

**BEFORE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice J.C.S.Rawat
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

Claim Petition No. 63/2012

Rajesh Gill Son of Shri Telu Ram R/o 80/2 Vasant Vihar, Dehradun, at present working as Deputy commissioner, Commercial Tax, Haridwar (Uttarakhand).

.....Petitioner

Versus.

1. State of Uttaranchal through Secretary Finance, Uttarakhand, Civil Secretariat, Dehradun.
2. Commissioner, Tax, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri D.C.Srivastav,, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the Respondent.

JUDGMENT

DATED: JANUARY 15, 2014.

(Delivered by Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

1. Instant petition has been filed by the petitioner for seeking a direction to set aside the impugned order dated 8.2.2012 passed by the respondents and further a direction has been sought to consider the case of petitioner for promotion on the post of Joint Commissioner by relaxing under the powers vested in Uttarakhand Government Servant Relaxation in Qualifying Services for promotion Rules, 2010 (hereinafter referred to as Relaxation Rules, 2010)
2. It is admitted case to both the parties that the petitioner was initially appointed on the post of Commercial Tax Officer and was promoted to the post of Assistant Commissioner, Commercial Tax on 20.1.2003 after completing satisfactory service in his initial appointment. The petitioner

was not promoted to the post of Deputy Commissioner while his junior officers viz Assistant Commissioners, Commercial Tax were promoted to the post of Deputy Commissioner on 11.1.2010. The petitioner could not be promoted to the post of Deputy Commissioner, Commercial Tax due to the adverse entries recorded in his Character roll in the year 2007-08 & 2008-09 on the post of Assistant Commissioner, Commercial Tax, against which he preferred a claim petition before the Tribunal. The said adverse entries recorded in the character roll of the petitioner were expunged by the Tribunal. Thereafter, the petitioner also earned an adverse remark in the year 2009-10, which was expunged by the department itself. The petitioner could not get promotion in time due to these adverse entries which were later expunged. When the adverse entries of the petitioner were expunged, he was promoted to the post of Deputy Commissioner by the Department on 26.4.2011 vide Annexure-6 to the claim petition. Thereafter the petitioner made a representation which is evident from Annexure-7 to the C.P. as well as Annexure-A-1 to the Rejoinder affidavit dated 16.5.2011, to the respondents and he prayed in the said representation that the junior officer had been promoted before the promotion of the petitioner as such he may be granted notional promotion with all consequential benefits from the date when a junior officer Sri Arun Kumar was promoted. The said request of the petitioner was conceded by the Government and vide order dated 3.10.2011 as well as 28.12.2011 Annexure Nos. 7 & 8 respectively granted the notional promotion as desired by the petitioner. Thereafter, certain vacancies came up for consideration for promotion from the Deputy Commissioner to the Joint Commissioner and the petitioner was not considered on the said post as the petitioner had already availed the benefit of the relaxation under the relevant service rules and order applicable in the case of the petitioner by getting the notional promotion and again for the promotion from the post of Deputy Commissioner to the post of Joint Commissioner the petitioner had not completed the required minimum length of service and it was found that in view of the Relaxation Rules, 2010, the petitioner could avail the said relaxation only one time during his service period; the petitioner has already availed the said relaxation period, so he cannot be allowed to avail the said concession again.

3. The petitioner has pleaded in his claim petition that the petitioner had not availed the facility of relaxation for promotion from the post of Assistant Commissioner to the post of Deputy Commissioner. It was the bounded duty of the respondents that when a junior officer has been promoted and the case of the petitioner has not been considered, the petitioner was entitled to get the promotion before his junior officers. The petitioner has never sought the relaxation for the same and he was promoted only after completion of 7 years of service as Assistant Commissioner, Commercial Tax, so the petitioner is entitled to get the relaxation by virtue of the Relaxation Rules, 2010. He further alleged that the said rules are only applicable in the case of the selection and not for the notional promotion.
4. The State/ respondents contested the claim petition and it was alleged that the petitioner has already availed the benefit of the relaxation as provided under rules while granting him the first notional promotion at his behest; the petitioner was actually promoted on 26.4.2011. The petitioner had made a representation to the department to get him the notional promotion from the date 11.1.2010, which was granted to him and he was notionally promoted from the date when his junior was promoted. He got the notional promotion from 11.1.2010 as such he is not entitled to get the benefit of Relaxation Rules, 2010.
5. We have heard learned counsel for the parties and perused the record. Ld. Counsel for the petitioner contended that the State Government issued a Government order dated 6.10.2010 (hereinafter referred to as Relaxation Order of 2010) in which it was provided that required minimum length of service on the post of Assistant commissioner, Commercial Tax from 7 years to 4 years will be relaxed to become the Deputy Commissioner, Commercial Tax. Immediately thereafter the State Government promulgated the Relaxation Rules, 2010 under Article 309 of the Constitution of India and it was provided in the said rules that notwithstanding anything contained in any of the service rules framed there under, the Relaxation Rules, 2010 would prevail on all the service rules. It is further provided in the aforesaid rules that the officers/officials, who were selected for the promotion, had availed the facility of the relaxation at one point of time, such officers/officials would only be entitled to take that benefit once in their whole service career. It was

