

**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)

CLAIM PETITION NO.166/DB/2019

Bhupendra Kumar s/o Late Sri Lalman Singh, aged about 38 years, presently working and posted on the post of Dy. General Manager (Finance), Uttarakhand Transport Corporation, Head Quarters, UCF Sadan, Vishnu Vihar, Deep Nagar Road, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Transport, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Uttarakhand Transport Corporation through its Managing Director, Uttarakhand Transport Corporation, Headquarters, UCF Sadan, Vishnu Vihar, Deep Nagar Road, Dehradun.

.....Respondents

Present : Sri L.K.Maithani, Advocate for the petitioner.
Sri V. P. Devrani, A.P.O. for the Respondent No.1.
Sri Vaibhav Jain, Advocate for Respondents No. 2.

JUDGMENT

DATED: JUNE 13, 2023

Justice U.C.Dhyani (Oral)

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

“i) To quash the impugned order dated 16.05.2019 with a declaration that the petitioner is entitled for promotion on the post of Dy. General Manager (Finance) since 2014, when the DPC was constituted and date was fixed for meeting.

ii) To issue an order or directions to the concerned respondents to grant the benefit of promotion on the post of Dy. General Manager (Finance) since 09.04.2014 and accordingly modify the promotion order dated 19.06.2018 of the petitioner with all consequential benefits.

iii) To issue any other order or directions which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.

vii) To award the cost of the petition.”

2. The petitioner has filed present claim petition for modification of his promotion order dated 19.06.2018 and to declare that he is entitled for promotion on the post of Deputy General Manager (for short, DGM Finance), *w.e.f.* 09.04.2014, with all consequential benefits.

3. The petitioner was appointed as Assistant General Manager (for short, AGM Finance), in the Uttarakhand Transport Corporation (for short, Respondent Corporation) on 01.11.2009 and thereafter *vide* office order dated 19.06.2018, issued by Respondent No.2, he was promoted to the post of DGM, Finance, with immediate effect (Copy: Annexure – A 2).

3.1 Further promotion avenue available to the petitioner was to the post of General Manager, Finance. Under the Uttarakhand Transport Corporation Officers Service Regulations 2009 (for short, Regulations of 2009), in Finance Cadre, a particular service period is required for promotion to the next higher post.

3.2 For promotion on the post of DGM, Finance, 05 years' continuous service on the post of AGM, Finance, is mandatory on the first

day of recruitment year. Petitioner, who was appointed on the post of AGM, Finance, on 01.11.2009, had completed 05 years' continuous service on such post on 01.11.2014. Hence, on the first day of recruitment year 2015 *i.e.*, the first day of July, 2015, he became eligible for promotion to the post of DGM, Finance.

3.3 In the department, there were two posts of DGM, Finance, which were kept vacant since the selection year 2006-07 and 2007-08. Till 2014, many persons were not eligible for promotion against such vacant posts, therefore, Respondent No. 2 sought relaxation in the qualifying service from Respondent No.1. Respondent No.1, *vide* order dated 13.03.2014 granted relaxation up to 50% under Relaxation Rules, 2010 (Annexure: A-5).

3.4 The respondents constituted DPC for promotion to the post of DGM, Finance, including other posts. 09.04.2014 was fixed for the meeting of DPC. On that date, the quorum of members of DPC was not complete. Thereafter, seven dates were fixed for DPC but due to one reason or another, meeting of DPC could not be convened, (Annexure: A-6). Finally, DPC was held in June, 2018, which recommended the name of the petitioner for promotion to the post of DGM, Finance. On the recommendation of DPC, Respondent No.2 *vide* order dated 19.06.2018, promoted the petitioner to the post of DGM, Finance (Annexure: A 2). Copy of the Regulations of 2009 has been brought on record as Annexure: A-3.

3.5 Petitioner moved a representation, but the same was rejected *vide* office order dated 16.05.2019 (Annexure: A-1). Hence, present claim petition.

4. Written Statement has been filed on behalf of the Respondent Corporation. Counter Affidavit has been filed by Sri C.P. Kapoor, Divisional Manager (Operation), Uttarakhand Transport Corporation, Dehradun.

4.1 In the C.A., it has been mentioned that at the level of UTC Headquarters, many posts, viz, DGM (Operation), DGM (Finance), DGM (Law), DGM (Technical), AGM (Operation) etc. were available for promotion but the officers were not available for promotion in the respective cadre because of non-completion of qualifying service to become eligible for promotion. Therefore, the matter of relaxation in qualifying service was taken up by UTC Headquarters under the Relaxation Rules, 2010 for grant of relaxation for the above posts which was duly sanctioned up to 50% of the minimum qualifying service *vide* Government order No. 58 dated 13.03.2014 (Annexure A-5 to the Claim Petition).

