

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

Present: Hon'ble Mr. Rajendra Singh,

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat,

.....Vice Chairman (A)

CLAIM PETITION NO. 62/NB/DB/2023

Sanjeev Kumar Mishra, (Male) aged about 62 years, S/O Sri Raja Ram Mishra, retired General Manager, Uttarakhand Jal Sansthan, Pithoragarh, District Pithoragarh presently R/O 23, Dwarika Vihar, Near Bharat Gas Godown, P.O. Gurukul Kangari, Haridwar.

.....**Petitioner**

Vs

1. State of Uttarakhand through its Secretary, Drinking Water Department, Government of Uttarakhand, Dehradun
2. Secretary, Finance Department, Government of Uttarakhand, Dehradun.
3. Uttarakhand Jal Sansthan, H.O. Jal Bhawan B-Block, Nehru Colony, Dehradun, through its Chief General Manager.
4. Sri Anwar Salim Ansari, presently serving as General Manager, C/O Chief General Manager, Uttarakhand Jal Sansthan, H.O. Jal Bhawan B-Block, Nehru Colony, Dehradun.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner.

Sri Kishore Kumar, A.P.O. for the respondents no. 1 & 2

Sri Vinod Tiwari, Advocate for respondent no. 3

JUDGMENT

DATED: NOVEMBER 12, 2025

Per: Hon'ble Sri A.S.Rawat, Vice Chairman(A)

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

"1. To set-aside the impugned communication/order dated 29-03-2022 passed by the Respondent No. 1, which was communicated to the petitioner by the Respondent No. 3 along with covering letter dated 22-04-2022 which was received by the petitioner on 28-04-2022(Annexure No. 1 to the Compilation No. I).

II. To direct the Respondents to grant at least same salary to the petitioner as was paid to his junior i.e. Respondent No. 4, in view of Rule-22(b) of the Financial Handbook Vol. II Part 2 to 4.

III. To direct the Respondents to treat the petitioner substantively/actually promoted on the post of Executive Engineer as well Superintending Engineer from the date when his junior was promoted, i.e. 29-09-2004 and 30-11-2012 as the petitioner also discharged duties of the post of Executive Engineer as officiating one during the said period.

IV. To direct the Respondents to grant the benefit of First Promotion Pay Scale to the petitioner from due date.

V. To issue a writ order or direction in the nature of mandamus commanding the Respondents, to grant all consequential benefits to the petitioner.

VI. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

VII. To allow the claim petition with cost."

2. Brief facts of the case are as follows:

2.1 The petitioner was substantively appointed on the post of Assistant Engineer vide order dated 04-09-1993 in the pay scale of Rs. 2200-4000 under the Respondents and he joined duties w.e.f. 26.11.1993.

2.2 In the year 1992, the U.P. Hill Sub-Cadre Rules, were framed which were amended in the year 1995 and the personnel serving on the Class-II and Class-I posts were also given option to opt for Hill Sub-Cadre. The petitioner in the year 1996 opted for Hill Sub-Cadre, which was duly accepted by the competent authority and he became member of Hill Sub-Cadre. The Respondent No. 4 was also appointed along with the petitioner in the same selection, the name of the petitioner was placed above in the merit list as well in the appointment order.

2.3 Vide order dated 24-02-2000, the petitioner was transferred from Garhwal Jal Sansthan, Dehradun to Nagar Palika Parishad, Farrukhabad. The said transfer order was challenged by the petitioner before the Hon'ble High Court of Allahabad, Lucknow Bench by filing Writ Petition No. 752 (S/B) of 2000 (Sanjeev Kumar Mishra Vs. State of U.P. and others). The Division Bench of Hon'ble Allahabad High Court vide order dated 01-09-2000, stayed the effect and operation of the said

transfer and gave liberty to the State Government to transfer him in any Hill Districts.

2.4 In view of impending State Reorganization, as per U.P. Reorganization Act, 2000, the options were invited in the year 2000 from all employees of State Government or under the State Government. The petitioner opted for State of Uttarakhand and his option was duly forwarded by the competent authority within the prescribed time. The Central Government issued a general order of allocation on 11-09-2001, whereby it was held that inter-alia all the members of Hill Sub-Cadre, shall stand finally allocated for State of Uttarakhand, irrespective of their options, if any. In view of the aforesaid policy decision of the Central Government, the petitioner stands finally allocated to State of Uttarakhand from the appointed day i.e. 09.11.2000.