further pointed out by the Ld. Counsel for the petitioner that the petitioner had never applied or taken benefit of the Relaxation Order of 2010 by which required minimum length of service was relaxed from 7 years to 4 years on the post of Assistant Commissioner to become Deputy Commissioner. The petitioner was promoted on the post of Deputy Commissioner on 26.4.2011 after completing 7 years' service and he was given notional promotion at the behest of the petitioner w.e.f. the date Sri Arun Kumar , junior Deputy Commissioner was promoted on 11.1.2010. It was further contended that neither he had claimed the relaxation nor he was granted the relaxation under the original Government Order. He is entitled to get the relaxation on the post of Deputy Commissioner to Joint Commissioner.

6. Ld. A.P.O. refuted the contention and contended that the petitioner was promoted in the year 2011 and thereafter he submitted a representation (Annexure-A-1 to R.A.) to the Government and claimed the notional promotion from the date his junior Sri Arun Kumar was promoted i.e. 11.1.2010. Thus, he is not entitled to get the second relaxation according to Relaxation Rules, 2010. The petitioner could have taken only one relaxation at one point of time.
7. We have gone through the entire record. It is apparent from the admitted facts of the parties that there were adverse entries in the character roll of the petitioner which were expunged by the Tribunal in two claim petitions and the third entry was expunged by the respondents' department themselves. After the entries were expunged, the petitioner was promoted from the date of the promotion order dated 26.4.2011. It is also admitted that he moved a representation seeking that the person junior to the petitioner had already been promoted, so he is entitled to get the promotion from the date i.e. 11.1.2010, which was conceded by the Government and he was given a notional promotion from 11.1.2010 from the date his junior Sri Arun Kumar was promoted to the post of Deputy Commissioner from the post of Assistant Commissioner, Commercial Tax. It is admitted that the petitioner was promoted after the D.P.C. and thereafter the notional promotion was granted by the Secretary of the concerned department. No D.P.C. is required for granting the notional promotion to the petitioner. It is admitted to the parties that the petitioner

after getting the notional promotion i.e. on 1.11.2010, had not completed 7 years as Assistant Commissioner, Commercial Tax, there are few days short in case of the petitioner.

8. The only question from the above facts arises for consideration as to whether the representation made to seek the notional promotion from the date his junior was promoted will amount a relaxation under the Relaxation Order of 2010 or under the Relaxation Rules, 2010 as mentioned earlier. Ld. Counsel for the parties could not demonstrate that Sri Arun Kumar was granted the promotion on 11.1.2010 after completing 7 years of service and as such it can very safely be concluded that he had not completed the minimum required length of service for the post of Deputy Commissioner on the date of promotion on 11.1.2010.. The petitioner was well aware when he moved the representation that he has not completed his 7 years of service as required under the rules on 11.1.2010 and he made the representation to get his promotion from the date his junior had been promoted. The request of the petitioner had been accepted by the Government and a notional promotion was given to the petitioner. The D.P.C. dated 26.4.2011 reveals that 24 candidates were found fit to be promoted including the petitioner and they were promoted to the post of Deputy Commissioner. The suitability was considered by the D.P.C.; whereas the notional promotion is concerned, it is to the department to decide from which date the promotion would take effect. The benefits of the notional promotion would be counted for all the benefits to the person to whom the notional promotion has been granted. Thus, it is a promotion to a post under all the service jurisprudence purposes. Ld. Counsel for the petitioner tried to distinguish the notional promotion and the regular promotion on the grounds that the regular promotion is made by a selection process, whereas the notional promotion is done by the department concerned without any selection. We do not agree with the contention of the Ld. Counsel for the petitioner because if the petitioner was promoted on 26.4.2011 and that order was made effective w.e.f. 11.1.2010 in case of the petitioner, thus, it cannot be disputed that the said notional promotion is not a promotion within the definition of selection process. Ld. Counsel also tried to distinguish Relaxation Rules, 2010 by placing reliance on the word 'Selection'. It is

