

(2010) 06 UK CK 0055
In the Uttarakhand High Court

Bhaskar Prasad Tripathi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 73

Citation : (2010) 06 UK CK 0055

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.S. Khehar, C. J.

1. The Public Service Commission, Uttar Pradesh issued an advertisement, bearing No. 10/83-84, wherein it, inter alia, invited applications for 850 posts of Junior Engineers belonging to the "plains cadre" of the Public Works Department, Uttar Pradesh, and 550 posts of Junior Engineers belonging to the "hills cadre" of the Public Works Department, Uttar Pradesh. The aforesaid factual position emerges from the following extract of the advertisement (referred to hereinabove):

										Deptt.	
Name of Cadre for Pay Reservation for No. Post & Scale total No. of Vacancies											
Plains	Hills	For STs	DFF	Disable	BCs	Physically	SCs	of of d	Ex of	Handicapp	of
U.P.	U.P.	Army	U.P.	ed	Persons	U.P.	Persons	of	U.P.		
										S-6/6	
(a) Junior	850	550	515-	P-153	P-17	P-26	P-26	P-128	P-17	Engg-	860
H-16		H-16		H-82		H-11		(Civil)		H-99	H-11
										1400	

The petitioner claims to have responded to the aforesaid advertisement by making an application for one of the posts of Junior Engineers, belonging to the

"hills cadre" of the Public Works Department, Uttar Pradesh. The fact, that the petitioner applied for the "hills cadre" and was actually appointed to the said cadre has been asserted in paragraphs 4 and 5 of the writ petition. Paragraphs 4 and 5 of the writ petition are accordingly being extracted hereunder:

4. That advertisement dated 26.11.1983 clearly provides two separate cadre i.e. plain and hill and it was clearly provided in the advertisement that candidates should submit separate application for the posts mentioned in different cadre. The petitioner submitted his application for the post of Junior Engineer in hill cadre.

5. That in pursuance of the aforesaid advertisement the petitioner applied, interviewed and was selected by the Public Service Commission, U.P. against hill cadre posts and was placed at serial No. 261 of the merit list prepared for hill area. Thereafter vide order dated 05.06.1991 the petitioner was appointed as Junior Engineer (Civil) in P.W.D. and was posted in Temporary Division, P.W.D. Champawat. For last about 18 years the petitioner is continuously working in hill districts and presently posted at Construction Division, P.W.D., Roorkee.

The factual position depicted by the petitioner to the effect, that he applied against one of the posts of Junior Engineers in the hills cadre of the Public Works Department, Uttar Pradesh and was appointed as such, has not been disputed, either by the State of Uttarakhand or by the State of Uttar Pradesh. The aforesaid factual position must, therefore, be taken to be an admitted position.

2. The Uttar Pradesh Hill Sub-Cadre Rules, 1992 (hereinafter referred to as the "1992 Rules") were notified on 25.11.1992. By Rule 5 of the aforesaid 1992 Rules, the "hill sub-cadre" was constituted. Allocation to the "hill sub-cadre" was to be made under Rule 6 of the 1992 Rules. Rule 6 of the 1992 Rules is being extracted hereunder:

6. Allocation of members of service to Hill Sub-Cadre.- (1) The existing members of Service shall be required by the Appointing Authority to exercise entire option for allocation to Hill Sub-Cadre within three months from the date of order made under Sub-rule (2) of Rule 5.

Provided that fresh options shall not be invited in respect of the Departments and posts for which options have already been asked for.

(2) On the commencement of the Uttar Pradesh Hill Sub-Cadre (Second Amendment) Rules, 1997 the Appointing Authority in case where the procedure for asking for options to Hill Sub-Cadre has not been completed or partially completed, may require the members of the General Cadre to exercise their options for allocation to Hill Sub-Cadre within three months from the date of order made under Sub-rule (2) of Rule 5.

Provided that fresh options shall not be invited in respect of the Departments and posts for which options have already been asked for.

(3) Options exercised under Sub-rules (1) and (2) shall be final and irrevocable.

(4) In case no options is exercised within the time specified in Sub-rules (1) and (2) it will be deemed that the member of the Service wants to remain in the General Cadre and does not want his allocation to the Hill Sub-Cadre.

(5) Appointing Authority shall prepare list of persons, who have exercised their options under Sub-rules (1) and (2) in accordance with their seniority as it stood in the service.

(6) Allocation to the Hill Sub-Cadre shall be made by the Appointing Authority of persons in the list prepared under Sub-rule (5) to the extent of the strength of the Hill Sub-Cadre as determined under Sub-rule (2) of Rule 5.

(7) In case the number of persons in the list prepared under Sub-rule (5) is less than number of posts in the Hill Sub-Cadre, the posts remaining vacant will be filled in accordance with relevant Service Rules or executive instructions, as the case may be, applicable to the Hill Sub-Cadre.

Provided that so long as the posts are not filled in accordance with relevant Service Rules or executive instructions, as the case may be, the posts shall be filled by transfer from general cadre.

Rule 6 (1) (reproduced hereinabove) is relevant for the determination of the present controversy. All members of services governed by the provisions of the 1992 Rules had the option to seek allocation to the "hill sub-cadre". The proviso to Rule 6(1) of the 1992 Rules, however, exempts the submission of fresh options at the hands of individuals engaged in departments and posts for which options had already been asked for.

