

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 13/NB/DB/2022

Dinesh Chandra Pandey, aged about 58 years, s/o Late Sri Mahidhar Pandey, presently posted as Assistant Audit Officer, Bageshwar.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Principal Secretary, Finance, Uttarakhand, Dehradun.
2. Secretary, Karmik, Govt. of Uttarakhand, Dehradun.
3. Secretary, Finance, Govt. of Uttarakhand, Dehradun.
4. Additional Secretary (Finance Section-6), Govt. of Uttarakhand, Dehradun.
5. Uttarakhand Public Service Commission, Uttarakhand, Gurikul Kangri, Haridwar, through its Secretary.
6. Director, Lekha Pariksha (Audit), Uttarakhand, Dehradun.
7. Shri Mahendra Singh Rawat, presently posted as Audit Officer in the office of District Audit Office, Rudraprayag, District Rudraprayag.
8. Shri Virendra Singh Tomar, presently posted as Audit Officer in the office of District Audit Office, Dehradun, District Dehradun.
9. Shri Virendra Singh Nabiyaal, presently posted as Audit Officer in the office of District Audit Office, Pithoragarh, district Pithoragarh.

.....**Respondents**

Present: Sri D.S. Mehta, Advocate, for the petitioner

Sri Kishore Kumar, A.P.O., for the State respondents

JUDGMENT

DATED: AUGUST 14, 2023

Mr. Rajeev Gupta, Vice Chairman(A)

This claim petition has been filed seeking the following reliefs:

"I. To set-aside/quash the letter no. 698/Teen-8(4), Ni.Le.Pa. Aau./2020-21 dated 11-09-2020 submitted by the respondents for promotion on the post of Audit Officer, by which the promotion of private respondents have been recommended for promotion on the post of Audit Officers who are juniors to the petitioner (contained as Annexure No.1 to this petition).

II. To direct the Respondent authority to declare to the petitioner, he is service on the post of Assistant Audit Officer when he promoted i.e. on 28.06.2014 and promote the petitioner on the post of Assistant Director/ Audit Officer from the date when the juniors to the petitioner were promoted with the salary and all other consequential benefits.

III. Issue any suitable writ, order or direction, which this Hon'ble court may deem fit and proper on the basis of the facts and circumstances of the case."

2. Brief facts, according to the claim petition are as below:

2.1 The petitioner was appointed on the post of Auditor on 19.05.1995 and promoted to the post of Assistant Audit Officer along with 17 other employees vide office order dated 28.06.2014 (Annexure-2 to the claim petition). The petitioner was relieved by the Audit Officer, Co-operative Societies and Panchayat on 01.07.2014 so he joined his services as Assistant Audit Officer on 02.07.2014. The services of the petitioner were governed earlier by the U.P. Subordinate (Co-operative and Panchayat) Audit Service Rules, 1980 and U.P. Subordinate (Co-operative and Panchayat) Audit (First Amendment) Service Rules, 1993. The Local Fund Audit Department and Co-operative Panchayat Audit Department were unified in pursuance to the Uttarakhand Audit Act, 2012 and vide Notification dated 08.07.2019, the Uttarakhand Co-operative Societies and Panchayat Audit Department and Local Fund Audit Department Personnels Unification Rules, 2019 have been framed. As per these Unification Rules, total 28 posts of Audit Officers have been sanctioned out of which, 14 posts have to be filled up by promotion. The name of the petitioner was not considered for promotion on the post of Audit Officer as he had joined on the post of Assistant Audit Officer on 02.07.2014 and fell short of just

one day in completing 5 years of service on the first day of the selection year 2019-2020 and even some persons junior to the petitioner have been promoted.

2.2 The private respondents are junior to the petitioner and they have been promoted as they joined their services on the post of Assistant Audit Officer on 1st July of the year but the petitioner joined on the post on 2nd July of the year due to his relieving order having been issued after delay.

2.3 It is clearly mentioned in the Financial Hand Book Vol. 2 to 4 that when the Government servant after reporting for the duty has to compulsory wait for taking charge of a post, he is in no way responsible for the interval between the date of such report and the date on which he takes charge of his duties.

