

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

REVIEW APPLICATION NO. 04/DB/2022

(in Claim Petition no. 110/DB/2021)

Padmini Panwar, Sub Inspector (Excise) d/o Shri Gobind Singh Panwar,
presently posted at Uttam Sugar Mills Limited, Haridwar.

.....Review Applicant

vs.

1. State of Uttarakhand through Principal Secretary (Excise) Civil Secretariat, Dehradun.
2. Commissioner (Excise) Near Tehsil Chowk, Gandhi Road, Dehradun.
3. Additional Commissioner, Excise (Administration) near Tehsil Chowk, Gandhi Road, Dehradun.
4. Smt. Kamlesh Rani, w/o Shri Varun Kashyap, Sub Inspector (Excise Intelligence Bureau) Headquarters, Dehradun.

.....Respondents

Present: Sri Uttam Singh, Advocate, for Review Applicant.
Sri V.P.Devrani, A.P.O. for Respondents No. 1 to 3.

JUDGMENT

DATED: JULY 05, 2022

Justice U.C.Dhyani (Oral)

At the very outset, Sri Uttam Singh, learned Counsel for the review-applicant, on receiving instructions from his client, submitted that present review application has been rendered infructuous and, therefore, the review application may be dismissed as infructuous.

2. Learned Counsel for the review-applicant submitted that WPSB No. 337 of 2022 has been filed by the petitioner (review-applicant herein) before the Hon'ble High Court of Uttarakhand, in which order dated 24.05.2022, passed by this Tribunal in Claim Petition No. 110/DB/2021 has been challenged. In the said writ petition, a direction has also been sought to quash

order dated 20.06.2022 passed by the Excise Commissioner, Uttarakhand, whereby the Excise Commissioner has given consent for inclusion of the name of Smt. Kamlesh Rani (respondent no. 4) in the proposal of promotion of Excise Inspector(s).

3. The chronology of events leading to filing of present review application is as follows:

(i) The claim petition No. 110/DB/2021 was decided on 24.05.2022, as follows:

“9. The respondent department in its earlier Counter Affidavit filed in Claim Petition No. 99/DB/2020 had categorically admitted that the request of the petitioner has been accepted, while Annexure: A1, the impugned order dated 02.09.2021 states that the petitioner has not completed 5 years of necessary qualifying service as Sub-Inspector, Excise and, therefore, she cannot be included in the eligibility list. Drawing analogy from the case when an incumbent could proceed on leave and still be eligible, even if there is break in 5 years’ continuous service and the remaining period is less than 5 years, we find it appropriate to apply the same principle in the case of the petitioner. The same is also substantiated by the averments made in the earlier affidavit of the respondent department in Counter Affidavit filed in Claim Petition No. 99/DB/2020 and our observations made in para 7 & 8 as above.

10. We therefore, hold that the petitioner is eligible for being considered for promotion in the selection year 2019-20 and she will be deemed to have completed 5 years’ necessary qualifying service as on the 1st day of the selection year. Annexure: A1 is hereby set aside and the claim petition is hereby allowed. No order as to costs”

(ii) The review-applicant was not party to the claim petition.

(iii) Review-applicant has filed Review Application no. 04/DB/2022 on 10.06.2022 for the following prayer:

“It is therefore prayed that in the interest of justice, the Hon’ble Tribunal may very graciously please review its judgment order dated 24.05.2022 in the above mentioned legal provision/grounds of law, so that the legal right of the review petitioner may be protected as well as will not adversely affected the right of the review petitioner.”

(iv) An urgency application was filed by the review-applicant, on which notices were directed to be issued on 29.06.2022 to respondents 2, 3 & 4, as to why review petition be not admitted. Learned A.P.O. had accepted notice on

behalf of respondent no. 1 and 15.07.2022 has been fixed for hearing on admission of review application.

(v) Since the orders were passed on urgency application therefore, Miscellaneous Application No. 01/DB/2022 stood disposed of (*vide* order dated 29.06.2022).

(vi) *Vide* order dated 13.06.2022, 05.07.2022 was fixed for hearing on admission before this Bench. It is a different matter that subsequently, on urgency application notices on admission were issued to the respondents and the hearing on admission was fixed for 15.07.2022.

4. Sri Uttam Singh, Advocate has appeared for the review-applicant in response to the earlier order dated 13.06.2022. He has submitted that since the WPSB No. 337 of 2022 has been filed by the petitioner (review-applicant herein), therefore, present review application has been rendered infructuous.

5. A copy of the Writ Petition no. 337 of 2022 has also been received by this Tribunal in which, the petitioner has sought the following prayers:

“i) Issue a writ, order or direction in the nature of certiorari and quashing the order dated 24.05.2022 passed by the Public Services Tribunal, Dehradun Branch in Kamlesh Rani v State of Uttarakhand in Claim Petition No. 110/DB/2021.

ii) Issue a writ, order or direction in the nature of certiorari and quashing the order dated 20.06.2022 passed by the Excise Commissioner *vide* which he gave his consent for the inclusion of Smt. Kamlesh Rani in the proposal for promotion of Excise Inspector.

iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the candidature of the petitioner for the ongoing promotional exercise for the post of Inspector (Excise) since she fulfils all the requisite criteria of completing the minimum qualifying service.

iv) Any other order or direction the Hon’ble Court may deem appropriate.

v) Award the cost of the petition.”

6. The order dated 24.05.2022 has now been challenged by the petitioner (review-applicant herein) before the Hon’ble High Court of Uttarakhand in WPSB No. 337 of 2022. Hon’ble High Court has been pleased to pass an order on 27.06.2022, as follows:-

“WPSB No. 337 of 2022
Shri Sanjaya Kumar Mishra, ACJ
Shri Ramesh Chandra Khulbe, J.”

Mr. Abhijay Negi, learned Counsel for the petitioner.

Mr. Anil Bisht, learned Additional Standing Counsel for the State.

Issue notices to respondent nos. 4 & 5 returnable within four weeks.

Steps to be taken within seven days.

List the matter after six weeks.

In the interregnum, it is directed that any promotional exercise, if taken, by the Department concerned shall be subject to the final disposal of the writ-petition.”

7. Present review application has been filed to review the selfsame order (dated 24.05.2022). The review-application has, therefore, been rendered infructuous, as stated by learned Counsel for the review-applicant (petitioner of Writ Petition (SB) No. 337 of 2022) and agreed to by learned A.P.O.

8. The review-application is, accordingly, dismissed as infructuous.

9. Respondent no. 4 (in this Review Application) be informed accordingly. She need not appear before this Tribunal, either in person or through Advocate, in response to the notice issued as per order dated 29.06.2022 (of this Tribunal). Learned A.P.O. may inform official respondents no. 2 and 3 accordingly.

Sd/-

(RAJEEV GUPTA)
 VICE CHAIRMAN (A)

Sd/-

(JUSTICE U.C.DHYANI)
 CHAIRMAN

DATE: JULY 05, 2022.

DEHRADUN

KNP