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HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1045 of 2020 (S/S)

Manoj Tyagi and others

.....Petitioners

Versus

State of Uttarakhand and others

.....Respondents

Present:-

Mr. S.R. Singh, Senior Advocate assisted by Mr. M.C. Pant, Advocate for the petitioners.

Mr. Narain Dutt, Standing Counsel for the State.

Mr. Ashish Joshi, Advocate for the respondent no. 3.

Mr. D.S. Patni, Senior Advocate assisted by Mr. Dharmendra Barthwal, Mr. Karmanya Pande, Advocates for the respondent nos. 4, 6, 7, 8, 9 and 10.

Writ Petition No. 112 of 2021 (S/S)

Manoj Tyagi and others

.....Petitioners

Versus

State of Uttarakhand and others

.....Respondents

Present:-

Mr. S.R. Singh, Senior Advocate assisted by Mr. M.C. Pant, Advocate for the petitioners.

Mr. Narain Dutt, Standing Counsel for the State.

Ms. Menka Tripathi, Advocate for the respondent no. 3.

Mr. D.S. Patni, Senior Advocate assisted by Mr. Dharmendra Barthwal, Mr. Karmanya Pande, Advocates for the respondent nos. 4, 5, 6, 10, 11, 12, 13 & 14.

Mr. Abhijay Negi, Advocate for the respondent no. 7.

JUDGMENT

Hon'ble Ravindra Maithani, J.

Since common questions of facts and law are involved in both these writ petitions, they are heard together and being decided by this common judgment. However, for the sake of convenience, in this judgment, the facts of WP (S/S) No. 1045 of 2020 shall be referred to unless otherwise expressly provided for.

2. In WP (S/S) No. 1045 of 2020, the challenge is made to the order dated 27.08.2020 issued by the respondent no. 1/the State, by which the representation of the petitioners has been rejected. In that petition, the petitioners also seek quota for promotion to the post of Assistant Regional Transport Officer (“ARTO”). During the pendency of WP (S/S) No. 1045 of 2020, some of the private respondents, particularly private respondent Nos. 5 to 10 in WP (S/S) No. 1045 of 2020 were promoted to the post of ARTO by order dated 19.01.2021. That has also been challenged subsequently on the ground that it is void and against the rules. In WP (S/S) No. 1045 of 2020, some other allied reliefs have also been sought.

3. When WP (S/S) No. 1045 of 2020 was still pending, WP (S/S) No. 112 of 2021 has been filed by the petitioners initially challenging the order dated 30.12.2020 and 20.10.2020, by which the private respondents in WP (S/S) No. 112 of 2021 (which also include some of the private respondents in WP (S/S) No. 1045 of 2020), were given additional charge of ARTO or they were attached. The order dated 19.01.2021 issued by the respondent no. 1, by which the private respondents in WP (S/S) No. 1045 of 2020 were promoted as ARTO has further been challenged in WP (S/S) No. 112 of 2021 also.

4. It has been the case of the petitioners that by virtue of an advertisement issued by the respondent no. 3/Uttarakhand Public Service Commission (“the Commission”) for appointment to the post of Regional Inspectors (Technical) [for short, “the RIs (T)”] and Assistant Regional Inspectors (Technical) [for short, “the ARIs (T)”], they applied and they were declared successful and appointed as ARIs (T) by order dated 09.08.2012. They had been continuously working as ARIs (T).

On 03.01.2017, their services were merged and re-designated on the post of RIs (T) keeping in view pay scale, grade pay and the similar nature of duties for the post of the ARI (T) and RI (T).

5. The service conditions of RIs (T) and ARIs (T) are governed by Uttarakhand Transport (Subordinate) Technical Service Rules, 2009 ("2009 Rules"). Subsequently, by amendment in 2009 Rules, the merger of ARIs (T) and RIs (T) were incorporated in Rule 5 of the 2009 Rules. The next promotion of RI (T) is to the position of ARTO, which is governed by UP Transport Service Rules, 1990 ("1990 Rules") and according to Rule 5 of it, the appointment to the post of ARTO is done as follows:-

- (i) 50% by direct recruitment by examination conducted by the Commission and
- (ii) 50% by promotion from such permanent Transport Tax/Goods Tax Officers and RIs (T), who have put in atleast 5 years of continuous service, through Commission.

