

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**Claim Petition No. 73/2012**

Vijendra Kumar aged about 42 years, S/o Sri Balbir Singh, Fireman, Police Station, Rishikesh District Dehradun.

.....Petitioner

**Versus.**

1. State of Uttarakhand through its Secretary, Home Department, Subhash Road, Dehradun.
2. Sr. Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri J. P.Kansal, Ld. Counsel  
for the petitioner.

Sri Umesh Dhaundiyal, Ld. P.O.  
for the Respondent.

**JUDGMENT**

**DATED: OCTOBER 23, 2013.**

**(Hon'ble Mr.Justice J.C.S. Rawat, Chairman)**

1. This claim petition has been filed for seeking following relief:-

“Therefore, the petitioner most humbly prays this Hon'ble Tribunal:

- (a) That the above impugned order (Annexure-A-1) be kindly held and declared against fundamental, constitutional and civil rights of the petitioner, wrong, illegal, against law, rules and principles of natural justice and accordingly the same be kindly quashed and set aside.
- (b) That the respondents be kindly ordered and directed to grant to the petitioner selection grade one increment in the pay scale of the post of Fireman w.e.f. 1.11.1997, personal promotional pay scale w.e.f. 1.11.2003, selection grade one increment in the personal

promotional pay scale w.e.f. 1.11.2009 and to pay him the consequential benefits including of pay, D.A. etc. together with interest thereon @ 12% per annum from the date of accrual till the actual date of payment to the petitioner;

(c) Any other relief, in addition to modification or substitution of the above relief, which the Hon'ble Tribunal deems fit and proper in the circumstances of the case and facts on record, be kindly allowed to the petitioner against the respondents; and

(d) Rs. 15,000/- as costs of this petition be allowed to the petitioner against the respondents."

2. It is admitted case to both the parties that the petitioner had joined the services as Fireman in the Police Department in the undivided State of U.P. on 1.1.1989. During his employment, the Government issued a notification on 8.3.1995 for time bound Career Growth Scheme for the persons who had not been promoted and who were stagnating in their original appointment and they were given monetary benefits by the said notification. It was provided in the aforesaid notification of 1995, firstly, that 8 years continuous satisfactory service, the person who had been stagnating in one post and would get one increment in the revised pay scale of the employee; secondly that thereafter, if such employee is further stagnated on the same post and he is in regular grade, on completion of 6 years continuous satisfactory service, would be given promotional pay scale and lastly, that if the employee further stagnates for further 6 years continuously having a satisfactory service, he would be allowed the benefit of one increment again. The petitioner had continuously discharged his duties till his superannuation and he completed 8 years of his service on 1.11.1997 and on completion of the above 8 years of service, he was entitled to get the first increment as provided in the Government Order of 1995. Thereafter, again he served the department and he completed further 6 years and total service of 14 years as Fireman on 1.11.2003 and he was entitled to get promotional pay scale from the said date. Thereafter, the petitioner again remained in the service for the next 6 years and he completed his 20 years' service as Fireman till 1.11.2009 and he was also entitled to get the one increment in the

promotional pay scale according to the aforesaid Govt. order. The petitioner has alleged in his petition that the petitioner made a representation on 3.5.2012 praying for grant of the aforesaid benefits, but the said representation was decided by the S.S.P., Dehradun on 18.5.2012 refusing the prayer of the petitioner.

3. The petitioner has alleged in his claim petition that the petitioner's representation has been rejected on the ground that he had been awarded the penalty of the censure and reduction of his pay to the minimum for three years on 21.7.1997 and 16.6.1999 respectively. The respondent had passed the said order without applying his mind and the impugned order is illegal and in violation of the Fundamental Rules of the natural justice therefore the petitioner sought to quash the said order and further he sought the relief as claimed in the petition.
4. The respondents have denied the claim of the petitioner and they have supported the impugned order passed by the S.S.P.. It was further alleged that the petitioner was awarded censure entry in July, 1997 and he again was awarded the punishment of reduction of his pay to minimum of three years on 16.6.1999 and as such he had been continuously getting the punishments from the authorities. Lastly the petitioner was awarded the punishment of censure entry again on 29.5.2003. The extracts of above punishment recorded in the service book were annexed with the counter affidavit as Annexures- R-1, R-2 and R-3 respectively. The respondents have further prayed that the petition may be dismissed.
5. We have heard learned counsel for the parties and perused the record. The Ld. Counsel for the petitioner contended that during his first 8 year's service, the work and conduct of the petitioner was continuously good and satisfactory. He was only awarded a penalty of censure in the year 1997; according to the rules, merely a censure penalty is not an impediment to grant him the benefit of time bound career growth scheme after completion of 8 years' service. According to the Government Order, the competent authority was required to consider the entire service record of the petitioner for a relevant period and take an appropriate decision considering the satisfactory

service of the petitioner for grant of benefits under the scheme; the respondents have failed to take such decision in accordance with the law. He also referred the G.O. of 1993 & 1995, which have been filed as Annexure- A-3 & A-4 to the C.P. respectively in which the satisfactory service & procedure has been defined for granting the benefits in the time bound career growth scheme.

