

(2011) 06 UK CK 0001

In the Uttarakhand High Court

Case No : Writ Petition No. 255 of 2009 (S/B)

Tara Dutt Kandpal

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Citation : (2011) 06 UK CK 0001

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Before 1992, Petitioner and the private Respondents were appointed as Junior Engineers in the Department of Irrigation. Since the entry of the Petitioner was earlier than the private Respondents, Petitioner was recognized as senior to the private Respondents. In 1992, the Government created Sub-Cadre Rules and applied the same to the cadre of Engineers working in Irrigation Department of the State. Private Respondents opted for the Hill Sub-Cadre. In 1994, Petitioner too opted for Hill Sub-Cadre. The option of the Petitioner, however, was not acknowledged until 2002. Therefore, from 1992 until 2002, Petitioner was never treated to be a member of the Hill Sub-Cadre. In May 2000, private Respondents were promoted to the posts of Assistant Engineers. The posts, in which the private Respondents were promoted, were available for promotion only to those Junior Engineers who were in the Hill Sub-Cadre, in terms of the Hill Sub-Cadre Rules. Therefore, in the said posts, Petitioner could not be promoted as he was never recognized, until before May 2002, that he belongs to Hill Sub-Cadre. Much before 2002, when the Petitioner was recognized to have had submitted option to come to the Hill Sub-Cadre, the Hill Sub-Cadre stood abolished with effect from 9th November, 2000 and, accordingly, all the members of the Hill Sub-Cadre stood merged with the General Cadre. At that time, the Petitioner was admittedly in the General Cadre holding the post of Junior Engineer, whereas the private Respondents were in the Hill Sub-Cadre

stood merged with the General Cadre holding the posts of Assistant Engineers. Petitioner thus could not be compared at the stage of merger with the private Respondents, inasmuch as, whereas the Petitioner was holding an inferior post of Junior Engineer, the private Respondents were holding superior posts of Assistant Engineers.

2. In 2003, Petitioner was also promoted to the post of Assistant Engineer. In the writ petition, it is the contention of the Petitioner that in terms of the Uttaranchal Government Servants Seniority Rules, 2002, the Petitioner is entitled to be treated as senior to the private Respondents in the cadre of Assistant Engineers, and that he is also entitled to prepone his promotion to the date, when his juniors, the private Respondents were promoted.

3. The fact remains that the Petitioner, being not in the Hill Sub-Cadre, was not entitled to be promoted to the posts of Assistant Engineer, in which the private Respondents were promoted. It is, therefore, not permissible to contend that the private Respondents were junior while they obtained the said promotions. When the private Respondents stood merged with the General Cadre, they had already earned the status of Assistant Engineers, which, in law, could not be altered to the prejudice of the private Respondents.

4. On 9.11.2000, private Respondents, in law, came to the General Cadre holding the posts of Assistant Engineers. On that date, Petitioner was also in the General Cadre holding the post of Junior Engineer. Because the Petitioner in 2003 was promoted to the post of Assistant Engineer, he, with effect from that date, could only be recognized to be senior to the private Respondents provided a rule to that effect had been made. But no such rule has been made as yet. The Uttaranchal Government Servants Seniority Rules, 2002 does not at all address the issue.

5. In law, a person should be deemed to be entitled to his seniority from the date of his substantive appointment. When the private Respondents were substantively appointed to the posts of Assistant Engineers in May 2000, and the Petitioner was appointed substantively as Assistant Engineer in 2003, by no stretch of imagination, unless contrary is mentioned in any rule having statutory force, Petitioner can claim to be senior to the private Respondents.

6. We, accordingly, dismiss the writ petition.