
(2010) 11 UK CK 0026
In the Uttarakhand High Court
Case No : Writ Petition (S/B) No. 16 of 2008

J.K. Pant

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttaranchal Government Servants Seniority Rules, 2002 — Rule 6

Citation : (2010) 3 UC 2103 : (2010) 2 UD 556

Hon'ble Judges : Sudhanshu Dhulia, J; Prafulla C. Pant, J

Bench : Division Bench

Judgement

Prafulla C. Pant, J.—Heard.

2. By means of this writ petition moved under Article 226 of Constitution of India, the Petitioner has sought writ in the nature of certiorari quashing the order dated 12.12.2007, relating to the promotion of Respondent No. 5 Lalit Mohan to the post of Chief Engineer, Level-II. A mandamus has also been sought directing the Respondents make notional promotion of the Petitioner to the post of Superintending Engineer w.e.f. 13.06.2001 instead of 28.07.2005 (date on which he was actually promoted) alongwith all consequential benefits.

3. Heard learned Counsel for the parties, and perused the affidavit, counter affidavit, rejoinder affidavit and supplementary affidavit on record.

4. Brief facts of the case are that, the Petitioner was appointed as Assistant Engineer on 07.10.1972, with U.P. Local Self Government Engineers Department (for short UPLSGED) on adhoc basis. Subsequently, he was appointed on regular basis through U.P. Public Service Commission on 24.09.1973, as Assistant Engineer with U.P. Public Works Department (for short P.W.D.). On 18.11.1995, the Petitioner was promoted as Executive Engineer. At the time of creation of the State of Uttarakhand options were invited from the employees for the purposes of allocation to the new State. The Petitioner opted for State of Uttarakhand, and his name was included in Tentative Final Allocation List (for short TFAL) by the

Government of India to allocate him the State of Uttarakhand in the year 2005. Subsequently, he was relieved by State of Uttar Pradesh, and joined his duties in the State of Uttarakhand on 26.02.2005. One Shri M.G. Push Karana, who was appointed as Assistant Engineer on 09.11.1973, and promoted as Executing Engineer on 29.08.1993, was promoted as Superintending Engineer by the State of Uttarakhand on 31.05.2001. The Petitioner's case is that he was senior to said M.G. Push Karana, and merely because he was relieved by the State of U.P., in 2005, he cannot denied his notional promotion from the date, M.G. Push Karana was promoted to the post of Superintending Engineer. It is further pleaded in the writ petition that after a post of Chief Engineer, Level-II, fell vacant in the year 2005, one Kripal Singh, Superintending Engineer, who was Member of Scheduled caste, was given promotion on said post. On the basis of Government Order dated 31.08.2001, which provides roaster for promotion, it is pleaded by the Petitioner that as per the roaster if the first post was given to the Scheduled Caste Candidate, the next i.e. 2nd, 3rd, 4th and 5th posts should have been filled from the General Category Candidates, and only thereafter another Scheduled Caste Candidate could have been considered as per the roaster for the post of Chief Engineer, Level-II. The Petitioner has no grievance to the promotion of Kripal Singh who was junior to him but entitled to promotion as per the roaster provided in Government Order dated 31.08.2001. It is stated in the writ petition that there were only two posts of Chief Engineer, Level-II, and the second post when fell vacant, on promotion of R.C. Mittal, the second post of Chief Engineer, Level-II, was filled by one P.N. Tikkoo, Superintending Engineer just senior to the present Petitioner. The Petitioner is not aggrieved by said promotion also. The grievance of the Petitioner is that on retirement of Kripal Singh as per the roaster, the Petitioner should have been promoted to the post of Chief Engineer, Level-II, in the year 2007, but the Respondent Nos. 3 and 4 promoted. Respondent No. 5 Lalit Mohan, another Member of Scheduled Caste who was much junior to the present Petitioner. Challenging the Government action in promoting Lalit Mohan, Respondent No. 5 w.e.f., 12.12.2007, by breaking roaster, this writ petition is filed for the relief as already mentioned above.

5. Respondent No. 5 did not contest the petition. Counter affidavit is filed on behalf of the Respondent No. 3 in which contents of para 1, 2, and 3 of the writ petition are not denied, and it is mentioned that the same need no comments. As to the contents of para 4, 5, and 6 of the writ petition, the same are admitted in the counter affidavit. However, it has been pleaded by the answering Respondent that since the writ Petitioner joined for the State of Uttarakhand only on 26.02.2005, he cannot be given promotion to the post of Superintending Engineer w.e.f. 13.06.2001 (On the date M.G. Push Karana, junior to him was promoted in Uttarakhand). In para 7 of counter affidavit, it has been admitted that to fill the two posts of Chief Engineer, Level-II, roaster was applied, and one post was given to General Category Candidate. As to the contents of para 16, 17, 18, and 19 of the writ petition the same is also denied on behalf of the

Respondent. In reply to para 21, and 22 of the writ petition it is admitted that first post available was to be filled by the candidate of the reservation category and 2nd, 3rd , 4th , and 5th were required to be filled from the amongst General Cadre Candidates.

6. In the rejoinder affidavit relying case of R.S. Garg Vs. State of U.P. and Others, , it is pleaded by the Petitioner that if the reservation is not made by percentage, the promotion of Scheduled caste can be made as per the roaster. It is further pleaded in the rejoinder affidavit that if the roaster is applied and the first post was filled by Kripal Singh, Respondent No. 5 Lalit Mohan was required to wait for his turn after promotion of the 4th General Category Candidates. It is stated that by filling vacancy on retirement of Kripal Singh by promoting Lalit Mohan (Respondent No. 5) the reservation of percentage has been increased to 50% which the State could not have done, as the prescribed limit of percentage of reservation for Scheduled Caste was 19%.