4.2 The procedure for Recruitment by promotion has been laid down in the Regulations of 2009 to provide that-

(1) Recruitment by promotion to the post of General Manager shall be made on the basis of merit and to the other posts on the basis of merit and seniority, subject to the rejection of unfit, through the Selection Committee, which shall be comprising the following:-

(i) Appointing Authority; Chairman

(ii) Director General, Public Enterprises Bureau or an officer not below the rank of Additional Secretary, to be nominated by him- Member

(iii) An officer not below the rank of General Manager to be nominated by appointing authority; Member.

(iv) An officer belonging to the Schedule Castes or Scheduled Tribes, not below the rank of Additional Secretary, to be nominated by the Appointing Authority - Member

Provided that the Managing Director shall have the authority to nominate any other officer as member of the Selection Committee.

4.3 The meeting of DPC for promotion was convened on 09.04.2014, but on that date quorum of the members could not be completed. During the years 2014 to 2018 meetings of the DPC were

called on different dates but DPC could not be held due to different reasons and non-availability of the members of the DPC/ lack of quorum to hold the DPC. Two officers of the level of Additional Secretary of Uttarakhand Govt., who were members of committee, could not attend the meetings convened for DPC due to other official work. Every effort was made to hold DPC but the process could not be completed. However, there was no delay on the part of the Respondent Corporation. Finally, the DPC was held on 17.05.2018 in the UTC Headquarters in which the petitioner Sh. Bhupendra Kumar, AGM (Finance) was found fit for the post of DGM (Finance). Accordingly, petitioner was promoted to the post of Dy. General Manager (Finance) *vide* office order No. 178 dated 19.06.2018 (Copy : Annexure CA-R 1).

4.4 The petitioner submitted a representation dated 02.04.2019 (Copy: Annexure CA- R 2) for grant of promotion from the date of completion of qualifying service, which was rejected *vide* office order No. 424 dated 16.05.2019 (Copy: Annexure CA- R 3). Aggrieved by the rejection of his representation dated 02.04.2019, the petitioner has filed the Claim Petition.

4.5 The meeting of DPC for promotion was convened on 09.04.2014 but on that date quorum of the members could not be completed. During the years 2014 to 2018, meetings of the DPC were called on different dates but DPC could not be held due to unavoidable reasons and non-availability of the members of the DPC/ lack of quorum to hold the DPC. Every effort was made to hold DPC but the process could not be completed.

4.6 No officer of the feeding Cadre was available for promotion to the post DGM (Finance) in 2013-2014. Due to non-completion of qualifying service, they were not eligible for promotion. *Vide* Govt. Notification No. 566/618 R0/03/2006 dated 14.07.2006, 09 posts of AGM (Finance) and on promotion from the post of AGM (Finance), 02 Posts of DGM (Finance) were sanctioned in the officer cadre.

No officer was available for promotion to the post of DGM (Finance) in 2006-07 and 2007-08. Thereafter, the available officers had not completed the qualifying service to be eligible for promotion. Therefore, the matter of relaxation in qualifying service was taken up by UTC Headquarters letter No. 202 dated 25.02.2014 under the Relaxation Rules, 2010 for grant of relaxation for the above posts which was duly sanctioned up to 50% of the minimum qualifying service *vide* Government order No. 58 dated 13.03.2014 (Annexure: A-5).

5. Rejoinder Affidavit to the Counter Affidavit has been filed by the petitioner.

6. It is the submission of Ld. Counsel for the petitioner that the post of DGM, Finance was kept vacant since 2006-2008 for which promotional exercise was started in March, 2014 when DPC was constituted and relaxation in qualifying service was granted to the petitioner and other persons of the department for the selection year 2013-14. The petitioner could not be promoted on time. Petitioner is entitled for promotion with retrospective effect, *i.e.* from 09.04.2014 in the selection year 2013-14, when meeting of DPC was convened and after relaxation was granted to the petitioner.

7. Sri Vaibhav Jain, Ld. Counsel for the Respondent Corporation submitted that no officer in the feeder Cadre was available for promotion to the post DGM (Finance) in 2013-2014. Due to non-completion of qualifying service, they were not eligible for promotion. *Vide* Govt. Notification dated 14.07.2006, 09 posts of AGM (Finance), on promotion from the post of AGM (Finance), 02 Posts of DGM (Finance) were sanctioned in the officer cadre. No officer was available for promotion to the post of DGM (Finance) in 2006-07 and 2007-08. Thereafter, the available officers had not completed the qualifying service to be eligible for promotion. Therefore, the matter of relaxation in qualifying service was taken up by UTC Headquarters letter No. 202 dated 25.02.2014 under the Relaxation Rules, 2010 for grant of relaxation for

the above posts which was duly sanctioned up to 50% of the minimum qualifying service *vide* Uttarakhand Government order No. 58 dated 13.03.2014.

