

**BEFORE THE UTTARAKHAND PUBLIC SERVICES  
TRIBUNAL AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 13/DB/2014**

Mohd. Aslam, Additional Statistical Officer(Retd.), S/o Late  
Sri Makbul Ahmed, R/o 145, Van Vihar, Shimla Bypass Road,  
Mehuwala Mafi, Dehradun

.....Petitioner

**VERSUS**

1. Chief Conservator of Forest, Human Resources Development and Personnel Management, Uttarakhand, 85 Rajpur Road, Dehradun,
2. Principal Chief Conservator of Forest, Uttarakhand, 85 Rajpur Road, Dehradun.
3. State of Uttarakhand through Principal Secretary, Forest and Environment, Secretariat, Dehradun.
4. Secretary, Uttarakhand Public Service Commission, Gurukul Kangri, Haridwar,
5. Director/Conservator of Forest, Rajaji National Park, Dehradun,
6. Sri Arvind Kumar Verma, Office of Chief Conservator of Forest, Parchar Evam Prasar, Vasant Vihar, Dehradun,

7. Sri Gorakh Nath, Office of Chief Conservator of Forest, N.T.F.C., 85, Rajpur Road, Dehradun,
8. Sri Om Kailash Tyagi, Office of Conservator of Forest, Shiwalik Circle, Dehradun,
9. Sri Ajay Maheshwari, Office of Chief Conservator of Forest, Planning Work, Nainital.

.....Respondents

Present: Petitioner in person  
Sri Umesh Dhaundiya, A.P.O.  
for the respondents No. 2 & 3  
  
None for the other respondents

### **JUDGMENT**

**DATE: JANUARY 23, 2015**

**DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. This claim petition has been filed for seeking the following reliefs:-

“(1) यह कि याची के अंतिम प्रत्यावेदन दिनांक 01-03-2013 संलग्नक सं0-ए-1 के अनुसार अन्य संवर्गों के कार्मिकों की भांति शासनादेशों के अनुसार याची की भी पद रिक्ति के दिनांक 09.11.2000 से सांख्यकीय सहायक/अपर सांख्यकीय आधिकारी पद पर पदोन्नति/नोशनल पदोन्नति एवं समस्त सेवा हित लाभ मय ब्याज सहित प्रदान करने की कृपा की जाय एवं शासनादेश दिनांक 23 जून, 2003 के पैरा-21 के अनुसार नोशनल पदोन्नति का लाभ देते हुए पद रिक्ति के दिनांक 20 दिसम्बर 2006 से सांख्यकीय अधिकारी के पद पर पदोन्नति/नोशनल पदोन्नति एवं समस्त हित लाभ मय ब्याज सहित प्रदान करने की कृपा की जायें।

- (2)– यह कि उत्तराखण्ड लोक सेवा आयोग गुरुकुल कांगड़ी हरिद्वार के पत्रांक 144/03/डी0पी0सी0/सेवा-2/2012-2013 दिनांक 17-10-2013 से चयन समिति द्वारा पदोन्नति हेतु चयन एवं वन एवं पर्यावरण अनुभाग-1 के पत्र दिनांक 19 नवम्बर 2013 द्वारा की गयी पदोन्नतियां नियम विरुद्ध, विधि विरुद्ध, मनमानो, अनुचित, अवैध एवं शून्य, माननीय सर्वोच्च न्यायालय की व्यवस्थाओं के विपरीत एवं असंवैधानिक तथा द्वेष भावना से प्रेरित घोषित करते हुए निरस्त करने की कृपा की जायें।
- (3)– यह कि याचिका पर हुआ समस्त व्यय याची को प्रदान करने की कृपा की जायें।
- (4)– यह कि अन्य कोई त्वरित व लाभकारी उपचार जो माननीय न्यायाधिकरण याचिका के विचारोपरांत उचित एवं लाभकारी समझें उसे भी याची को प्रदान करने की कृपा की जाये।”

