

A STATE OF UTTARANCHAL & ORS.
v.
C.S.R.K.S. MEDICAL HEALTH SERVICES,
UTTARANCHAL
(Civil Appeal No. 7696 of 2009 etc.)

B OCTOBER 16, 2014.

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

C *Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004:*

D *Rule 1(3) – Promotion from Group ‘D’ post to Group ‘C’ post – Held: Promotional posts under consideration do not require consultation with Public Service Commission and, as such, the 2004 Rules would apply to promotional avenues under consideration.*

E *Rule 2 – Overriding effect – Held: Rule 2 of the 2004 Rules leaves no room for any doubt that the 2004 Rules have an overriding effect, notwithstanding anything to the contrary contained, in any other Service Rules promulgated under Art. 309 of the Constitution of India – All the other Rules brought to the notice of the Court had been notified prior to the Notification of the 2004 Rules (notified on 15.06.2014) – Thus viewed, the 2004 Rules have an overriding effect on*
F *other Rules.*

G *Rules 1(3) and 4 – Promotion from Group ‘D’ post to Group ‘C’ post – Criterion – ‘Seniority to the rejection of unfit’ – Government Orders dated 17.7.2004 and 8.11.2004 set aside by High Court holding the same as violative of Rule 4 – Held: Inter se merit is inconsequential for promotions under Rule 4 of the 2004 Rules, insofar as promotions from Group ‘D’ service to the lowest ranks of ministerial posts in Group ‘C’ service, are concerned – Rule 4 postulates seniority as*

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the basis for promotion, but it also provides that promotions would be made subject to the "rejection of unfit" – If the G.Os. dated 17.7.2004 and 8.11.2004 were the basis of determining the fitness of employees concerned, for onward promotion and for adopting measures for 'rejection of the unfit' then the two G.Os. would squarely fall within the purview of r. 4 of 2004 Rules – G.Os. dated 17.07.2004 and 08.11.2004 are upheld — Service Law.

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The instant appeal arose out of the order of the High Court by which it set aside the Government Orders dated 17.7.2004 and 8.11.2004 as violative of Rule 4 of the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004.

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Allowing the appeal, the Court

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HELD: 1.1. A perusal of Sub-rule (3) of Rule 1 explicitly mandates that the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004 would regulate promotion to such posts with reference to which consultation with the Public Service Commission is not required. The promotional posts under consideration do not require consultation with the Public Service Commission, and as such, the 2004 Rules would apply to the promotional avenues under consideration. [para 4] [1194-F-G]

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1.2. Rule 2 of the 2004 Rules leaves no room for any doubt, that the 2004 Rules have an overriding effect, notwithstanding anything to the contrary contained, in any other Service Rules promulgated under Art. 309 of the Constitution of India. All the other Rules brought to the notice of the Court had been notified prior to the Notification of the 2004 Rules (notified on 15.06.2014). Thus viewed, the 2004 Rules have an overriding effect on the other Rules. [para 5] [1195-C-D]

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A 2.1. There can be no doubt whatsoever that *inter se*
 merit is inconsequential for promotions under Rule 4 of
 the 2004 Rules, insofar as promotions from Group 'D'
 service to the lowest ranks of ministerial posts in Group
 'C' service, are concerned. The real mandate of the said
 B Rule is, that for the posts under reference seniority would
 regulate onward promotion, however, subject to the
 condition of suitability, inasmuch as, promotions are to
 be made on the basis of seniority, subject to the
 "rejection of the unfit". If the Government Orders dated
 C 17.07.2004 and 08.11.2004 were the basis of determining
 the fitness of concerned employees for onward
 promotion and for adopting measures for "rejection of
 the unfit" then the two Government Orders would
 squarely fall within the purview of Rule 4 of the 2004
 Rules. Otherwise, they would be in conflict therewith.
 D [para 7 and 10] [1196-A-D; 1200-E]