6. The merger of ARIs (T) with RIs (T) by Government Order ("GO") dated 03.01.2017 was challenged by the Transport Tax Officers ("TTOs") in the year 2017, but that writ petition was not held maintainable.

7. The petitioners had earlier filed a writ petition bearing WP (S/S) No. 492 of 2020, Manoj Tyagi and others v. State of Uttarakhand ("the first petition").

8. In the first petition, the petitioners had sought various reliefs including writ of mandamus commanding the respondents to consider the case of the petitioners for promotion to the post of ARTO by fixing their respective quota; the petitioners may also be allowed the benefit of qualifying service w.e.f. 2012, etc.

9. The first petition was decided by this Court on 20.03.2020 directing the State Government to decide the representation of the petitioners. The judgment and order dated 20.03.2020 was challenged by some of the respondents in Special Appeal No. 92 of 2020, Ashit Kumar Jha and others v. State of Uttarakhand and others (“the appeal”), which was decided on 19.05.2020. In para 8 of the judgment passed in the appeal, the Court observed as follows:-

“8. The order under appeal cannot be construed as a mandamus to the first respondent to grant the respondents – writ petitioners the relief they had sought for in their representation. It is for the respondent no. 1, after considering their representation, to take an appropriate decision on their claims. We see no reason, therefore, to entertain this intra-court appeal. Suffice it, in the light of the fair submission of Mr. K.N. Joshi, Deputy Advocate General, to direct respondent no. 1 to consider the respondents-writ petitioners representation in the light of the directions issued by the learned Single Judge in the order under appeal, and in accordance with law, within one week from today. While we see no reason to grant liberty to the appellants to submit a representation, that too in a writ petition filed not by them but by the respondents-writ petitioners, suffice it to make it clear that the order now passed by us shall not disable the appellants herein from submitting a representation to respondent no. 1, and for the first respondent, if he so chooses, to consider the same in accordance with law. The special appeal is, accordingly, disposed of. No costs.”

10. Pursuant to the directions of this Court passed in the first petition, the petitioners preferred a representation, which has been rejected by the impugned order dated 27.08.2020.

11. It has been the case of the petitioners that after merger of the posts of ARIs (T) and RIs (T) on 03.01.2017, for the purposes of promotion to the posts of ARTO, their services have to be reckoned from the date they jointed as ARIs (T). It has also been suggested by the Department of Personnel of the State of Uttarakhand. It has further been the case of the petitioners that the respondents have utterly failed to consider the purport of the Commission, which had sought clarification from the State Government to fix the quota for promotion to the post of ARTO amongst the RIs (T) and TTOs.

12. During the pendency of the writ petition, the respondent no. 1 State had appointed the respondent nos. 5 to 10 [in WP (S/S) No. 1045 of 2020] to the post of ARTO by order dated 19.01.2021. It has been the case of the petitioners that the order dated 19.01.2021 is unjust and arbitrary; in the promotion of ARTO, the quota has not been prescribed whereas it has been so prescribed in the State of Uttar Pradesh. On these grounds, the challenge is made to the order dated 27.08.2020 by which the representation of the petitioners has been rejected. The challenge is also made to the order dated 19.01.2021 by which the respondent nos. 5 to 10 [in WP (S/S) No. 1045 of 2020] were appointed as ARTO. As stated, in the connected WP (S/S) No. 112 of 2021, the challenge is made to such orders by which the private respondents were either given additional charge of ARTO or they were attached.

13. The respondent No. 1 State has filed its counter affidavit. According to it, by virtue of GO dated 03.01.2017, the positions of ARIs (T) and RIs (T) were merged to one single post of RI (T) subject to certain conditions contained therein. Amongst such conditions, two important conditions were, namely, that the seniority list of RIs (T) working before the merger and ARIs (T), who had been RIs (T) by virtue of the GO dated 03.01.2017 shall be maintained separately and the GO dated 03.01.2017 came into force from the date of its issuance and not with retrospective effect.

14. It has further been the case of the respondent no. 1 State that the posts of ARIs (T) and RIs (T) were different before their merger on 03.01.2017, therefore, the contention of the petitioners that the services rendered by them as ARIs (T) w.e.f. 2012 should be taken into account for consideration of 5 years service as RIs (T) for promotion to the post of ARTO is without any merit.

