

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,  
DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 43/DB/2014**

1. Mohan Bhatt, S/o Late Sri Ishwari Dutt Bhatt, R/o Ram Bag Colony Misserwala Kalan, Doiwala, Dehradun,
2. V.K. Kakkar S/o Late Sri R.N. Kakkar, R/o 56, Engineers Enclave, G.M.S. Road, Phase III, Dehradun,
3. S.K. Sahi, S/o Late Shri Tej Prakash Sahi, R/o Maheshwari Villa Raj Nagar Colony Aarogaya Mandi, Gorakhpur, U.P.
4. Rajendra Deva, S/o Late Sri Ratan Deva, R/o Chand Mari Road Shanti Kunj Colony, Doiwala, Dehradun,
5. V.K. Mehrotra, S/o Late Sri D.N. Mehrotra, R/o 29, Guru Road, Lakshman Chowk, Dehradun,
6. N.K. Aggarwal, S/o Late Sri Somti Prasad Aggarwal, R/o 28/16, Chock Bazar old Rajpur, Dehradun,
7. S.K. Dhiman, S/o Late Sri H.S. Dhiman, R/o D-127 Govind Puram, Ghaziabad,
8. M.R. Saklani, S/o Late Sri P.N. Saklani, R/o Govt. Inter College Road, Near Shiva Colony, Jolly Grant, Dehradun,
9. Pradip Sangal, S/o Late Sri Som Prakash, R/o 10/1, Tyagi Road, Dehradun,

10. D.N. Dev, S/o Late Sri Arindra Narayan Dev, R/o D-102,  
Nehru Colony, Dehradun.

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Secretary, Cane Development and Sugar Industries, Secretariat, Dehradun,
2. Uttarakhand Sahakari Chini Mills Sangh Ltd. (Uttarakhand Sugars) through Chief General Manager, S-8 Tyoner Villa, C-Block, Ganesh Vihar, Ajabpur Khurd, Dehradun,
3. Doiwala Sugar Company Ltd. Dehradun, through its Executive Director,
4. Kiccha Sugar Company Ltd. Kichha District Udham Singh Nagar, through Executive Director,
5. U.P. State Sugar Corporation Ltd. Vipin Khand, Gomti Nagar, Lucknow, Uttar Pradesh through Managing Director.

.....Respondents

Present: Sri Deepak Kumar, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondent No. 1

Sri B.S.Rawat, Counsel  
for the respondents No. 2, 3 & 4

None for respondent no. 5

**JUDGMENT****DATE: OCTOBER 06, 2015****DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioners in the present petition approached this Tribunal for the direction to the respondents to grant them the first time scale/selection grade on the basis of parity with 17 other similarly situated employees. The petitioners have also prayed for the setting aside the order on their representations on 03.10.2013.

2. The facts as have been narrated in the petition are that the petitioners are the former employees of U.P. State Sugar Company Ltd. At the time of carving out the State of Uttarakhand, they were in service and after creation of State of Uttarakhand, the petitioners were allocated to State of Uttarakhand and were posted in Doiwala Sugar Company Ltd. in the year 2000-01. The State of Uttarakhand had subsequently created a Corporation named as Uttarakhand Sugars. The petitioners had discharged their duties & functions to the satisfaction to the employer throughout their service and were retired after attaining the age of superannuation between the period of the year 2004 to 2012. The respective dates of superannuation of each of the petitioner have also been mentioned in the petition. The services of the petitioners were governed by the U.P. State Sugar Corporation Ltd, General Service Rules, 1988, which were adopted by the State of Uttarakhand also. The Promotion Policy of 1996 was formulated for the employees

of Centralized Services belonging to U.P. States Sugar Corporation including the petitioners, which was also adopted by the Uttarakhand Sugars. The Uttarakhand Sugars had granted first time scale/selection grade to 10 employees of Centralized Services of Doiwala Sugar Company Ltd. and 08 employees of Centralized Services of Kiccha Sugar Company in accordance with the Promotion Policy of 1996.