2. The main facts in brief as stated in the claim petition are that the petitioner was appointed on the post of ‘Investigator-cum-Computer’ in February, 1981. He was promoted to the post of ‘Additional Statistical Officer’ on 11.06.2007. His main contention is that he should have been given this promotion retrospectively with effect from 09.11.2000 as he was eligible and the vacancies also existed on that date. The petitioner has given a detailed account of vacancies which were available from time to time. He has further stated that had he got promotion from 09.11.2000, he would have completed minimum service of five years on 08.11.2005 making him eligible for his next promotion to the post of ‘Statistical Officer’. Further, a vacancy of ‘Statistical Officer’ accrued on 20.12.2006 and the

petitioner has claimed promotion for this. The petitioner has also stated that the Uttarakhand Public Service Commission (for short the Commission) in its meeting for the selection of 'Statistical Officer' by promotion on 25.09.2013 did not consider the name of the petitioner as per the "उत्तरांचल (लोक सेवा आयोग क्षेत्रान्तर्गत) राज्याधीन सेवाओं में 'अनुपर्युक्त को अस्वीकार करते हुए ज्येष्ठता' एवं 'श्रेष्ठता' के आधार पर पदोन्नति द्वारा किये जाने वाले चयनों में अपनायी जाने वाली प्रक्रिया विनियमावली, 2010" (hereinafter referred as the 'Regulations of the Commission'). Thereafter, the Government of Uttarakhand on receiving the recommendations of the Commission dated 17.10.2013 (Annexure:A-2) issued the promotion order of 4 persons (excluding the petitioner) on 19.11.2013(Annexure:A-3). Petitioner, stating many deficiencies and illegality, has challenged the recommendations of the Commission dated 17.10.2013 and promotion order of the Government dated 19.11.2013 in this claim petition. The petitioner has also stated that he had given representations to the respondents on 07.07.2007, 11.01.2012, 15.06.2012, 28.08.2012 and lastly on 01.03.2013(Annexure A-1) but of no avail. The petitioner retired on 31.3.2013.

3. The respondent no. 2 filed the counter affidavit (which was adopted by respondent no. 3) and opposed the contentions made in the claim petition. It has been stated that after the creation of Uttarakhand State in November, 2000, the tentative allocation for the State could be made in 2003 and final allocation in 2006. The employees who had

to join Uttarakhand after tentative allocation did not join. As joining of employees from Uttar Pradesh to Uttarakhand was pending, the posts which could not be filled due to non-joining of employees from U.P. cannot be treated as vacancies. The vacancies occurred only after the organizational structure of the department was finalized on 20.12.2006 and thereafter, the petitioner (alongwith others) was promoted on the post of 'Additional Statistical Officer' on 11.06.2007. Meanwhile, due to non-promotion of the petitioner, he was sanctioned two promotional pay scales as per rules. As regards the proceedings of the Commission and consequent promotion order issued by the Government in 2013, it has been stated that the same are as per rules and though the name of the petitioner was included in the 'eligibility list', he was not considered by the Commission for promotion because his 'annual entry' and 'certificate of integrity' for 2007-08 were not available which were required as per Regulation 6(ग) of the 'Regulations of the Commission'.

4. Respondents no. 1 and 4 to 9 did not file any written statement and therefore, it was decided to proceed ex-parte against them.

5. Petitioner also filed the rejoinder affidavit and in this the same points which were stated in the claim petition have been reiterated.

6. We have heard the petitioner and learned A.P.O. and perused the record.

7. There are two issues involved in this case:

(i) Whether the petitioner is entitled to get the promotion on the post of 'Additional Statistical Officer' retrospectively w.e.f. 09.11.2000 and also further promotion on the post of 'Statistical Officer' w.e.f. 20.12.2006 or not.

(ii) Whether promotion order of the Government dated 19.11.2013 on the post of 'Statistical Officer' on the basis of the recommendations of the Commission dated 17.10.2013 is valid or not.