15. The respondent no. 2/Transport Commissioner, Uttarakhand has in his counter affidavit merely admitted the factual position.

16. The respondent no. 3/the Commission in its counter affidavit has revealed that the Commission by its communication dated 20.11.2013 had requested the Secretary, Transport Department, State of Uttarakhand to fix separate quota for the posts of TTOs-I and the RIs (T) as the next promotional post for both the posts is ARTO. Similar, communication was made by the Commission on 29.08.2020. According to the respondent no. 3/the Commission, the relief sought by the petitioners is against the State Government.

17. In his counter affidavit, the respondent no. 4 has stated that by virtue of the GO dated 03.01.2017, the posts of ARIs (T) and RIs (T) were merged without amending the 2009 Rules. The 2009 Rules were amended w.e.f. 07.05.2020, therefore, the petitioners should be given the status of merger to the post of RIs (T) w.e.f. 07.05.2020. It is further case of the respondent no. 4 that even otherwise for promotion to the post of ARTO, the petitioners are not eligible as they had not completed 5 years service, which is necessary for bringing them within the zone of consideration. According to the respondent no. 4, the services of the petitioners rendered by them as ARIs (T) w.e.f. the year 2012 cannot be considered for their promotion to the post of ARTO.

18. The respondent nos. 6, 7, 8, 9 & 10 filed their counter affidavit along with other private respondents of that petition in WP (S/S) No. 112 of 2021. It reveals that the requisition for promotion to the post of ARTO was sent by the respondent no. 1 State to the Commission on 18.09.2020. It has been the case of these respondents that on the date when the requisition was sent to the Commission on 18.09.2020 and the date when the answering respondents were promoted to the post of ARTO by order dated 19.01.2021, none of the petitioners had completed the required length of 5 years continuous service on the post of RI (T). These respondents have also raised the following points in their counter affidavit:-

“(i) The another date is 07.02.2020. This is the date of the notification, whereby the 2009 Rules were amended known as Uttarakhand Transport (Subordinate) Technical Services (Amendment) Rules, 2019, whereby the Rules were amended

for the purposes of incorporating the provisions for implementing the merger of ARI (Technical) to the post of RI (Technical) for which executive order was passed on 03.01.2017.

As per law, for the purposes of computation of length of service of the petitioners to the post of RI (Technical), it should be computed only w.e.f. 07.02.2020 when the amendment took place and from this date their 5 years will be completed on 07.02.2025. Now further as per Rules, the year of recruitment always commences from the 1st July and comes to an end on 30th June and since their length of service of 5 years would complete on 07.02.2025, this date falls in the recruitment year of 2024-25 and for the said recruitment year the eligibility will be seen on 01.07.2024 and on 01.07.2020 they will not complete the 5 years service as such, and therefore, their candidature will be considered in the recruitment year of 2025-26 and their eligibility will be taken into consideration on 01.07.2025.

(ii) Respondent no. 4, 5, 12, 13 & 14 were inducted in service as TTO-II in the year 2005 and thereafter they were promoted to the post of TTO-I on 21.04.2015

(iii) As per Rules of 1990, for promotion to the post of ARTO, the TTO-I (Passenger Tax Officer) is required to complete 5 years of service as such and since these respondents, except the respondent no. 9 were promoted to the post of TTO-I on 21.04.2015 and as such they completed their 5 years of service as such on 20.04.2020, which falls in the recruitment year of 2019-20, however, in that recruitment year they cannot be considered for promotion as eligibility will be seen on 01.07.2019, however, they are entitled to be considered for promotion to the post of ARTO in the recruitment year of 2020-21 for which the eligibility of 5 years will be seen on 1.7.2020, which they already completed on 20.04.2020.

(iv) In the requisition sent to the Commission on 18.09.2020, which pertains to the recruitment year of 2020-21, these private respondents were eligible as they completed 5 years of service as TTO-I on 01.07.2020 and there is no illegality and infirmity on the said requisition. Consequently, on the recommendation of the Commission, the answering respondents were rightly promoted to the post of ARTO on

19.01.2021 and hence the order granting promotion to them is strictly as per rules and there is no illegality and therefore the relief as sought to that extent is thoroughly misconceived and are liable to be rejected.