3. It is the case of the learned Counsel for the petitioner, that when the petitioner responded to the advertisement (relevant extract whereof has been reproduced hereinabove) and chose to submit his application for appointment to the posts advertised for the "hills cadre", as against the posts advertised for the "plains cadre", he must be deemed to have exercised his option, as has been conceived of under the proviso to Rule 6(1) of the 1992 Rules. The contention of the learned Counsel for the petitioner is, that Sub-rule (4) of Rule 6 of the 1992 Rules would not be applicable in the facts and circumstances of the case of the petitioner, in as much as the petitioner was never a member of the general cadre, as in terms of the advertisement (reproduced hereinabove), he was a member of the "hills cadre". To substantiate his instant contention, learned Counsel for the petitioner further vehemently contends, that ever since his appointment as a Junior Engineer, i.e. prior to the re-organization of the composite State of Uttar Pradesh w.e.f. 09.11.2000, he had remained posted uninterruptedly in the hills, which subsequently came to be described as the "hill sub-cadre" under the 1992 Rules. The instant factual position depicted by the petitioner in paragraph 5 of the writ petition (already extracted hereinabove) has also not been disputed at the hands of the State of Uttarakhand or the State of

Uttar Pradesh.

4. It is the contention of the learned Counsel for the petitioner, that not only in terms of the 1992 Rules, but the respondents themselves had always treated the petitioner as belonging to the "hills cadre"/"hill sub-cadre", in as much as the respondents issued a seniority list with a covering letter dated 28.11.2002 (Annexure S.A.-3), wherein the name of the petitioner figured at serial number 4729. In column No. 10 of the aforesaid seniority list, it was clearly mentioned, that the petitioner belonged to the "hills cadre". It is, therefore, the contention of the learned Counsel for the petitioner, that for all intents and purposes, prior to the reorganization of the composite State of Uttar Pradesh, the petitioner should be treated as a member of the "hills cadre"/"hill sub-cadre".

5. Based on the inference drawn by the learned Counsel for the petitioner (depicted in the foregoing paragraph), learned Counsel for the petitioner then placed reliance on the order of the Government of India dated 11.09.2001 passed u/s 73 of the Uttar Pradesh Reorganization Act, 2000. It is asserted, that all members of the "hills cadre"/"hill sub-cadre" were to be automatically allocated to the successor State of Uttarakhand w.e.f. 09.11.2000, and as such, the petitioner should also have been allocated to the successor State of Uttarakhand w.e.f. 09.11.2000.

6. While adjudicating the present controversy, the only issue that requires determination is, whether the petitioner belonged to the "hills cadre"/"hill sub-cadre" prior to the re-organization of the composite State of Uttar Pradesh, or he belonged to the "plains cadre"/"general cadre". The contention advanced by the learned Counsel for the petitioner will have to be accepted, if we arrive at the conclusion, that the petitioner was a member of the "hills cadre"/"hill sub-cadre" prior to the reorganization of the composite State of Uttar Pradesh. In so far as the instant issue is concerned, there seems to be no ambiguity in the matter whatsoever. At the time of the petitioner's entry into service as a Junior Engineer, he had applied for posts allocated to the "hills cadre". He was selected as a Junior Engineer against one of the said posts, which comprised the "hills cadre". Ever since his induction into service prior to the re-organization of the composite State of Uttar Pradesh, the petitioner remained posted in hills, which subsequently came to be described as the "hill sub-cadre". Even the seniority list prepared by the respondents depicted the name of the petitioner as a member of the "hills cadre". In the aforesaid view of the matter, we have no hesitation to conclude, that the petitioner belonged to the "hills cadre"/"hill sub-cadre", whilst he was employed in the composite State of Uttar Pradesh.

7. It would be unfair to the learned Counsel for the respondents, if we do not deal with an objection raised by the learned Counsel for the respondents, so as to assert, that the petitioner does not belong to the "hills cadre"/"hill sub-cadre". During the course of hearing, it was the vehement contention of the learned Counsel for the respondents, that the petitioner did not opt under Rule 6(1) of the 1992 Rules for being allocated to the "hill sub-cadre", and as such, he could

not be treated to be a member of the "hill sub-cadre". It is not possible for us to accept the instant contention advanced by the learned Counsel for the respondents, for the simple reason, that the petitioner was not required to submit an option for being allocated to the "hill sub-cadre", in view of the proviso under Rule 6(1) of the 1992 Rules as he had already opted for the "hills cadre" at the time of his entry into service. We, therefore, find no merit in the solitary objection raised at the hands of the learned Counsel for the respondents, to the inclusion of the name of the petitioner in the "hills cadre"/"hill sub-cadre".

8. Based on the Government of India order dated 11.09.2001, issued u/s 73 of the Uttar Pradesh Re-organization Act, 2000, there can be no doubt, that the petitioner, who was originally a member of the "hills cadre"/"hill sub-cadre", was liable to be allocated to the successor State of Uttarakhand. That being so, we are satisfied that the allocation of the petitioner to the State of Uttar Pradesh at the hands of the respondents was clearly uncalled for and in violation of the Government of India Order dated 11.09.2001, issued u/s 73 of the Uttar Pradesh Reorganization Act, 2000. The same is accordingly hereby set aside.

9. For all intents and purposes, the petitioner shall be deemed to have been allocated to the successor State of Uttarakhand w.e.f. 09.11.2000. The State of Uttar Pradesh shall relieve the petitioner forthwith. The State of Uttarakhand shall issue posting orders to the petitioner, as soon as the petitioner is relieved by the State of Uttar Pradesh and submits his joining report in the State of Uttarakhand.

10. The instant writ petition stands allowed in the aforesaid terms.