

**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)

**WRIT PETITION NO 256 (S/B) OF 2021**

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 18/DB/2023]

Ramesh Kumar, about 59 years, s/o Late Sri Phool Singh, r/o 53, Kunjapuri Vihar, Ajabpur Khurd, Dehradun, presently posted as Additional Secretary, Government of Uttarakhand, Civil Secretariat, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Chief Secretary, Government of Uttarakhand, Civil Secretariat, Subhash Road, Dehradun.
2. Additional Chief Secretary, Secretariat Administration Department, Govt. of Uttarakhand, Civil Secretariat, Subhash Road, Dehradun.

.....Respondents

Present: Sri Hari Mohan Bhatia, Advocate for the petitioner (Virtual)  
Sri V.P.Devrani, A.P.O. for the respondents

**JUDGMENT**

**DATED: JUNE 14, 2023**

**Mr. Rajeev Gupta, Vice Chairman (A) (oral)**

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 31.10.2022 in WPSB No. 256/2021, Ramesh Kumar vs. State of Uttarakhand and another, which reads as under:

*"The petitioner falls within the definition of a public servant. The reliefs sought in the Writ Petition squarely falls for consideration by the Uttarakhand Public Services Tribunal.*

*2. Considering the fact that the Writ Petition has been pending since 2021, and pleadings have been exchanged, we direct the Registry to transfer the complete record of this Writ Petition to the Uttarakhand Public Services Tribunal, Nainital Bench. The Tribunal shall register the same as a Claim Petition, and deal with the same accordingly.*

*3. The Writ Petition stands disposed of accordingly.*

*4. In sequel thereto, pending application, if any, also stands disposed of."*

The original record of the writ petition has been transferred to this Tribunal vide Letter no. 17942/UHC/Service (S/B) 2022 dated 21.12.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as Claim Petition No. 18/DB/2023. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

2. This petition has been filed seeking the following reliefs:

*"i. Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 20.06.2019 and 17.10.2015 (Annexure No. 1 & 2 to the writ petition).*

*ii. Issue any other writ, order or direction in the nature of mandamus directing the respondents to grant Notional Promotion to the Petitioner on the post of Joint Secretary with all consequential benefits from 08.09.2008 when the Late Hariom (junior to the petitioner 1991 Batch Review Officer) had been promoted on the post of Joint Secretary i.e. 08.09.2008.*

*iii. And/or pass any other order which this Hon'ble Court may deem fit in the circumstances of the case and award the cost of the petition."*

3. The facts of the petition are briefly, as below:

The petitioner was finally allocated to the State of Uttarakhand in the year 2010 and he had provisionally joined in the Uttarakhand Secretariat in 2006. Though he was promoted to the post of Under Secretary and Deputy Secretary on later dates, keeping in view his seniority, he has been given notional promotion on the post of Under Secretary and Deputy Secretary w.e.f. 2001 and 2004 respectively. The petitioner's junior Late Sri Hariom was promoted to the post of Joint Secretary in 2008 while the petitioner has been promoted as Joint Secretary in the year 2013. The petitioner's requests for notional promotion w.e.f. 08.09.2008, when his juniors were promoted to the post of Joint Secretary have been rejected earlier vide impugned order dated 17.10.2015 and vide impugned order dated 20.06.2019.

4. Learned A.P.O. drew our attention towards Paras 12, 14, 16 and 22 of the Counter Affidavit of respondent no.2, which are reproduced as below:

“12. That in reply to the contents of paragraph No.13 of the said petition it is stated that when Late Hariom was promoted on the post of Joint Secretary, he was working as Deputy Secretary, whereas the petitioner was working on the post of Section officer as he was finally allocated to the State of Uttarakhand by the Central Government vide order dated 21.01.2010, therefore the DPC constituted at that relevant point of time did not found him fit to be considered for promotion as neither he was permanent employee of the Secretariat nor he fulfilled other provisions which were to be taken into consideration for granting the promotion on the post of Joint Secretary.