8. We take up the issue 7(i) above first. Petitioner argued that that promotion given to him on 11.06.2007 on the post of 'Additional Statistical Officer' should have been given from the back date i.e. from 09.11.2000 when vacancy was available. Learned A.P.O. argued that vacancies were not available on 09.11.2000. The whole issue of 'vacancies' was pending due to allocation process and vacancies occurred only after the final allocation and the restructuring of the department in 2006. The calculation and timing of vacancies has been stated by the petitioner in detail in the claim petition and he has argued that vacancies were there on 9.11.2000 irrespective of the fact that the final allocation was pending.

9. Without going into the issue of availability of vacancies, we would like to discuss the more important and relevant issue i.e. can promotion be given retrospectively from the date of vacancy. This issue has been examined by the Government of Uttarakhand and the position has been made clear by the Office Memorandum dated 11<sup>th</sup> June, 2003. We reproduce it below:

“उत्तराखण्ड शासन  
कार्मिक अनुभाग-2  
संख्या: 737/कार्मिक-2/2003  
देहरादून: दिनांक 11 जून, 2003

कार्यालय- ज्ञाप

शासन के समक्ष यह प्रश्न आया है कि क्या किसी कार्मिक का रिक्ति घटित होने की तिथि से पदोन्नति पाने का अधिकार है तथा क्या किसी सेवा निवृत्त अथवा दिवंगत कार्मिक को किसी ऐसे पूर्वगामी तिथि से नोशनल पदोन्नति दी जा सकती है, जिस तिथि को वह कार्मिक न तो स्वयं पदोन्नति से सम्बंधित पद पर कार्यरत था और न ही उसका कोई कनिष्ठ पदोन्नति से सम्बंधित उक्त पद पर कार्यरत था।

2- पूर्व में यह स्पष्ट किया गया था कि पदोन्नति हेतु विलम्ब से चयन सम्पन्न किये जाने की दशा में ऐसे सेवानिवृत्त/दिवंगत कार्मिकों के नाम भी पात्रता सूची में शामिल किये जायं जिनके नाम संगत सेवा नियमावली के अन्तर्गत पात्रता सूची में होते, यदि चयन समय से कराया गया होता, भले ही चयन के समय उसमें से कुछ कार्मिक सेवा निवृत्त हो चुके हों अथवा उनकी मृत्यु हो चुकी हो। मृत्यु एवं सेवानिवृत्त सरकारी सेवकों को, उपयुक्त पाये जाने पर संबंधित वर्ष(दिनांक) से नोशनल पदोन्नति दिये जाने पर विचार के लिए कहा गया है।

3- उपरोक्त के संबंध में अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि लोक सेवा आयोग सपरामर्श चयनोन्नति प्रक्रिया नियमावली के नियम-8 तथा लोक सेवा आयोग की परिधि के

बाहर के पदों पर चयनोन्नति पात्रता सूची नियमावली के नियम-2 के अनुसार प्रत्येक वर्ष के संबंध में पृथक-पृथक पात्रता सूची तैयार करने का प्रावधान है। इसका आशय यह है कि संबंधित वर्ष में जो कार्मिक पात्रता सूची में रखे जायेंगे, भले ही चयन के समय कार्मिक की मृत्यु हो चुकी हो अथवा वह सेवानिवृत्त हो चुका हो। परन्तु जहां तक नोशनल पदोन्नति का प्रश्न है रिक्ति की तिथि से पदोन्नति दिये जाने की कोई बाध्यता नहीं है। सम्प्रति नोशनल पदोन्नति सदैव कनिष्ठ की पदोन्नति की तिथि से विचारणीय होती है, प्रतिबन्ध यह है कि कनिष्ठ की पदोन्नति से नोशनल पदोन्नति प्रदान किये जाने हेतु संबंधित सरकारी सेवक को चयन समिति द्वारा उपयुक्त पाय गया हो।

4-अतः अनुरोध है कि कृपया ऐसे मामलों में उपरोक्तानुसार कार्यवाही की जायं।”

10. The above office memorandum makes it clear that the promotion/notional promotion cannot be given from the date of vacancy. Notional promotion to an employee can be considered only from the date of the promotion of an employee junior to him. In the case before us, no junior to the petitioner has been given the promotion on the post of Additional Statistical Officer before promotion was given to the petitioner and therefore, the petitioner is not entitled for promotion from the date of vacancy according to the office memorandum dated 11.06.2003 quoted in para 9 above.

