

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).13019/2011

(From the judgement and order dated 16/03/2011 in WP No.23/2005 of The  
HIGH COURT OF UTTARAKHAND AT NAINITAL)

ARJUN SINGH

Petitioner(s)

VERSUS

STATE OF UTTARANCHAL(NOW UTTARAKHAND)&OR

Respondent(s)

(With prayer for interim relief)  
(For final disposal)

Date: 19/02/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE H.L. GOKHALE  
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Mr.Dinesh Dwivedi, Sr.Adv.  
Mr. P.N. Gupta, Adv.  
Mr.Varun Chaudhary, Adv.

For Respondent(s) Mr. Abhishek Atrey, Adv.  
For State of Mr.Brijesh Panchal, Adv.  
Uttarakhand Mr.Aishverya Shandilya, Adv.

For RR Nos.4 & 6 Mr. Amit Anand Tiwari, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The petitioner, who is a member of Scheduled Tribe and is holding the post of Additional Secretary in the Government of Uttarakhand is aggrieved by order dated 16.3.2011 of the Division Bench of the Uttarakhand High Court, whereby the committee constituted under the U.P. Secretariat Service Rules, 1983 (for short, 'the 1983 Rules') was directed to consider his case along with that of respondent Nos. 4 and 5 for promotion to the post of Additional Secretary against the vacancies of 2004-2005.

The petitioner and respondent Nos. 4 to 6 were selected by the Uttar Pradesh Public Service Commission and were appointed as Upper Divisional Assistants. In the merit list prepared by the Commission, respondent Nos. 4 to 6 were placed above the petitioner. All of them were promoted as Section Officer w.e.f. 24.1.1997. The petitioner and respondent Nos. 4 and 5 were further promoted as Under Secretaries w.e.f. 14.2.1997. Respondent No.6 was promoted as Under Secretary w.e.f. 3.11.1998. In April 1999, the petitioner was given accelerated promotion on the post of Deputy Secretary whereas respondent Nos. 2 to 6, who were initially senior to him, were promoted as Deputy Secretaries vide order dated 2.8.2001. The petitioner and respondent Nos. 4 to 6 were further promoted as Joint Secretaries w.e.f. 2.8.2001, 21.2.2004, 21.2.2004 and 13.11.2004 respectively. Vide order dated 9.10.2002, the petitioner and 2 others were confirmed as Joint Secretaries. Respondent Nos. 4 and 5 were also confirmed as Joint Secretaries w.e.f. 2.12.2004. Respondent No.6 was promoted as Joint Secretary vide order dated 11.12.2004 and was placed on probation.

In 2005, the Departmental Promotion Committee selected Shri Mohan Lal Tamta for the post of Additional Secretary and he was promoted

against one of the two available posts.

The petitioner filed Writ Petition No.23/2005 claiming promotion to the post of Additional Secretary. The Division Bench of the High Court passed interim orders dated 27.4.2005, 4.5.2005 and 19.5.2005, perusal of which shows that the petitioner was treated senior to respondent Nos.4 to 6.

During the pendency of the writ petition, the petitioner was promoted as Additional Secretary w.e.f. 7.6.2005.

The Division Bench finally disposed of the writ petition by the impugned order. It took into consideration the Uttaranchal State Government Servants Confirmation Rules, 2002 (for short, 'the Confirmation Rules') and Uttaranchal Government Servants Seniority Rules, 2002 (for short, 'the Seniority Rules') and held:

"Admittedly, petitioner and respondents No. 4 to 6 were recruited as UDAs in the year 1982, and petitioner was junior to the rest of the three. It is also not disputed that petitioner belonged to the category of Scheduled Tribe, and got promotion to the post of Deputy Secretary ahead of his seniors. But to that stage there was no grievance either to the respondents or to the petitioner. Cause of dispute appears to have arisen when the petitioner was promoted as Joint Secretary which was not reserved for Scheduled Tribe. It is also clear from the affidavits filed by the parties that respondents No. 4 to 6 were also promoted to the post of Joint Secretaries and out of them respondents No. 4 and 5 were promoted to said post on 02.02.2004 and confirmed in December 2004. As on 01.07.2004, they were also Joint Secretaries, but they had not completed the probation period, while the petitioner had already completed the same. The argument advanced on behalf of the petitioner is that since the respondents No. 4 to 6 were not permanent Joint Secretaries on 01.07.2004, as such only the case of petitioner should have been considered by the DPC for promotion to the post of Addl. Secretary. Having considered said argument advanced on behalf of the petitioner, we are of the view that since it has come in the affidavit of State Government that promotion of respondents No. 4 and 5 was also against permanent vacancies, as such, on completion of their probation period in December 2004, they stood permanent Joint Secretaries w.e.f. 02.02.2004. In view of Sub Rule (2) of Rule 5 of the Rules of 1983, which provides that if a junior person is included in the field of eligibility his senior shall also be included notwithstanding the fact that such person had not put in requisite period of service, we are of the opinion that the stand taken by the petitioner cannot be accepted that it was only he who should have been considered by the DPC for promotion to the post of Addl. Secretary, particularly, when the respondents No. 4 and 5 were admittedly senior to the petitioner. It is pertinent to mention here that during the pendency of this writ petition, in compliance of interim order of this court, the petitioner has provisionally been promoted to the post of Addl. Secretary in the year 2005, and thereafter in the year 2007, against the other two vacancies of Addl. Secretaries respondents No. 4 and 5 have also been promoted to said posts. While, we do not want to disturb their provisional promotions, we are of the view that the Selection Committee / DPC is required to consider case of all the three (petitioner, respondent No. 4 and respondent No. 5) eligible candidates whose appointment to the post of Joint Secretary stood permanent on 01.07.2004, as discussed above. As far as respondent No. 6 is concerned, as he was promoted on the post of Joint Secretary only on 11.12.2004 (i.e. after 01.07.2004) as such, he was not eligible for promotion to the post of Addl. Secretary in the year 2004-05. As such the case of respondent No. 6 may come for promotion in the vacancy if any for subsequent year or thereafter.

As far as the order dated 28.04.2005 is concerned, it simply contains the clarification made by the Government of India

relating to the entitlement of promotion of the members belonging to Scheduled Castes and Scheduled Tribes whose promotion is due on merits against post which is not reserved for said community. There is nothing illegal in the clarification which violates any constitutional provision as it simply provides that where such candidate on his own merit stands for promotion, he cannot be denied his promotion only on the ground that the post is not reserved for that community. Paragraph No. 3 of the Clarification further provides in the order, challenged by amending the petition, that in the cases of non-selection promotions i.e. seniority-cum-unfit, the clarification given in Paragraphs No. 1 and 2 have no application for the simple reason that the promotion of the person would be decided on the basis of seniority-cum-unfit."

After holding that respondent Nos.4 and 5 were senior to the petitioner and they were eligible to be considered for promotion as Additional Secretary, the Division Bench issued the following directions:

"i) The Committee constituted under U.P. Secretariat Service Rules 1983 for the promotion to the post of Addl. Secretary shall consider cases of the petitioner as well as that of respondent No. 4 and respondent No. 5 for their promotion to the post of Add. Secretary meant for Secretariat staff in the year 2004-05.

ii) The provisional promotions made of the petitioner and respondents No. 4 and 5 shall remain undisturbed till the decision of the Committee constituted under the Rules, for the promotion to the post of Addl. Secretary in the matter.

iii) No recovery of the salary already paid to the petitioner and respondents No. 4 and 5 for the post of Addl. Secretary shall be made.

iv) We do not find any illegality in the Government Order dated 28.04.2005, and as such, the relief in respect thereof stands declined."

Shri Dinesh Dwivedi, learned senior counsel appearing for the petitioner argued that the High Court's interpretation of the Confirmation Rules and the Seniority Rules is ex facie erroneous and the impugned order is liable to be set aside because in the interim orders passed on 27.4.2005 and 4.5.2005, the Division Bench had unequivocally recognized the petitioner's seniority over respondent Nos. 4 and 5. Learned senior counsel submitted that the Division Bench, which finally decided the writ petition could not have ignored the earlier orders and held that respondent Nos. 4 and 5 are senior to the petitioner. He then submitted that no useful purpose would be served by giving effect to the directions contained in the impugned order because respondent Nos. 4 and 5 have already retired from service and the petitioner is the only person eligible to be considered for the post of Additional Secretary.

Learned counsel for the respondents supported the impugned order and argued that the petitioner cannot claim seniority over the private respondents because as on the date of consideration, i.e., 1.7.2004, respondent Nos.4 and 5 were holding the posts of Joint Secretaries.

We have considered the respective arguments/submissions. It is not in dispute that as per G.O. dated 23.6.2003, the eligibility of the employees is required to be considered as on first day of July. As on that day, the petitioner and respondent Nos. 4 and 5 were holding the posts of Joint Secretaries. They were regularly promoted to the posts of Joint

Secretaries. Therefore, their seniority had to be considered keeping in view their placement in the feeder cadre and the High Court did not commit any error by holding that respondent Nos. 4 and 5 were senior to the petitioner.

The direction given by the Division Bench of the High Court for consideration of the petitioner's case along with that of respondent Nos. 4 and 5 for promotion to the post of Additional Secretary for the year 2004-2005 does not suffer from legal infirmity because all of them were eligible for that post.

With the above observations, the special leave petition is dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master