2.2. It was the endeavour of the Government to
 determine fitness of Group 'D' employees, for onward
 promotion to the lowest rank of ministerial posts in Group
 E 'C' service. Group 'D' posts comprise of posts in the
 nature of Peons, Messengers, Chaukidars, Malis,
 Farrashes, Sweepers, Watermen, Bhistis, Tindals,
 Thelamen, Recordfilters, Peon-Jamadars, Daftris, Book-
 binders, Cyclostyle Operators, Farrash-Jamadars,
 F Sweeper-Jamadars and Head Malis. The nature of duties
 of these posts are too well-known. Merely because an
 employee while holding a Group 'D' post has been
 discharging the duties of the said post, it cannot be
 presumed that he/she is suitable for onward promotion
 G to a ministerial post. It is, therefore, that while determining
 the issue of onward promotion to ministerial posts, the
 State Government issued *inter alia* two Government
 Orders dated 17.7.2004 and 8.11.2004. Thereby, it would
 be possible to determine the fitness of those who fulfilled
 the conditions of eligibility for promotion. The said
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Government Orders squarely fall within the ambit of competence of the appointing authority, to determine the minimum fitness standards postulated under Rule 4 of the 2004 Rules. The two Government Orders dated 17.07.2004 and 08.11.2004 are upheld. The impugned orders passed by the High Court are, therefore, set aside. [para 11-12] [1200-F-H; 1201-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7696 of 2009.

From the Judgment & Order dated 4.3.2006 of the High Court of Uttaranchal at Nainital in Special Appeal No. 9 of 2006.

WITH

C.A. Nos. 972, 973, 974 & 975 of 2010.

Rachana Srivastava, Utkarsh Sharma, Anuvrat Sharma for the Appellants.

Mahendra Anand, V. Shekhar, Sushil Kumar Jain, Kuldeep S. Parihar, H.S. Parihar, Manoj Gorkela, Shashi Kiran, Nagendra Singh, Vishwa Pal Singh, Varinder Kumar Sharma for the Respondent.

C.S.R.K.S. Medical Health Services, Uttaranchal (Respondent-in-person).

The Judgment of th Court was delivered by

J.S.KHEHAR, J. 1. Heard learned counsel for the parties.

2. The applications for impleadment are dismissed as no ground for impleadment is made out.

3. The State of Uttaranchal (now Uttarakhand) is in appeal against a number of orders passed in a bunch of cases on 04.03.2006. The issue which was the subject matter of consideration before the High Court pertains to the criterion for

A promotion from Group 'D' service, to the lowest ranks of ministerial posts in Group 'C' service. Even though, various Rules were framed from time to time delineating the manner and method for onward promotion from Group 'D' service to the lowest ranks of ministerial posts, yet we are satisfied, that insofar as the present controversy is concerned, the same would be regulated by the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004 (hereinafter referred to as the '2004 Rules'). The aforesaid Rules were notified on 15.06.2004. Rule 1 of the 2004 Rules reads as under:

"1. Short title Commencement and Extent-(1) These rules may be called, the Uttaranchal Government Servants (Criterion for Recruitment by Promotion) Rules, 2004.

(2) They shall come into force at once.

(3) They shall apply to a recruitment by promotion to a post or service for which no consultation with the Public Service Commission is required on the principles to be followed in making promotions under the Uttaranchal Public Service Commission (Limitation of Functions) Regulations, 2003, as amended from time to time."

4. A perusal of Sub-rule (3) of Rule 1 explicitly mandates that the 2004 Rules would regulate promotion to such posts with reference to which consultation with the Public Service Commission is not required. It is not a matter of dispute, that the promotional posts under consideration, do not require consultation with the Public Service Commission, and as such, the 2004 Rules would apply to the promotional avenues under consideration.

5. Rule 2 of the 2004 Rules is also of material relevance. During the course of hearing, learned counsel for the rival parties invited our attention to different Rules framed under Article 309 of the Constitution of India, promulgated in the years

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1985, 1994 and 2004 (besides the 2004 Rules). It is, therefore, that Rule 2 of the 2004 Rules assumes significance. The same is being extracted hereunder:

"2. Overriding effect- These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force."

A perusal of Rule 2 of the 2004 Rules leaves no room for any doubt, that the 2004 Rules have an overriding effect, notwithstanding anything to the contrary contained, in any other Service Rules promulgated under Article 309 of the Constitution of India. Suffice it to state, that all the other Rules brought to our notice, had been notified prior to the Notification of the 2004 Rules (notified on 15.06.2014). Thus viewed, it is imperative for us to conclude, that the 2004 Rules have an overriding effect on the other Rules, to which our attention was invited, during the course of hearing.