(v) So far as the answering respondent no. 9 is concerned, he was promoted to the post of TTO-I (Passenger Tax Officer) on 28.01.2013 and as such he is eligible and under the zone of consideration and he was also rightly promoted to the post of ARTO.”

19. The parties have exchanged the pleadings as well.

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

21. Learned Senior Counsel for the petitioners submits that the petitioners were appointed in the year 2012 as ARIs (T); they continued on this position till 03.01.2017 when by virtue of GO dated 03.01.2017, the posts of ARIs (T) and RIs (T) were merged. Therefore, it is argued that by the principle of merger, the services rendered by the petitioners as ARIs (T) w.e.f. 2012 are to be counted for qualifying service as RIs (T) for their promotion to the post of ARTO. The learned Senior Counsel for the petitioners also raised the following submissions in his arguments:-

- (i) The representation of the petitioners has been rejected by the respondents by an order, which speaks that it has been passed without application of mind as the relevant material such as recommendation of the Commission, the official notes were not taken into consideration.

- (ii) The requisition was sent for appointment to the posts of ARTOs by the State Department in violation of transparency and the principle of equal opportunity.
- (iii) The petitioners' case is also supported by the provisions of Section 74 of the UP Reorganization Act, 2000 ("the Act"), as the past services under the erstwhile State have to be respected to; for promotional services, the petitioners have unjustly been excluded from consideration.
- (iv) The petitioners are entitled for counting their entire service from 2012 towards qualifying service for promotion.
- (v) Non-fixation of appropriate quota between the RIs (T) and TTOs-I for promotion to ARTO; non-consideration of relaxation under Rule 4 of the Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010 ("2010 Rules") and without providing quota to RIs (T), the promotion has been made which has adversely affected the rights of the petitioners.

22. In support of his contention, learned Senior Counsel has placed reliance on the principle of law as laid down by the Hon'ble Supreme Court in the cases of *S. Sivaguru*, (2013) 7 SCC 335; *Union of India v. C.N. Ponnappan*, (1996) 1 SCC 524; *S.I. Rooplal and*

another v. Governor of Delhi & others, (2000) 1 SCC 644; Shakti Prasad Bhatt v. State of Uttarakhand, (2018) 17 SCC 69; K. Madhavan and another v. Union of India and others, (1987) 4 SCC 566; R.S. Makashi & others v. I.M. Menon and others, (1982) 1 SCC 379 and S.K. Mathur and others v. Union of India and others, (1998) 4 SCC 134.

23. On the other hand, learned Senior Counsel for the private respondent nos. 4, 5, 6, 7, 8, 9 & 10, argued that the petitioners were not eligible for promotion to the post of ARTO on 27.08.2020 when their representation was rejected by the impugned order. It is argued that Rule 5 of 2009 Rules provides that only such RIs (T) are to be considered for promotion to the post of ARTO, who had put in continuous 5 years service. It is argued that the petitioners did not complete 5 years of service as RIs (T) on 27.08.2020. Learned Senior Counsel also argued the following points:-

- (i) Even 2017 merger was prospective. The principles of law as laid down in the case of C.N. Ponnappan (*supra*) and S.I. Rooplal (*supra*) are not applicable in this case, as in those cases the merger was of parallel positions. Those cases were not dealing with the merger of subordinate and promotional posts.
- (ii) The principle of law as laid down in the case of S. Sivaguri (*supra*) provides that after merger, the birth mark obliterates, which, it is argued, means

that after 03.01.2017 there may not be any discrimination between RIs (T) who were directly recruited or promoted from ARIs (T) or such ARIs (T), who were merged with the position on 03.01.2017.

24. Learned Senior Counsel for the respondent nos. 4, 5, 6, 7, 8, 9 & 10 referred to the principle of law as laid down in the case of Uday Pratap Singh and others v. State of Bihar and others, 1994 Supp (3) SCC 451, to argue that no retrospective effect could be given by any merger of erstwhile lower branch into higher branch in the cadre so as to affect the vested rights of the incumbents already occupying the post in the erstwhile higher branch of the cadre.

25. Learned counsel for the State adopts the arguments as made on behalf of the private respondents. He would also submit that the relaxation of qualifying service as per 2010 Rules cannot be claimed as a matter of right.

