

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 844 of 2006

Heera Ballabh Joshi

....Petitioner

Versus

State of Uttaranchal & others

....Respondents

Presence:-

Mr. Ganesh Chandra Kandpal, learned counsel for the petitioner.

Mr. Atul Bahuguna, learned Standing Counsel for State of Uttarakhand.

Hon'ble Pankaj Purohit, J. (Oral)

The present writ petition has been filed by the petitioner challenging the order dated 23.05.2006 passed by respondent no.2 (Annexure No.1 to the writ petition), whereby, the representation filed by him in pursuant to the order passed by this Court dated 28.03.2006, has been rejected.

2. The petitioner was initially appointed as Storekeeper on 05.12.1963 with the respondent-department i.e. Soil Conservation Division, Ranikhet and he assumed charge on 06.12.1963 in the office of Divisional Forest Officer, Soil Conservation Division, Ranikhet.

3. It is the case of the petitioner that vide Government Order No.1812 dated 31.07.1976, the State Government took a policy decision to merge the cadre of Storekeeper to the cadre of Junior Clerk. According to him, the merger was for the purpose of opening avenues of promotion on the post of Storekeepers. As per the said Government Order, after merger of the two cadres, the employees' seniority would be reckoned from the date of continuous service and it was also stated in the aforesaid

Government Order that if date continuous service is same, than the seniority would be fixed in accordance with the age of the employee i.e. a person senior in age shall be senior to the person, who is junior in age.

4. On 18.04.1977, another Government Order was issued, in which, it has been mentioned that those employees who were working on the post of Storekeeper would continue to get the benefit of the post until they are promoted to the post of Senior Clerk and it was also stated that till an option is given for the post of Junior Clerk, they will continue to get the benefit of the post of Storekeeper mentioned thereby, which would arise in favour of the petitioner from the date of exercise of option given.

5. It is himself the petitioner, who had given option for retaining the post of Storekeeper on 17.05.1977. It is further stated by the petitioner that petitioner preferred a representation dated 04.12.2004 before the respondent no.2, in which he made a claim that his name in the seniority list of Assistant Clerk after on Sri M.A.Khan, who is at S.No.15 in the said seniority list. When the representation of the petitioner reached to the respondent no.2, the petitioner was given regular appointment on the post of Store Clerk vide order dated 18.08.1987 w.e.f. 01.04.1982.

6. It is also contended by the petitioner that respondent no.2 vide order dated 30.04.2002 on the basis of the order passed by the respondent no.3 dated 12/10.08.2002 paid Time Scale to the petitioner w.e.f. 01.07.1982 and next higher pay-scale w.e.f. 01.07.1988 and Personal Promotional Pay-Scale w.e.f. 01.03.1995. It

is also the case of the petitioner that after that he was paid arrears of salary to the tune of Rs.64836/- from the year 1982 to the year 2002.

7. With these factual backgrounds, it is the grievance of the petitioner that junior to the petitioner were promoted initially on the post of Senior Clerk and thereafter, on the post of Senior Assistant, Head Clerk and Head Assistant. In the clerical cadre, on the post of Senior Clerk w.e.f. 01.04.1982, the petitioner is also entitled to get the same promotions, as has been given to one-Shri Naveen Chandra Joseph, who is at S.No.30 on the seniority list. The petitioner also submitted in his writ petition that one-Shri Prakash Chandra Lohani was also given a chance of the promotion, but for no reasons, the petitioner has been left over.

8. It is on these backgrounds, the petitioner moved a writ petition before this Court being Writ Petition No.1616 of 2004 (S/S) Shri Heera Ballabh Joshi Vs. State and others and this Court by judgment and order dated 28.03.2006 has disposed of the writ petition directing the respondents to decide the representation of the petitioner to give notional promotion to the petitioner from the date he became entitled for being promoted and to reimburse the amount of Rs.8,800/- deducted towards Income Tax within a period of two months from the date of certified copy of the order i.e.28.03.2006.