7. In the supplementary counter affidavit, filed on behalf of Respondent No. 3, it is admitted that the Petitioner was finally allocated State of Uttarakhand during pendency of this writ petition. It is also stated in the counter affidavit that the writ Petitioner has retired during the pendency of the writ petition.

8. Before further discussion, we think it just and proper to mention the relevant provision of law applicable to the case. Rule 6 of Uttaranchal Government Servant Seniority Rule 2002, reads as under:

Seniority where appointment by promotion only from singly feeding cadre:

Where according to the service rules, appointments are to be made only by promotion from a singly feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre. Explanation:- A person senior in the feeding cadre shall even though promoted after the promotion of a person junior to him in the feeding cadre shall, in the cadre to which they are promoted, regain the seniority as it was in the feeding cadre.

9. Above rule makes it evidently clear that the writ Petitioner who was senior to M.G. Push Karan, who was promoted in the year 2001, after creation of State of Uttarakhand, entitled to the notional promotion from the date junior to him (M.G. Push Karana) was promoted as Superintending Engineer. As such, prayer made in the writ petition that the Petitioner should be notionally promoted w.e.f., 13.06.2001 deserves to be allowed. The writ Petitioner cannot be deprived of his notional promotion only for the reason that state of Uttar Pradesh, did not relieve him prior to February 2005, after his allocation to the State of Uttarakhand. It is not disputed between the parties that the Petitioner was allocated State of Uttarakhand in the year 2005, under TFAL, and relieved for the State of Uttarakhand where he joined his duties on 26.02.2005. It is also not disputed rather admitted in the supplementary counter affidavit filed on behalf of State of Uttarakhand that thereafter the writ Petitioner was finally allocated State of Uttarakhand in the year 2008.

10. Now we come to the question to the entitlement of the Petitioner for notional promotion to the post of Chief Engineer, Level-II in P.W.D., w.e.f., and 12.12.2007. Admittedly, there are two posts of Chief Engineer, Level-II with P.W.D., in the State of Uttarakhand. It is also not disputed that as per the roaster provided in Government Order dated 31.08.2001, first post was required to be filled by promotion by the candidate belonging to Scheduled Caste. The 2nd, 3rd, 4th, and 5th were required to be filled by promotion from amongst the General Category Candidates. 6th was to be filled by promotion again by the Member of Scheduled Caste. The writ Petitioner has pleaded that one P.N. Tikkoo who was senior to the writ Petitioner was given promotion to the post of Chief Engineer, Level-II, w.e.f., 12.12.2007, against the second post, and to that extent the writ Petitioner has no objection. It is further pleaded that next to P.N. Tikkoo was the writ Petitioner in the list next to him was M.G. Push Karana, next to him was Baldev Singh, next to him was J.C. Belwal, and next to him was Lalit Mohan (Respondent No. 5). Learned Counsel for the Petitioner pleaded that the Respondent No. 5 Lalit Mohan could not have been promoted as Chief Engineer, Level-II on 11.12.2007, merely on the ground that Kripal Singh another Member of Scheduled Caste has retired from the post of Chief Engineer, Level-II. It is further submitted that if out of the two posts one post is always filled by the Member of Scheduled Caste, the percentage of reservation for Scheduled Caste would go up to 50% while actually the Members of Scheduled Caste are entitled as per the Government Order to the reservation of 19% for the State of Uttarakhand. As such, the only logical, and legal procedure to fill the vacancy of the post of Chief Engineer, Level-II, on retirement of Kripal Singh was the roaster as per Government Order dated 31.08.2001, and the man next to P.N. Tikkoo was to be promoted on said post. It is not disputed that the next man on the line was the writ Petitioner.

11. Having considered submissions of learned Counsel for the parties, and after going through the copy of the Government Order dated 31.08.2001 (copy Anx. 5 to the writ petition) read with Rule 6 of Uttaranchal Government Servant Seniority Rules, 2002, we find that the writ petition has successfully made out the case for notional promotion not only to the post of Superintending Engineer w.e.f., 13.06.2001, but also for the notional promotion to the post of Chief Engineer, Level-II, w.e.f. 12.12.2007, the date on which junior to him was promoted. Needless to say that the Petitioner was promoted as Superintending Engineer for the State of Uttarakhand before his retirement in the year 2008, which is not disputed by the parties. In the case of R.S. Garg Vs. State of U.P. and Others, , it has been held by the Apex Court that by promotion the limit prescribed for reservation cannot be exceeded, and if there is any conflict between the percentage of reservation and roaster the former shall prevail. That being so, the Respondent cannot be allowed to exceed the limit prescribed for reservation. Even, otherwise, the Respondent No. 3 has not applied the same strictly. The promotion of the Kripal Singh, Member of Scheduled Caste (though Junior to the Petitioner), to the post of Chief Engineer, Level-II, did not suffer any

illegality as per the roaster. The first post had to go to the Member of Scheduled Caste but filling the post of Kripal Singh by another Scheduled Caste Candidate in a given case of strength of two posts, has violated the Rules, and the Government Order applicable to the case, as it exceeds limit of prescribed percentage of reservation.

12. For the reasons, as discussed above, we allow the writ petition for following reliefs only:

(i) The writ Petitioner shall be given notional promotion w.e.f., 13.06.2001 to the post of Superintending Engineer, the date on which Junior to him was given promotion in the State of Uttarakhand.

(ii) The writ Petitioner shall be given notional promotion to the post of Chief Engineer, level-II, w.e.f. 12.12.2007, the date on which Respondent No. 5 was given the promotion to said post.

(iii) Since the writ Petitioner has retired from service as Superintending Engineer in February 2008, he shall be entitled to the pensionary benefits only, arising out of the notional promotions directed to be given to the Petitioner from the date of his retirement.