

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. U.D.Chaube

-----Member (A)

CLAIM PETITION NO. 25/DB/2014

1. Ghanshyam Joshi (Retd.), Deputy Forest Ranger, R/o Ward No.3, Saharanpur Road, Harbertpur, Dehradun.
2. Sri Jagdish Prasad Thapliyal, Retired, Deputy Forest Ranger, Narendra Nagar Van Prabhag, Munikireti, Rishikesh, Dehradun.
3. Sri Jaiprakash, Retired, Deputy Forest Ranger.
4. Sri Ruli Ram Rathore, S/o Shri Nathu Singh, Retired, Deputy Forest Ranger, C-24 Turner Road, Clementown, Dehradun.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Forest & Environment , Civil Secretariat, Subhash Road, Dehradun.
2. Principal Chief Conservator of Forests, Uttarakhand, Dehradun.

.....Respondents

Present: None for the petitioner.
Sri Umesh Dhaundiyal, Ld. A P.O.
for the respondents.

JUDGMENT

DATED: DECEMBER 11, 2015.

(Justice J.C.S. Rawat, (Oral)

We would like to mention that this claim petition was fixed for final hearing on 18.11.2014. Thereafter on the following dated Ld. Counsel for the petitioner sought adjournments:

22.1.2015, 11.2.2015, 9.3.2015, 10.4.2015, 2.7.2015, 17.7.2015, 29.9.2015, 27.10.2015 & 19.11.2015.

Ld. Counsel for the petitioner on 3.12.2014, 9.9.2015 and on the last date 10.12.2015 did not appear before the Court, even on these dates, in the interest of justice the matter was adjourned in the absence of the petitioner's counsel. It is further necessary to mention that Ld. Counsel for the petitioner sent his Brief Holder on the following dates for seeking adjournments on behalf of Ld. Counsel for the petitioner:

25.11.1014, 11.2.2015, 10.4.2015, 6.5.2015, 27.10.2015 & 19.11.2015.

Then the Court had to pass a preemptive order on 10.12.15 which is as under:-

"The petitioner is seeking adjournments since long and today he has abstained to appear before the Court. The matter be listed for tomorrow and if Ld. Counsel for the petitioner or petitioner himself does not appear, the petition shall stand dismissed. In case Ld. Counsel for the petitioner appears tomorrow, he will have to argue the matter, if he does not argue the matter, the matter will be decided on merit."

Inspite of the preemptive order, Ld. Counsel for the petitioner did not appear before the Court.

Post this matter tomorrow on 11.12.2015 for hearing".

1. Today, we have heard Ld. A.P.O. at length. The claim petitioners have sought following relief in the claim petition:-

"(i) To issue order or direction to the respondents to grant the notional promotion to the petitioner in accordance with the Government order dated 5.9.2012 w.e.f. 10.07.2012.

(ii) Any other relief which the Hon'ble court may deem fit and proper in the circumstances of the case.

(iii) To award cost of this petition to the petitioner."

2. These are the admitted facts to the parties that the State of U.P. passed an enactment known as U.P. Public Services (Reservation for Scheduled Caste and Scheduled Tribe and other Backward Classes)

Act, 1994. After creation of the State of Uttarakhand the said Act was adopted by the State of Uttarakhand in the year 2001. The provisions of this Act clearly provided the reservation for Scheduled Caste and Scheduled Tribe and other Backward Classes in promotion of the Civil Services. Section 3(7) of the said Act was struck down by the Hon'ble High Court of Uttarakhand in 45(SB) /2011 Vinod Prakash Nautiyal and others Vs. State & others and the Hon'ble High Court directed the State Government to make an Act or Law in consonance with the judgment rendered by the Hon'ble Apex Court in M. Nagraja case. In consequence of the above judgment of the Hon'ble High Court the State Government issued an order dated 19.07.2012, (Annexure-R-1) by which the procedure of the promotion in public services was stayed. In consequence of the above the State Government thereafter again issued a Government order dated 5.9.2012, which is extracted as under:-

“3. मा0 उच्च न्यायालय के उक्त निर्णय के आलोक में राज्य सरकार द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि राज्याधीन लोक सेवाओं से संबंधित विभिन्न संगठनात्मक ढांचों में प्रोन्नति के समस्त पदों/ रिक्तियों को अनुसूचित जाति एवं अनुसूचित जनजाति को आरक्षण प्रदान किये बिना तथा प्रोन्नति में आरक्षण हेतु, शासन द्वारा पूर्व में निर्गत रोस्टर व्यवस्था को लागू किये बिन भरा जायेगा।