6. Insofar as the present controversy is concerned, the same shall have to be determined with reference to Rule 4 of the 2004 Rules. The above Rule, was also the only Rule relied upon by the High Court, while adjudicating upon the controversy. Rule 4 aforementioned is being reproduced below:

"4. Criterion for Recruitment by Promotion- Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department and to a post in any service carrying the pay scale the maximum of which is Rs.18,300 or above shall be made on the basis of merit, and to the rest of the posts in all services to be filled by promotion, including a post where promotion is made from a Non-gazetted post to a Gazetted post or from one service to another service, shall be made on the basis of seniority to the rejection of the unfit."

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A 7. There can be no doubt whatsoever that *inter se* merit
is inconsequential for promotions under Rule 4 of the 2004
Rules, insofar as promotions from Group 'D' service, to the
lowest ranks of ministerial posts in Group 'C' service, are
concerned. This is for the reason because the promotions under
B reference are neither to the post of Head of Department nor to
a post just one rank below the post of Head of Department. It
is also not the case of either of the parties that the scale of the
posts concerned bring the same out of the purview of Rule 4
of the 2004 Rules. The real mandate of the said Rule is, that
C for the posts under reference seniority would regulate onward
promotion, however, subject to the condition of suitability.
Inasmuch as, promotions are to be made on the basis of
seniority, subject to the "rejection of the unfit". It is in the
aforesaid background, that we shall determine the validity of
D two Government Orders. Firstly, the order dated 17.07.2004
was assailed before the High Court, in Special Appeal No.10
of 2006 (arising out of Writ Petition No.945 of 2004). The
aforesaid Government Order dated 17.07.2004, is the subject
matter of consideration in Civil Appeal No.975 of 2010. The
aforesaid Government Order dated 17.07.2004 is being
E extracted hereunder:

"From
Joint Director(Education)
Kumaon Division
Nainital.

F To

District Education Officer Nainital/Almora/Pithoragarh/
Udhamsingh Nagar/Bageshwar/Champawat

G Letter No.Pra-3/4006-25/04-05 Dated 17.07.04

Subject: Regarding Promotion of Class-IV Employees
(Group-'D') on the Post of Junior Clerks in Subordinate
offices Ministerial Staff Class-III (Group-'C').

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Sir,

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With reference to above, and in pursuance of the instructions issued by the Director of Education, Uttaranchal, Dehradun vide his letter No.Pra-1/5302-03/04-05 dated 07.06.2004 and letter No.Pra-1/Pri.Promotion/5496-97/04-05 dated 08.06.2004 and the Government Order No./885/Karmik-02/03 dated 02.09.2003, the Schedule and programme for taking necessary action for promotion of Class-IV employee of your division on the post of Junior Clerk, is being forwarded herewith.

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You are requested to get the forms duly filled up and submitted by the eligible Class-IV employees of your district so that all the eligible class-IV employees may submit relevant information as per the format.

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1. Only those Class-IV employees shall be eligible to apply who have minimum qualification of high school or equivalent and have regularly worked for 5 years in the Education Department and is substantively appointed.

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2. The time schedule for holding examination for promotion of Class-IV employees on the post of Junior Clerk is being forwarded herewith to enable you to take further necessary action accordingly.

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(a) Date of submission of certified copy of the confidential report of the past 5 years submitted before the District Education Officer. 08.08.2004

(b) Date of submission of list (in triplicate) compiled at District Level of the forms received and the Confidential Reports with details After Verification in respect of High School pass Candidates separately In the Office of Joint Director, Education, Kumaon Mandal Office. 14.08.2004

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- A (C) Date and place to hold examination.
22.08.2004 Government Inter College, Nainital
(There will be one question paper in Written Examination with two parts 1 – Hindi Essay, 2. General Knowledge. Each question paper will consist of 15 Marks). Total 30 marks.
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You are requested to inform to all concerned in your District in all offices/colleges. The notice may be pasted on the notice board to ensure that no eligible employee is deprived of the opportunity of the promotion.

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The information to be compiled at District Level should be prepared in A5 paper in the Computer and a floppy may also be forwarded with this information.

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It may be ensured that while compiling information that serial number of the compiled information and the compiled format are in same seriatum.

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Sd/-
Dan Singh Rautela
Joint Director(Education)
Kumaon Division, Nainital”

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8. The second order, assailed before the High Court was dated 08.11.2004. The same came up for consideration before the High Court in Civil Appeal No.9 of 2006 (arising out of Writ Petition No.78 of 2005). The above Government Order dated 08.11.2004 is being extracted hereunder:

“From

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Additional Director
Medical & Health
Kumaon Mandal, Nainital.