provided in the rule 3(1) which applies to the promotion by selection to a post or service. Ld. Counsel tried to make out that there are two promotions in this case, one promotion is by selection on 26.4.2011 and the other notional promotion, which was granted from the date 11.1.2010, is not by way of selection. We do not agree with the said contention. The selection was made on 26.4.2011 and the benefit was given from the back date i.e. 11.1.2010. Thus, the petitioner had not completed 7 years on that date. If the petitioner would not have claimed parity with Sri Arun Kumar, who was definitely junior to him and who had not completed 7 years at the time of his selection by promotion, the petitioner could not have got the benefit of the relaxation. So it can safely be concluded that the petitioner by implication moved the representation to relax the rule of 7 years and to provide him the benefit of relaxation. Thus in view of the above, the petitioner has availed the facility at one point of time. Ld. Counsel for the petitioner could not demonstrate from the record that the respondents are not counting the period of notional promotion to the length of service of the Deputy Commissioner.

9. Ld. Counsel for the petitioner further contended that the petitioner relied upon a judgment of Hon'ble Apex court in case of **Inder Jit Gupta & others Vs. Union of India (2001)1 SCC 637**, we have gone through the entire judgment. The facts and circumstances and proposition of law of the above case are different and the said judgment is not applicable in this case.
10. It is evident from the record that the petitioner has availed the benefit of the Relaxation order, 2010 as such the second relaxation is not permissible to the petitioner. Rule 3 has an overriding effect on all the service rules and the provisions of Relaxation Rules 2010 would prevail over all the service rules. Rule 4 of the Relaxation Rules 2010 provides that in case a post is filled up by promotion and for such promotion a certain minimum length of service is prescribed on the lower post and the required number of eligible persons are not in the field of eligibility. Such prescribed minimum length of service may be suitably relaxed. It is also provided that the relaxation in the prescribed qualifying service for promotion will be allowed once in the entire service tenure of the officer/official. It is also provided in the said rules that the officers/official

who have availed benefit of relaxation of prescribed qualifying service for promotion earlier, they will not be entitled for such benefits again during their service tenure. It is evident that relaxation can only be taken at one time. The petitioner has also relied upon the judgment of **Ashutosh Gupta Vs. State of Rajasthan & others (2002)4 SCC 34**. The facts and circumstances and proposition of law of this case are different and the said judgment is not applicable in the case in hand.

11.Ld. Counsel for the petitioner has also filed Annexure-13, perusal of these letters depicts that the department has asked to their employees as to whether they want the promotion on the basis of Relaxation Rules, 2010. On the basis of these applications, Ld. Counsel for the petitioner has tried to emphasize that the department in the case of relaxation seeks the option of the employees and thereafter department exercised its jurisdiction in accordance with law to promote the willing candidates on the appropriate post. Ld. Counsel for the State refuted the contention. The Relaxation Order 2010 prior to Relaxation Rules, 2010 only relaxes the length of service on the post of Assistant Commissioner to Deputy Commissioner from 7 years to 4 years. There was no bar in the said G.O. that the incumbent can only take the benefit of relaxation once in his services. So it was not necessary to the department to seek such option, rather it was obligatory on the department to consider all the incumbents who come within the ambit of the G.O. When the new Relaxation Rule 2010 was formulated and bar has been created that the relaxation can only be granted at one point of time during the whole service career, it was necessary that employee would exercise the option according to his discretion taking all the circumstances into consideration. The enforcement of Relaxation Rules, 2010 has definitely curtailed an absolute right of the employee to get relaxation from length of service of the officer/official at all stages of service. Prior to that, it was not necessary to seek such consent by the employee. The petitioner could not demonstrate that the petitioner had completed the required period of length as Deputy commissioner to become Joint Commissioner. It has been settled that the officer/official had a right to be considered for promotion and the promotion is not a vested right of the employee. As such the relaxation is an incidence of service like a promotion. In these

circumstances, there was no necessity to seek the option from the petitioner for being notionally promoted as Deputy Commissioner from 11.1.2010. Moreover, the petitioner had already made a representation to relate back his promotion from 11.1.2010 when he had not completed 7 years of service as Assistant Commissioner. In view of the above, we do not find any merit in the petition of the petitioner and the same is liable to be dismissed.

12. The claim petition is dismissed. No order as to costs.

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

Sd/-

(D.K.KOTIA)
VICE CHAIRMAN(A)

DATE: JANUARY 15, 2014
DEHRADUN

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