26. In fact, the controversy is quite short. The admitted facts are not disputed. The details with regard to appointment of the petitioners have been given by the respondent no. 2, the Commissioner, Transport Department, Uttarakhand in their counter affidavit in para 4 as follows:-

Sl. No.	Name of employee	Date of appointment on the post of Assistant Regional Inspector (Technical)	Date of joining on the post of Assistant Regional Inspector (Technical)	Date of Merger on the post of Assistant Regional Inspector (Technical)
1	Manoj Kumar Tyagi	01.10.2012	29.04.2013	03.01.2017
2	Arvind Yadav	09.08.2012	16.08.2012	03.01.2017
3	Devendra Singh	09.08.2012	16.08.2012	03.01.2017
4	Alok Kumar	09.08.2012	30.08.2012	03.01.2017
5	Chandrakant Bhatt	09.08.2012	18.08.2012	03.01.2017
6	Vinod Gunjyaal	09.08.2012	16.08.2012	03.01.2017
7	Ajay Arya	25.01.2016	10.02.2016	03.01.2017

27. A bare perusal of it reveals that all these petitioners did join in the cadre of ARI (T) in the year 2012-13. In fact, petitioner Ajay Arya did join as ARI (T) on 10.02.2016. It is also an admitted position that the posts of ARIs (T) and RIs (T) were merged by virtue of GO dated 03.01.2017 and subsequently the 2009 Rules were also amended w.e.f. 07.02.2020.

28. A few facts may further be elaborated.

29. Prior to its merger, the post of ARI (T) was to be filled up by direct recruitment only as per 2009 Rules. Rule 5 of 2009 Rules further provided that 50 % of the vacancies in the RI (T) position were

to be filled up from amongst such ARIs (T), who had continuously worked on such position for 5 years. It is being argued that the duties of ARIs (T) and RIs (T) were the same. Be as it may, as per 2009 Rules, prior to merger, the post of RI (T) was a promotional post to the ARI (T). By virtue of administrative order dated 03.01.2017, these posts were merged and subsequently admittedly the rules were changed in the year 2020 w.e.f. 07.02.2020.

30. The service conditions of ARTO are covered by 1990 Rules and Rule 5 of it provides that 50% posts of the ARTOs were to be filled up by promotion from amongst such TTOs or RIs (T), who had completed 5 years of continuous service. The fact remains that 1990 Rules initially did not provide for quota for TTOs and RIs (T) for consideration of their promotion to the post of ARTOs.

31. The respondent No. 7 in WP (S/S) No. 112 of 2021 filed separate counter affidavit and stated therein that w.e.f. 20.02.2022, the quota has been fixed between RIs (T) and TTOs for their promotion to the post of ARTO. This fact is not denied to the petitioners, which means till 2022, there was no quota prescribed for RIs(T) and TTOs for their promotion to the post of ARTO.

32. A gross question that has been raised is that after merger by virtue of GO dated 03.01.2017, the past services rendered by the petitioners as ARIs (T) should be considered for counting their qualifying service. This requires deliberation.

33. In the case of S. Sivaguru (*supra*), initially there were two distinct posts of Leprosy Inspector and Multipurpose Health Worker,

who were categorized as Health Inspector Grade-I and Health Inspector Grade-II. On 27.06.1997, the posts of Leprosy Inspector and Multipurpose Health Worker were merged and thereafter Health Inspector Grade-I was redesignated as Health Inspector Grade IA and Leprosy Inspector was redesignated as Health Inspector Grade IB. On 12.10.2007, another decision was taken to redesignate Health Inspector Grade IB as Health Inspector Grade I, but it was decided that Health Inspector Grade IB being redesignated as Health Inspector Grade I will be placed in the seniority list below the last of the already existing Health Inspector Grade I from the date of such merger. In that context, the Hon'ble Supreme Court, in para 60, observed as follows:-