11. We have also perused relevant Service Rules i.e. the Uttar Pradesh Statistical Service Rules, 1982 as amended in 1985 (for short the Service Rules). The Service Rules do not provide any Rule under which promotion is permissible from the date of vacancy. The relevant Rule 23 is reproduced below:



“23 – ज्येष्ठता– (1) एतदपश्चात् यथा उपबन्धित के सिवाय, किसी श्रेणी के पद पर व्यक्तियों की ज्येष्ठता, मौलिक नियुक्ति के आदेश के दिनांक से, और यदि दो या अधिक व्यक्ति एक साथ नियुक्त किये जायें, तो उस क्रम से, जिसमें उनका नाम नियुक्ति के आदेश में रखे गये हों, अवधारित की जायेगी: परन्तु यदि नियुक्ति के आदेश में किसी व्यक्ति की मौलिक रूप से नियुक्ति का कोई विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट किया जाय तो उस दिनांक को मौलिक नियुक्ति के आदेश का दिनांक समझा जायगा और अन्य मामलों में, उसका तात्पर्य आदेश जारी किये जाने के दिनांक से होगा।”

The definition of “मौलिक नियुक्ति”(substantive appointment) has also been given under Rule 3(झ) of the Service Rules which reads as under:

“(झ) “मौलिक नियुक्ति” का तात्पर्य सेवा के संवर्ग में किसी पद पर ऐसी नियुक्ति से है, जो तदर्थ नियुक्ति न हो और नियमों के अनुसार चयन के पश्चात की गयी हो, और यदि कोई नियम न हो तो सरकार द्वारा जारी किये गये कार्य पालक आदेशों द्वारा तत्समय विहित प्रक्रिया के अनुसार चयन के पश्चात की गयी हो।”

On the scrutiny of the above Rules, it is clear that the seniority of candidate is to be determined from the date of order of substantive appointment unless otherwise stipulated in the letter of appointment. In the instance case at hand, nothing has been stipulated in the promotion order of the petitioner dated 11.06.2007.

12. The petitioner has referred the following two cases:

(I) Sheo Dayal Sinha and others Vs. State of Bihar and others, AIR 1981 Supreme Court, 1543

(II) Dr. (Mrs.) Sandhya Jain, Vs. Dr. Subhash Garg and another, AIR 2000 Supreme Court, 29

We have gone through the above cases and reach the conclusion that these are not applicable to the case in hand.

13. In State of U.P. and others Versus Ashok Kumar Srivastava and another 2014(1) AWC 140 (SC), the Hon'ble Supreme Court dealt with the matter of the retrospective seniority. Following part of the judgment is worth reproducing:

*“11. The thrust of the matter is how the seniority is to be determined in such circumstances. In Union of India V. S.S.Uppal and another. (1996) 2 SCC 168, it has been opined that the seniority of a person is to be determined according to the seniority rule applicable on the date of appointment. It has also been observed that weightage in seniority cannot be given retrospective effect unless it is specifically provided in the rule in force at the material time.*

*12. In State of Karnataka and others v. C.Lalitha, (2006) 2 SCC 747, it has been observed that it is well-settled that seniority should be governed by rules and a person should not be allowed to derive any undue advantage over other employees, for concept of justice demands that one should get what is due to him or her as per law.*

*13. In State of Uttaranchal and another v. Dinesh Kumar Sharma, (2007) 1 SCC 683:2006(7) AWC 7761(SC), it has*

*been clearly stated that seniority has to be decided on the basis of rules in force on the date of appointment and no retrospective promotion or seniority can be granted from a date when an employee has not even been born in the cadre.*

