

(2022) 08 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 191 Of 2019, 316 Of 2020?

Trilok Chandra Tiwari & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Bench?Result?Referred Case

Citation : ??

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

Bench : Division Bench

Advocate : Rakesh Thapliyal, Lalit Samant, A.S. Rawat, Pradeep Joshi, Durgesh Thapa

Final Decision : Allowed

Judgement

Vipin Sanghi, CJ

1. These two writ petitions assail the same judgment dated 29.03.2019, passed by the Uttarakhand Public Services Tribunal at Dehradun, in Claim Petition No. 13/DB/2013, preferred by the private respondent nos.5 to 8 in Writ Petition (S/B) No.191 of 2019 (hereinafter referred to as the private respondents). The petitioners in Writ Petition (S/B) No.191 of 2019 were the respondents in the Claim Petition, whose seniority above the private respondents has been disturbed, and the effect the impugned judgment is that the private respondents would be ranked senior to the petitioners. The State of Uttarakhand has also assailed the impugned judgment in Writ Petition (S/B) No.316 of 2020. The Tribunal allowed the said claim petition preferred by the private respondents; set-aside the seniority list dated 29.04.2009; and, the Tribunal also directed the State of Uttarakhand, and its authorities to re-draw the seniority list afresh on the basis of the date of substantive appointment of the persons in the parent department for determining the inter se seniority of the persons who joined the Secretariat services under the

(hereinafter referred to as the "Absorption Rules, 2002"), (the Tribunal has referred the expression "Amalgamation Rules" for the same). Rule 6 of the Absorption Rules, 2002 is material to determine the present controversy, and the relevant extract from Rule 6 of the said rules, as published in Hindi language, as well as its English translation, (provided by the learned Senior Counsel appearing for the petitioners- which has not been disputed by the learned counsel for the private respondents, and the learned Special Senior Counsel appearing for the State), reads as follows:-

English Translation:-

6. Determination of conditions for absorption:- (1) The date indicated in the order of absorption on the post of Personal Assistant, Lower Division Assistant/ Assistant Accountant/ Typist/ Peon in the Secretariat shall be treated as the date of substantive appointment of the concerned employee on the concerned post in the Secretariat and after that date, the matters relating to his seniority, promotion and other service matters shall be governed as per the concerned service rules.

(2) After absorption, after fixation of the inter se seniority of the employee on the concerned post in Secretariat cadre on the basis of date of substantive appointment in the concerned cadre, he shall be placed in the seniority below the junior most employee of the Secretariat cadre. Against the concerned post in the Secretariat cadre at the time of fixation of seniority below the junior most employee, those employee whose pay scale is same in different departments, their seniority shall be determined from their date of substantive appointment in their parent department on the basis of counting their period of service.

(3) Even after absorption of personnel posted in the Government departments on deputation, the direct recruitment posts remain vacant, then in such an eventuality the absorption shall be made in the Secretariat from amongst the employee substantively appointed in the Corporations and Autonomous Institutions.

(4) In the eventuality of absorption of the employees of Corporation/Autonomous Institution, they shall be placed in the seniority list at the bottom of absorbed employees of Government Department. The inter se seniority of the absorbed employees of Corporation/ Autonomous Institution having same pay-scale shall be determined on the basis of their period of service from the date of their substantive appointment in the Corporation/ Autonomous Institution till the date of their absorption".

(emphasis supplied)

2. The Absorption Rules, 2002 were framed on 22.06.2002. The petitioners and the private respondents- at their option, were attached to the Secretariat on 25.06.2002 with the issuance of an office memorandum. On 20.07.2002, the Government of Uttarakhand issued an office memorandum, whereby it stated

that with immediate effect, the sixty-four stenographers posted in Uttaranchal Secretariat, on the basis of transfer, are substantively appointed on the posts of Personal Assistant under the terms and conditions specified in the Uttaranchal Personal Assistant, Lower Division Assistant/Assistant Accountant/ Typist/ Peon Absorption Rules, 2002, on probation for a period of one year. Paragraph No.3 of the said office memorandum stated that the serial numbers mentioned in the above appointment order do not have any relation with the seniority of the persons. The order relating to seniority under the provisions of the Absorption Rules, 2002 will be issued separately.