14. That in reply to the contents of paragraph No. 15 of the said petition it is stated that when Late Hariom was granted promotion on 08.09.2008, at that relevant point of time reservation policy was implemented in the State of Uttarakhand for promotion in Government Services and he was granted promotion by giving benefit of the said reservation, but in case of the petitioner even though he belongs to the reserved category have been given promotion on the post of Joint Secretary on 26.12.2013 on the basis of seniority, as reservation in promotion has been dispensed with by State Government by the G.O dated 05.09.2012 in light of the judgment dated 10.07.2012 passed by the Hon'ble High Court in WPSB No. 45/2011. Further, every time the petitioner was granted notional promotion in furtherance of G.O dated 11.06.2003, wherein his direct comparison was made with his immediate junior i.e. Rajendar Singh (who has been promoted on the post of Joint Secretary on 20.02.2014) but in the instant writ petition the petitioner is claiming notional promotion by comparing himself with Late Hariom who had been promoted on the post of Joint Secretary on 08.09.2008 when the petitioner was still working on the post of Section Officer. Copy of G.O Dated 05.09.2012 is being marked and filed as Annexure no. CA-7 to this Affidavit.

16. That in reply to the contents of paragraph No.18 of the said petition it is stated that the promotion of Late Hariom was done in accordance with the applicable provisions of the G.Os, policy and rules available at that relevant point of time. Moreover, Late Hariom was given the said benefits because he had been allocated to the State of Uttarakhand in the year 2000 whereas the petitioner was provisionally allocated in the year 2006.

22. That the contents of paragraph No.26 of the said petition are not admitted as stated. In reply it is stated that since late Hariom had joined the State of Uttarakhand much prior to the petitioner and due to applicability of roaster in reservation in State of Uttarakhand at that relevant point of time, he was granted promotion against the post earmarked for reserve category and now the reservation in promotion has been dispensed with by State Government vide G.O dated 05.09.2012 in light of the judgment dated 10.07.2012 passed by the Hon'ble High Court in WPSB No. 45/2011 Vinod Prakash Nautiyal Vs. State of Uttarakhand & ors. Further, the petitioner was provisionally

allocated on 31.10.2006 to the State of Uttarakhand in pursuance of the Hon'ble Lucknow Bench of Allahabad High Court vide order dated 25.04.2005 issued in WPSS no. 289/2005, as he never opted for the State of Uttarakhand. Later the Central Government vide order dated 21.01.2010 finally allocated the petitioner to the State of Uttarakhand. Therefore in view of the aforesaid facts and in accordance with the applicable provisions of the G.Os, policy and rules available at that relevant point of time the petitioner was denied the promotion from the date of Late Hariom i.e. 08.09.2008."

5. R.A. to the Counter Affidavit has been filed on behalf of the petitioner.

6. It is the submission of learned A.P.O. that at the time when Late Sri Hariom was promoted, reservation in promotion was applicable but it has been subsequently dispensed with and, therefore, applying the same principle, notional promotion to the post of Joint Secretary *w.e.f.* 08.09.2008 cannot be given to the petitioner. Learned Counsel for the petitioner contends that the petitioner is also of reserved category and had his final allocation been done in time, the petitioner would have been promoted from 08.09.2008 to the post of Joint Secretary. As per the seniority list, the name of the petitioner was placed at sl. No. 20B while name of Late Sri Hariom was placed at sl. No. 35. Our attention has been drawn to the minutes of DPC which have been filed as Annexure C.A.-6 to the Counter Affidavit, according to which, Late Sri Hariom and Sri Lalit Mohan Arya have been recommended to be promoted to the post of Joint Secretary. These minutes also mention that two senior persons, Sri Subhash Chandra and Sri Ramesh Kumar (petitioner) who were also of S.C. category, have been provisionally allocated to the Uttarakhand Secretariat in continuation of the Writ Petition filed by them for allocation to State of Uttarakhand and they have joined the State of Uttarakhand on 10.11.2006 on the post of Review Officer and these two personnel have been promoted to the post of Section Officer *vide* O.M. dated 24.05.2007, subject to the final allocation. As these two personnel are working on the post of Section Officer, therefore, they do not fulfil the qualification for promotion to the post of Joint Secretary. It is further mentioned that final allocation of personnel between U.P. and Uttarakhand has not yet been done and after final allocation, senior personnel may be allocated to the State of Uttarakhand. Further regarding seniority, writ

