

(2010) 09 UK CK 0178

In the Uttarakhand High Court

Case No : Writ Petition No's. 202 of 2009 and 204 of 2010 (S/B)

Jeevan Chandra Joshi

APPELLANT

Vs

State of Uttarakhand and Another
 Ranveer Singh
Chauhan and Others Vs State of Uttarakhand and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Uttarakhand Government Servants Seniority Rules, 2002 — Rule 8

Citation : (2010) 09 UK CK 0178

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—These petitions seek to challenge the legality of the amendment effected to the Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred to as the "Rules"), whereby and under, after Rule 8, Rule 8(a) has been inserted. The inserted Rule 8(a) provides three things, namely, (i) that the status of the Government employee, as at 8th November, 2000, shall remain unaltered and, even if anyone is holding a superior post, on the ground that his seniors are not holding such posts, he shall not be reverted; (ii) a senior shall not be entitled to notional promotion on the ground that his junior is holding a superior post; and (iii) the employees shall be promoted to the superior posts only when they have achieved eligibility to be promoted to superior posts.

2. The petitioners are principally contending that by reason of insertion of Rule 8(a) in the said Rules, the right of the petitioners to be promoted has been interfered with. The petitioners are not contending that their juniors, who have been promoted to superior posts, should be reverted back, but they are contending that in service jurisprudence, a senior is entitled to notional promotion when his junior has been given a substantive promotion to a superior post and, accordingly, the Rule 8(a) interferes with such established right of the petitioners. The petitioners are not contending that they should be given

promotion without being eligible for promotion, but having regard to the acknowledged fact that their juniors are occupying superior posts, in the event petitioners are prevented from obtaining notional promotion on the basis that they have not crossed the eligibility bar, that will be interference with their established right of being promoted.

3. The reason for insertion of Rule 8(a) in the said Rules is basically the Uttar Pradesh Reorganisation Act, 2000. In terms thereof, the members of other services, not belonging to All India Services, would remain employees of Uttar Pradesh until they are allotted to the State of Uttarakhand. When such employees of Uttar Pradesh are allotted to the State of Uttarakhand, their conditions of service, applicable when they were employees of Uttar Pradesh, cannot be varied to their disadvantage except with the previous approval of the Central Government. That apart, the employees of Uttar Pradesh, so allotted to Uttarakhand, are entitled to hold and discharge duties of the posts they were holding while they were employees of the State of Uttar Pradesh.

4. Therefore, it makes it abundantly clear that until the writ petitioners and the private respondents, in these writ petitions, were allocated to the State of Uttarakhand, they were employees of the State of Uttar Pradesh. Each of the petitioners and the private respondents has been allocated to the State of Uttarakhand with effect from the appointed date, i.e. 9th November, 2000, although the orders of allocation had been issued from time to time. In such view of the matter, apparently, there cannot be any dispute inter se the petitioners and the private respondents, either as regards their right of promotion or as regards their seniority or as regards any other matter pertaining to their service conditions. In other words, if the petitioners and the private respondents were sailing in the same boat while employees of the State of Uttar Pradesh, they would be sailing in the same boat when they would become employees of Uttarakhand on being allocated to the State of Uttarakhand. The reason for discontent and the reason for insertion of Rule 8(a) in the said Rules is that the petitioners and the private respondents were not sailing in the same boat while they were employees of the State of Uttar Pradesh.

5. The State of Uttar Pradesh had and has different services catering the needs of different departments of the said State. By the Uttar Pradesh Hill Sub-Cadre Rules, 1992, it was decided that the services catering the needs of the departments mentioned in the said Hill Sub-Cadre Rules shall have a hill sub-cadre. In order to be allocated to the said hill sub-cadre, an employee in the services of the State of Uttar Pradesh, attached to the departments mentioned in the said Hill Sub-Cadre Rules, was required to opt and such option was final and irrevocable. It provided that the strength of the hill sub-cadre, in such services, shall be such as may be determined by the Government from time to time by notified order. It also provided that if the number of persons in the hill sub-cadre is less than the posts available in hill sub-cadre, the vacant posts may be filled-in by transfer from general cadre. It also provided that the promotional posts

