

BEFORE THE 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. 06/DB/2014

Chandra Bhallabh Dhuliya aged about 62 years S/o Shri Bachhi Ram Dhuliya,
R/o 67/2A, Vidya Vihar, Phase-1, Kargi Road, Dehradun (Retd. Administrative
Officer, Department of Tourism Uttarakhand).

.....Petitioner

VERSUS

1. State of Uttarakhand through its Secretary, Department of Tourism, Subhash Road, Dehradun.
2. Director Tourism Uttarakhand, Dehradun, Pt. Deen Dayal Upadhyay Tourism Bhawan, Near ONGC Halipad, Garhi Cantt., Dehradun..
3. Addl. Director Tourism, Directorate of Tourism, Uttarakhand, Pt. Deen Dayal Upadhyay Tourism Bhawan, Near ONGC Haliapad, Garhi Cantt., Dehradun.

.....Respondents.

Present: Sri J.P.Kansal, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondent No.1.
Sri Rajeshwar Singh, Ld. Counsel
for Respondent Nos. 2 & 3

JUDGMENT

DATED: NOVEMBER 19, 2014.

(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)

1. This petition has been filed for the following relief:-
“Therefore, the petitioner most respectfully and humbly prays this
Hon'ble Tribunal that;

- (a) *The petitioner be kindly held entitled to get the benefits of 3rd next financial up gradation under the Assured Career Progression Policy of the respondents w.e.f. 1.9.2008 and as per G.O. dated 8.3.2011 Annexure-R E-A 8 as modified/clarified by G.Os. Annexure Nos. A 9 to A 11 issued during the period 9.3.2011 to 1.7.2013 and the respondents be kingly ordered and directed to allow to the petitioner the said benefit of 3rd next financial up-gradation and accordingly to pay to the petitioner Rs. 4600/- grade pay instead of Rs. 4200/- per month w.e.f. 1.9.2008 with all consequential benefits and also to pay him retiral benefits and pension based thereon together with interest thereon @ 12% per annum from the date of accrual to the date of actual payment to the petitioner;*
- (b) *Any other relief, in addition to or in modification of above, as the Hon'ble Tribunal deem fit and proper, be kindly granted to the petitioner against the respondents; and*
- (c) *Rs.20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."*

2. The petitioner was appointed to the substantive post of Typist Clerk on 5.1.1976 in the office of the Regional Tourism, Pauri Garhwal. Thereafter the petitioner was promoted by the competent authority in exercise of the power conferred upon him under the proviso to Rule 5 (VII) of the U.P., Tourism Department Ministerial Service Rules, 1980 (hereinafter referred to as Service Rules, 1980). The said proviso of the rules provides that if suitable eligible persons are not available for promotion to the post of Head Clerk, the field of eligibility may be extended to include permanent Typist, Receipt Clerk, Dispatch Clerk and permanent Account Clerks and Typist in the office. Pursuant to the above Rule, the petitioner was promoted to the post of Head Clerk (Senior Assistant) in the regional office. Thereafter the Government vide order dated 26.10.2001 vide Annexure-A 4 to the claim petition, granted to its employees promotional time pay scale scheme on completion of 14 years of continuous satisfactory service of the employee on the post, he may be entitled to have the pay scale of next

promotional cadre under the respective relevant service rules. The Director General, Tourism, U.P. vide letter dated 31.8.1998 had also directed on completion of 14 years of continuous satisfactory service, the Typist Clerk of the regional office be given the pay scale of Rs. 1350-2200/- as is given to them on the normal promotion. The petitioner was not entitled to the said promotional time scale because the petitioner had already been promoted in the year 1989, so he did not claim the first promotional scale after 14 years of service. According to the said time pay scale the second promotional time pay scale was to be given to the employees after completion of 24 years of continuous satisfactory service according to the aforesaid Government order dated 22.10.2001. The petitioner had completed on 4.7.2002 for his next promotional pay scale as Administrative Officer and he got the second scale. In supersession of the above policy of the time pay scale, the respondents vide Annexure-A 8, on 8.3.2011 introduced Assured Career Progressive Policy (hereinafter referred to as ACP) for the employees working prior to 1.1.2006 in the pay scale of Rs.7500-12000/- . According to the said Government Order the employees on completion of the continuous satisfactory service of 10 years and 18 years from the date of their initial appointment were allowed financial up-gradation to the next scale and third financial up-gradation to an employee was to be allowed after completion of 26 years of continuous satisfactory service from the date of initial appointment irrespective of the period of excess service rendered by him after second financial up-gradation..