4 इसके अतिरिक्त शासन द्वारा यह भी निर्णय लिया गया है कि माह जुलाई एवं माह अगस्त 2012 के दौरान सेवानिवृत्त हुए प्रोन्नति हेतु पात्र कार्मिकों को भी 10 जुलाई 2012 से नोशनल प्रोन्नति प्रदान की जायेगी।”

3. When the aforesaid Government order was promulgated by the State Government, the petitioners were not given the notional promotion from the date when their juniors had been promoted. They preferred this claim petition before the Court. It is alleged that the petitioner Nos. 1 to 4 have retired from service on 31.7.2012, 31.1.2013, 30.11.2012 and 31.8.2012 respectively. Petitioners submitted their representation but it was of no avail to them. It is alleged in the claim petition that the petitioners had already been promoted vide order dated 25.7.2013 and their names have been indicated in Annexure-A-1 to the claim petition. But they had not been given the notional

promotion as claimed. It is further stated that in view of the aforesaid Government order, they are entitled to get the notional promotion from the date when their juniors had already been promoted.

4. Respondents have filed written statement. They have stated at the last of the written statement that due to the reason given in the written statement/ counter affidavit, the claim petition may be disposed of without any relief. It is further alleged that the Government order dated 5.9.2012 is not applicable in the case of the petitioners. The petitioners are not entitled for the notional promotion according to the concerned and applicable rules; notional promotion may be awarded to the person only if his junior persons have been promoted before his promotion and may be awarded only from the date of promotion of junior persons.
5. We have heard Ld. Counsel for the respondents and perused the record.
6. Ld. A.P.O. contended that the petitioner Nos.2 & 3 namely, Sri Jagdish Prasad Thapliyal and Sri Jaiprakash retired in the month of January and November, 2013 and 2012 respectively. Hence, they are not covered under the said Government order. It was further contended that the said Government order is not applicable in the case of the petitioners.
7. We have gone through the entire record with the help of the Ld. A.P.O. and also perused each and every document of the record. It is apparent from the Annexure-A-1 that Sri Jai Prakash and Sri Jagdish Prasad Thapliyal have been shown at Sl. No. 3 & 6 of the said promotion list whereas Petitioner No.1 & 4 namely, Sri Ghanshyam Joshi and Sri Ruli Ram have been placed at Sl. No. 12 & 13 in the promotion list. Petitioner No. 2 and 3 retired 31.1.2013 and 30.11.2012 respectively. The said Government order which has been extracted above, clearly denotes that the notional promotion may be awarded to the persons retired during July and August, 2012, if their junior officers/ officials had already been promoted before the judgment of the Hon'ble High Court. Ld. A.P.O. could not demonstrate from the record that Sri Jagdish Prasad Thapliyal & Sri Jai Prakash

Petitioner Nos. 2 & 3 were junior to Petitioner Nos. 1 & 4. According to the promotion order itself they had been shown senior to Petitioner Nos. 1 & 4. The written statement also did not clearly speak that Petitioner Nos. 2 & 3 are junior to Petitioner Nos. 1 & 4. In the W.S. also the respondents have alleged that the Government order dated 5.9.2012 and 19.7.2012 provide only all the persons who had retired in the month of July and August 2012 may be given notional promotion if junior officers/officials have been promoted before their promotion and notional promotion can be given only from the date of the promotion of the junior officers/ officials if promoted. Ld. A.P.O. could not demonstrate that petitioner Nos. 2 & 3 are junior to Petitioner Nos. 1 & 4 and they are not entitled for their promotion due to the said reason. Ld. A.P.O. could not demonstrate that the promotion list has not been issued according to seniority. It is also settled principle of law if all the persons, who had been promoted at a later date and Government takes decision to promote by notional promotion from the back date, the persons who are already senior to them, will be promoted prior to their junior officers/officials were promoted. Thus, it cannot be held that Petitioner Nos. 2 & 3 being senior to Petitioner Nos. 1 & 4 cannot be promoted in any way; even if they have retired after the date enumerated in the Government Order. If we take interpretation submitted by the Ld. A.P.O. that only those persons who retired during July to August can only be promoted, rest cannot be promoted even if they are senior to them, is not sustainable in law and it would be a discrimination under the Constitution of India. The Ld. A.P.O. could not demonstrate that Petitioner Nos. 1 & 4 are not covered by the G.O. dated 23 August, 1997 and hence they are not entitled for the notional promotion in accordance with G.O. We do not find any force in the contention of the Ld. A.P.O.

8. In view of the above we are of the considered opinion that all the petitioners are entitled to be promoted notionally from the date when

their juniors have been promoted. Therefore the petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. Respondents are directed to promote all the petitioners notionally from the date their juniors have been given promotions. No order as to costs.

(U.D.CHAUBE)
MEMBER (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: DECEMBER 11, 2015
DEHRADUN

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