

**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. 66/NB/DB/2019

Gabar Singh Negi, aged about 60 years, s/o Late Sri B.S.Negi, r/o House No. 117, Near Shishu Mandir, Vikas Marg, Pauri Garhwal.

.....Petitioner

Vs.

1. State of Uttarakhand through Secretary, Culture, Secretariat Complex, Subhash Road, Dehradun.
2. Director, Culture, Uttarakhand, M.D.D.A. Colony, Dalanwala, Chander Road, Dehradun.

.....Respondents

Present: Sri K.S.Bora & Sri Mohit Kumar, Advocates, for the petitioner
Sri Kishore Kumar, A.P.O., for the State respondents

JUDGMENT

DATED: AUGUST 17, 2023

Mr. Rajeev Gupta, Vice Chairman(A)

This claim petition has been filed seeking the following reliefs:

“(a) In view of the facts and circumstances, as mentioned above, the petitioner prays that this Hon'ble Tribunal may, graciously, be pleased to call the entire record and direct the respondents to notionally promote/ consider the petitioner for promotion to the post of Chief Administrative Officer, implementing government order/office memorandum no. 90/XXX(2)/2016- 30(51)15 dated 26-7-2016 issued by the Principal Secretary

(Culture), Government of Uttarakhand (Annexure No. 4) to this claim petition).

(b) Issue an order or direction directing the respondents to implement the amendment G.O. dated 26-7-2016 from the due date and give the petitioner all notional benefits accordingly.

(c) To issue any other suitable order or direction in favour of petitioner, which this Hon'ble Tribunal may deem fit and proper in the present circumstances of the case.

(d) Award the cost of claim petition."

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

2.1 The petitioner was appointed on the post of Junior Clerk/Assistant in the department on 18-11-1986 and thereafter, on 01-03-2005, he was promoted to the post of Senior Clerk. On 26-5-2011, he became Chief Assistant. Thereafter, he was promoted to the post of Administrative Officer on 20-11-2017 and on 19-5-2018, he was promoted to the post Senior Administrative Officer, on which he joined on 26-5-2018, and after one year, he became eligible to be promoted to the post of Chief Administrative Officer, as the requisite qualification to be promoted to the post of Chief Administrative Officer is one year's service on the post of Senior Administrative Officer and at least 25 years service in the department. According to the rules, the post of the Chief Administrative Officer is to be filled by the promotion.

2.2 Vide Office Memorandum dated 06.10.2015 (Annexure no. 3 to the claim petition) of the Personnel Department, an amended staffing pattern was issued which provided for 10% posts of Senior Administrative Officers and 2% posts of Chief Administrative Officers. This staffing pattern was implemented in the Culture Department of the Government vide G.O. dated 10.02.2017 (Annexure no. 5 to the claim petition) thereby creating 3 posts of Senior Administrative Officers and 1 post of Chief Administrative Officer. The Personnel Department vide O.M. dated 26.07.2016 (Annexure

no. 4 to the claim petition) again amended Staffing Pattern according to which 6% of the posts of the total staff was to be posts of Chief Administrative Officer. If this was implemented by the Culture Department, then against the total staff strength of 36, the posts of Chief Administrative Officer would have been two instead of one, but this amended Staffing Pattern has not been implemented by the Culture Department despite representations to implement the same. The petitioner is second in the seniority and if on the implementation of new pattern, two posts of Chief Administrative Officers had been created, he would have been promoted to the post of Chief Administrative Officer.

2.3 The Uttarakhand Govt. vide G.O. dated 18.09.2018 and G.O. 30.05.2019 directed to fill the promotional posts especially keeping in mind the persons like petitioner, who were going to retire soon, but the respondents kept sleeping over them.

2.4 The petitioner filed a writ petition no. 337 of 2019 (S/B) 'Gabar Singh Negi vs. State of Uttarakhand & another' before the Hon'ble High Court of Uttarakhand at Nainital. The petitioner retired from the services on the post of Senior Administrative Officer from Bhatkhande Music College, Almora on 31-07-2019. The aforesaid writ petition was dismissed by the Hon'ble High Court, vide judgement & order dated 6-12-2019, on the ground of alternative remedy before this Tribunal.

Hence the claim petition.

