

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

EXECUTION PETITION NO. 15 /DB/2022

*(Arising out of judgment dated 22.09.2021,
passed in Claim petition No. 151/DB/2019)*

VinayKumar.

.....Petitioner-executioner

vs.

State of Uttarakhand through Secretary, Finance, Govt. of Uttarakhand,
Secretariat, Dehradun, and others.

.....Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner-executioner.
Sri V.P.Devrani, A.P.O., for the respondent no.1.

JUDGMENT

DATED: MAY 24, 2022

Justice U.C.Dhyani (Oral)

By means of present execution application, petitioner-executioner seeks to enforce order dated 22.09.2021, passed by this Tribunal in Claim Petition No. 151/DB/2019, Vinay Kumar vs. State and others.

2. The execution application is supported by the affidavit of Sri Vinay Kumar, petitioner-executioner.
3. In first round of litigation, Claim Petition No. 05/DB/2018, Vinay Kumar vs. State and others was filed before the Tribunal. The claim petition was decided by the Tribunal *vide* judgment and order dated 25.06.2018, as below:

“

4. It is not a case in which petitioner was denied promotion. It is a case in which he was already promoted to the post of Accountant. He is admittedly junior most in the list of eligible candidates of Assistant Accountants, who were to be promoted to the post of Accountant. If he is given promotion from an earlier date, no one else would be adversely affected. The facts of the instant case are peculiar, as if the petitioner was to swim or sink with Sri S.C.Tyagi. It was like a musical chair or see-saw game. When Sri Tyagi was promoted, one post of Accountant fell vacant. Petitioner was also promoted, when Sri Tyagi was reverted, petitioner's promotion was also cancelled. Sri Tyagi took recourse to writ jurisdiction and succeeded. He was placed appropriately as Assistant Treasury Officer. Petitioner too was promoted to the post of Accountant, but only on 30.11.2004. Here justice could not be meted out to him. It is a case in which both Sri Tyagi and petitioner were promoted. Whereas, with the intervention of Hon'ble High Court, Sri Tyagi was promoted again *w.e.f.* the same date on which he was promoted earlier, but similar treatment was not given to the petitioner. In other words, petitioner was promoted, but his promotion order was cancelled because of the reversion of Sri Tyagi, who, although was granted promotion with the intervention of Hon'ble Court and the petitioner was also granted promotion *w.e.f.* 30.11.2004, but his earlier order of promotion dated 15.02.2003 was not revived. It requires to be emphasized here that when petitioner was promoted *vide* order dated 15.02.2003, he was granted promotion *w.e.f.* 09.08.2002. Same relief was not granted to the petitioner on a subsequent occasion. Whereas the department was benevolent in promoting the petitioner from a previous date on earlier occasion, no such spirit was shown on subsequent occasion while promoting the petitioner on the same post. The facts and circumstances warrant that he ought to have been granted promotion *w.e.f.* 09.08.2002, instead of 30.11.2004 and hence, it is a case of review. In other words, order impugned should be reviewed by the reviewing authority, in the same manner, in which the case of Sri S.C.Tyagi was reviewed by the competent authority.

5. It may be pointed out, at this stage, that the representation of the petitioner was not decided on 15.10.2015, in the manner it ought to have been decided. It was mentioned therein that since Sri Tyagi was promoted on the basis of Hon'ble Court's order, therefore, the petitioner may also obtain similar order from the Court, if he so desires. This Court is, therefore, of the opinion that, clearly it is a case in which order impugned should be reviewed by the competent authority, considering the peculiar facts and circumstances of the case. Petitioner's destiny, it appears, was tagged with the destiny of Sri Tyagi and since Sri S.C.Tyagi has obtained the desired relief with the intervention of Hon'ble Court, therefore, in the considered opinion of this Tribunal, petitioner is also entitled to such relief [with the intervention of this Tribunal].

6. Such relief can be granted to the petitioner under Rule 14 of the Uttarakhand Government Servants Discipline and Appeal Rules, 2003, which runs as below:

“14. Review-The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any

material error of law occurred which has the effect of changing the nature of the case.”

7. It will be worthwhile to mention here that the case of the petitioner has already been recommended by Chief Treasury Officer, Haridwar, *vide* letter dated 18.11.2015, (Annexure: A 11). Petitioner made a representation to Director Treasuries on 18.11.2015 that his promotion may be made effective *w.e.f.* 30.08.2002, (sic) which should be read as 09.08.2002, in place of 30.11.2004.

8. District Magistrate, Haridwar/ Director, Treasuries, Dehradun are, accordingly directed to review the order impugned dated 15.10.2015 in the light of observations made by this Tribunal hereinabove.

9. The same is directed to be reviewed at an earliest possible but not later than 8 weeks of presentation of certified copy of this order along with fresh representation enclosing a copy of letter dated 18.11.2015 (Annexure: A 11), written by Chief Treasury Officer, Haridwar to Director Treasuries, Dehradun.

.....”

4. In second round of litigation , Claim Petition No. 151/DB/2019 Vinay Kumar vs. State and others was decided by this Tribunal *vide* judgment and order dated 22.09.2021, which is sought to be enforced in present execution application. Relevant portion of the judgment dated 22.09.2021 is extracted herein below for convenience:

“10. This Tribunal had already expressed its opinion in its judgment dated 25.06.2018 passed in Claim Petition No. 05/DB/2018. It appears that Tribunal’s opinion was not taken in the right earnest by Respondents No.2 to 4, and that is why the representation of the petitioner was dismissed *vide* Office Order dated 28.09.2018 (Annexure: A 1). In the aforesaid discussion, this Tribunal has again given its opinion as to why the petitioner is entitled to the pay scale of Accountant *w.e.f.* 09.08.2002, instead of 30.11.2004, with other service benefits. This opinion is now converted into directions.

11. Order as above.

12. The claim petition thus stands disposed of, but with no order as to costs.”

5. It is the submission of Ld. Counsel for the petitioner-executioner that a copy of judgment dated 22.09.2022 was served in the office of Respondent No.2, with an application dated 04.10.2021, which was followed by a reminder dated 28.01.2022, but till date compliance of the order of the Tribunal has not been done by the authorities concerned.

6. It is the submission of learned counsel for the petitioner/ executioner that casual approach on the part of the respondents no.2, 3 & 4 should not be tolerated and strict action should be initiated against them. Earlier , on 17.05.2022, there was no representation before the Tribunal for the said respondents, despite notices to them.
6. Considering the facts of the case, this Tribunal directs the Respondents No.2, 3 & 4 to comply with the order dated 22.09.2021, passed by this Tribunal in Claim Petition No. 151/DB/2019, Vinay Kumar vs. State & others, if the same has not been complied with so far, without further loss of time, failing which the concerned respondents may be liable to face appropriate action under the relevant law governing the field.
7. Petitioner/ executioner is directed to place copies of this order before the Respondents No.2, 3 & 4 by 03.06.2022, to remind that a duty was cast upon said authorities to do something, which has not been done. The same requires to be done now, without unreasonable delay.
8. Execution application is, accordingly, disposed of at the admission stage.
9. Let copies of this order be supplied to Ld. Counsel for the petitioner/executioner and Ld. A.P.O., today itself, as per Rules.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 24, 2022
DEHRADUN

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