3. It is further stated that the Uttarakhand Sugars had issued a memorandum on 10.03.2013 wherein it has been mentioned that the first time scale can only be given on Parikalpit basis. This is contrary to the fact that the due date for grant of promotion is to be taken in accordance with the Policy of 1996. This has not been done by the respondents. The petitioners claim the first time scale/ selection grade from the due date in accordance with Promotion Policy of 1996. A chart has also been given in the petition in which the date of eligibility of each petitioner has been mentioned.

Sl. No.	Name of the Applicant	Date of Eligibility
1.	Sri Mohan Bhatt	06.08.1996
2.	Sri V.K.Kakkar	29.03.1996
3.	Sri S.K.Sahi	28.10.1999
4.	Sri Rajendra Dev	29.03.1996
5.	Sri V.K.Mahrortra	10.06.2004
6.	Sri N.K.Agarwal	29.03.1996
7.	Sri S.K.Dheeman	13.10.1997
8.	Sri M.R.Saklani	29.03.1996
9.	Sri Pradeep Sangal	29.03.1996
10.	Sri D.N. Dev	29.03.1996

4. It is further stated that though selection grade has been granted to the claimant no. 2, Sri V.K.Kakkar, claimant no.4, Sri Rajendra Dev, claimant No. 10, Sri D.N. Dev but, it not in accordance with the Promotion Policy of 1996. The petitioners had moved a representation to the Uttarakhand Sugars, which was dismissed vide order dated 03.10.2013. Hence this petition.

5. The petition has been opposed on behalf of respondents no. 2, 3 and 4. None appeared and no written statement has been filed on behalf of respondent no. 5. Moreover, no separate written statement has been filed on behalf of respondent No.1, but the written statement filed on behalf of the respondents no. 2, 3 and 4 has been adopted. It has been stated in the written statement filed on behalf of the respondents no 2, 3 and 4 that that the promotion policy framed by the then U.P. State Sugar Corporation Ltd., Lucknow known as Promotion Policy of 1996 was not adopted by the answering respondents after creation the State of Uttarakhand rather it was discarded. In fact, the respondents no. 1, 2 and 4 had framed their own promotion policy vide order no. 1396- dated 27.12.2012 commonly known as Promotion Policy of 2012. As the Promotion Policy of 1996 has not been adopted by the answering respondents, the petitioners are not entitled to claim any benefit on the basis of that policy. It is further stated that actual financial benefits were granted to the employees' w.e.f 10.01.2013 and not earlier. The petitioners had already retired by that time; therefore, the petitioners for that reason

also are not entitled for any monetary benefit. It is further stated that the petition is barred by time. The respondents have also denied the fact of granting the benefit of promotion on the basis of Policy of 1996 to any of the employee and it is stated that the petitioners have misrepresented the fact. Therefore, the petitioners are not entitled for any benefit and the petition is liable to be dismissed.

6. A rejoinder affidavit has been on behalf of the petitioners and the facts stated in the main petition have been reiterated and it has further been stated that the respondent no. 2 has granted the first time scale to 18 employees with retrospective effect which includes the claimant no. 10 also by applying the Promotion Policy of the year 1996.

7. We have heard both the parties at length and perused the evidence available on record. Some of the facts are admitted to both the parties. It is admitted to both the parties that the petitioners were the employees of the erstwhile U.P. State Sugar Corporation and after creation of the State of Uttarakhand, a new corporation named as Uttarakhand Sugars were formed and the petitioners were allocated or continued to serve in the newly formed Corporation. It is also admitted that the petitioners have retired on attaining the age of superannuation between the periods 2004 to 2012. There is nothing adverse against the petitioners while they were in the service.

8. It is also admitted that a promotion policy was framed by the U.P. State Sugar Corporation, which was applicable to the employees of the said Corporation, named as Promotion Policy of 1996. After creation of a new Corporation known as Uttarakhand Sugars, a new promotion policy was framed, known as Promotion Policy of 2012.