petition nos. 150/SB/2006, 158/SB/2006 and writ petition No.547/SB/2006 are pending in Hon'ble High Court, which have not been finally decided. The recommendation for promotion of Late Sri Hariom and Sri Lalit Mohan Arya has been made subject to the final decision of these writ petitions and final allocation of Secretariat personnel between U.P. and Uttarakhand and with the condition that if from U.P. Secretariat senior personnel are allocated to Uttarakhand Secretariat, then these two persons can be reverted to their original posts. Learned Counsel for the petitioner has also drawn our attention to the G.O. dated 15.09.2004, which has been annexed as Annexure No. 1 to the petitioner's Supplementary Affidavit, which also states that if senior personnel are finally allocated to the State of Uttarakhand and if promotional post is not available, then junior-most personnel shall be reverted and senior personnel shall be considered for promotion; and on such reversion, the junior personnel will not be entitled to any compensation. G.O. dated 11.06.2003 has also been filed along with this affidavit (Annexure no. 2) which states that retired personnel or deceased personnel can be considered for notional promotion from the date, when junior has been promoted with the condition that on such date, the concerned government servant should have been found fit by the departmental promotion committee. The promotion order of Late Sri Hariom and Sri Lalit Mohan Arya is annexed as Annexure no. 4 to the claim petition which, *inter-alia*, states that this promotion is temporary and subject to the final allocation of personnel between U.P. and Uttarakhand and if officers senior to these two persons are allocated to the Uttarakhand Secretariat, then these officers shall be reverted to their original posts.

7. Learned Counsel for the petitioner has also drawn our attention to the file notings filed along with petition, according to which, the law department has also given advice that there is no legal impediment in giving notional promotion to the petitioner from the date of promotion of his junior Late Sri Hariom (*i.e.* 08.09.2008), still the representation of the petitioner for giving notional promotion from such date has been rejected. It is brought to

the notice of this Tribunal that Sri Lalit Mohan Arya has been subsequently reverted in compliance of Hon'ble Courts decision in another matter.

8. The Tribunal observes that the recommendations of the DPC as well as promotion order of Late Sri Hariom and Sri Lalit Mohan Arya clearly mention that their promotions were subject to the final allocation of the personnel from U.P. and they can be reverted if personnel senior to them are allocated to the State of Uttarakhand. After final allocation of Sri Subhash Chandra and Ramesh Kumar (petitioner) who were senior to Late Sri Hariom and Sri Lalit Mohan Arya, the State Govt. should have undertaken such exercise including consideration of promotion of senior personnel, which has not been done.

9. In view of the above, the Tribunal directs that respondents shall conduct a review DPC of the petitioner and other eligible persons of S.C. Category who were senior to Late Sri Hariom and Sri Lalit Mohan Arya to consider their notional promotion from 08.09.2008 and if the petitioner and some other persons are found fit for promotion by the DPC on the basis of their Character Roll entries and other service record (ignoring the fact that they were not working as Deputy Secretary before such date), then to grant them notional promotion from 08.09.2008 with all consequential admissible benefits. It is clarified that since the review DPC is to consider granting notional promotion from the date 08.09.2008, the respondents will not take the plea that the policy of reservation in promotion which was prevalent in 2008 has been dispensed with subsequently in 2012.

10. The claim petition is accordingly disposed of. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATED: JUNE 14, 2023*  
*DEHRADUN.*  
*KNP*