

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 136/NB/DB/2022

Birendar Prasad Sah (Male) Aged about 61 years S/o Late Sri Sunder Lal Sah,
R/o Village and Post Kotabagh, Tehsil Kaladhungi District Nainital.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary Economic and Statistics, Dehradun.
2. Director Economics and Statistics, Government of Uttarakhand Dehradun.
3. District Economics and Statistics Officer Nainital District Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate for the petitioner (Virtual)
Sri Kishore Kumar, A.P.O. for the respondents (Virtual)

JUDGMENT

DATED: NOVEMBER 09, 2022

Justice U.C.Dhyani (Oral)

By means of present petition, the petitioner seeks the following reliefs:

“(i) To Issue direction or order or direction suitable in nature and quash the communication dated 20-07-2017, 24-07-2019 and 24-07-2020 issued by the Director Economic and Statistics (Contained as Annexure No.1 to the claim petition) after calling the records.

“(ii) To Issue direction or order or direction suitable in nature directing to the respondents to treat the “Satisfactory” of the year 2013-14, 2014-15, 2015-16 and 2017-18 as upgraded to “Out Standing” and “Very Good” and correct the same on the ground that same were not communicated to the petitioner, taking into

consideration the law laid down by the Apex Court in the case of Dev Dutt Vs. Union of India, 2008(8) SCC which was also upheld by the Full bench of the Apex Court in case of Sukhdev Singh V/s Union of India and other reported in (2013) 9 Supreme Court Cases page 566 and in view of the representation made by the petitioner after calling the entire records from the respondents.

(iii) To pass appropriate order or direction, directing the respondents to review the DPC held on 10-03-2016 and consider the case of the petitioner for promotion on the post of Senior Administrative Officer from the date when the juniors to the petitioner were promoted alongwith all consequential benefits and further revised the pension and other retiral dues along with admissible interest or @18% keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately and to allow the petition in toto.

(iv) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Brief facts giving rise to present petition, as stated in the claim petition, are as follows:

2.1 The petitioner was inducted in service as Junior Assistant/ Typist on 10-01-1989 in the Pay Scale of Rs.354-550 on compassionate ground under Dying in Harness Rules in the office of District Statistics Officer, Muzafarnagar in the erstwhile State of Uttar Pradesh by Director, Economics and Statistics. The service of the petitioner was confirmed from 28th April 2003 on the post of junior Assistant. On 06-02-2016 Director, Economic and Statistics, Government of Uttarakhand issued an office memorandum whereby a selection committee was constituted under the Chairmanship of Director Economics and Statistics for considering promotion on the post of Chief Administrative Officer and on the post of senior Administrative Officer. On 10-03-2016 the meeting of the selection committee was held under the chairmanship of the Director Economic and Statistics, Government of Uttarakhand for considering the candidature of the employee for promotion on the post of Senior Administrative Officer from Administrative Officer; Selection Committee recommended the

name of seven employees for promotion on the post of Senior Administrative Officer on the basis of Seniority.

2.2 On the basis of the recommendation made by the Selection Committee for making promotion on the post of Senior Administrative officer, the Director Economic and Statistics, Uttarakhand issued the office Memorandum on 11-03- 2016, 01-04-2016 and 18-04-2016, whereby 08 Administrative Officers were promoted on the post of Senior Administrative Officer.

2.3 On 16-05-2016, the petitioner submitted a representation to the Director, Economic and Statistics through proper channel in respect of promotion on the post of senior Administrative officer. In the representation petitioner pointed out that against the 07 sanctioned posts of senior Administrative Officer in the department, only 06 senior administrative officer are working. Petitioner requested for consideration of the candidature of the petitioner for promotion on 01 vacant post of senior Administrative Officer. Representation of the petitioner was forwarded by the District Economic and Statistics to the Director vide communication dated 17-05-2016.