“60. Upon merger of the two posts, it was no longer permissible to treat the redesignated Health Inspector Grade IA differently from Health Inspector Grade IB. Since 1997, all incumbents on the posts of Health Inspector Grade IA and Health Inspector Grade IB were performing the same duties. There was intermixing of the duties performed by the two categories of the Health Inspector Grade IA and IB. **Both the posts had lost their original identity since 27-6-1997, and formed one homogenous cadre. Further, having relaxed the qualifications on the basis of their length of service and experience, they were on a par with the Health Inspector Grade IA. Thereafter, the State was not justified in denying to the erstwhile Health Inspector Grade IB, the same treatment as was given to Health Inspector Grade IA. Therefore, the respondents could not have been denied the benefit of service on the post of Health Inspector Grade I from the date of the initial integration.** It would be appropriate to notice the ratio of law laid down in *Sub-Inspector Rooplal* [*Sub-Inspector Rooplal v. Lt. Governor*, (2000) 1 SCC 644 : 2000 SCC (L&S) 213] , wherein it was inter alia held that the previous service of the transferred officials who are absorbed in an equivalent cadre in the transferred post is permitted to be counted for the purpose of determination of seniority. It would be appropriate to notice here that Leprosy Inspectors redesignated as Health Inspector Grade IB have not been granted the benefit of seniority in their cadre from the

date of their initial appointment. They have been deprived of their service on the post of Leprosy Inspector up to 27-6-1997 when they were integrated and redesignated as Health Inspector Grade IB. However, upon merger w.e.f. 27-6-1997, there was no distinction in the services rendered by Health Inspector Grade IA and Health Inspector Grade IB. Therefore, in our opinion, the provision in GOMs No. 382 of 2007 not to grant the Health Inspectors Grade IB/erstwhile Leprosy Inspectors the benefit of the service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor was completely unjustified.”

(emphasis supplied)

34. In the case of C.N. Ponnapan (*supra*), the issue was **“whether an employee who is transferred from one unit to other on compassionate grounds, and, as a result, is placed at the bottom of the seniority list can have his service in the earlier unit from where he has been transferred counted as experience for the purpose of promotion in the unit where he is transferred”**. It has been answered in para 4 of the judgment by the Hon’ble Supreme Court as follows:-

“4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. **The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred.** In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.”

(emphasis supplied)

35. In the case of Rooplal (*supra*), a Sub Inspector appointed in the Border Security Force was transferred on deputation in Delhi Police in the cadre of Sub-Inspector (Executive) and permanently absorbed in Delhi Police. The question was whether he was entitled to count his substantive service as Sub-Inspector in Border Security Force for the purposes of his seniority in Delhi Police or not? In para 23, the Hon'ble Supreme Court answered in affirmative as follows:-

“23. It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the appellant-petitioners and the offending words in the memorandum “whichever is later” are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently, the right of the appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored.”

(emphasis supplied)

36. It may be noted that in the case of Rooplal (*supra*), the Hon'ble Supreme Court has noted that the services rendered by the deputationist in the equivalent cadre in the parent department are to be counted. The word ‘equivalent cadre’ is significant, which means that if in the parent department, the deputationist was working at the lower cadre, such services may not be counted for the purpose of seniority of the deputationist in the department, where he has been

transferred on deputation. It was a case of transfer and not merger, as the present case.

37. In the case of Shakti Prasad Bhatt (*supra*), the issue was with regard to services rendered in different States. In that context, the Hon'ble Supreme Court held that "once the State has been reorganised, the past service of Kurk Amins could not have been wiped off."

38. In the case of K. Madhavan (*supra*), the Hon'ble Supreme Court observed that **"The transfer cannot wipe out his length of service in the post from which he has been transferred."**

39. In the case of R.S. Makashi (*supra*), the Hon'ble Supreme Court observed that **"When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected".**

40. In the case of S.K. Mathur (*supra*), the principle of law as laid down in the case of K. Madhavan (*supra*) has been referred to.

41. In the case of S. Sivaguru (*supra*), what is principally ruled by the Hon'ble Supreme Court is that after merger, the birth mark obliterates. It has not been ruled that the merger takes effect from the retrospective date, when the employees in the merged cadre were initially appointed.

42. In the case of C.N. Ponnappan (*supra*), the issue was with regard to transfer and past services. As stated, in the case of Rooplal (*supra*), the counting of past services was in question in the case of a deputationist and there also, the Hon'ble Supreme Court, in para 23 of the judgment, used the word "equivalent cadre" in the parent department that such services are to be counted.