2.5 The respondent No. 1 vide order dated 29-09-2004 promoted as many as 14 persons to the post of Executive Engineer in the pay scale of Rs. 10000-15200. In the said promotion order, the Respondent No. 4 who was admittedly junior to the petitioner in the Cadre, was also promoted, however, the petitioner was left out.

2.6 The said writ petition No. 752 (S/B) of 2000 (Sanjeev Kumar Mishra Vs. State of U.P. and others) was ultimately disposed of by the Hon'ble Allahabad High Court vide order dated 07-05-2008 with a direction that the petitioner will submit a representation in the matter to the Sarkar Committee and till decision on the same, the transfer order against the petitioner shall remain in abeyance. Thereafter, the Respondent No. 1 vide letter dated 09-07-2008 gave its formal no-objection for allotment of the petitioner for State of Uttarakhand, to the State of U.P. Thereafter, similar letter was issued by the Director, Local Bodies U.P. to the State Government on 27-11-2008. Consequently, the State of U.P. also issued consent in the matter.

2.7 Thereafter, a letter dated 11-05-2010 was issued by the State of U.P. to the State Re-Organization Department, in the matter. The petitioner was denied promotion while his juniors were promoted on the

post of Executive Engineer in the month of September, 2004 on the alleged ground that his writ petition is pending for consideration before the Hon'ble Allahabad High Court.

2.8 The petitioner joined duties on the post of Assistant Engineer on 26-11-1993 and as per the Government Order No. 1644/09-03-93/146/W/88 Nagar Vikash Anubhag-3, Lucknow dated 02-07-1993, the petitioner became due for First Promotional Pay Scale after completing 12 years continuous satisfactory service, in the Pay Scale of Rs. 10000-15200 w.e.f. 26-11-2005. Till then, neither the petitioner was actually promoted nor he was given aforesaid promotional pay scale. As such, the concerned Executive Engineer vide letter dated 31-08-2010 sent the proposal for First Promotional Pay Scale to the petitioner, which was prepared in view of Government Order dated 02-12-2000 while the same would have been prepared as per government order dated 02-07-1993 which was applicable in the matter. Thereafter, two other letters were sent in the matter by the concerned Superintending Engineer to the Respondent No. 3, on 13-09-2010 and 22-09-2010.

2.9 In the month of November, 2010, another promotional exercise for making promotions to the post of Executive Engineer was to be carried out. The petitioner was having an apprehension that he will be ousted from the zone of consideration this time, so he approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 279 (S/B) of 2010. The said writ petition came up for hearing on 14.12.2010 and was disposed of by holding that the petitioner already stands allocated to Uttarakhand Jal Sansthan and if the petitioner has not been considered for promotion in the D.P.C. held on 30-11-2010, the respondents were directed to consider his case for promotion and he will be given the same benefit as would be given to the other candidates whose claims have been considered in the DPC held on 30.11.2010.

2.10 When the aforesaid judgment dated 14-12-2010 was not complied with by the Respondent No. 1 for a considerable long period, the petitioner was constrained to file Civil Contempt Petition No. 43 of 2011 and the Hon'ble Uttarakhand High Court vide order dated 11-03-

2011 issued contempt notice against the Respondent No. 1 and 3. The petitioner was served a letter on 16-03-2011 by the Respondent No. 3 showing the date of said letter as 05-03-2011, whereby, a strange condition was communicated to him that if he is ready to his absorption in State of Uttarakhand, he will be placed at the bottom of the seniority list, for which he has to submit a written consent. The said letter was duly replied by the petitioner on 18-03-2011 by refuting the same.

2.11 Thereafter, two Review Applications No. 43 of 2011 and No. 79 of 2011 were filed by the Respondents separately in the matter. Both the said Review Applications were dismissed by the Hon'ble High Court vide separate orders dated 05-05-2011. The copies of the said orders dated 05-05-2011 were immediately served upon the Respondents by the petitioner vide covering letter dated 13-05-2011. When the Respondents did not participate in the contempt proceedings, the Hon'ble High Court vide order dated 24-05-2011 directed for personal appearance of the concerned Secretary of Respondent No. 1 as well as concerned Chief General Manager of Respondent No. 3.

2.12 Thereafter the authorities of Respondents held a DPC on 02-06-2011 and rejected the claim of the petitioner on the alleged ground that he is not eligible for promotion as he is junior to other persons.