*14. In Nirmal Chandra Sing (Supra) it has been ruled that promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post. It has also been laid down therein that it is settled in law that date of occurrence of vacancy is not relevant for the determination of seniority.*

*15. Learned senior counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh and others v. Reevan Singh and others, (2011) 3 SCC 267: 2011(3) AWC 3011(SC), where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below:*

*“(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Article 14 and 16 of the Constitution.*

XXX XXX XXX XXX

*(iv)The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given*

*retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. ”*

*16. In view of the aforesaid enunciation of law, the irresistible conclusion is that the claim of the first respondent for conferment of retrospective seniority is absolutely untenable and the High Court has fallen into error by granting him the said benefit and accordingly the impugned order deserves to be lanced and we so do.*

*17. Consequently, the appeal is allowed and the order passed by the High Court is set aside. The parties shall bear their respective costs. ”*

14. In view of the above discussion in paragraphs 8 to 13, we are of the clear view that the petitioner is not entitled to get promotion on the post of ‘Additional Statistical Officer’ from the date of vacancy even if vacancies existed and further promotion on the post of ‘Statistical Officer’ from 20.12.2006. We therefore, do not find it relevant to ascertain whether vacancies of Additional Statistical Officer were available on 09.11.2000 or not.

15. Now we take up the second issue as to the validity of the proceedings/ recommendations of the Commission for the promotion to the post of Statistical Officer communicated to the Government vide letter dated

17.10.2013 (Annexure: A-2) and the promotion order issued by the Government on 19.11.2013(Annexure:A-3).

16. It would be appropriate to mention here that as per the Service Rules, the promotion on the post of 'Statistical Officer' is to be made in consultation with the Commission out of the Additional Statistical Officers, who have completed five years of continuous service. The State Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution has framed the "Uttaranchal Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003. It is also to be noted that Commission is also empowered to make Rules for the regulation of its procedure under the Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985. The Commission has framed the 'Regulations of the Commission' under this power. The Service Rules also provide that the promotion to the post of Statistical Officer is to be made on the basis of the "merit".

17. The petitioner in his arguments has raised many objections with regard to the material provided by the Government to the Commission for the meeting to select the Statistical Officers by promotion. We would like to discuss the main objection which is relevant to the petitioner for his non-promotion.

18. The petitioner has argued that it is unfair and unjust to not to consider him for promotion on the basis of non-availability of his annual entry and certificate of integrity for the year 2007-08. The committee has recorded the following in its minutes:

“मो० असलम के वर्ष 2007 –08 की वार्षिक प्रविष्टि उपलब्ध नहीं है। विभागाध्यक्ष द्वारा न तो चरित्र प्रविष्टि अनुपलब्धता का कोई औचित्यपूर्ण कारण उपलब्ध कराया गया है और न ही उक्त अवधि की सत्यनिष्ठा प्रमाणित होने का कोई प्रमाण पत्र उपलब्ध कराया गया है। यद्यपि विभागाध्यक्ष द्वारा समस्त पात्र कार्मिकों की सत्यनिष्ठा प्रमाण पत्र संबंधी अभिलेख उपलब्ध कराया गया है किन्तु मो० असलम के संबंध में आलोच्य वर्ष 2007–08 जिस अविधि में चरित्र प्रविष्टि अनुपलब्ध है के संबंध में सत्यनिष्ठा प्रमाण पत्र नहीं दिया गया है। अतः चयन समिति द्वारा उत्तराखण्ड (लोक सेवा आयोग क्षेत्रान्तर्गत) राज्यधीन सेवाओं में “अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता” एवं “श्रेष्ठता” के आधार पर पदोन्नति द्वारा किये जाने वाले चयनों में अपनायी जाने वाली प्रक्रिया विनियमावली, 2010 के नियम-7(ग) के अनुपालन में मो० असलम की पदोन्नति पर विचार नहीं किया गया।”

