

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 02/DB/2014**

Khilanand Lekhwar, S/o Late Sri M.D. Lekhwar, R/o Block-A,  
Lane No. 1, Ganesh Vihar, Ajabpur, Dehradun,

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Forest & Environment, Civil Secretariat, Subhash Road, Dehradun,
2. Principal Chief Conservator of Forest, Uttarakhand, Dehradun,
3. Devi Ram, presently posted at Western Circle, Haldwani,
4. Smt. Kamla Arya, Presently posted at Southern Kumoun Circle, Nainital,
5. Smt. Hansi Arya, Presently posted at Southern Kumoun Circle, Nainital,
6. Smt. Maya Pandey, Presently posted at Western Circle, Haldwani, Forest Range, Haldwani,
7. Harish Chandra Joshi, presently posted at North Kumoun, Bageshwar Forest Range,
8. Rajendra Prasad Pathak, presently posted at Northern Kumoun, Pithoragarh Forest Range,

9. Smt. Trapta Pant, presently posted at Northern Kumoun Circle, Almora,
10. Rajendra Prasad Kandpal, Presently posted at Northern Kumoun, Almora,
11. Smt. Rukmani Ghildiyal, presently posted at Shiwalik Circle,
12. Lal Singh Bisht, presently posted at Anushandan Vratt, Van Vardhanik Sal,
13. Satish Chandra Sharma, presently posted at Shiwalik Circle,
14. Smt. Bhagirathi Singh, presently posted at Northern Kumoun Circle, Pithoragarh Forest Range,
15. Naresh Chandra Sanwal, Mukhya Van Sanrakshak, Kumoun,
16. Ghananad Bhatt, presently posted at Southern Kumoun, Nainital Forest Range,
17. Ishwari Dutt Pandey, presently posted at Northern Kumoun Circle, Almora,
18. Parmanand Chamoli, Mukhya Van Sanrakshak, Uttarakhand
19. Suresh Chandra Bhatt, presently posted at Northern Kumoun, Nainital Forest Range,
20. Jagmohan Singh Chauhan, presently posted at Bhagirathi Circle, Tehri Dam,
21. Kishore Kumar, presently posted at Yamuna Circle,
22. Narendra Singh Bisht (Anu Sarwan Mulyankan Uttarakhand)
23. Hari Raj Singh, presently posted at Uttarkashi Forest Range (Bhagirathi Circle).

.....Respondents

Present: Sri V.P.Sharma, Counsel,  
for the petitioner

Sri U.C. Dhaundiyal, A.P.O.  
for the respondents No. 1 & 2

**JUDGMENT****DATE: JULY 16, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. This claim petition has been filed for seeking the following relief:

*“For the facts, reasons and circumstances mentioned in the foregoing paragraphs of the claim petition, the petitioner most humbly and respectfully prays that Hon’ble Tribunal be pleased to grant the following relief and direct to the respondents to pay the following reliefs:*

- (i) Notional Promotion granted to the petitioner from the date of the promotion of their juniors for the post of Senior Administrative Officer w.e.f. 09.09.2013 when the Juniors were promoted with all consequential benefits.*
- (ii) Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case,*
- (iii) To award cost of this petition to the petitioner.”*

2. The relevant facts in brief are that the petitioner was initially appointed as Junior Clerk on 16.12.1980 in the Forest Department, Government of Uttarakhand. He was promoted to the post of Senior Clerk, Senior Assistant and Administrative Officer in 1985, 2007 and 2011 respectively. The Forest Department further made promotion of 21 Administrative Officers to the post of Senior Administrative Officer on 09.09.2013 (Annexure: A-1). The name of the petitioner was not there in this list of 21 promotions. The

petitioner had retired on 31.08.2013 and his contention in the petition is that as per para 19 of the Government Order dated 23.06.2003 (Annexure: A-2), he even after his retirement should have been considered for the promotion.