2.13 Thereafter, the said officers appeared in person before the Hon'ble High Court and filed a so called compliance affidavit, on 07-06-2011. The said contempt petition was closed vide order dated 18-08-2011 with a liberty to the petitioner to challenge the said decision of 02-06-2011. It is further submitted that the Respondents also challenged the aforesaid judgment passed in favour of the petitioner before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 30-09-2011 dismissed the said SLP.

2.14 The petitioner challenged the aforesaid denial of promotion held in the meeting dated 02-06-2011 before Hon'ble Uttarakhand High Court by filing Writ Petition No. 320 (S/B) of 2011, (Sanjeev Kumar Mishra Vs. State of Uttarakhand and others). The said writ petition was allowed by

the Hon'ble Uttarakhand High Court vide judgment dated 12-04-2012 and respondents were directed to consider the seniority of the petitioner from 1993 and they were also directed to reconsider the case of promotion of the petitioner within one month.

2.15 The copy of the said judgment was immediately served upon the Respondents by the petitioner. When the aforesaid judgment dated 12-04-2012 was not complied with by the Respondents for a considerable long period, the petitioner again filed Civil Contempt Petition No. 113 of 2012 in the matter. The said contempt petition came up for hearing on 07-06-2012 and contempt notices were sent to the concerned authorities of Respondents vide order dated 07-06-2012.

2.16 Although the petitioner was not formally promoted to the post of Executive Engineer, he was asked to discharge duties of the post of Executive Engineer by the Respondents by issuing express orders w.e.f. 26-10-2006 and he continued on the said post till 15-11-2017. The petitioner discharged the duties of Executive Engineer from 01-10-2008 to 28-01-2011 time to time till actual promotion. Vide order dated 05-07-2012 the petitioner was granted promotion on the post of Executive Engineer with immediate effect.

2.17 Against the promotion order made effective with immediate effect, the petitioner made several representations for his grievance to the respondent authorities. When no decision was taken in the matter, despite lapse of considerable long period, the petitioner again approached the Hon'ble High Court by filing Writ Petition No. 413 (S/B) of 2015 seeking a direction to the Respondents to take a decision in the matter. The said writ petition was disposed of by the Hon'ble High Court vide order dated 28-09-2015 with a direction to the Respondent No. 1 to take a decision on petitioner's representation dated 14-07-2015, within a period of two months.

2.18 When no decision was taken despite lapse of a period of more than 05 months, the petitioner filed Civil Contempt Petition No. 43 of 2016 against the Respondent No. 1 which was disposed of by the

Hon'ble High Court vide order dated 03-03-2016, whereby the Respondent No. 1 was reminded to comply with the order of the Court.

2.19 Ultimately the Respondent No. 1 passed an order on 30-06-2016 and granted the notional promotion to the petitioner on the post of Executive Engineer w.e.f. 29-09-2004, when the Respondent No. 4, who was/is admittedly a junior person was promoted. However, in the said order it was provided that the petitioner will not be entitled to any arrears of salary from the date of notional promotion till regular promotion i.e. 05-07-2012. Thereafter the petitioner was promoted to the post of Superintending Engineer vide order dated 08-07-2016, the petitioner was given notional promotion on the post of Superintending Engineer from the same day i.e. 30-11-2012 since the Respondent No. 4 was promoted. However again this time also, it was mentioned in the said order that no arrears of salary shall be paid to the petitioner

2.20 A formal order was passed on 11-07-2016 whereby, the representation of the petitioner was disposed of mentioning the aforesaid subsequent developments. The petitioner submitted a representation on 27-11-2017 praying for benefit of Promotional Pay Scale/ACP from due date. The concerned Executive Engineer, Pithoragarh vide letter dated 17-01-2018 prepared the bill of arrears etc. in the matter and sent the same to the Respondent No. 3. However, the Respondent No. 3 pointed out certain shortcomings in the same vide letter dated 18-09-2018.

2.21 The petitioner sent a detailed letter on 09-10-2018 to the Respondent No. 3 in the matter. The petitioner was promoted to the next higher post of General Manager vide order dated 02-11-2018. Thereafter, the respondent No. 3 issued a letter dated 20-12-2018 in the matter. Neither the benefit of Promotional Pay Scale was given to the petitioner nor the same salary as was being paid to his junior i.e. Respondent No. 4, the petitioner submitted a representation on 28-12-2019 to the Respondent No. 1 requesting for same salary etc. as was being paid to the junior, and also staked his claim on Rule-22(b) of the Financial Handbook Vol. II (Part 2 to 4).

