

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR

AND

THE HON'BLE JUSTICE MR. ALOK MAHRA

Special Appeal No.346 of 2024

Sandeep Kumar

-- Appellant

Versus

State of Uttarakhand and Others

--Respondents

Judgment reserved on 17.06.2025

Judgment delivered on 27.06.2025

Presence:-

Mr. S. K. Shandilya, learned counsel for the appellant.

Mr. J. C. Pandey, learned Standing Counsel for the State.

Ms. Priyanka Agarwal, learned counsel for respondent nos.2 & 3.

Mr. Prateek Kanojia, learned counsel holding brief of Mr. Himanshu Pal,
learned counsel for respondent no.4 through V.C.

JUDGMENT : (per Mr. Alok Mahra, J.)

The present Special Appeal has been filed by the appellant/petitioner for quashing & setting aside the impugned judgment and order dated 07.10.2024 passed by learned Single Judge in Writ Petition (S/S) No.2715 of 2017, "Sandeep Kumar vs. State of Uttarakhand and Others".

2. Brief facts of the case are that, in the year 2015, respondent no.2 issued an advertisement for the post of Sinchpal in Irrigation Department, whereby 46 posts were advertised; that, out of 46 posts, one post was reserved for General Category (Physically Handicapped); that, appellant is a physically handicapped person, having disability of about 57%; that, written examination was held on 21.05.2017, which consists 100 questions, one mark was to be awarded for correct answer and 1.25 marks were to be deducted for wrong answer; that, petitioner secured 72.50 marks out of 100 marks, whereas, respondent no.4 secured 72.75 marks in the aforesaid examination and was declared successful candidate under Physically Handicapped (General Category). Question No.100 in SET-A with four options indicated in the question paper, reads as under:-

“100. Where did Frederick Smeta establish a Butterfly Museum?

(A) Khurpatal

(B) Nainital

(C) Saat Tal

(D) Bheem Tal”

3. Initially Examination Board i.e. respondent nos.2 and 3 have given answer key of question no.100 of Set-A and option ‘D’ was correct answer, but in the

revised answer key of question no.100 of Set-A option 'C' was shown as correct answer; that, as a consequence thereof, 1.25 marks were got deducted from total marks of the appellant; that, appellant moved a representation dated 24.07.2017, but no action was taken on his representation; thereafter, he preferred Writ Petition (S/S) No.2715 of 2017, in which an interim order came to be passed on 20.09.2017, pursuant to which, the post reserved for Physically Handicapped Candidate (General Category) could not be filled up by respondent no.4. Writ Petition was dismissed by the learned Single Judge vide its judgment & order dated 07.10.2024. Feeling aggrieved, the appellant/petitioner challenged the judgment & order passed by learned Single Judge.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant would submit that the examination conducted by the same selecting body has conducted the examination for the post of Secretariat Security Cadre and the correct answer "as to where the Museum of Colourful Butterflies is situated" was mentioned as 'Bhimtal'; while, in the present examination, for the same question, the correct answer

has been mentioned as 'Sattal'.

6. This Court has called the record relating to this selection and, on 21.04.2025, the Secretary, Uttarakhand Subordinate Service Selection Commission also appeared before the Court and he admitted that the revised answer key was published on the recommendation of the subject expert, but he failed to explain as to how the subject expert has given opinion when it is an admitted fact that the Colourful Butterflies Museum is situated at Bhimtal; that, the Commission has sacrosanct duty to conduct the examination with utmost due care and sincerity, as it relates to the career prospects of the students, who have put in many years of hard work and preparation. It is the duty of the Commission not to blindfold rely on the opinion given by the experts and should device a mechanism to counter check the opinion given by the experts, especially in relation to questions relating to geographical relations of the place; that, the Commission has filed the supplementary affidavit in the present Special Appeal, in which it has been categorically stated that one post reserved for Physically Handicapped candidate (General Category) is still vacant and if the appellant is granted 1.25 marks, then he would rank first

in the merit of Physically Handicapped candidate (General Category).

7. In light of the above submissions, the Commission is directed to send its recommendation to the State Government for appointment of the appellant under the Physically Handicapped candidate (General Category), as the appellant would rank on the top of the merit of Physically Handicapped candidate (General Category), after correcting the mistake committed by the Commission. Entire exercise shall be completed by the Commission within a period of two weeks from the date of production of certified copy of this order and it would be appropriate for respondent no.1/ State to act on the recommendation of the Commission i.e. respondent no.2 and offer appointment to the appellant on the post of Sinchpal under the Physically Handicapped candidate (General Category) within a period of three weeks after receiving the recommendation from the Commission, as the selection pertains to the year 2015 and, more particularly, that the appellant was wrongly denied the appointment on the basis of mistake committed by the Commission. It would be left open for the appellant to agitate the issue of seniority and another service benefit

as and when the cause arises.

8. The Special Appeal stands ordered accordingly.

There shall no order as to costs.

(G. NARENDAR, C. J.)

(ALOK MAHRA, J.)

Dated: 27.06.2025
BS