19. It would be relevant to reproduce the following regulation of the ‘Regulations of the Commission’.

“6(ग) यदि किसी वर्ष की गोपनीय चरित्र प्रविष्टि अप्राप्त बतायी गयी है तो उसका औचित्यपूर्ण कारण भी दर्शित होना चाहिए तथा सम्बन्धित वर्ष की ‘सत्यनिष्ठा’ प्रमाणित होने का प्रमाण-पत्र सक्षम अधिकारी द्वारा आयोग को सौंपे गये रिकार्ड(अभिलेख) पर उपलब्ध होना चाहिए। यदि किसी वर्ष की चरित्र प्रविष्टि अप्राप्त बतायी गयी है तथा उसका कोई औचित्यपूर्ण कारण दर्शित नहीं किया गया है और न ही सम्बन्धित वर्ष की सत्यनिष्ठा प्रमाणित

होने का पमाण-पत्र सक्षम अधिकारी द्वारा दिये गये रिकार्ड पर उपलब्ध है, तो ऐसे अभ्यर्थी के नाम पर पदोन्नति हेतु विचार नहीं किया जायेगा।”

20. The petitioner has argued that in 2007-08, he was posted in Rajaji National Park. The then Director of Rajaji National Park, Shri G.S.Pandey did not write his annual entry. On 28.06.2011, the Director, Rajaji National Park had written a letter to the Chief Conservator of Forest stating that the then Director had not written the annual entry of the petitioner for the year 2007-08 (Annexure: A-10). He argued that the then Director was responsible for not writing his entry. It was not the fault of the petitioner and therefore, he cannot be allowed to suffer. In spite of the written communication to the Chief Conservator of Forest on 28.06.2011, the Department of Forest and the State Government did not apprise the Commission regarding the reason for non-availability of the entry. Since certificate of integrity is a part of the annual entry, the same was also not available and the Commission was not informed the correct position in regard to certificate of integrity also. Respondents No. 2 and 3 in their counter affidavit have also mentioned that the Commission vide letter dated 13.09.2013 asked the Government to provide the certificate of integrity in respect of the petitioner for 2007-08. The Department of Forest and the State Government failed to respond.

21. The sole reason for not considering the petitioner for the promotion by the committee of the Commission was

non-availability of annual entry and certificate of integrity for 2007-08. After perusing the record, we find that the petitioner is not at fault for this. The Department of Forest and the State Government should have informed the Commission and explained the reason for non-availability of annual entry. Similarly, the reason for not providing certificate of integrity should have also been intimated to the Commission. The learned A.P.O. has not demonstrated that there was any material before the respondents for not certifying the integrity. Under these circumstances, we are of the view that the Department of Forest and the State Government have not provided important information to the Commission because of which the petitioner could not be considered for the promotion. This, according to us, is unfair and unjust

22. The petitioner has alleged the charges of bias and malafide against some individual officers. In the absence of any clear evidence in this regard, we do not find any substance in these charges.

23. In the light of the discussion in paragraphs 18 to 21 above, we are of the clear view that the case of the petitioner for promotion on the post of Statistical Officer needs to be reconsidered.

24. Under the above circumstances, we reach the conclusion that while the petitioner is not entitled to get the promotion to the post of Additional Statistical Officer w.e.f.



09.11.2000 and further promotion to the post of Statistical Officer w.e.f. 20.12.2006, the Government should reconsider its promotion order dated 19.11.2013. The petition therefore, deserves to be partly allowed.

**ORDER**

The petition is partly allowed. The State Government is directed to send the matter back to the Commission to reconsider the candidature and suitability of the petitioner for promotion to the post of Statistical Officer providing the Commission all necessary details in the light of findings of the Tribunal in this order for suitable recommendation by the Commission and thereafter, pass an appropriate order in respect of the petitioner. The State Government will complete this exercise within two months from the date certified copy of this order is produced before the respondents No. 2 and 3. It is, however, made clear that since the petitioner has already retired on 31.3.2013, the promotion of the persons as per order dated 19.11.2013 (Annexure:A3) will remain unaffected. No order as to costs.

Sd/-

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

Sd/-

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

DATE: JANUARY 23, 2015  
DEHRADUN

KNP