2.22 Thereafter, the Respondent No. 1 vide letter dated 09-01-2020 required the Respondent No. 3 to submit detailed comments on the petitioner's representation. When no information was provided to the State Government, a reminder was issued by the State Government on 31-01-2020. The petitioner retired from service w.e.f. 30-06-2020 after attaining the age of superannuation, from the post of General Manager, Uttarakhand Jal Sansthan, Pithoragarh.

2.23 The petitioner submitted two reminders on 09-10-2020 and 13-01-2021 to the Respondent No. 1. Ultimately the Respondent No. 1 passed the impugned order dated 29-03-2022 virtually rejecting the request of the petitioner for the same salary as was being given to the junior as well as the claim of the petitioner regarding Promotional Pay Scale. It is submitted that the said impugned letter dated 29-03-2022 is not addressed to the petitioner.

2.24 The action of the Respondents particularly Respondent No. 1 cannot be justified in the eyes of law. As per the Rule-22(b) of the Financial Handbook Vol. II Part (2 to 4), every employee is entitled at least the same salary as is being paid to his juniors. It is admitted facts between the parties herein that the Respondent No. 4 was/is admittedly junior to the petitioner since the initial appointment and both have been appointed on the post of Assistant Engineer in the same selection by direct recruitment and the petitioner was placed above to him in order of merit in the said selection. As such, by no stretch of imagination, the Respondents cannot be permitted to discriminate the petitioner in the matter of similar salary as was/is being paid to his junior. The petitioner is fully entitled for the benefit of Promotion Pay Scale from due date as well as the benefit of Rule-22(b) of the Financial Handbook. As such, having left no other options, the petitioner is approaching this Hon'ble Court with the hope of justice.

3. C.A./W.S. has been filed on behalf of main contesting respondent no. 3, which has been adopted by learned A.P.O. on behalf of respondent no. 1 & 2. In the C.A./W.S., it has been stated that as on 11.09.2001 there was no specific written order thereby allocating

petitioner to the State of Uttarakhand cadre and Petitioner cannot seek benefit of any such General order dated 11.09.2001. In fact Petitioner cannot claim that pursuant to passing of General Order dated 11.09.2001; there was no need to pass a specific written order for allocation of the State. In fact a specific written order was passed on dated 31.12.2008 vide which Petitioner was allocated State of Uttarakhand. Therefore, it is beyond understanding that when petitioner, was not allocated the state of Uttarakhand on 29.09.2004, then how Petitioner could have been considered for promotion on 29.09.2004. As a matter of fact, the petitioner was not granted promotion on 29.09.2004 for the simple reason that as on that date i.e 29.09.2004, the petitioner was not allocated to the State of Uttarakhand. In fact the court proceedings in Writ Petition filed by the Petitioner and NOC given by State of U.P. vide Letter dated 09.07.2008 and 27.11.2008 clearly demonstrate that the Petitioner was not allocated to the State of Uttarakhand, which was finally allocated to him vide order dated 31.12.2008. Hence, the Petitioner was rightly not considered for promotion on 29.09.2004. It is also contended that passing of the order dated 30.06.2016 vide which notional promotion was granted to the petitioner w.e.f. 29.09.2004 and it was rightly decided that the petitioner is not entitled for any arrears of salary from the date of notional promotion till regular promotion i.e. 05.07.2012. The notional promotion was granted to the petitioner w.e.f. 30.11.2012, the date on which respondent no. 4 was promoted to the post of Superintending Engineer and it was rightly decided that petitioner was not entitled for any arrears.

4. R.A. has also been filed on behalf of the petitioner denying the contents of the C.A/W.S. and reiterated the averments made in the claim petition.

5. Neither C.A/W.S. has been filed on behalf of respondent no. 4 nor he appeared despite sufficient service upon him. Therefore, the Tribunal vide order dated 15.09.2023 decided to proceed ex-parte against the said respondent.