3. Counter Affidavit has been filed on behalf of respondents no. 1 & 2 mainly stating the following:

3.1 The petitioner is seeking direction to grant him notional promotion in view of the G.O. dated 26.07.2016. The petitioner made a representation to the respondent authority for the first time on 03.06.2019 after a lapse of almost three years before his superannuation. The claim petition is filed after three years, which is highly time barred. Thus, the claim petition is barred by limitation.

3.2 The petitioner has been given the benefit of promotion four times in his whole service period. After attaining the age of superannuation, the petitioner has retired on 31.07.2019.

3.4 According to the G.O. dated 10.02.2017, issued by the governing department (Culture Department) for organizational structure, three posts of Senior Administrative Officers and one post of Chief Administrative Officer have been created and the promotions have been granted on these posts to the eligible employees in accordance with seniority.

3.5 According to the Seniority list of the Ministerial Cadre, the petitioner working on the post of Senior Administrative Officer was in the second place, therefore, his claim for promotion on the post of Chief Administrative Officer is baseless. No other G.O. or letter has been received from the Governing Department (Department of Culture) about creation of posts and the claim petition is liable to be dismissed.

4. Rejoinder Affidavit has been filed by the petitioner mainly stating the following:

4.1 The petitioner has not approached the Court/Tribunal late because the G.O. dated 26.07.2016 has still not been implemented and that the petitioner became eligible/qualified for promotion to the post of Chief Administrative Officer in May, 2019 after completion of one year's service on the post of Senior Administrative Officer, hence, there was no occasion to approach the Court before that. The petitioner first approached the Hon'ble High Court and on the dismissal of the Writ Petition on the ground of alternative remedy, he has approached the Tribunal so there is no deliberate delay on the part of the petitioner.

4.2 The concern of the petitioner is that had the new staffing pattern of the Office Memorandum dated 26.07.2016 been implemented, the petitioner would have been promoted to the post of Chief Administrative Officer and that too only after 26.05.2019 when the petitioner had

acquired the requisite qualification, but the staffing pattern of the Office Memorandum of 26.07.2016 has still not been implemented. So the petitioner had to go out empty handed as he has retired on 31.07.2019. The petitioner is seeking notional promotion in pursuance of the G.O. dated 26.07.2016.

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

(i) As regards the point of limitation, the Tribunal agrees to the averments of the petitioner made in the Rejoinder Affidavit and holds that the claim petition is not barred by limitation.

(ii) The main argument of learned Counsel for the petitioner is that the Culture Department should have revised the organizational structure of the staff in accordance with the Office Memorandum dated 26.07.2016 of the Personnel Department according to which, two posts of Chief Administrative Officers would have been created in place of one post of Chief Administrative Officer created vide G.O. dated 10.02.2017 of the Culture Department. After such creation of two posts, the petitioner who was second in seniority would have been promoted as Chief Administrative Officer and such notional promotion should be granted to him now.

(iii) Learned A.P.O. has argued that it is upto the respondent department (Department of Culture) to adopt the O.M. dated 26.07.2016 of the Personnel Department and in its discretion, the department has not adopted this O.M. Even if, the Culture Department had modified its organizational structure in accordance with this O.M. of Personnel Department and created two posts of Chief Administrative Officer, instead of one post, they could not be forced to make promotion on these posts before the date of petitioner's retirement. The petitioner's right to get promoted from a certain date arises only when his junior has been promoted from such date and not otherwise.

(iv) The Tribunal agrees to the above argument of learned A.P.O. and holds that the petitioner cannot claim 'as a right' to be promoted before the date of his retirement in the circumstances of the case. So many promotional posts remain vacant in the Govt. and it is not the right of any Govt. Servant to claim promotion immediately after he becomes eligible for the same, even if the promotional post is vacant.

(v) In the instant case, the petitioner is first demanding the creation of the second post of Chief Administrative Officer and then his promotion on the same when he becomes eligible for such promotion after 26.05.2019 and before his retirement on 31.07.2019. The Tribunal holds that the second post of Chief Administrative Officer was not created by the Department of Culture and even if it had been created, the petitioner cannot claim promotion on such post as a matter of right before 31.07.2019 as no person junior to the petitioner has been promoted to this post before this date.

6. In view of the above, the claim petition is devoid of merit and is hereby dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN(J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: AUGUST 17, 2023
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KNP