3. On 13.08.2002, the Uttarakhand Government Servants Seniority Rules, 2002 (hereinafter referred to as the "Seniority Rules, 2002") were framed and enforced. It appears that on 26.03.2004, the Government of Uttarakhand issued a tentative seniority list of the absorbed employees into the Secretariat, in the cadre of Additional Private Secretary. After considering the objections, on 08.12.2004, the final seniority list was issued by the Government of Uttarakhand in the cadre of Additional Private Secretary. In the said seniority list, the petitioners were placed at Sl. Nos.1, 2, 3, 4, 5, 8 and 11, whereas the private respondents were placed at Sl. Nos.26 and below. As noticed above, the date of absorption of the petitioners as well as the private respondents was the same, i.e. 25.06.2002. This seniority list indicated- in column No.9, the pay-scale drawn by, inter alia, the petitioners, and the private respondents in their parent departments. It would be seen that the petitioners were all drawing their pay in the pay-scale of Rs.5500 - 9000, or Rs.5000 - 8000, whereas, the private respondents were drawing their pay in the pay-scale of Rs.4000 - 6000.

4. On 10.12.2004, the Government of Uttarakhand issued a promotion order granting promotion to the Additional Private Secretaries as Private Secretaries (Grade-1) in the pay-scale of Rs. 6500-10500. In this promotion order, the names of the petitioners ranked higher in seniority, than that of the private respondents.

5. At this stage, we may leave the narration of further facts on the side, and take note of certain legal proceedings qua the challenge to Rule 6 of the Absorption Rules, 2002. The constitutionality of the aforesaid rule was challenged before this Court in a batch writ petitions, including Writ Petition (S/B) No.34 of 2005. A Division Bench of this Court, vide its judgment dated 20.12.2006, repelled the said challenge to Rule 6(2). The Division Bench, in its judgment held, inter alia, as under:-

"27. In view of these circumstances as stated in the writ petition, there is no material on record to show that the provisions of Rule 6 of the Rules are unreasonable rather on the other hand, it was the only reasonable criteria which has been adopted. Therefore, the Rule 6 of the Rules cannot be held to be violative of Article 14 of Constitution of India. Hence the provisions of Rule 6 are held to be valid subordinate legislation.

28. The petitioners were well aware about the Rules before absorption in Secretariat. They have opted to be absorbed in Secretariat, being aware of the fact that their inter-se seniority would be determined in accordance with sub-rule (2) of Rule 6 of the Rules. Can now the petitioners be permitted to challenge the constitutionality of the Rules? (although it has already been held that the provisions of Rule 6 of the Rules are not violative of Article 14 of Constitution of India). In the case of Union of India and another Vs. N. Chandrasekharan and others reported in (1998) 3 S.C.C.694, it has been held that "It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report." In view of the facts of the case, definitely, now the petitioners cannot challenge the validity of the Rules by which they have been absorbed in the Secretariat service and about which they were aware before absorption".

(emphasis supplied)

6. The matter was carried to the Supreme Court in Special Leave Petition being Special Leave to Appeal (Civil) No(s).5574 of 2007. The same was dismissed on 02.04.2007. The Supreme Court further observed that "in case any individual person is affected by the improper implementation of the Rule, then he can approach the proper forum for relief of his grievance. So far as Rule is concerned, we do not find any illegality in it".

7. It appears that the Government of Uttarakhand again invited objections to the seniority list finalized on 08.12.2004. On 29.04.2009, the Government, after considering the objections received, again issued a final seniority list. Yet again, the petitioners were ranked higher to the private respondents. In Paragraph No. 3.1 of the said office order dated 29.04.2009, the Government stated as under:-

"In relation to the objections filed by the aforesaid employees, it is to inform that after absorption under Rule 6(2) of the

,after determination of the inter se seniority of the employees on the concerned post in the Secretariat cadre on the basis of their date of substantive appointment on the post under the concerned cadre, there is a provision for placing the employee in the seniority list just below the junior-most employee, and under the Uttarakhand Government Servants Seniority Rules, 2002, where the pay-scales are different, then there is a provision that the promoted employees drawing higher pay-scales in the feeder cadre, will be senior to the promoted persons drawing lower pay-scales in the feeder cadre".

(emphasis supplied)

8. On 17.04.2012, the Government of Uttarakhand issued another office order containing its decision on the representation of officers- like the private respondents, in the light of the right of representation given by the Supreme Court while dismissing Special Leave to Appeal (Civil) No.5574 of 2007. The Government rejected the said representation, wherein the Government observed as follows:-

"6 (4.) As written consent was sought from all the employees before the absorption and it was known to these employees that according to Rule 6(2) of the Absorption Rules, the seniority is to be determined and no change can be done in it. Still, the absorption was accepted by the personnel and according to the Absorption Rules, at the time of issuance of the seniority list, there have been promotions twice on the basis of seniority list and now any kind of alteration in this seniority list is neither right according to the Rules, nor is it right from the administrative point of view.

