
(2011) 06 UK CK 0039

In the Uttarakhand High Court

Case No : Writ Petition No"s. 221 of 2006 (S/B) and 376 of 2011 (S/S)

Umrao Singh Saini

APPELLANT

Vs

State of Uttaranchal and Another
 Harish Chandra
Singh Rawat Vs State of U.P. and Others

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Citation : (2011) 06 UK CK 0039

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

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—On 01.03.1980 Umrao Singh Saini (for the purpose of convenience hereinafter referred to as "Petitioner") and Harish Chandra Singh Rawat (for the purpose of convenience hereinafter referred to as "Respondent") entered the service of State by direct recruitment in the posts of Cooperative Inspector Group-II. Petitioner scored better merit than the Respondent at the entry level and was accordingly recognized as senior to Respondent. On 16.01.1989 Petitioner was promoted to the post of Co-operative Inspector Group-I; whereas on 24.07.1992, Respondent was promoted to the post of Co-operative inspector Group-I. In 1998 a seniority list was prepared where it was shown that the Petitioner is at 1274th position; whereas the Respondent is at 1346th position. This seniority list contained seniority position of all employees in the cadre. On 06.06.1998 a seniority list was prepared containing seniority particulars of only those employees who were then in Hill Sub Cadre. In that list Petitioner occupied 09th position and Respondent 12th position. Respondent took an objection to the said seniority list. He contended that Petitioner was not a member of Hill Sub Cadre and even if he is treated to be a member of Hill Sub Cadre, he having come after the Respondent in Hill Sub Cadre, as is depicted in the seniority list of Hill Sub Cadre prepared on 10.03.1998, in the Hill Sub Cadre, Petitioner should be treated to be junior to the Respondent. This contention was accepted by the authority concerned without giving any notice to the Petitioner and accordingly on 21.07.1998 another seniority list of Hill Sub Cadre was

published where it was shown that the Respondent is senior to the Petitioner. Aggrieved thereby, Petitioner filed a representation which was ultimately allowed on 29.06.2000 whereupon the seniority list of 06.06.1998 was restored. Against the order dated 29.06.2000 Respondent filed a writ petition before Hon'ble Allahabad High Court, which writ petition since has been transferred to this Court.

2. In the meantime on 02.11.1999 Respondent was promoted to the post of District Assistant Registrar. In view of the said promotion, and in as much as subsequent thereto Petitioner was also promoted to the post of District Assistant Registrar on adhoc basis, Petitioner filed a writ petition in 2006 claiming that since junior to the Petitioner has been promoted to the post of District Assistant Registrar, promotion accorded to the Petitioner to the post of District Assistant Registrar be given effect to from the date Respondent was promoted i.e. from 02.11.1999. With the intervention application filed by the Respondent to the writ petition of the Petitioner the decision of the Public Service Commission to promote the Respondent has been annexed. In that it has been shown that criteria for promotion was merit. However, while doing so, the decision does not show that merit of any other person, apart from who had been found to have merit to be promoted, was considered. Respondent has annexed a document dated 04.02.2006 and thereby purported to contend that the commission in 1999 considered the merit of all those persons who have been listed in the said document dated 04.02.2006. It was contended that the case of the Petitioner was also considered by Commission, when Commission did not find that the Petitioner had appropriate merit for being promoted. In the absence of recording by the Commission that they considered the case of others, apart from those who were found to be eligible, it would not be appropriate to proceed on the basis that the commission considered the case of anyone else than those who were found by the commission to be eligible. The fact remains that commission did not record that others were found not meritorious enough. In the circumstances, the conclusion would be that the Commission selected those who were selected on 01.11.1999 because their cases were put forward to the Commission on the basis of their respective Seniority. In the event on 21.07.1998, the seniority list of 06.06.1998 had not been altered, it is possible that the case of the Respondent may not have had been placed before the Commission; instead the case of Petitioner would have had been placed before the Commission.

3. Be that as it may, it is settled law that status of a person in Government Service can not be altered to his disadvantage without notice to him. Therefore, the alteration in the seniority list as was made on 21.07.1998 is per se illegal and has no legal force at all. The seniority list of 21.07.1998 was interfered with on 29.06.2000, when the seniority list of 06.06.1998 was restored. Respondent has filed a writ petition contending that the order dated 29.06.2000 restoring seniority list of 06.06.1998 is unjust and inappropriate. We think that by the passage of time and by reason of subsequent events the issue raised in the writ petition filed by the Respondent has become academic, in as much as on

09.11.2000, while by the U.P. Re-organization Act, carving out a part of State of U.P., State of Uttarakhand was created, Hill Sub Cadre was abolished. As a result people who were in Hill Sub Cadre stood merged w.e.f. 09.11.2000 in the General Cadre of the State of Uttarakhand. It is settled law that seniority in the General Cadre is to be reckoned on the basis of entry. As aforesaid, at the time of original entry, Petitioner was senior. Subsequent thereto, when he was first promoted, he having been promoted prior to the Respondent, he was treated to be senior. Further until the illegal alteration of seniority list dated 21.07.1998, Petitioner was also treated to be senior. In the event said alteration is avoided, which in law is required to be avoided and was, in fact, avoided on 29.06.2000, Petitioner should be deemed to have continued to remain senior to the Respondent throughout his career and also on the date Hill Sub Cadre was abolished and members thereof stood merged with the General Cadre. In those circumstances even if writ petition filed by the Respondent is allowed and it is held that the Petitioner did not come to Hill Sub Cadre before the Respondent came, the same will not affect the seniority of the parties in the merged General Cadre.

4. The fact remains that the Petitioner has now been promoted to the post of District Assistant Registrar, though on adhoc basis. The Government of Uttarakhand has already taken a decision that in the event, a junior to a Government employee has been promoted then the employee concerned is entitled to notional promotion from the date his junior was promoted. We accordingly direct the State Government to give notional promotion to the Petitioner w.e.f. 09.11.2000 provided the Public Service Commission accords approval to the promotion of the Petitioner to the post of District Assistant Registrar. We would request to State Government to approach the Commission for that purpose at an early date. With the observations as above, both the writ petitions are disposed of.