7.1 Ld. Counsel for Respondent Corporation further submitted that the meeting of DPC for promotion was convened on 09.04.2014, but on that date quorum of the members was not complete. During the years 2014 to 2018 meetings of the DPC were called on different dates but DPC could not be held due to unavoidable reasons and non-availability of the members of the DPC/ lack of quorum to hold the DPC. Every effort was made by the respondent department to hold DPC but the process could not be completed.

8. In response to the query of the Tribunal, Ld. Counsel for the parties submitted that no junior was promoted before the petitioner was promoted as DGM (Finance) on 19.06.2018. Whereas, according to Ld. Counsel for the petitioner, postponement of DPC has adversely affected the rights of the petitioner, it is the submission of Ld. Counsel for Respondent Corporation that the DPC could not be convened for valid reasons and for no fault of the respondents.

9. The meetings of DPC were convened on number of times since 09.04.2014 for promotion of the officers but the process could not be completed earlier than 17.05.2018 due to different reasons and lack of quorum. The completion of the process of the DPC was not delayed deliberately. During the years 2006-07 & 2007-08, no officer was available for promotion to the post of DGM (Finance). The representation of the petitioner for grant of consequential monetary benefits with retrospective effect *i.e.* 09.04.2014 on which the DPC was firstly convened for promotion, was disposed by a speaking order *vide* office order dated 16.05.2019 (Copy: Annexure- CA- R 3).

10. Ld. Counsel for the petitioner, in support of his contention, has relied upon the decision rendered by Hon'ble Apex Court in *Major General H.M. Singh, VSM vs. Union of India and another, (2014) 1 SCC (L&S) 649* to submit that the petitioner is entitled to relief claimed in the claim petition from the date of his entitlement to promotion. Ld. Counsel for respondents, on the other hand, submitted that the facts of Major General H.M.Singh case (*supra*) are entirely on different pedestal and, therefore, petitioner cannot be granted benefit of such ruling.

11. The Tribunal observes that the facts of H.M.Singh case (*supra*) are clearly distinguishable from the facts of present claim petition. Hon'ble Supreme Court has observed, in such decision, that rejection of Major General H.M.Singh's claim for promotion to the post of Lt. General by Appointments Committee of the Cabinet on the ground that he was on extension of service, is not tenable. The extension was granted so that the appellant could be considered for promotion to vacancy which had arisen before his retirement. Vacancy for which the appellant was seeking consideration, was available well before his retirement on superannuation. Hence, rejection of appellant's claim on the ground that he was on extended service, was unjustified, also because of the reason that the selection board had recommended his promotion on the basis of his service record. In the facts and circumstances of the case, the appellant was directed, by the Hon'ble Supreme Court, to be promoted to the rank of Lt. General with all consequential benefits.

12. In such decision, it was observed by Hon'ble Supreme Court that the appellant was senior most serving Major General, vacancy to the rank of Lt. General arose on 01.01.2007, when the appellant had 14 month of Army service remaining and Selection Board singularly recommended his name for promotion out of a panel of four names. In the circumstances, it was held that non-consideration of the claim of the appellant would be discriminatory of Articles 14 and 16 of the Constitution. The appellant had fundamental right of being considered against the vacancy and of being promoted in case found suitable.

Besides, Respondent Authorities had also granted him extension of service because they desired him to be treated justly.

13. In the instant case, promotion of the petitioner was considered and he was promoted *vide* order dated 19.06.2018. Had the DPC recommended his name for promotion and he would not have been promoted for some reason, then only, the petitioner would have been given benefit of H.M. Singh's decision (*supra*), who was, probably, denied promotion on the ground that he was on extension of service. In the instant case, the facts are entirely different and petitioner cannot be granted any benefit of H.M. Singh's decision. Equating petitioner's case with H.M.Singh's decision looks like putting square peg in a round hole.

14. In the decision of *K.Madhavan and another v s. Union of India and others, (1987) 4 SCC 566*, Hon'ble Apex Court observed as under:

“The retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation. But if the meeting of the DPC scheduled to be held is arbitrarily or mala fide cancelled without any reasonable justification therefor, to the prejudice of an employee, and he is not considered for promotion to a higher post, the Government in a suitable case can do justice to such an employee by granting him promotion or appointing him to the higher post for which the DPC was to be held with retrospective effect so that he is not subjected to a lower position in the seniority list. An employee may become eligible for a certain post, but he cannot claim appointment to such post as a matter of right.”