(5.) The Private Secretaries mentioned in Para-4 met with me and raised the points regarding the seniority list that personal pay-scale and time-scale pay-scale should have been considered at the time of absorption. Consultation of Personnel Department was sought on this point, and Personnel Department has clarified that according to the Absorption Rules, 2002, personal pay-scale/time scale pay-scale cannot be considered as the basis of date of substantive appointment".

9. The private respondents then preferred their claim petition before the Tribunal being Claim Petition No.13/DB/2013. The said claim petition was rejected by the Tribunal on 18.05.2016, on the ground that the same suffers from delay, laches, and limitation.

10. This order of the Tribunal was, however, set-aside by a Division Bench of this Court in Writ Petition (S/B) No.239 of 2016, and the matter was remitted back to the Uttarakhand Public Services Tribunal to decide the lis on its own merit, without being influenced by delay and laches. The Tribunal, thereafter, heard the aforesaid claim petition, and has allowed the same by the impugned judgment.

11. On behalf of the petitioners, the submissions were led by Mr. Rakesh Thapliyal, the learned Senior Counsel. He firstly submits that the Tribunal fell in grave error in unsettling the settled seniority lists since 08.12.2004, which had repeatedly been finalized after repeated rejection of the objections raised by the private respondents. The provisional seniority list, upon absorption of the petitioners and the private respondents into the Secretariat services, was issued by the Government of Uttarakhand on 26.03.2004, and objections were called against the same. The said seniority list was finalized on 08.12.2004 after considering of all objections of the private respondents.

Mr. Rakesh Thapliyal further submits that this seniority list dated 08.12.2004 was drawn strictly in accordance with Rule 6 of the Absorption Rules, 2002, which provided that if the date of absorption in the post within the Secretariat cadre is

same, the inter se seniority of the absorbees would be determined by placing those drawing higher pay-scale, above those drawing a lower pay-scale, in their parent departments on the date of absorption. The second occasion when the same seniority list was affirmed by the State, was when the State issued yet another seniority list on 29.04.2009. This seniority list was issued in respect of the promotional post since, in the meantime, the petitioners and the private respondents had been promoted. However, their inter se seniority was maintained.

Mr. Rakesh Thapliyal further submits that the Tribunal's finding that the inter se seniority of the absorbees would be determined on the basis of the length of service in the parent cadre in all cases, has no basis in the Rules, and the same is contrary to the express provision in the Rules, namely Rule 6(2) of the Absorption Rules, 2002. He submits that when there is a specific rule with regard to fixation of the inter se seniority of the absorbees in the same posts of the Secretariat cadre, the same has to be given effect to, and it cannot be overlooked by invocation of the general principle of seniority being determined on the basis of the length of service. The Seniority Rules, 2002, admittedly, were not in force when the petitioner and the private respondents were absorbed in the Secretariat cadre on 25.06.2002. Admittedly, the Seniority Rules, 2002 were framed under clause (3) of Article 348 of the Constitution of India by the Governor on 13.08.2002.

The further submission of Mr. Rakesh Thapliyal is that, Rule 7 of the Seniority Rules, 2002 is of no avail, since the same dealt with the situation where the appointments are to be made only by promotion from more than one feeder cadres. Rule 7 of the Seniority Rules, 2002 reads as follows:-

"7. Seniority where appointment by promotion only from several feeding cadres.- Where according to the service rules, appointments are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of order of their substantive appointment in their respective feeding cadres". (emphasis supplied)

Mr. Thapliyal submits that, in the present case, the petitioners and the private respondents were not promoted, but were absorbed in terms of the Absorption Rules, 2002 in the Secretariat services. Since Rule 6 of the Absorption Rules, 2002 itself provided the manner of fixation of inter se seniority of the absorbees qua those already in service in the Secretariat services, as also the manner of fixation of inter se seniority of the absorbees into the Secretariat services, the said rule alone was relevant, and it took effect on the date of absorption. The Seniority Rules, 2002 were not even in force on the relevant date, i.e. 25.06.2002. The said Rules, in any event, could not have altered the inter se seniority positions, since the same already stood fixed by the Absorption Rules, 2002.