3. The para 19 of the Government Order dated 23.06.2003 is reproduced below:

“(19) पात्रता सूची में उन कार्मिकों के नाम ही शामिल किये जाय जो संबंधित चयन वर्ष (अर्थात् उस चयन वर्ष, जिसकी रिक्तियों के लिये चयन प्रस्तावित है) की प्रथम जुलाई को, तत्समय प्रभावी नियमों के अनुसार, पात्रता की समस्त निर्धारित शर्तें (यथा स्थायीकरण, पोषक पद पर अर्हकारी सेवा, विभाग में निर्धारित अर्हकारी सेवा आदि, जो भी संबंधित सेवा नियमावली में निर्धारित हों) पूरी करते हों व सेवारत हों। यदि कोई कार्मिक चयन वर्ष की प्रथम जुलाई को पात्रता की शर्तें पूरी करता हो, परन्तु विलम्ब से चयन सम्पन्न होने के कारण, चयन के दिनांक को वह सेवानिवृत्त हो गया हो अथवा उसकी मृत्यु हो गयी हो, तब भी उसका नाम यथास्थान पात्रता सूची में रखा जाय। परन्तु यदि कोई कार्मिक संबंधित चयन वर्ष की प्रथम जुलाई को उपरोक्तानुसार पात्रता की शर्तें न पूरी करता हो परन्तु विलम्ब से होने वाले चयनों में चयन समिति की बैठक आयोजित होने के दिनांक को अर्हताएं पूरी कर चुका हो तो ऐसे कार्मिक को पात्रता सूची में शामिल नहीं किया जा सकेगा क्योंकि नियमानुसार संबंधित चयन वर्ष की प्रथम जुलाई को ही पात्रता धारण करना आवश्यक होता है।”

4. The petitioner has also stated in his petition that as per the seniority list (undisputed) issued on 15.7.2013 (Annexure: A-3), he is placed at Serial No. 21 and 3 Administrative Officers who are placed at Serial Numbers 22, 23 and 24 in the seniority list and who were junior to the petitioner were promoted to the post of Senior Administrative Officer on 09.09.2013.

5. The petitioner has also contended in his petition that as per Rule 4(5) of the “उत्तराखण्ड (लोक सेवा आयोग की परिधि के बाहर) राज्याधीन सेवाओं में पदोन्नति के लिए चयन प्रक्रिया नियमावली, 2013” (hereinafter referred to Rules of 2013), it is essential that for promotion, the candidate must secure minimum average of 6 marks based on grading of the Annual Confidential Entries for the preceding 5 years and respondents No. 6 and 14 (who are shown at Serial Numbers 4 and 12 in the promotion order dated 09.09.2013) have only secured 4.99 and 5.19 marks respectively (Annexure: A-9) and therefore, they were “unfit” for the promotion.

6. The relevant part of Rule 4 of the Rules of 2013 is reproduced below:

“श्रेष्ठता के आधार पर चयन की प्रक्रिया—4 (1) किसी सेवा की नियमावली में अथवा कार्मिक विभाग की किसी नियमावली में ‘योग्यता’ ‘श्रेष्ठता’, सर्वथा श्रेष्ठता (स्ट्रिक्टली मैरिट) अथवा ‘मुख्य रूप से श्रेष्ठता (प्राइमरिली ऑन मैरिट) या समस्त पात्रता क्षेत्र से श्रेष्ठतानुसार कड़ाई से चयन (रिगरेसली सलेक्शन ऑन मैरिट फ्राम दी होल फील्ड ऑफ एलीजीबिलिटी) अथवा ‘सर्वथा श्रेष्ठतानुसार’ या ‘श्रेष्ठता –सह–ज्येष्ठता’ या किसी भी प्रकार से अभिव्यक्त ऐसे ही किसी अन्य मानदण्ड की व्यवस्था हो, जिसमें पदोन्नति हेतु चयन करने में ‘योग्यता/श्रेष्ठता को अधार मानने पर मुख्यतया बल दिया जाय तो इस नियमवली के प्रारम्भ होने पर और इसके पश्चात ‘श्रेष्ठता (मैरिट) के मानदण्ड का पालन किया जायेगा।

(2).....