available in the hill sub-cadre would be supplied only by those, who are in the feeder posts in the hill sub-cadre. Therefore, in each of the departments, mentioned in the said Hill Sub-Cadre Rules, after 1992, there was a hill sub-cadre and a general cadre. A promotional post, in the hill sub-cadre, could only be supplied by a person belonging to hill sub-cadre and not by a person belonging to the general cadre. In consequence thereof, fast track promotions were given to many a persons in different services, who belonged to hill sub-cadre of such services. Admittedly, the Uttar Pradesh Hill Sub-Cadre Rules, 1992 were repealed w.e.f. 9th November, 2000 and, accordingly, whoever was in the hill sub-cadre, stood reverted back to the original cadre of the service. On that date, the members of the hill sub-cadre and some of the members of the general cadre were also allocated to the State of Uttarakhand. In view of the mandate of the Uttar Pradesh Reorganisation Act, 2000, each of them carried with them the benefits of the services rendered by them while serving the State of Uttar Pradesh and, accordingly, became entitled to seniority from the date of their substantive appointments. In such view of the matter, some of the persons, belonging to general cadres of different services, allocated to the State of Uttarakhand, became senior to many a members of hill sub-cadres of the same departments, allocated to the State of Uttarakhand, but substantively holding higher posts. Admittedly, neither by the Uttar Pradesh Reorganisation Act, 2000 nor by any other law made by the State of Uttarakhand, any of the conditions of service of any member, either belonging to the general cadre or hill sub-cadre, has been altered. It is an admitted position that each person, who has been allocated to the State of Uttarakhand, has been given due respect to the seniority to which he is entitled to from the date of his substantive appointment. However, as aforesaid, some juniors, having had opted for hill sub-cadre, occupied higher posts in the hierarchy as on the date of their allocation to the State of Uttarakhand. No doubt, they cannot be reverted back and that is also not the contention of the petitioners. The petitioners are contending that in service law, they have a right to be treated equally with their juniors and, accordingly, if promotional posts are not available for giving substantive promotions to the petitioners, in law, they are entitled to notional promotions to the posts held by their juniors. The learned Counsel for the State submitted that if petitioners seek notional promotion from the date their juniors were promoted, they would be seeking promotion from a date anterior to 8th November, 2000, i.e. the date when their juniors were promoted in the hill sub-cadre, which the State of Uttarakhand cannot accord as the State of Uttarakhand had not come into existence on that date. The learned Counsel for the petitioners, in answer, submitted that acknowledging the fact that right of a notional promotion crystallised on the date of allocation of the petitioners to the State of Uttarakhand, their promotions should be given from the date of allocation i.e. 9th November, 2000, which is well within the competence of the State of Uttarakhand. It was also submitted that the inserted Rule 8(a), which debars such notional promotion, being contrary to the established right of the petitioners to obtain promotion on the analogy that their juniors have been promoted,

should be struck down.

6. The fact remains that the promotions, which were accorded to the persons belonging to hill sub-cadre, could not be accorded to persons belonging to the general cadre in terms of the said Hill Sub-Cadre Rules. Because they were part and parcel of the sub-cadre created by the said Hill Sub-Cadre Rules, they could alone be considered for promotion to the posts available in the said sub-cadre. With the coming to an end of the said Hill Sub-Cadre Rules, while the sub-cadre ceased to exist, the posts available in sub-cadre also ceased to exist. The persons, who were holding the posts in the hill sub-cadre, came to be merged into the general cadre with the posts that they were holding. In such view of the matter, the persons in the general cadre cannot compare themselves with the holders of the posts in the hill sub-cadre, who came and merged along with their posts held in hill sub-cadre, with the general cadre and, accordingly, there is no question of a senior, in the merged cadre, to ask for a notional promotion in the merged cadre on the ground that his junior is holding a superior post in the merged cadre. Inserted Rule 8(a) only explains the same.

7. The learned Counsel for the petitioners has, for our benefit, cited a judgment of the Hon'ble Supreme Court rendered in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, , and drew our attention to paragraph 15 thereof. We are really grateful to the learned senior counsel Mr. Manoj Tiwari for citing the judgment. The said judgment records the distinction between "a right to be promoted" and "a chance to be promoted". Whereas a right to be promoted is a part and parcel of the service conditions and, accordingly, the same cannot be altered to the disadvantage of an existing employee, whereas a chance to be promoted, being not a part and parcel of the service conditions, no right can be founded thereon. In the instant case, however, there was no right, nor even a chance of promotion.

8. Being a member of a hill sub-cadre, until such time the hill sub-cadre was in existence, he had a right to be promoted to the promotional posts available in the hill sub-cadre. The moment the Rules came to an end, the right envisaged in such promotions came to an end. The people belonging to general cadre had no right to be promoted to promotional posts available in a hill sub-cadre and not even a chance of notional promotion in the general cadre on the analogy that their juniors in the hill sub-cadre have been promoted. After the Hill Sub-Cadre Rules came to an end, if the persons, who had no such right or even a chance, are given such right, the same would tantamount to windfall for them. That is not permissible, since, of their choice, they did not opt to become members of hill sub-cadre when they could. By reason of cessation of the Rules, they cannot get a benefit merely because they are senior to persons, who came from hill sub-cadre. We, accordingly, find no infirmity in Rule 8(a) inserted by the amendment impugned in the writ petitions.

9. The learned Counsel for the petitioners contended that taking advantage of the said inserted Rule, the right to claim notional promotions, on the strength of

promotions given subsequent to 9th November, 2000, has also been interfered with. We do not think that is permissible and make it absolutely clear that Rule 8(a), inserted by the amendment, only deals up to 9th November, 2000 and does not deal with anything done or to be done after 9th November, 2000. It was further submitted before us by the learned Counsel for the petitioners that taking advantage of the inserted Rule 8(a), the right of being notionally promoted would be denied even in cases where unjust, inappropriate or illegal promotions had been given to juniors. A look at the inserted Rule 8(a) would make it abundantly clear that the appointments and promotions, referred to therein, are substantive, legal and valid appointments and promotions and does not contemplate any unjust, illegal or inappropriate appointment or promotion. Therefore, there is no scope of apprehension that the petitioners will have no scope of putting forth a case of unjust, inappropriate or illegal promotion given to a junior.

10. With the clarifications as above, we permit the petitioners to make representations to the appropriate authorities highlighting their personal grievances in relation to any promotion not given to any of the petitioners or in relation to any promotion given to any other person, which according to the petitioners, was inappropriate and, if such representations are made, we hope and expect that the same will be dealt with in accordance with law as quickly as possible, but not later than three months from the date of making of such representations.

11. With the observations as above, the writ petitions are disposed of. Parties to bear their own costs.