To

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The Chief Medical Officer/
Chief Medical Superintendent

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Almora, Pithoragarh, Udham Singh Nagar/
Nainital/Balaswar/Champawat.

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No.E-4/2004/1770-22 dated 8.11.2004.

Sub: To provide opportunity to appear in typing test to those candidates who did not appear earlier in the typing test in the written examination conducted for promotion from class IV to the post of junior clerk.

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Sir,

As per direction of Director General, Medical Health and Family Welfare, Uttaranchal, Dehradun vide his letter no.IV category/37/2002/26233 dated 25.10.2004, those class IV employees who appeared in written examination of captioned mentioned promotion and who could not appear in the typing test conducted earlier, are being given another opportunity to appear in typing test.

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Therefore, a list of such candidates is enclosed herewith. You are requested to inform intimation to this effect to all those employees mentioned in the said list of your district wherever they are posted that a typing test is being conducted on 4.12.2004 at 11.00 a.m. in the office of Additional Director, Medical Health and Family Welfare, Kumaon Division, Nainital. The concerned candidate should appear at 10.00 a.m. in the concerned division alongwith an identity card or a certificate issued by the Medical Incharge.

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A notice to this effect may be published in Dainik Jagran and Amar Ujala also so that no candidate is deprived of such opportunity.

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sd/-
H B Bhatt
Additional Director"

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A 9. The High Court while disposing of the bunch of cases
 on 04.03.2006, set aside both the Government Orders dated
 17.07.2004 and 08.11.2004, by holding that they violated the
 mandate contained in Rule 4 of the 2004 Rules. The question
 to be determined by us is, whether the mandate of Rule 4 of
 B the 2004 Rules, was indeed breached by the aforesaid two
 Government Orders.

C 10. In its determination, the High Court was of the view,
 that Rule 4 of the 2004 Rules postulates only one criterion for
 promotion, namely, seniority. And that, seniority was the only
 relevant factor for determining onward promotion from Group
 'D' service to the lowest ministerial posts of Group 'C' service.
 Keeping in view the facts and circumstances of the present
 controversy, we are of the view that the High Court erred in
 recording the aforesaid determination. Whilst there can be no
 D doubt that Rule 4 postulates seniority as the basis for onward
 promotion, but the Rule also provides, that promotions would
 be made subject to the "rejection of the unfit". If the Government
 Orders dated 17.07.2004 and 08.11.2004 were the basis of
 determining the fitness of concerned employees for onward
 E promotion and for adopting measures for "rejection of the unfit"
 then the two Government Orders would squarely fall within the
 purview of Rule 4 of the 2004 Rules. Otherwise, they would be
 in conflict therewith.

F 11. We have extracted hereinabove both the Government
 Orders. We are satisfied that it was the endeavour of the
 Government to determine fitness of Group 'D' employees, for
 onward promotion to the lowest rank of ministerial posts in
 Group 'C' service. We say so because, it is apparent to us,
 G that Group 'D' posts comprise of posts in the nature of Peons,
 Messengers, Chaukidars, Malis, Farrashes, Sweepers,
 Watermen, Bhistis, Tindals, Thelamen, Recordfilters, Peon-
 Jamadars, Daftris, Book-binders, Cyclostyle Operators,
 Farrash-Jamadars, Sweeper-Jamadars and Head Malis. The
 nature of duties of the posts referred to hereinabove, are too
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well-known. Merely because an employee while holding a Group 'D' post has been discharging the duties, of the nature referred to above, it cannot be presumed that he/she is suitable for onward promotion to a ministerial post. It is, therefore, that while determining the issue of onward promotion to ministerial posts, the State Government issued *inter alia* the above two Government Orders extracted hereinabove. Thereby, it would be possible to determine the fitness of those who fulfilled the conditions of eligibility for promotion. We are satisfied that the aforesaid two Government Orders squarely fall within the ambit of competence of the appointing authority, to determine the minimum fitness standards postulated under Rule 4 of the 2004 Rules.

12. In view of the above, we are satisfied that the impugned orders passed by the High Court, whereby, the above two Government Orders were quashed, deserve to be set aside. The two Government Orders dated 17.07.2004 and 08.11.2004 are hereby upheld. The instant appeals are accordingly allowed. The impugned orders passed by the High Court are therefore set aside.

Rajendra Prasad

Appeals allowed.