(3) पात्रता क्षेत्र में सम्मिलित कार्मिकों की वार्षिक चरित्र प्रविष्टियों के मूल्यांकन के लिए चयन वर्ष , जिसके लिए चयन किया जा रहा है, के ठीक पूर्व के 05 वर्षों की प्रविष्टियां देखी जायेंगी.....

(4) उप नियम (3) में निर्दिष्ट वार्षिक चरित्र प्रविष्टियों का मूल्यांकन 'उत्कृष्ट' 'अति उत्तम', अच्छा/ संतोषजनक एवं 'प्रतिकूल' वर्ग में किया जायेगा। 12 माह को 'उत्कृष्ट प्रविष्टि के लिए 10 अंक, 'अति उत्तम' प्रविष्टि के लिए 08 अंक, 'उत्तम' प्रविष्टि के लिए 05 अंक, अच्छा/संतोषजनक प्रविष्टि के लिए 02 अंक तथा प्रतिकूल प्रविष्टि के लिए 05 ऋणात्मक अंक प्रदान किए जायेंगे। 12 माह से कम अवधि के लिए, प्राप्त अंक को कुल माह जिनकी प्रविष्टि मूल्यांकित की गयी 1/12 के अनुपात में कम कर दिया जायेगा। इस प्रकार प्राप्त अंकों के कुल योग को कुल माहों (जिसकी प्रविष्टि मूल्यांकित की गयी) से विभाजित करने पर औसत मासिक अंक प्राप्त होगा जिसे 12 से गुणा करने पर औसत वार्षिक अंक प्राप्त होगा। अर्थात् कार्मिक को प्राप्त होने वाले औसत वार्षिक अंक की गणना निम्नांकित सूत्र के आधार पर की जायेगी:—

$$\frac{\text{कुल प्राप्तांक} \times 12}{\text{कुल मूल्यांकित माह}}$$

(5) उपरोक्त खण्ड 4 के अनुसार मूल्यांकन के आधार पर 06 से कम औसत वार्षिक अंक प्राप्त करने वाले कार्मिक श्रेष्ठता के पैमाने पर पदोन्नति हेतु अनुपयुक्त माने जायेंगे। 08 या इससे अधिक अंक प्राप्त करने वाले अभ्यर्थी 'अति उत्तम' श्रेणी में तथा 06 व इससे अधिक किन्तु 08 से कम अंक प्राप्त करने वाले कार्मिक को 'उत्तम' श्रेणी में वर्गीकृत किया जायेगा। इस प्रकार किए गए वर्गीकरण से 'श्रेष्ठता' मानदण्ड पर कार्मिकों को चिन्हीकरण 'अति उत्तम', 'उत्तम' एवं अनुपयुक्त, इन तीनों वर्गों में कर लिया जायेगा।

(6).....

(7).....

(8).....”

7. The petitioner also gave a representation dated 14.08.2013(Annexure: A-4) which was rejected on 24.09.2013(Annexure: A-5). He gave another representation against the promotion order dated 09.09.2013 on 17.10.2013(Annexure: A-6) which was also rejected on 14.11.2013(Annexure: A-7). Hence the petition.

8. Learned A.P.O. on behalf of the State (respondents No. 1 and 2) has opposed the claim petition and stated in the written statement that the promotion from the post of Administrative Officer to the post of Senior Administrative Officer is made as per the criterion of “Seniority subject to rejection of unfit” and, therefore, the promotion will be governed by Rule 3(3) of the Rules of 2013 (and not by Rule 4(5) of the Rules of 2013 which is applicable when the criterion of promotion is “merit”).

