

(2022) 07 UK CK 0093

In the Uttarakhand High Court

Case No : Special Appeal No. 682 Of 2018

Krishna Kuwar Singh Dewari And Others

APPELLANT

Vs

Kripal Singh And Others

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 67, 74
Uttarakhand Government Servant (Relaxation In Qualifying Service For Promotion)
Rules, 2010 — Rule 4

Citation : (2022) 07 UK CK 0093

Hon'ble Judges : Vipin Sanghi, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Bhagwat Mehra, Abhijay Negi, K.N. Joshi, V.K. Kapruwan

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1. The present Special Appeal has been preferred by the appellants after obtaining leave, since they were not parties to the writ proceedings, wherein the impugned order was passed by the learned Single Judge on 11.08.2017.

2. The writ petitioners, who are respondent nos. 1 to 4 in the present Special Appeal, had preferred Writ Petition (S/S) No. 1918 of 2016 assailing the order dated 09.09.2016 passed by the respondent/ authorities, whereby the respondent nos. 7 and 8 in the present Special Appeal were promoted to the post of Assistant Accounts Manager in the Uttarakhand Forest Development Corporation. The learned Single Judge disposed of the said Writ Petition by a short order, which we may reproduce hereunder :-

"In both these writ petitions, the petitioners before this Court are working on the post of accountant in Uttarakhand Forest Development Corporation and seek promotion to the next higher post i.e. Assistant Manager Accounts. One of the mandatory conditions for considering for promotion to the next higher post of

Assistant Manager Accounts is that an incumbent must have put in substantive service on the post of accountant for atleast seven years, a condition which is not fulfilled by some of the petitioners. Their case is that their promotion to the account itself was delayed at the hands of the respondents and in many cases the promotions were done after a gap of 14 to 15 years.

2. The petitioners have relied upon Rule 4 of the Uttarakhand Government Servant (Relaxation in Qualifying Service for Promotion) Rules, 2010, where the Managing Director has got powers to relax the mandatory condition of 7 years provided no other eligible candidates are available, a fact which is admitted by learned counsel for the Uttarakhand Forest Development Corporation.

3. In view thereof, both the writ petitions stand disposed with the direction to the respondents to first consider the case of such candidates who already fulfill the mandatory requirement for promotion and thereafter, if posts remain vacant, the case of other candidates shall be considered for promotion by giving relaxation as per the Rules.”

(emphasis supplied)

3. The appellants have assailed the impugned order on the ground that the learned Single Judge 2 wrongly proceeded on the premise that, for promotion to the post of Assistant Accounts Manager, the persons working in the feeder post of Accountant should have substantive service of atleast 07 years, as a condition of eligibility. According to the appellants, there is no minimum qualifying service required by an Accountant for becoming eligible for consideration for promotion to the post of Assistant Accounts Manager in the respondent Corporation.

4. The submission of the learned counsel for the appellants is that, prior to the bifurcation of the State of Uttarakhand from the State of Uttar Pradesh, in the Uttar Pradesh Forest Development Corporation – from which the respondent Corporation has been carved out, the service conditions were governed by Regulations framed in the year 1985. In the said Corporation, in the promotion Rules - for promotion to the post of Accountant from Assistant Accountant; from Accountant to Senior Accountant and; from Senior Accountant to Senior Auditor, the minimum required service of 07 years, in the feeder cadre was prescribed. However, upon the creation of the State of Uttarakhand, the respondent/ Corporation was created in the year 2001. According to the appellants, after 2001, the 1985 Regulations of the Uttar Pradesh Forest Development Corporation were no longer applicable. The appellants further submit that earlier there were only 08 posts of Assistant Accounts Manager in the respondent Corporation, which were raised to 20 in the year 2016.

5. The learned counsel for the appellants further submits that, on 06.06.2007, a completely new cadre of officers was created in the respondent/ Corporation. In respect of the Accounts Department, there were 29 posts of Accountants; 08 posts of Assistant Accounts Manager; 05 posts of Accounts Manager; 02 posts of Senior Accounts Manager; 01 post of Chief Audit Manager; and 01 post of

Financial Advisor/ Chief Financial Controller, which were created. In respect of the post of Assistant Accounts Manager, it was stated that, out of 08 posts, 01 post would be that of Assistant Audit Officer, and that all the posts would be filled by way of promotion from the cadre of Accountants. However, the said communication did not indicate as to what were the promotion Rules applicable for promotion.

6. On the aforesaid premise, the submission of the learned counsel for the appellants is that, for 4 promotion from the post of Accountant to the post of Assistant Accounts Manager, there is no stipulation with regard to experience, or minimum service required in the feeder grade.