3. The petitioner had been working continuously for more than 26 years and he retired on 30.6.2011 and he is claiming his third financial up-gradation w.e.f. 1.9.2008. The respondents are not allowing him the said benefit, so he has preferred this claim petition before the Tribunal.
4. The respondents have admitted all the facts as narrated by the petitioner, but they have only disputed that the Service Rules, 1980 provide that in case of post of Head Clerk (Senior Assistant), which was to be filled by promotion, if suitable candidate was not available, even the Typist could be considered. In the year 1989, since there was no

eligible candidate for the post of Head Clerk (Senior Assistant) in the regional office, so the petitioner being a Typist, who was in the lower grade, was considered and he was directly promoted as a Head Clerk (Senior Assistant) in the regional office from the post of Typist. Thus, he was given double promotion. According to the respondents the petitioner should have been first promoted as a Senior Clerk then he was entitled to be promoted as Head Clerk (Senior Assistant). The respondents have further pointed out that the petitioner was promoted in the year 1989 and at the initial stage he was given two promotions thereafter in the year 2002 he was given one grade pay promotion as such he has availed three ACP as such he is not entitled to any third ACP.

5. We have heard the learned counsel for the parties and perused. We have also considered the written arguments submitted by the Ld. Counsel for the petitioner.
6. The short controversy is that whether the petitioner, who was promoted under the proviso to Rule 5 (VII) of the Service Rules, 1980 as Head Clerk (Senior Assistant) construes a double promotion or it is a single promotion. To decide the said controversy we will extract the provision of Rule 5 (VII) of the Service Rules, 1980 as under:

“Source of Recruitment :-.....

(vii) Head Clerks in the Regional Offices- By promotion on the basis of seniority subject to the rejection of unfit from amongst permanent Junior Noter and Drafter, Junior Accountants, Cashier, Reference Clerks, Storekeepers and Nazir at the Headquarters and permanent Head Clerks-cum-Accountants in the lower scale in the Regional Offices.

Provided that if suitable eligible persons are not available for promotion, the field of eligibility may be extended to include permanent Typists, Receipt Clerks, Dispatch Clerks at the Headquarters and permanent Accounts Clerks and Typists in the Regional Offices.....”

7. The above rule clearly provides that for the post of the Head Clerk (Senior Assistant) in the regional office, the feeding cadre would be

Junior Noter, Drafter, Junior Accountant, Cashier etc. if these persons are not found fit, then the second feeding cadre has been provided in the proviso. In the proviso as extracted above clearly lays down that the Typist would also be entitled for promotion to the post of the Head Clerk (Senior Assistant). Thus, the rule clearly provides the feeding cadre of the Typist for the Head Clerk (Senior Assistant) also. Thus, the language of the Rule clearly provides that it cannot be treated two promotions at a time because no such provision exists in the aforesaid rules. The petitioner has got one promotion in the year 1989 and the second promotional pay scale was given to him on 4.7.2002. After the supersession of the above grant of time pay scale, order dated 8.3.2011 the Assured Career Progressive Policy for the employees clearly provides the third ACP after continuous satisfactory service from the date of their initial appointment and the said Government order Annexure-A 8 to the petition is clearly applicable in this case and the petitioner is entitled to the said third ACP w.e.f. 1976 to 1.9.2008, after completion of two years of service from 4.7.2002, the date when the second promotional pay scale was given to him.