9. The relevant part of Rule 3 of the Rules of 2013 is reproduced below:

“ज्येष्ठता के आधार पर पदोन्नति हेतु चयन की प्रक्रिया-3 (1) ‘अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता’ अथवा ज्येष्ठता सह श्रेष्ठता के आधार पर की जाने वाली पदोन्नति में “उत्तरांचल (लोक सेवा आयोग के क्षेत्र के बाहर के पदों पर) चयनोन्नति पात्रता-सूची नियमावली, 2003” के नियम 5 के उपबन्धों के अधीन बनायी गयी पात्रता सूची में सम्मिलित कार्मिकों के नामों पर विभागीय पदोन्नति समिति द्वारा उनके ज्येष्ठता क्रम के अनुसार अवरोही क्रम में विचार किया जायेगा। सर्वप्रथम ज्येष्ठतम कार्मिक के नाम पर विचार करते हुए ‘उपयुक्त’ या ‘अनुपयुक्त’ श्रेणीकृत करने के बाद दूसरे तथा तीसरे और आगे इसी प्रकार कार्मिकों के नामों पर विचार तब तक किया जायेगा, जब तक कि रिक्तियों की तुलना में वांछित संख्या में प्रोन्नति के लिए उपयुक्त कार्मिक उपलब्ध न हो जायं। जब प्रोन्नति के लिए वांछित संख्या में उपयुक्त श्रेणीकृत कार्मिक उपलब्ध हो जायं तब उसके बाद के कार्मिकों के नामों पर विचार करने की आवश्यकता नहीं होगी।

(2) उपर्युक्त प्रक्रिया अनुसार ‘उपयुक्त’ कार्मिकों के चयन हेतु सम्बन्धित कार्मिकों की, प्रोन्नति के पद के नीचे के पदों पर काय करने की अवधि की अद्यतन 05 वर्षों की वार्षिक चरित्र प्रविष्टियां देखी जायेंगी। .....

(3) यदि पात्रता क्षेत्र में शामिल कार्मिक की विगत 05 वर्षों की चरित्र प्रविष्टियों में से न्यूनतम चार प्रविष्टियां 'उत्तम' या 'उच्चतर' श्रेणी में वर्गीकृत हो तभी ऐसे कार्मिक को विभागीय पदोन्नति समिति द्वारा पदोन्नति हेतु 'उपयुक्त' घोषित किया जायेगा।

(4).....

(5).....

(6).....

(7).....”

10. It has further been stated in the written statement that the petitioner had retired on 31.8.2013 and could not be considered/promoted as vacancies were not there on 31.08.2013 to promote him. Giving detailed account of vacancies, it has been mentioned that there are 63 sanctioned posts of Senior Administrative Officers (SAOs), 47 were working as on 01.07.2013 and therefore, 16 vacancies existed on 01.07.2013. One SAO (at Serial No. 2 in the seniority list) took voluntary retirement on 31.7.2013. Two SAOs namely Shri Lakhi Ram Bhadri and Shri Meharban Singh Rawat died on 07.07.2013 and 24.08.2013 respectively. Therefore, in all 2 vacancies occurred between 01.07.2013 and 31.08.2013, making total number of vacancies 18 on 31.08.2013, the date of the petitioner's retirement. The DPC in its meeting held on 07.09.2013 found all Administrative Officers (AOs) except one Administrative Officer namely Shri Yogesh Lal Shah (at Serial No. 1 in the seniority list), who was senior to the petitioner, fit for promotion to the post of SAO. 18 clear vacancies of SAOs, 1 voluntary retirement of AO and one unfit AO made it possible to promote AOs upto Serial No.



20 in the seniority list. The petitioner is placed at Serial No. 21 in the seniority list. Thus, there was no vacancy available for the petitioner as on 31.08.201, the date on which he retired. 3 more vacancies occurred on 01.09.2013 due to retirement of 3 SAOs on 31.08.2013 but the petitioner could not be considered for these vacancies as he had already retired on 31.08.2013. As a result, 3 Administrative Officers at Serial Nos. 22,23 and 24 in the seniority list of AOs were considered and found suitable for promotion by the DPC in its meeting held on 07.09.2013 and they were promoted vide order dated 09.09.2013. While doing the exercise of the promotion, the para 19 of the Government Order dated 23.06.2003 (referred in paragraph No. 3 of this order) has also been taken into account and the petitioner is not entitled to the promotion to the post of Senior Administrative Officer.