43. In the instant case, prior to merger of the posts of ARIs (T) and RIs (T) on 03.01.2017, both these posts were not equivalent posts. Rule 5 of 2009 Rules provided that the appointment to the post of ARIs (T) was to be made by direct recruitment, whereas 50% of the posts in the RI (T) position were to be filled up by promotion from amongst such ARIs (T), who have put in 5 years continuous service. Prior to 03.01.2017, the post of RI (T) was a promotional post for ARI (T). In other words, ARI (T) was feeder cadre for RI(T). It categorically means that prior to 03.01.2017, the post of ARI (T) and RI (T) was not in equal grade. RI (T) position was superior and promotional post of ARI (T).

44. In view of the principle as laid down in the case of S. Sivaguru (*supra*), after 03.01.2017, no distinction could have been done between RIs (T) on the grounds of their recruitment, namely, those who were directly recruited and/or those who were appointed as RIs (T) by virtue of promotion and or such RIs (T), who were designated as RIs (T) by virtue of GO dated 03.01.2017 on that date. At the cost of repetition, it may be reiterated that the principle of law as laid down in the case of S. Sivaguru (*supra*) cannot be read to infer that ARIs(T), who were merged on 03.01.2017 as RIs (T) were to be presumed as RIs(T) with effect from the date when they initially joined

their services as ARIs(T). This could not have been done otherwise also because if the argument made on behalf of the petitioners is accepted that the services of such ARIs (T) are to be counted from their initial date of appointment, who were merged on the position of RIs(T) on 03.01.2017, those RIs(T) may be eligible for their future promotion as ARTOs, but such RIs (T) would not be eligible, who were directly recruited or promoted as RIs(T) in the year 2016.

45. In the case of Uday Pratap Singh (*supra*), the Hon'ble Supreme Court has categorically held that no retrospective effect could be given to any merger, particularly when it is merger of lower branch to higher branch, as in the instant case. In para 6 of the judgment, the Hon'ble Supreme Court observed as follows:-

“6. By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallised. In this connection, it is profitable to refer a decision of this Court in *T.R. Kapur v. State of Haryana* [1986 Supp SCC 584 : (1987) 2 ATC 595 : AIR 1987 SC 415] wherein it is held that rules framed under Article 309 of the Constitution cannot affect or impair vested rights, unless it is specifically so provided in the statutory rules concerned. It is obvious that an executive direction stands even on a much weaker footing. It is true, as laid down in *Bishan Sarup Gupta v. Union of India* [(1973) 3 SCC 1 : 1973 SCC (L&S) 1] , that effect of upgradation of a post is to make the incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post. **Still it cannot be gainsaid that no retrospective effect could be given to any merger of erstwhile lower branch into higher branch in the cadre so as to affect the vested rights of incumbents already occupying posts in the erstwhile higher branch of the cadre.”**

(emphasis supplied)

46. Therefore, in view of the foregoing discussion, this Court is of the view that the contention of the petitioners has no merit for acceptance that their services rendered from initial appointment as ARIs(T) may be considered for counting qualifying service for their promotion as ARTOs.

47. It has been argued that the impugned order dated 27.08.2020 has been passed without application of mind and various factors has not been considered by the authority.

48. The impugned order takes into account every contention of the petitioners. It is annexure 1 to the writ petition WP (S/S) No. 1045 of 2020. It is quite in detail. It has reasonings as well.

49. It has also been argued on behalf of the petitioners that as in the cases of Reorganization Acts, the past services are counted, the services prior to merger have to be counted. This Court has already held that the services of the petitioners rendered as ARIs (T) from the date of their initial appointment cannot be counted as their services as RIs(T), when they were merged on 03.01.2017, for their future promotion as ARTOs.

50. Arguments have also been raised with regard to not prescribing the quota for RIs(T) and TTOs for their promotion to the post of ARTOs as also the qualifying services ought to have been relaxed for the petitioners. It is true that initially the quota was not prescribed under 1990 Rules to the RIs(T) and TTOs for their promotion to ARTOs. In the State of Uttar Pradesh, it has been done

and now it is admitted that since 2022, the quota has been prescribed in the State of Uttarakhand also.

51. In so far as the relaxation in the qualifying service is concerned, there are different parameters for it. How they are applicable in the case of petitioners? It is also not revealed. Moreover, it is admitted that a person cannot claim relaxation in qualifying service as a matter of right.

52. In view of the foregoing discussions, this Court does not find any merit in the writ petitions. Accordingly, the writ petitions deserve to be dismissed.

53. Both the writ petitions are dismissed.

(Ravindra Maithani, J)
04.06.2026

Avneet/