7. On the other hand, the learned counsel for the respondent/ Corporation submits that the aforesaid contention of the learned counsel for the appellants is not correct. He has drawn our attention to the stand taken by the respondent/ Corporation in the counter affidavit filed in the Writ Petition and, in particular, to paragraph nos. 3(ii) and 3(iv), which reads as follows :-

3(ii). That before re-structuring of cadre by the G.O. dated 24.08.2016, there was only 8 sanctioned post of Assistant Account Manager in the Corporation and the same was earlier known as Sr. Account Manager but after re-structuring, additional 12 posts of Assistant Account Manager were created. All these posts are required to be filled or supplied by promotion and direct recruitment is not permissible.

3(iv). That on 24.08.2016, when cadre was re-structured, there were 12 vacancies on the newly created posts of Assistant Account Manager which were to be filled up by the feeder cadre of Accountant. In the top 18 of the seniority list of Accountants there was only one person who fulfilled the condition of 7 years service eligibility criteria for promotion. Thus there was a shortfall of eligible persons in the shortlist for zone of consideration for promotion. The matter was consequently placed before the Governing Body of the corporation and the Governing Body of the corporation passed a resolution to grant the promotion as per seniority relaxing the condition regarding the qualifying service. The said resolution was passed in its 57th meeting dated 29.08.2016. The that it may be stated here that the petitioners belong to reserve category who were appointed as Assistant Accountant on 07.03.1987, 03.09.1990, 20.07.1990 and 10.05.1990 respectively, subsequently they got accelerated promotion on the post of Accountant against the reserve vacancies. The private respondents belong to general category, were appointed on 24.04.1980 on the post of Assistant Accountant respectively but were promoted later in the point of time. However upon their promotion, they regain seniority by application of the catchup rules thus in the seniority list of accountant, private respondents are above the petitioners."

8. Thus, the stand of the respondent/ Corporation is that, before restructuring of the cadre by Government Order dated 24.08.2016, by which the number of

sanctioned posts for the post of Assistant Accounts Manager were increased from 08 to 20, the said post was earlier known as Senior Accounts Manager. However, upon restructuring, additional posts of Assistant Accounts Manager were created, and these posts are required to be filled or supplied by promotion, and direct recruitment is not permissible.

9. Learned counsel for the writ petitioners/ respondent nos. 1 to 4 has also opposed the present appeal. Learned counsel has drawn our attention to, firstly, Section 67, and also to Section 74, of the Uttar Pradesh Reorganisation Act, 2000, which led to the creation of the State of Uttarakhand. Learned counsel submits that the respondent Corporation is a Corporation carved out and created from the Uttar Pradesh Forest Development Corporation, and the respondent Corporation has continued to function and operate in the State of Uttarakhand. By placing reliance on Section 74 of the aforesaid Act, learned counsel submits that the conditions of service, of persons serving in connection with the affairs of the State, could not be altered to their disadvantage, and they continued to operate as they were operating prior to the bifurcation of the State. He submits that no previous approval of the Central Government was obtained so as to remove the requirement of 07 years' service in the feeder cadre of Accountants, for consideration for promotion as Assistant Accounts Manager. He submits that the writ petitioners had much longer tenure of service in the feeder grade, and any relaxation of the said requirement would have worked to their disadvantage, which could not have been done.

10. It has also been informed to us by the learned counsel for the appellants that, in the year 2022 itself, fresh promotion Rules have been framed, and for promotion to the post of Assistant Accounts Manager, 03 years' service in the feeder grade, and overall 15 years' service, is the eligibility norm.

11. We have considered the submissions of the learned counsels.

12. In our view, there is no merit in the submissions of the learned counsel for the appellants that there was no requirement of any minimum qualifying service in the feeder cadre of Accountants for consideration for promotion to the next higher post of Assistant Accounts Manager. This is for the reason that even before the bifurcation of the State, and creation of the respondent/ Corporation, under the Uttar Pradesh Forest Corporation, admittedly, by virtue of the Regulations framed in the year 1985, 07 years' minimum qualifying service, in the feeder cadre of Accountants was essential for consideration for promotion to the next higher post of Senior Accountant.

13. The respondent/ Corporation has stated in its counter affidavit, filed in the Writ Petition, that the said post has been renamed as Assistant Accounts Manager. Even otherwise, it does not stand to reason that, for gaining eligibility for promotion from one post to another, there would be no requirement of minimum qualifying service in the feeder cadre. Merely because the order sanctioning the posts of Assistant Accounts Manager, did not indicate the

promotion Rules, it does not follow that there was no Rule framed or applicable for promotion, requiring minimum service in the feeder cadre.

14. We, therefore, do not find any merit in the present Special Appeal and the same is, accordingly, dismissed. The respondent/ Corporation should proceed to fill up the vacancies in the cadre of Assistant Accounts Manager without any further delay.

15. In sequel thereto, all pending applications also stand disposed of.