11. The respondents in the end have stated in their written statement that all proceedings in respect of promotion are in accordance with law and rules, the petitioner is not entitled to any relief and therefore, the petition is liable to be dismissed.

12. Two written statements of private respondents No. 7 and 17 were received by post, which were not in proper proforma and were not duly verified. Therefore, these were not taken on record. Despite sufficient service, no written statements were filed on behalf of all other private

respondents. Therefore, it was decided to proceed ex-parte against private respondents No. 3 to 23.

13. Rejoinder Affidavit was filed by the counsel for the petitioner and in it the same points have been reiterated which were stated in the claim petition.

14. We have heard learned counsel for the petitioner and learned A.P.O. on behalf of the respondents No. 1 & 2 and perused all record carefully.

15. The only argument of the learned counsel for the petitioner is that according to Rule 4(5) of the Rules of 2013 (reproduced in para 6 of this order), respondents No. 6 and 14 (who were senior to the petitioner) were not fit for promotion. He argued that the minimum requirement of average marks on the basis of the grading of ACRs for the preceding 5 years according to this Rule is 6 and as per the chart which was procured by the petitioner under the Right to Information Act (Annexure: A-9 to the petition), the marks secured by Mrs. Maya Pandey (respondent No. 6) shown at Sl. No. 5 in the Chart are 4.99 and the marks secured by Mrs. Bhagirathi Singh (respondent No. 14) shown at Serial No. 13 in the chart are 5.19. Both of these respondents therefore, do not fulfil the requirement of Rule 4(5) of the Rules of 2013 and are unfit and their promotions are wrong and illegal. Counsel for the petitioner contended that if these two respondents are excluded from the list of promotions made vide order dated 09.09.2013 (Annexure:

A-1), the petitioner gets included in the list of promotions according to his position in the seniority list keeping in view the vacancies available as on 31.08.2013, the date on which he retired.

16. Learned APO has refuted this argument and contended that the counsel for the petitioner is relying on a Rule which is not applicable in case of promotion from the post of the Administrative Officer to the post of Senior Administrative Officer. He stated that Rule 4(5) of the Rules of 2013 is applicable when the criterion of the promotion is "Merit". The criterion for promotion from the post of Administrative officer to the post of Senior Administrative Officer is not "merit" but the criterion is "seniority subject to rejection of unfit". The promotions made, therefore, are covered under Rule 3 of the Rules of 2013 (reproduced in para 9 of this order) and not Rule 4 of the Rules of 2013. Learned APO further contended that when the criterion for promotion is "seniority subject to rejection of unfit", the requirement of Rule 3(3) is that if a candidate has 4 "Good" (उत्तम) or higher grade ACRs during preceding 5 years, he shall be declared fit for the promotion. Referring to the chart submitted by the petitioner as Annexure: A-9 to the petition, the learned APO contended that respondents No. 6 and 14 fulfil this criterion and they have been rightly found fit for the promotion by the DPC and their promotion vide order dated 09.09.2013(Annexure: A-1) is perfectly in order and according to Rules.

17. The only question before us is to examine whether the promotions in question are governed by Rule 4 or Rule 3 of the Rules of 2013. Rule 4 of the Rules of 2013 is applicable when the criterion for promotion is “merit” and Rule 3 of the Rules of 2013 is applicable when the criterion for promotion is “seniority subject to rejection of unfit”. In other words, it is to be determined whether promotion from the post of Administrative Officer to the post of Senior Administrative Officer is to be governed by the “merit” criterion or “seniority subject to rejection of unfit” criterion.