2.4 On 20-07-2017, the Director, Economic and Statistics issued impugned communication to the petitioner wherein the petitioner was informed that he has been found unsuitable for promotion on the post of Senior Administrative officer on the ground that in terms of the provisions of Rule 3(3) of the Rules of 2013, the petitioner does not have minimum 04 ACR entries of the category of "Good" or above, in order to be treated as suitable for being considered for promotion on the post of Senior Administrative Officer. It was pointed out that ACR entries of the petitioner for the year 2014-15 and 2015-16 have been categorized as "Satisfactory" and thus petitioner is unsuitable for promotion.

2.5 On 28-07-2017, the Director, Economic and Statistics, issued an office Memorandum whereby three Administrative officers who were

junior to the petitioner in the cadre of Administrative officer, were promoted on the post of Senior Administrative Officer, on the basis of the recommendation made by the Selection Committee. On 24-07-2019, the Director Economics and Statistics issued impugned communication to the petitioner wherein the petitioner was informed that he has been found unsuitable for promotion on the post of Senior Administrative Officer on the ground that in terms of the provisions of Rule 3(3) of the Rules of 2013 the petitioner does not have minimum 04 ACR entries of category of "Good" or above, in order to be treated as suitable for being considered for promotion on the post of Senior Administrative officer. It was pointed out that ACR entries of the petitioner for the year 2014 &15 and 2015-16, 2016-17 and 2017-18 have been categorized as "Satisfactory" and thus petitioner is unsuitable for promotion.

2.6 On 20-07-2020, the Director, Economic and Statistics, issued impugned communication to the petitioner wherein the petitioner was informed that he has been found unsuitable for promotion on the post of Senior Administrative Officer on the ground that in terms of provisions of the Rule 3(3) of the Rules of 2013, the petitioner does not have minimum 04 ACR entries of the category of "Good" or above, in order to be treated as suitable for being considered for promotion on the post of Senior Administrative Officer. It was pointed out that only 02 ACR entries of the petitioner of last five years are categorized as "Good/Very Good".

2.7 On 05-10-2020, the petitioner submitted a representation to the Director, Economic and Statistics against the denial of promotion on the post of Senior Administrative officer. Petitioner pointed out that he has been denied promotion on the ground that the ACR entries of the petitioner of last five years are not categorized as "Good" or above" and hence he has not been found suitable for promotion. The petitioner further pointed out that the entries of the ACR for the year 2014-15 and 2015-16 are never communicated to the petitioner and as such he has never been given an opportunity to defend himself.

2.8. The petitioner has been deprived of the promotion on the post of Senior Administrative Officer from the date when the same was given to his juniors on the ground that the minimum 04 ACR entries of the last five years of the petitioner are categorized as “Good” or above in order to be treated as suitable for being considered for promotion on the post of Senior Administrative Officer, which is the mandate of Rule 3(3) of the Rules of 2013.

2.9. It submitted that the ACR entries of the petitioner for the years 2013-14, 2014- 15, 2015-16 and 2017-18 which have been categorized as “Satisfactory”, and which is the basis of the denial of the promotion to the petitioner on the post of Senior Administrative Officer, were never communicated to the petitioner by the competent Authority.

3. Learned Counsel for the petitioner submitted that the controversy in hand is squarely covered by the decision rendered by the Hon’ble Apex Court in the case of Dev Dutt vs. Union of India, 2008(8) SCC, which was relied upon by the Full bench of the Hon’ble Apex Court in the case of Sukhdev Singh vs. Union of India and other reported in (2013) 9 Supreme Court Cases page 566. Learned A.P.O. fairly conceded that the issue involved is no longer *re-integra* in view of the judgments rendered by the Hon’ble Apex Court in Dev Dutt vs. Union of India (*supra*) and Sukhdev Singh vs. Union of India (*supra*).

4. In Writ Petition No. 04 (S/B) OF 2016 [Reclassified and Renumbered as Claim Petition No. 75/NB/DB/2022], Anil Kumar Pandey vs. State of Uttarakhand & others, with almost identical facts, this Tribunal decided the claim petition on 19.09.2022, relying upon the decisions of Hon’ble Apex Court in Dev Dutt vs. Union of India and Sukhdev Singh vs. Union of India, as follows:

“.....