9. It is pertinent to mention that when this writ petition was filed, the petitioner has already retired on superannuation on 30.06.2004 and the earlier writ petition was also filed after his retirement.

10. Pursuant to the aforesaid judgment dated 28.03.2006, the representation dated 04.10.2004 already filed by the petitioner was considered by the respondent no.2 and by reasoned order, the same was rejected saying that the petitioner is not entitled to get any relief.

11. It is feeling aggrieved by the said order, by which the representation was rejected, the petitioner is before this Court.

12. Respondent nos. 1 to 3 has filed their counter affidavit and in the counter affidavit, it has been specifically pleaded that pursuant to the Government Order dated 31.07.1976 and subsequent Government Order dated 18.04.1977, the petitioner has not given his option for the post of Junior Clerk rather he refused to opt the post of Junior Clerk and chose to remain as Storekeeper on the post he was working. The respondent has also annexed the copy of the said option dated 17.05.1977 as Annexure No.C.A.-2 to the counter affidavit. It is only for the reason, the petitioner has never exercised his option for the post of Junior Clerk pursuant to the Government Order dated 18.04.1977, he was found not entitled to get promotion as asked for by him.

13. The petitioner has also filed his rejoinder affidavit to the counter affidavit filed by the respondent nos.1 to 3 and in the rejoinder affidavit, it has been stated that the petitioner was confirmed as Storekeeper and later on, he was confirmed on the post of Store Clerk w.e.f. 01.04.1982 and accordingly, his services stand merged with the clerical cadre.

14. Further, supplementary counter affidavit has been filed by the respondent nos.2 & 3, whereby, it has

been reiterated that vide Government Order dated 31.07.1976, the cadre of Store Keeper was merged with that of Junior Clerk and in order to remove inconsistency of the said Government Order, the subsequent Government Order was issued on 18.04.1977, whereby, it was prescribed that before merger the post of Store Keeper to the post of Junior Clerk, the options were invited from the employees (Store Keeper) whether they opt to join the post of Junior Clerk or retained the same post as Store Keeper, as the cadre/post of Store Keeper was not a promotional cadre/post. Thereafter, it is contended by the respondents in supplementary counter affidavit, that the petitioner himself willingly refused to opt the cadre of Junior Clerk vide exercising his refusal option dated 17.05.1977 and opted to work as a Store Keeper.

15. Having heard learned counsel for the parties and having gone through the relevant Government Orders and the order rejecting the representation of the petitioner dated 23.05.2006, this Court is of the view that the petitioner cannot blow hot and cold at the same time. On the one hand, he refused to exercise option to be merged in the cadre of the Junior Clerk and on the other hand, he want to take the benefit of the chance available to the Clerk Cadre i.e. of the Junior Clerks.

16. The reliance placed by the learned counsel for the petitioner on a clarificatory letter issued on 02.05.1977 that the employees on the post of Store Keeper, who were working before the issuance of Government Order dated 31.07.1976 on the post of Store Keeper, shall keep on getting all the benefits and

privileges on the post of Store Keeper, till he is promoted on the post of Senior Clerk or he exercise his option.

17. I have gone through the aforesaid clarificatory letter dated 02.05.1977. This letter was issued only to clarify the anomalies which have crept in by merger of two posts i.e. from Store Keeper to Junior Clerk by issuance of the Government Order dated 31.07.1976 and subsequent Government Order dated 18.04.1977. The tune and tenor of this letter nowhere speaks that without exercising the option, the person will be placed in clerical cadre.

18. In this view of the matter, I do not find any merit in the present writ petition. The reasons which have been cited by the respondent no.3 while rejecting the representation are in accordance with the Government Orders issued by the respondents, this Court does not see any reason to as such interfere in the matter.

19. Accordingly, the writ petition is dismissed.

20. Pending application(s), if any, stands disposed of accordingly.

(Pankaj Purohit, J.)
19.12.2023