9. The first question for adjudication in this petition is as to whether the petitioners are entitled for the first time scale in accordance with the provisions of Promotion Policy of 1996. The claimants claim that they are entitled for the first time scale in accordance with the Promotion Policy of 1996, whereas this fact has specifically been denied on behalf of respondents on the ground that after the pronouncement of the new Promotion Policy in the year 2012, the policy promulgated by the U.P. Sugar Corporation Ltd. in the year 1996 had ceased to operate. Not only this, it has also been contended that the Promotion Policy of 1996 was never adopted by the Uttarakhand Sugars. So, we have to see as to whether the Promotion Policy of 1996 had ever been applicable to the Uttarakhand Sugars. In this regard the most important material available on record is the Promotion Policy of 2012 itself, which is admitted to the respondents. In this policy, it is clearly mentioned that Promotion Policy of 1996 was adopted and was made applicable in the State of Uttarakhand also. The relevant extract contained in that Policy (copy Annexure: R-4) is as follows:

“सार्वजनिक क्षेत्र की चीनी मिलों में कार्यरत विभिन्न संवर्ग के अधिकारियों/कर्मचारियों की पदोन्नति एवं समयमान वेतनमान स्वीकृत किये जाने के सम्बन्ध में उत्तर प्रदेश राज्य चीनी निगम लि० के निदेशक मण्डल द्वारा दिनांक 29.05.1996 को अनुमोदित पदोन्नति नीति उत्तराखण्ड राज्य में भी यथावत लागू की गयी है। उत्तराखण्ड राज्य की सार्वजनिक क्षेत्र की चीनी मिलों में कार्यरत अधिकारियों/कर्मचारियों की पदोन्नति की सम्बन्ध में पूर्व में प्रचलित नीति को अवकमित करते हुए पदोन्नति नीति 2012 प्रख्यापित की जा रही है। जो तत्कालिक प्रभाव से लागू होगी।”

Above assertion made by the respondents in their new Promotion Policy makes it clear that the promotion policy of the erstwhile U.P. State Sugar Corporation was adopted by the respondents. Apart from it, the impugned order dated 10.01.2013 (Annexure 1-A) by which the time scale/selection grade was granted to some of the employees of the Uttarakhand Sugars belies the contention of the respondents that the Promotion Policy of 1996 was not applicable to the Uttarakhand Sugars. In fact, this order has been passed in accordance with the Promotion Policy of 1996. More strangely, this order was passed on 10.01.2003 i.e. after the promulgation of the new Promotion Policy of 2012. The respondents failed to clarify it as to why the order dated 10.01.2013 was not passed in accordance with the Promotion Policy of 2012 and why it has been passed under Promotion Policy of 1996. The relevant assertion regarding the applicability of Promotion Policy of 1996 to the Uttarakhand Sugars is as follows, which is made in the impugned order:



“उत्तर प्रदेश राज्य चीनी निगम लि०, लखनऊ द्वारा निर्गत की गयी पदोन्नति नीति 1996 जो उत्तराखण्ड राज्य की सार्वजनिक क्षेत्र की चीनी मिलों में भी तत्समय यथावत् लागू की गयी थी, में निहित प्राविधानों के अधीन निम्नलिखित केन्द्रीयत सेवा के अधिकारियों को उनके सम्मुख अंकित तिथि से प्राकल्पित आधार पर प्रथम समयमान/चयन वेतनमान स्वीकृत करते हुए इसका वास्तविक लाभ तत्कालिक प्रभाव से अनुमन्य कराये जाने की एतद्द्वारा स्वीकृति प्रदान की जाती है।”

From the above facts, it becomes clear that the Promotion Policy of 1996 was adopted and was applicable to the Uttarakhand Sugars also and the impugned order of granting time scale/ selection grade to the employees of the Uttarakhand Sugars was passed in accordance with the Promotion Policy of 1996.

