

**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. 149/DB/2022

R.K. Yadav, s/o late Sri R.S. Yadav, r/o 10 B Patel Road,
Dehradun, District Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Chief Secretary (Transport),
Uttarakhand Government, Dehradun.
2. Managing Director, Uttarakhand Transport Corporation,
Dehradun.

..... Respondents

Present: Sri M.C. Pant (*online*) and Sri Abhishek Chamoli
Advocates, for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondent No. 1
Sri Vaibhav Jain, Advocate,
for Uttarakhand Transport Corporation

Judgement

Dated: 22nd September, 2023

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to
pass an order on 24.09.2022 in WPSB No. 217/2012, R.K. Yadav
vs. State of Uttarakhand and another, which reads as under:

“Mr. M.C. Pant, learned counsel for the petitioner.

Mr. Pradeep Joshi, learned Additional Standing Counsel for
the State.

Mr. Ashish Joshi, learned counsel for respondent no.2.

Ms. Monika Pant, learned counsel for respondent no.3.

The petitioner has preferred the present writ petition for the following relief:-

“i) Issue a writ, order or direction in the nature of certiorari calling for records and quashing the impugned order dated 22.06.2012 passed by the respondent no.2 (contained as Annexure no.7 to this writ petition).

ii) Issue a Writ, Order or direction in the nature of mandamus commanding the respondents to consider the promotion of the petitioner on the post of General Manager (Personnel) which is lying vacant and reserved for scheduled caste category candidate.”

The petitioner is a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ petition.

Considering the fact that the petition is pending since 2012 and pleadings have been completed, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

We request the Tribunal to endeavor to dispose of the petition at an early date, considering that the writ-petition is pending since 2012.

The petition stands disposed of accordingly.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 14790/UHC/Service (S/B) 2022 dated 17.10.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The writ petition has been registered as claim petition no. 149/DB/2022.

3. Order dated 22.06.2012 (Annexure No. 7) is in the teeth of present petition. The petitioner seeks to quash the same and also seeks direction to the respondents to consider the promotion of the petitioner on the post of General Manager, Personnel, which is stated to be lying vacant and reserved for Scheduled Caste (candidate). *Vide* order dated 22.06.2012 (Annexure No. 7), M.D., Uttarakhand Parivahan Nigam, has declared that the reservation is not available on a single post. Letter dated 22.06.2012 was issued on

the representation of the petitioner, on which a direction was sought whether reservation is available on a single post or not. The petitioner prayed for promotion to the post of G.M., Personnel, for which he moved a representation on 11.11.2011. According to the petitioner, the decision taken by the Departmental Promotion Committee (DPC) was wrong, which should be set aside.

4. Relevant documents have been filed by the petitioner in support of his case, which (case) has been contested by the respondents by filing counter affidavits. Counter affidavit has been filed on behalf of respondent no. 2 by Sri S.C. Joshi, Assistant Law Officer, Uttarakhand Transport Corporation.

4.1 In para 5 of such C.A., it has been mentioned that the post of General Manager (Operation and Personnel) were kept as one single cadre and the post of General Manager (Technical) and G.M. (Finance) has been kept as separate and distinct cadre. Cadre structure thus created cannot be resettled according to the administrative exigency and requirement of the corporation. The promotions for the post of G.M. were placed for consideration before the selection committee constituted on 28.11.2011. In accordance with the decision of the committee, there were two posts available and sanctioned for G.M. (Operation/ Personnel). In accordance with the rules, the source of recruitment as per Rule 5-ka is- the person eligible to be considered for promotion on the post of G.M. (Operation) and G.M. (Personnel) is that those candidates would be considered for promotion, who have completed five years continuous service on the first day of year of recruitment against the posts after having being substantively appointment as against the posts of Deputy General Manager (Operation/ Personnel)/ Divisional Manager (Operation). The criteria is suitability and eligibility, and for other posts, it is suitability, eligibility and seniority.

4.2 Sri Ashish Kumar, who was promoted as against the unreserved post, Sri R.K. Yadav i.e. the petitioner and Sri C.P.

Kapoor were working as Deputy General Manager (Operation/ Personnel) and all the three officials, who were working at the relevant time were not eligible to be appointed on the post of G.M. (Operation/ Personnel) as they were not fulfilling the minimum eligibility criteria. Thus, the State, to meet the administrative contingency, issued a G.O. No. 252 dated 27.12.2010 whereby for the purposes of promotion on the post of G.M. the eligibility clause of having put in five years of service on the first day of year of selection on the post of Deputy General Manager was relaxed and the same was reduced to three years of service. In accordance with the said relaxation provided in the G.O. dated 27.12.2010, all the above three persons, who at the relevant time were working on the post of D.G.M., their candidature was placed for consideration for promotion before the selection committee.

4.3 The contention of the petitioner that since there is no reserved category officer on the post of D.G.M. (Operation/ Personnel), hence the post is available for promotion on the post of G.M. (Operation/ Personnel) is untenable.

4.4 The impugned order observes that on the representation submitted by the petitioner, the headquarters *vide* its letter dated 19.03.2012 has sought guidance from the State Govt. taking into consideration the Service Regulations of 2009 as the post of G.M. (Operation/ Personnel) was a common cadre and since there was one post available, it was kept reserved for the Scheduled Caste. The Managing Director rightly held that the benefit of reservation could only be extended as against the posts of G.M. (Operation/ Personnel) as these were two posts but will not apply on the post of G.M. (Technical) or G.M. (Finance) as it was single and separate cadre.

4.5 It is stated that the Division Bench of Hon'ble High Court has directed the consideration for promotion against the post reserved for Scheduled Caste taking into consideration the said fact that there was a vacancy for one post only. The said ratio will not be

applicable here for the reasons that the post for which the promotion is being sought in accordance with the cadre for the post of G.M. (Operation/ Personnel), there were two posts sanctioned out of which one post is reserved for Scheduled Caste. The case at hand is distinct from what has been considered by the Division Bench in its judgement.

5. Rejoinder affidavit has been filed on behalf of the petitioner. In the rejoinder affidavit, it has been mentioned that the post of G.M. (Operation) and G.M. (Personnel) belong to the same cadre, therefore, the petitioner can be considered for promotion on the post of G.M. (Personnel).

5.1 It has been mentioned in para 13 of the R.A. that Sri Khushi Ram, who belonged to the S.C. category and has been promoted on the post of D.G.M. (Operation/ Personnel) on 29.03.2012 will become eligible for further promotion on the post of G.M. (Operation/ Personnel) only on 29.03.2017 and upto the said date, the petitioner, who is fully eligible to be promoted on the post of G.M. will not be considered for the promotion, although the petitioner will retire in the year 2016 before the date of acquiring eligibility by Sri Khushi Ram.

5.2 It is mentioned in para 15 of the R.A. that the judgement dated 01.11.2011 of the Hon'ble Division Bench passed in writ petition no. 222 (S/B) of 2011 is fully applicable to the petitioner.

6. Sri Vaibhav Jain, learned Counsel for the respondent no. 2 submitted that since the petitioner has retired and the relief claimed cannot now be granted to him, therefore, the petition has rendered infructuous with due passage of time. The Tribunal agrees with such submission of learned Counsel for the respondent no. 2, considering the peculiar facts of the case.

7. The Tribunal observes that the petition has rendered infructuous with due passage of time. The petitioner has retired

after attaining the age of superannuation. The petition is disposed of as infructuous with due passage of time. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 22nd September, 2023
DEHRADUN
RS