15. Let us now consider, for a moment, whether the meetings of DPC in respect of petitioner's promotion were arbitrarily cancelled or not?

16. Firstly, the meeting of DPC for promotion was convened on 09.04.2014 but on that date quorum of the members could not be completed. During the years 2014 to 2018 meetings of the DPC were

called on different dates but DPC could not be held due to unavoidable reasons and non-availability of the members of the DPC. The quorum to hold the DPC was not complete. Every effort was made by the Respondent Corporation to hold DPC but the process could not be completed. There was no delay in convening DPC on the part of the Corporation. The meeting of DPC was successfully conducted on 17.05.2018, in the UTC Headquarters in which Sh. Bhupendra Kumar, AGM (Finance) [petitioner] was found fit for the post of DGM (Finance). Accordingly, petitioner was promoted to the post of Dy. General Manager (Finance) vide office order No. 178 dated 19.06.2018. (Copy: Annexure-CA- R 1).

17. This fact is under no dispute that the meetings of DPC were convened several times since 09.04.2014. The C.A., which has been filed on behalf of respondents, suggests that the meetings were postponed for one reason or another, which were beyond the control of the respondents. The petitioner, on the other hand, has made an attempt to project a case that postponement of date was arbitrary, but there is no document or evidence to suggest that the postponement of meetings of DPC was arbitrary or mala fide. Therefore, in the absence of any evidence on record, this Tribunal is unable to hold that the postponement of meetings of DPC was arbitrary or mala fide. The petitioner has to stand on his own legs. He has to establish his case. He has failed to do so. Respondents, on the other hand, have been able to show, even though *prima facie*, that they were not responsible for postponement of the meetings of DPC.

18. Possibility of laying down a law, that a person should be held entitled for promotion when the DPC was constituted and the date was fixed for such meeting, seems remote. In the instant case, no law has been shown to suggest that there is a rule suggesting that an employee shall be entitled for promotion when the DPC is first constituted. Normally, there should not be any rule, but if any rule is there, then the

Tribunal is bound to apply such rule to the facts of a particular case. In this case, there is no such rule.

19. Petitioner's case is that he was appointed on the post of AGM (Finance) on 01.11.2009, had completed 05 years' continuous service on 01.11.2014, hence on the first date of recruitment year 2015 (*i.e.*, 01.07.2015), he became eligible for promotion to the post DGM (Finance). Merely because the petitioner has completed 05 years of continuous service on a post, he becomes eligible for promotion to the next promotional post, but, if for some valid reasons, meetings of the DPC were not held, it cannot be said that he should be given promotion to the next higher post. Eligibility is one thing, entitlement is another. Direction shall follow only when the entitlement matures into legal right. It may be noted here that the petitioner's promotional exercise to the post of DGM (Finance) started only after Respondent No.1, *vide* order dated 13.03.2014, granted relaxation under the Relaxation Rules, 2010. It may further be noted that the petitioner has been promoted to the post of DGM (Finance) on 19.06.2018.

20. Prayer of the petitioner that he should be declared promoted to the post of DGM (Finance) on 09.04.2014, *per se*, is not acceptable to the Tribunal. No malice is reflected on the basis of documents brought on record to suggest that the postponement of the meetings of DPC was deliberate, to deny the promotion to the petitioner. No law can reasonably be framed to declare that a person shall be entitled for promotion no sooner he completes the qualifying service, that too after giving relaxation under the Relaxation Rules. It may further be stated, at the cost of repetition, that eligibility is one thing and entitlement is another and unless entitlement is perfected into legal right, it cannot be declared that a person is entitled for promotion on a post with a back date, *i.e.* with retrospective effect. Respondent department made efforts to consider the promotion of the petitioner, on a vacancy, which was his fundamental right, but if the DPC could not be held for one reason or

another, which were valid reasons, the petitioner cannot be given promotion retrospectively.

21. Petitioner's case cannot be equated with Major General H.M. Singh's decision (*supra*), where the issue was something else. Retrospective promotion should be given most sparingly and on sound reasoning and foundation. One cannot claim promotion, in the absence of arbitrariness, as a matter of right. One has, however right to be considered for promotion. An employee may become eligible for a certain post, but he cannot claim appointment to such post as a matter of right.

22. No interference is called for in the well reasoned impugned order dated 16.05.2019 (Annexure: A 1 and Annexure: CA -R 3) whereby the representation of the petitioner was rejected. The claim petition, therefore, fails and is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 13, 2023
DEHRADUN

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