10. The second question for adjudication is as to whether the petitioners are also entitled for the benefit of selection grade/time scale. In this regard, it has been contended on behalf of the petitioners that as the benefit of the time scale/ selection grade has been granted to the similarly situated persons/employees, therefore, they are also entitled for this benefit. Per contra, it has been said that the petitioners are not entitled for any benefit as they had retired prior to the impugned order and secondly, the order has been made applicable w.e.f. 10.01.2013. First of all, it is to be considered as to whether the petitioners can be denied the benefit of the time scale/selection grade simply on the ground of their retirement. We are of the view that retirement cannot be a ground for extending the benefit of the selection grade/time scale as it has been extended to

other similarly situated employees. Not only this, one of the petitioners named as D.N. Dev (petitioner No. 10) had also retired prior to the impugned order i.e. on 30.11.2012, but his name appears in the impugned order at sl. No. 7 in the first list of the impugned order dated 10.01.2013 (Annexure A-1(A)). It was the responsibility of the respondents to clarify as to how the benefit of the time scale/selection grade has been extended to one retired employee and why it has been denied to other retired employees. Though the accrued benefits were not granted to D.N. Dev also, but the fact remains that his name was included in the impugned order itself. Therefore, the benefit of granting time scale/selection grade cannot be denied to the petitioners on the ground of their retirement.

11. It has also been contended on behalf of the respondents that the benefit of time scale/selection grade has been extended to the employees only w.e.f. 10.01.2013 and their pay was fixed notionally for the earlier period or from the due date. As the petitioners had already retired before 10.01.2013, they are not entitled for any fixation of pay as no financial benefit accrued to them, but we are not convinced with this contention. Though the monetary benefits had been extended to the employees w.e.f. 10.1.2013, even then it was incumbent upon the respondents to at least fix the pay of the petitioners with effect from the due date notionally, which has not been done and to extend them benefit, if any, accrues to the petitioners even after the retirement. By fixation of the pay, the petitioners undoubtedly can claim the benefit at par with the other

employees. In other words, the petitioners cannot claim the arrears, but in case, their pay is fixed notionally with effect from the due date of their entitlement of the time scale/section grade, it may have an effect in the fixation of their pension, gratuity or any other retiral benefits. The non-fixation of the pay of the petitioners from the due date and denying the retiral benefits to the petitioners, which may accrue to them after re-fixation of pay, cannot be held justified. In support of their contentions, the petitioners rely upon the judgment of the Hon'ble Supreme Court in **Union of India and another v SPS VAINS (RETD) and others, (2009)SCLJ, 635**. The Hon'ble Supreme Court in the above noted case has held that the retirement of any employee cannot be a valid criterion for classification and it is the violation of Article 14 of the Constitution of India. The relevant extract is as follows:

*“The date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not*

*based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.”*

The above principle laid down by the Honble Apex Court also supports the contention of the petitioners and contention raised by the respondents has no merit. The petitioners are entitled for fixation of pay and to get benefit, if any, which may accrue to them even after their retirement.

12. It has also been contended on behalf of the respondents that the petition is barred by time, but it was the responsibility of the respondents to make it clear as to how the petition is barred by time, but the respondents have miserably failed to establish this fact. On the other hand perusal of the record reveals that the petitioners had made a representation for the grant of time scale/ selection grade, which was dismissed by the respondents on 03.10.2013 and the petition has been filed within a period of one year from the date of rejection of the representation of the petitioners. As per the provisions contained in Uttarakhand Public Services Tribunal Act, 1976, a petition can be brought before the Tribunal within a period of one year from the date of accrual of the cause of action. As the petition has been preferred within a period of one year from the accrual of the cause of action, we find that the petition is within time and it is not barred by limitation.

13. We are of the considered opinion that the petitioners are entitled for fixation of the time scale/selection grade with effect from the due date, of course, only if they are otherwise found eligible. On fixation of pay, the petitioners will not be entitled to claim any arrears, but surely will be entitled to claim benefit in the retiral dues, if any, accrues to them. We would like to make it more clear that in case any benefit on account of the fixation of pay in time scale/ selection grade accrues to the petitioners, it should be extended to them.

**ORDER**

The petition is allowed. The respondents are directed to fix the pay of the petitioners notionally in time scale/selection grade with effect from the due dates in accordance with the Promotion Policy of 1996, of course, if the petitioners are otherwise found eligible, within a period of three months from today. The respondents are further directed to extend all the benefits to the petitioners, if it accrues to them in their retiral benefits. It is made clear that the petitioners will not be entitled for any arrears prior to 10.01.2013. Costs made easy.

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

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

DATE: OCTOBER 06, 2015  
DEHRADUN

KNP