6. We have heard the arguments of Learned Counsels for the parties and perused the record.

7. Learned Counsel for the petitioner argued that the petitioner joined the post of Asstt. Engineer on 26/11/1993. The petitioner opted for the Hill sub- cadre in 1996. The petitioner was transferred to Nagar Palika Farrukhabad against the provisions in the Hill Sub-Cadre Rule 1992. His transfer to Farrukhabad was stayed by the Hon'ble High Court. In the meantime, after bifurcation of State of U.P., the Respondents promoted 14 persons on the post of Executive engineer w.e.f. 29/9/2004 but the petitioner was left out. The Hon'ble High Court vide the judgement dated 07/05/2008 in the writ petition No. 752(S/B) of 2000 directed to keep the order of transfer of the petitioner in abeyance and ordered to take decision on the representation of the petitioner. On the representation of the petitioner, he was given No objection by the Uttarakhand Govt. and Government of U.P. gave consent on the proposal of Government of Uttarakhand for allocation of Uttarakhand cadre. The decision on his transfer to Uttarakhand was taken up finally but he was not considered for promotion. He was placed at the bottom of the seniority list in his cadre. He was denied promotion on the ground that he was junior to other persons. The petitioner was finally promoted on the post of the executive engineer on 05/07/2012 and was given notional promotion w.e.f. 29/09/2004 the date from his junior was promoted. He was promoted the post of the superintendent engineer on 08/07/2016 and he was given notional promotion w.e.f. 30/11/2012, the date from his junior was promoted. He was promoted on the post of the DGM on 02/11/2018 and he superannuated on 30/06/2020. The petitioner is entitled to the benefit of time scale of pay as well benefit of the salary on promotion like his junior. The learned counsel to the petitioner argued that the impugned communication dated 29/03/2022 is liable to be set aside and the claim petition is liable to be allowed.

8. Learned counsel for the respondent No 3 argued that the petitioner was allocated Uttarakhand cadre on 31.12.2008. He was not in Uttarakhand cadre on the date of promotion of his junior on

29.09.2004 and again he was not considered for promotion in the meeting of the DPC held on 30.11.2010 also as he was junior and not eligible for the promotion. He was finally promoted notionally vide order dated 22/03/2016 w.e.f. 29/9/2004 from the date his Junior was promoted. He was not given salary of Executive Engineer w.e.f. 29/9/2004. Further he was promoted on the post of Superintending Engineer notionally w.e.f. 30/06/2012 vide order dated 08/07/2016. He was given salary of the Superintending Engineer from the date of joining the post of the superintending engineer. The petitioner was promoted on the post of DGM on 02/11/2018 and he retired on 30-06-2020. The petitioner has been made payments on his promotion as per the order of the Department.

9. Learned Counsel for the respondent no. 3 has further argued that the matter related to payment of salary from the actual date of joining has been examined by the Personnel Department as well as the Finance Department and found that the payment has been made to him as per the existing rules in the Financial Hand Book. In view of the above the Claim petition is liable to be dismissed.

10. Learned A.P.O. appearing for the Respondents No 1 & 2 concurs with the arguments of the Learned Counsel for the Respondent No 3.

11. Based on the arguments of the parties and perusal of the record, we find that the petitioner who was appointed on 04/9/1993 was transferred to Farrukhabad but his transfer order was kept in abeyance vide the order of the Hon'ble High Court of Allahabad on 07/5/2008 and he was asked to make a representation. It was only after the NOC was given by the Government of Uttarakhand and the consent obtained from U.P. government, he was allocated to Uttarakhand cadre on 31.12.2008. The respondents placed the petitioner in the bottom of the seniority list of his cadre officers and was not considered for promotion also on 02/6/2011. After the order of the Hon'ble High Court of Uttarakhand in writ petition 320(S/B) of 2011 and subsequent orders of the Hon'ble High Court of Uttarakhand in Civil Contempt Petition against the respondents,

the petitioner was granted promotion notionally w.e.f. 29/9/2004 vide order dated 30/6/2016, the date when his junior Respondent No4 was promoted to the post of the Executive engineer. He was promoted on the post of Superintending Engineer on notional basis w.e.f. 30/11/2012 vide order dated 08/07/2016. He was not given the monetary benefit from the date of notional promotion to his joining the promotion posts. The petitioner is claiming the monetary benefits for the period from date of notional promotion to his date of joining on the post of the Executive Engineer and Superintending Engineer both. The petitioner was not promoted along with his juniors because of the decision about the cadre allotment was pending. He was given promotion on the post of the Executive Engineer w.e.f. 29/09/2004 vide order dated 28/9/2015 of the Hon'ble High Court of Uttarakhand in the Writ Petition (S/B) No 413 of 2015 and order dated 03/03/2016 in Contempt petition No 43 of 2016.

12. In view of the above, the petitioner is not entitled to the payment of the arrears of salary for the period between his notional promotion and date of joining the promotional post when he was promoted on the post of the Executive Engineer and Superintending Engineer respectively. Hence the Claim petition is liable to be dismissed.

ORDER

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

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: NOVEMBER 12, 2025
DEHRADUN
KNP