8. Ld. Counsel for the respondents contended that the petitioner at the time of retirement was getting the benefit of highest pay scale of the concerned cadre in the service, now the petitioner cannot be granted the third financial up-gradation on that ground. Ld. Counsel for the petitioner refuted the contention and contended that the respondents have taken a new plea during the course of arguments and as such this plea is not tenable at the stage of arguments without being taken in the written statement. Ld. Counsel further contended that the Uttarakhand Tourism Department was reorganized in the year 2002 and a post of Senior Administrative Officer was created by the Government dated 20.2.2002 vide Annexure- A 15. After the reorganization amongst the other category of the post, one post of Senior Administrative Officer was also approved for the department and the Government order , Annexure-A 15 to the Claim Petition clearly provides in Paragraphs 3 & 4 that the post so created for the Parytak Vikas Parishad will be

deemed to have been created in place of the earlier post available in the directorate and para 4 of the said G.O. is also relevant for the purpose. Ld. Counsel for the respondents also refuted the contention and contended that the post, which is said to have been created by the 2002 Government Order, was for the Tourism Parishad and it was not for the directorate. He further contended that the post, which was created in the year 2011 on 22.12.2011, the post of Senior Administrative Officer, was not available on the date of retirement of the petitioner on 30.6.2011 and he is not entitled to get the benefit of the said post.

9. Considering the respective submissions of the parties, Ld. Counsel for the respondents could not demonstrate in the written statement that this plea has been taken by them and the general rule of the pleading is that the party should narrate all the material facts in his petition or in the CA/WS., on which he has based his claim or defence. The object to lay down the above principle was nothing but to inform the other party about his claim or defence of the case. It is the settled principle of law that a party cannot be taken by surprise at the time of the argument to raise his new pleading before the Court for which the other party was not prepared. It is also settled principle of law that if such plea has not been taken in the pleadings, the party cannot plead the evidence on that point and he cannot be heard on the said point. Thus, the respondents' case suffers from inherent lack of plea in the W.S./C.A.. When this plea was raised by the respondents without any pleading, Ld. Counsel for the petitioner also filed an affidavit narrating the facts that a post of Senior Administrative Officer existed in the department of Tourism by virtue of the notification and Government order dated 20.2.2002, Annexure-A 15_ which created 220 posts at the level of Headquarter and regional district level. It is also indicated in para 3 & 4 of the G.O. that the earlier sanctioned post of the directorate and regional and district offices would stand abolished and the directorate and regional and district offices would continue to function against the

above newly sanctioned post. The aforesaid averment is clearly indicated in Annexure-A 15 , para 3 & 4 of which are as under:-

“ 3 उपरोक्त तालिका के अन्तिम स्तम्भ 'वर्तमान में सृजित पद' ही अब सृजित पद माने जायेंगे। इस प्रकार पूर्व में पर्यटन निदेशालय के अन्तर्गत सृजित समस्त पदों को समाप्त मानते हुए उपरोक्त पदों को सृजित पद समझा जायेगा।

4 पर्यटन निदेशालय (पर्वतीय), उत्तर प्रदेश के अन्तर्गत कार्यरत समस्त कार्मिकों को कार्यानुभूत एवं उपयोगिता के आधार पर उपरोक्त पद संरचना में समायोजित किया जायेगा। वर्तमान वित्तीय वर्ष 2001-2002 में उत्तरांचल पर्यटन विकास परिषद के अन्तर्गत कार्यरत/समायोजित समस्त कार्मिकों का वेतन आहरण पूर्व की भांति किया जाता रहेगा। उपरोक्त समस्त पदों को आयव्ययक के आयोजनेत्तर पक्ष में सृजित समझा जाये एवं तदनुसार ही आगामी वित्तीय वर्षों हेतु वेतन/ अधिष्ठान व्यय की व्यवस्था सुनिश्चित की जाये।

10. Thus, the post of the Senior Administrative Officer was in existence according to the said Government Order on the date when the petitioner retired from the service. In view of the above we do not find any force in the contention of the Ld. Counsel for the respondents.
11. In view of the above, we do not find any force in the contention of the Ld. Counsel for the respondents and we find the claim of the petitioner is substantiated by the evidence and the documents. The claim petition is liable to be allowed and the petitioner is to be held entitled to the ACP w.e.f. 1.9.2008 and the order dated 23.11.2013 is liable to be quashed and the petitioner is liable to get all the consequential benefits arising out of by allowing this petition.

ORDER

The claim petition is allowed. The petitioner is entitled to the ACP w.e.f. 1.9.2008 and the order dated 23.11.2013 is hereby quashed. The petitioner is entitled for all the consequential benefits arising out of by allowing this petition. No order as to costs.

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

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: NOVEMBER 19, 2014
DEHRADUN