2.4 The respondent authority has promoted the juniors of the petitioner on the post of Audit Officer who have joined on the post of Assistant Audit Officer on 07.03.2015 and 04.03.2015, as they have been given the notional promotion from 28.06.2014 and they have also not completed five years service on the post of Assistant Audit Officer, so the act of the respondent authority is totally illegal and arbitrary.

2.5 The service should be counted from the date of promotion and not from the date of joining on the promotional post. Clause 26 of 2019 Rules relates to the relaxation but same has not been considered by the respondent authority, so the act of the respondent authority is totally illegal, perverse and against the law of natural justice.

2.6 The petitioner filed a Writ Petition No. 1421 of 2020 (S/S) before the Hon'ble High Court, which was dismissed, observing that the petitioner should be relegated to approach the Public Services Tribunal for adjudication of his grievance.

Hence the claim petition.

3. Counter Affidavits have been received by post on behalf of the private respondents no. 8 & 9 who have stated that the various paras of the claim petition relate to the department and promotions of the respondents no. 8 & 9 have been done according to the departmental Service Rules from the eligible Assistant Audit Officers.

4. Counter Affidavit filed on behalf of the respondents no. 1, 3, 4 & 6, mainly states that according to the relevant Service Rules of 2019, completion of 5 years service as Assistant Audit Officer on the first day of recruitment year was necessary for consideration for promotion and the services of the petitioner fell short by one day on the first day of the selection year 2019-2020 (01.07.2019) as the petitioner joined on the post of Assistant Audit Officer on 02.07.2014. Though, the petitioner was senior, since he did not complete the compulsory service of 5 years, he could not have been considered eligible for promotion. Regarding the two persons, who had joined in 2015, but given notional promotion from 28.06.2014, it has been stated in this Counter Affidavit that their 5 years compulsory service as Assistant Audit Officer has been deemed to be completed on 01.07.2019 and, therefore, these two persons have been considered eligible for promotion and given promotion accordingly.

5. The petitioner has filed Rejoinder Affidavit to the above Counter Affidavits reiterating that his date of promotion on the post of Assistant Audit Officer is 28.06.2014 but due to delay in his relieving order issued by the respondent authority, he joined the post on 02.07.2014 and according to the Rules and provisions of Financial Hand Book-Part 2 to 4, his date of promotion should be counted for the length of service and he is eligible to be promoted on the post of Audit Officer from the date on which his juniors have been promoted. It has further been stated in the Rejoinder Affidavit that according to the Rules of 2019, official respondents have the power to give relaxation to the petitioner but the respondent authority has not considered the contention of the petitioner without any valid reason.

6. After hearing learned Counsel for the parties and perusal of the record, the Tribunal observes the following:

(I) There was no intentional delay on the part of the petitioner to join on the post of Assistant Audit Officer and when he was relieved on 01.07.2014 by the respondent authority, he joined on the post of Assistant Audit Officer on 02.07.2014.

(ii) The length of service of two persons who actually joined on the post of Assistant Audit Officer in March, 2015 has been counted from 28.06.2014 as they have been given notional promotion from this date. On the other hand, the petitioner who has got actual promotion on 28.06.2014 but could join only on 02.07.2014 due to the delay in his relieving by his superior authorities, is being denied this benefit, which is unfair and against the principles of natural justice.

7. In view of the above, the Tribunal orders that qualifying service on the post of Assistant Audit Officer in the case of the petitioner shall be counted from the date of his promotion *i.e.* 28.06.2014 and thereby he completes 5 years of service on 01.07.2019 and was eligible for promotion in the selection year 2019-2020 (first day of recruitment year 2019-2020). Accordingly, the Tribunal directs that a review DPC be conducted for considering the promotion of the petitioner to the post of Audit Officer from the date his juniors have been promoted and if he is found fit, he be promoted from the date on which his juniors have been promoted with salary and all other consequential benefits.

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

(RAJENDRA SINGH)
VICE CHAIRMAN(J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: AUGUST 14, 2023
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KNP