Mr. Thapliyal has also drawn our attention to the Uttar Pradesh Government Servants Seniority Rules, 1991 (hereinafter referred to as the "1991 Rules" for brevity). Rule 7 of the 1991 Rules is the same, as the Rule 7 of the Seniority Rules, 2002. He submits that the Government was aware of the 1991 Rules which were in force, when the Absorption Rules, 2002 were framed. If the Government intended that the inter se seniority of the absorbees should be governed by their length of service in their parent departments, the Government would have said so expressly, and all that the Government was required to do was to say that Rule 7 of the 1991 Rules would apply to determine the inter se seniority of the absorbees. However, the Government consciously made a departure in Rule 6 of the Absorption Rules, 2002 and, thus, Rule 6 has to be given effect to. He submits that the private respondents came into the Secretariat service with open eyes, by opting for the same, knowing fully well as to how the inter se seniority of the absorbees would be fixed and, therefore, they are estopped from raising any such grievance.

Mr. Rakesh Thapliyal further submits that even the private respondents acknowledged in their claim petition, in Paragraph 4.18 that the inter se seniority of the absorbees of the same date; in the same posts, had to be determined on the basis of the pay-scales drawn by the absorbees in their parent departments on the date of absorption. In this regard, he relies on the following averment made in Paragraph 4.18 of the claim petition, which reads as under:-

"They have taken into consideration to the Rule 7 which provides that a person who is having higher pay-scale pursuant to the one selection may be senior, but this analogy cannot be accepted because the initial date of appointment of the petitioners has a great role and in their parent department, the date of appointment of the petitioners is much earlier to the private respondents and no private respondent was getting higher pay-scale in comparison to the petitioners at that time of induction in services of parent department in comparison to the petitioners".

12. Mr. A.S. Rawat, learned Special Senior Counsel, appearing for the State in the aforesaid writ petitions, supported the submissions of Mr. Rakesh Thapliyal, the learned Senior Counsel appearing for the petitioners.

13. On the other hand, Ms. Durgesh Thapa, the learned counsel for the private respondents, has firstly drawn our attention to an office order dated 20.07.2002, whereby, the absorbees, i.e the petitioners and the private respondents, were kept in probation for a period of one year upon their transfer into the Secretariat services on the post of Personal Assistant in terms of the Absorption Rules, 2002. Learned counsel submits that in this list, some of the private respondents were placed above the petitioners. For example, Mr. Madan Mohan Bhardwaj-respondent no.8, was placed at Sl. No.6, Mr. Hari Dutt Deotala- respondent no.5, was placed at Sl. No.13, and Mr. Dinesh Chandra Gairola-respondent no.7, was placed at Sl. No.30, whereas the petitioner Mr. Trilok Chandra Tiwari was placed at Sl. No.56.

14. Pertinently, this office order, in Paragraph No.3, clearly stated that the said office order had no relation with the inter se seniority of the absorbees, and that the inter se seniority would be fixed under the Absorption Rules, 2002 on a later date. Therefore, reliance placed by the learned counsel for the private respondents on the office order dated 20.07.2002 appears to be of no avail. As we have noticed hereinabove, the inter se seniority list of the absorbees was issued on 08.12.2004.

15. Learned counsel for the private respondents has vehemently argued that the seniority is always counted from the date of substantive appointment and, therefore, the inter se seniority of the petitioners and the private respondents ought to be fixed on the basis of their length of service in the parent departments- irrespective of the pay-scales that they were drawing in their parent departments on the date of absorption, i.e. 25.06.2002. She has placed reliance on the judgment of the Supreme Court, in the case of "State of Uttar Pradesh & others vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347".

16. This decision has absolutely no relevance to the present case, as it deals with the aspect of delay/ laches/ acquiescence, and held that there is entitlement to claim benefit of judgment in rem with intention to benefit all similarly situated persons, irrespective of whether they had approached the Court or not, subject to well-recognized exceptions. In the present case, the aspect of delay and laches in the private respondents approaching the Tribunal already stands concluded in the earlier round, and has not even been argued by the petitioners.

17. Learned counsel for the private respondents has then placed reliance on the judgment rendered by the Supreme Court, in the case of "Coal India Ltd. & another vs. Navin Kumar Singh, in Civil Appeal Nos.6491-6492 of 2014, decided on 25.09.2018".