9. Article 141 of the Constitution of India reads as below:

*“141. Law declared by Supreme Court to be binding on all courts
The law declared by the Supreme Court shall be binding on all
courts within the territory of India.”*

It therefore follows that if some *ratio* has been laid down by Hon’ble Apex Court, that is binding on all the authorities, no matter when the rules are framed.

10. The observations of Hon’ble Apex Court in *Dev Dutt vs. Union of India (supra)* in paras 47 and 48 of the decision assume significance. These observations are reproduced herein below for convenience:

“47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the ‘good’ entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the ‘good’ entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the ‘good’ entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.”

[Emphasis supplied]

11. The observations of the Hon’ble Apex Court in *Sukhdev Singh vs. Union of India (supra)*, are also important and are reproduced herein below for convenience:

“8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every

entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

10. Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.”

[Emphasis supplied]”

12. The case laws cited in Dev Dutt (*Supra*) and Sukhdev Singh (*supra*), lay down the requirement of communication of entries to the employees so that they can make timely requests for upgradation of the same and if the employee is deprived of such opportunity, such entries though, they may not be adverse as such, but being of lower grade can affect the service prospects of the employee.

13. Rule 6 of the Rules of 2015 reads as below:

“6.The effect of upgradation of Fair/Satisfactory, Good, Very Good Reports-Where after considering the representation against the Fair/Satisfactory, Good, Very Good report the competent authority passes the order to upgrade such entry then, if where at the time of promotion due to such reports the concerned employee has been found ineligible or deprived from any other service benefits, then after upgradation of entries, he shall be reconsidered for promotion and other service benefits and if found eligible the notional promotion and other service benefits shall be provided from the date of the promotion of his juniors.

In respect of change of category of entry the competent authority shall pass speaking orders.”

[Emphasis supplied]

The above Rule presupposes that the petitioner shall give representation against the entries and after considering the representation, if the competent authority upgrades such entries, the concerned employee shall be reconsidered for promotion and other service benefits and if found eligible, the notional promotion and other service benefits shall be provided from the date of promotion of his juniors.

14. The petitioner has sought upgradation of his ACRs for the year 2010-11 and 2011-12. As per the ratio of the judgment of Hon’ble Apex Court in Dev Dutt vs. Union of India (*supra*), the Tribunal, therefore, directs that the entries of these two years shall be communicated to the petitioner within a period of two months from the date of receipt of certified copy of this order by the respondents. Subsequently, the petitioner may make representations against these entries within a period of two months thereafter and the representations shall be decided within two months of the receipt of the same by the competent authority. If after such decision any or both the entries of these two years are upgraded, the respondents shall hold a review DPC to consider promotion of the

petitioner from the date his juniors were promoted within a period of three months thereafter.

15. With the above directions, the claim petition is disposed of. No order as to costs."

5. Present claim petition is, accordingly, disposed of, at the admission stage, with the consent of learned Counsel for the parties on the basis of judgments rendered by Hon'ble Apex Court in Dev Dutt vs. Union of India (*supra*) and Sukhdev Singh vs. Union of India (*supra*), as below:

The petitioner has sought upgradation of his ACRs for *the years 2013-14, 2014-15, 2015-16 and 2017-18*. As per the ratio of the judgments of Hon'ble Apex Court in Dev Dutt vs. Union of India (*supra*) and Sukhdev Singh vs. Union of India (*supra*), the Tribunal directs that the entries of these years shall be communicated to the petitioner within a period of two months from the date of receipt of certified copy of this order by the respondents. Subsequently, the petitioner may make representations against these entries within a period of two months thereafter and the representations shall be decided within two months of the receipt of the same by the competent authority. If after such decision any of these entries are upgraded, the respondents shall hold a review DPC to consider promotion of the petitioner from the date his juniors were promoted within a period of three months thereafter.

No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: NOVEMBER 09, 2022
DEHRADUN.
KNP