant Engineer (Civil) by a direct recruitment in the initial cadre of Assistant Engineer (Civil) in the State of U.P. at the time of creation of State, cannot be placed junior to the persons who borne in the cadre of Assistant Engineer (Civil) in the year 2002 after creation of the State and the order to adjust the excess persons against the future vacancies, will only mean that the future vacancies will be deemed to be filled up by them. Private respondents were allocated in excess of their quota, but they were borne in the service of Assistant Engineer cadre in their substantive capacity earlier in time, hence they cannot be placed junior to the persons who were born in that cadre by promotion later in time. The court is of the view that the allotment of cadre, though made later in time, will relate back to the date of creation of the State. Record also reveals that when the allotment was made in the year 2010, the cadre was already revised on 18.09.2006 and there were 297 sanctioned posts in the cadre and not 204 posts and hence, the vacancies were already in existence at the time when allotment order was made.

12. Hence, this court is of the view that the seniority list was rightly amended by the respondents vide order dated 01.4.2011, because when previous seniority list dated 12.10.2009 was prepared, the private respondents were not allocated to Uttarakhand cadre and it was only after August 2010, they were included in the Uttarakhand cadre, but their appointment in the cadre of service will be treated from the date of creation of State as their substantive appointment as Assistant Engineer were made in the year 1999 and 1997.

13. The petitioners have also challenged the order dated 12.02.2013 and 13.02.2013 by which the private respondents No. 2 to 12 were notionally promoted. We find that these promotion orders were not granted on the basis of their S.T. quota but they were granted notational promotion on the basis of their seniority.

14. This court finds no illegality in such orders and does not agree with the argument of the petitioners that the substantive appointment of the private respondents to the service can only be counted from the date they will be adjusted against the future vacancies in the State of Uttarakhand because the private respondents who were substantively appointed in the cadre of Uttar Pradesh before creation of State of Uttarakhand after getting their allotment to State of Uttarakhand, will be deemed to be substantively appointed as such and there will be no need to give them appointment afresh and the condition in the allotment order to adjust them against future vacancies of their quota, will only mean that such future vacancies will not be filled up from new persons and such vacancies will be deemed to be already filled up by such persons, who were allocated Uttarakhand cadre in excess of posts by the Central Government in compliance of the Court order because the Hon'ble Apex Court specifically mentioned in their judgment that non-availability of the

vacancies will not affect the allotment of these persons to the State of Uttarakhand.

15. In view of the above, the court finds that the petition has no merit and deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JUNE 20, 2018
NAINITAL
KNP