18. We have perused this judgment, and in our view, the same is wholly irrelevant for our purpose. This is for the reason that the Supreme Court was concerned in that case with a particular clause of the policy, namely Clause 11.1(ii) which was applicable to inter-company transfer on request of the employee. However, Rule 6 of the Absorption Rules, 2002 is completely different. Navin Kumar Singh (supra) was a case of inter-company transfer, whereas the present is a case of absorption in the Secretariat services of persons serving in different departments of the Government. Reliance placed on Navin Kumar Singh (supra) is, therefore, rejected.

19. Having heard the learned counsels, and considered their submissions, and having perused the impugned judgment rendered by the Tribunal, we are of the view that the impugned judgment is, completely, laconic and cannot be sustained.

20. We have extracted hereinabove the relevant part of Rule 6 of the Absorption Rules, 2002 in Hindi language, as it was published, as well as its English translation, as provided by the learned Senior Counsel appearing for the petitioners, which translation has not been disputed by any of the other parties.

A perusal of the said rule leaves no manner of doubt that the manner of fixation of inter se seniority of the absorbees, who were absorbed on the same day; in the same post, was that the absorbees who were in a higher pay-scale in their parent departments on the date of absorption, would rank higher in seniority than those who were in a lower pay-scale in their parent departments on the date of absorption. This Rule has been upheld, and there is good justification for it. It stands to reason that persons in higher pay scale- when clubbed with persons in lower pay scale, should be ranked higher in the seniority list when their date of absorption is the same; in the same post.

21. Pertinently, it was argued by the private respondents before the Tribunal that the inter se seniority should be governed by the Absorption Rules, 2002, and not by the Seniority Rules, 2002, and this submission has been accepted by the Tribunal. In Paragraph Nos.24, 25 and 26 of its judgment, the Tribunal holds as follows:-

24. We hold that petitioners' interest was crystallized on the day when they joined Secretariat services on amalgamation i.e. prior to enforcement of the Seniority Rules, 2002, which admittedly came into existence about 53 days after the Amalgamation Rules, 2002. Thus, a person, whose appointment on a post was finalized on a particular date, his service conditions would be governed from that date when, he was appointed to a particular post. Accordingly, in our view, the Seniority Rules, 2002 would not govern the field at the time, when the services of the petitioners were amalgamated. The seniority of the petitioners should be and can be fixed as per the rules in existence at the time of their appointment. The absorption of the petitioners was made on 25.06.2002, when the Seniority Rules, 2002 were not in existence at all, so their seniority cannot be fixed according to these Rules. The above view also finds support from the judgments of the Hon'ble Apex Court, passed in Union of India Vs. S.S. Uppal and others 1996(2) SCC pg. 168.

25. It is also to mention that it was the case of merger of two cadres and seniority after merger of the cadres, can only be decided according the Amalgamation Rules, 2002, wherein merger was provided. Whereas, the Seniority Rules, 2002 does not provide for determination of seniority on amalgamation of two cadres, merged into one.

26. Thus, we are of the view that the petitioners' seniority can be determined according to Rule 6(2) of the Amalgamation Rules, 2002 and not in accordance with the Seniority Rules, 2002, which came into existence later in time and which also does not provide for the situation of determination of seniority on amalgamation of two cadres".

22. It appears that the Tribunal, thereafter, proceeded to hold that the inter se seniority of the absorbees should be fixed according to the length of service of the absorbees in their parent departments, only on the basis that the private respondents claimed that in the case of Anusewak (peon), the Absorption Rules,

2002 (Amalgamation Rules) were interpreted, and were made applicable for fixation of seniority according to length of service, i.e. on the basis of date of their substantive appointment, and not on the basis of their pay-scales in their parent departments at the time of absorption. The Tribunal misdirected itself by not appreciating that it was called upon to interpret Rule 6(2) of the Absorption Rules. It should have realized that it was not relevant how the Rule had been applied in the case of peons, and two wrongs do not make a right. It is, thus, clear that the Tribunal failed to read, and interpret Rule 6(2) of the Absorption Rules, 2002, and proceeded to allow the claim petition by holding that for fixation of inter se seniority, pay-scales cannot be the criteria, and the date of substantive appointment in the parent department, should be the criteria for considering their inter se seniority. This interpretation is, on the face of it, contrary to the plain language of Rule 6 of the Absorption Rules, and therefore, cannot be sustained.

23. For the aforesaid reasons, we allow the present writ petitions, and set-aside the impugned judgment and the directions issued by the Tribunal.

24. The parties are left to bear their respective costs.