18. The Government of Uttarakhand has framed “The Uttarakhand Government Servants (Criterion for Recruitment by Promotion) Rules, 2004” (hereinafter referred to Rules of 2004). The said Rules were amended in 2010. The Rule 4 of the Rules of 2004 as amended in 2010 reads as under:

*“Recruitment by promotion to the post of Head of the Department, to a post just one rank below the Head of the Department and to a post in any Service carrying Grade pay of Rs. 8,700 or above in pay scale of Rs. 37400-67000 shall be made on the basis of merit, and to the rest of the posts in all services to be filled by promotion, including a post where promotion is made from a Non-gazetted post to a Gazetted post or from one Service to another Service, shall be made on the basis of seniority subject to rejection of unfit.”*

19. Rule 2 of the Rules of 2004 is also reproduced below:

*“2. Overriding effect--These rules shall have effect notwithstanding anything to the contrary contained in any other Service rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force”.*

20. Rule 4 of the Rules of 2004 ( as amended in 2010) clearly states that criterion of “merit” for promotion shall apply to the following 3 promotions:

- (i) Promotion to the post of Head of the Department;
- (ii) Promotion to a post just one rank below the Head of the Department; and
- (iii) Promotion to a post in any service carrying Grade Pay of Rs. 8700 or above in pay scale of Rs. 37,400-67,000.

It has also been prescribed that to the rest of the posts (except (i), (ii) and (iii) above), the promotion shall be made on the basis of “seniority subject to rejection of unfit.”

21. It is also clear from Rule 2 of the Rules of 2004 that these Rules have over-riding effect and shall apply notwithstanding any thing to the contrary contained in any other Service Rules made by the Governor under the proviso to Article 309 of the Constitution, or Orders, for the time being in force.

22. In the case in hand, the promotion is to the post of Senior Administrative Officer. This is a post which is neither the post of Head of the Department and nor a post

just one rank below the Head of the Department. The “Grade Pay” to the post of SAO is Rs. 4800 as stated by the petitioner in para (i) on page 5 of the claim petition is, therefore, the post of SAO is also not a post carrying “Grade Pay” of Rs. 8700 or more. It is, therefore, clear that as per Rule 4 of the Rules of 2004 (as amended in 2010), the criterion for promotion to the post of Senior Administrative Officer is not “merit”. The post of SAO as per Rule 4 of the Rules of 2004 (as amended in 2010) is covered under “the rest of the post” and therefore, the criterion for promotion to the post of Senior Administrative Officer prescribed under this Rule is “seniority subject to rejection of unfit.”

23. In view of discussion in paragraphs 18 to 22 above, it is clear that the criterion for promotion to the post of SAO is “seniority subject to rejection of unfit” and therefore, the selection procedure prescribed under Rule 3 of the Rules of 2013 (reproduced in para 9 of this order) shall apply for the promotion. There is no force in the argument of the learned counsel for the petitioner that the selection procedure prescribed under Rule 4(5) of the Rules of 2013 is applicable in the case in hand.

24. In view of above, we find that the promotion of respondents No. 6 and 14 vide order dated 09.09.2013(Annexure: A-1) is in accordance with Rule 3 of the Rules of 2013. As Rule 3(3) of the Rules of 2013 provides that minimum 4 ACRs out of 5 ACRs of the

preceding 5 years must have “Good” or higher grade and respondents No. 6 and 14 fulfil this condition as is clear from the Chart filed by the petitioner in Annexure: A-9 to the petition that both respondents have “Good” or higher grade of ACRs in respect of all 5 preceding years, therefore, their promotion is in order and as per rules and law.

25. In so far vacancy position and also the question of promotion of three AOs junior to the petitioner are concerned, after careful examination of the record, we also fully agree with the contention of the respondents No.1 & 2 as mentioned in para 10 of this order. There is no force in the argument of the petitioner that he is entitled to get notional promotion from 09.09.2013, the date when 3 AOs junior to him were promoted.

26. For the reasons stated above, the petitioner is not entitled to any relief, the claim petition of the petitioner is devoid of merit and liable to be dismissed.

### **ORDER**

The petition is hereby dismissed. No order as to costs.

*Sd/-*

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

*Sd/-*

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

DATE: JULY 16, 2015  
DEHRADUN

*KNP*