6. Ld. A.P.O. appearing on behalf of respondents contended that the petitioner had earned continuously three penalties since 1997 to 2003, as such he is not entitled to get the benefits of the said scheme as provided in the G.O. of 1995. He also relied upon the Government Order, 1993 (Annexure-A-3) filed by the petitioner..
7. The first and the foremost question is to be considered as to whether the petitioner was entitled to get the first increment after completing the satisfactory service of 8 years as Fireman or not?
8. Initially the composite State of U.P. issued a Government Order that who were stagnating in their appointed post and who had very limited outlet of promotion on 3.6.1989, the said notification formulated a time bound Career Growth Scheme for those employees. Later on superseding the above Government Order, the provision of the above G.O. were made liberal and Government Order of 8.3.1995 was issued.
9. According to the claim petition the said period of 8 years had been completed on 1.11.1997. We have to see that during that period he had earned any penalty or not. According to the claim petition, counter affidavit as well as the rejoinder affidavit filed by the parties, it is admitted fact that the petitioner was awarded a penalty of censure entry on 21.7.1997 prior to the completion of 8 years. The Govt. order of 1995 (Annexure- A-4 to the C.P.) clearly provides as under:-

“ऐसे कर्मचारी जिनके पुनरीक्षित वेतनमान का अधिकतम रू० 3500/- तक है, जो 8 वर्ष की संतोषजनक अनवरत सेवा दिनांक 01 मार्च, 1995 को अथवा उसके बाद आगामी तिथि को संबंधित पद पर पूर्ण करते हैं , सेलेक्शन ग्रेड का लाभ अनुमन्य कराने हेतु उनका वेतन पुनरीक्षित वेतनमान में ही उस तिथि को अगले प्रक्रम पर निर्धारित कर दिया जाय। इस प्रकार प्रत्येक कर्मचारी को , जिसे यह लाभ अनुमन्य कराया जाये, 8 वर्ष की सेवा के पश्चात एक वेतन वृद्धि का लाभ उसी वेतनमान में मिलेगा। ऐसे पदधारक जिन्हें

पूर्व व्यवस्था के आधार पर सेलेक्शन ग्रेड अथवा इसके अंतर्गत देय एक वेतनवृद्धि का लाभ दिनांक 1.3.95 के पूर्व प्राप्त हो चुका है , ऐसे मामलों में अब लागू की जा रही व्यवस्था के उपरांत वेतनवृद्धि के लाभ की तिथि में कोई परिवर्तन नहीं होगा।”

The above extracted provision of the G.O. of 1995 issued by the composite State of U.P. and now applicable to the State of Uttarakhand clearly provides that if an employee who had been put to a maximum pay scale of Rs.3,500/- and he had completed 8 years' satisfactory service, he is entitled to the benefit as provided in the Government Order, 1995. Thus, the first benefit of 8 years' can only be provided, if he has completed his satisfactory service of 8 years.

10. Now the question arises what is the meaning of satisfactory service. Though, the term 'satisfactory service' is a subjective term and the composite State of U.P. has also issued a Government order on 13.6.1993 (Annexure-A-3 to the claim petition) in which guidelines have been issued about considering the satisfactory service of the employment for the above purpose. Relevant portion of the Government Order is extracted as below:-

यद्यपि सन्तोषजनक सेवा के निर्धारण का विषय नितान्त 'सब्जेक्टिव' प्रकृति का विषय है और सभी संगत सेवाभिलेखों का उन्हें अभिलिखित किये जाने की परिस्थितियों के परिपेक्ष्य में गहनता से अध्ययन करने के पश्चात ही सक्षम पाधिकारी द्वारा इस विषय में समुचित निर्णय लिया जा सकता है, तथापि सक्षम प्राधिकारियों की सहायता हेतु शासन द्वारा सम्यक विचारोपरान्त इस विषय में निम्नलिखित सामान्य मार्गदर्शक सिद्धान्त तय किये गये हैं:-

(1).....

(2) *दक्षतारोक पार कराने, समयमान वेतनमान स्वीकृत करने तथा सी०एस०आर० के० अनुच्छेद -470 (बी) के तहत पेंशन की अनुमन्यता आदि अन्य सभी विषयों में सन्तोषजनक सेवा का निर्धारण करते हेतु निम्नांकित निर्देशों को दृष्टि में रखा जाय।*

(अ) सन्तोषजनक सेवाओं के विषय में निर्णय लेने के दिनांक के पूर्व जिस समय तक के अभिलेखों के आधार पर सम्बन्धित सरकारी सेवक को सन्तोषजनक सेवा के आधार पर कोई लाभ अनुमन्य कराया जा चुका हो अथवा उसे पदोन्नति प्रदान की जा चुकी हो, अथवा उसका स्थायीकरण किया जा चुका हो अथवा उसे दक्षतारोक अनुमन्य कराया जा चुका हो, उन सेवाभिलेखों को पुनः विचार में न लिया जाये, वरन् उसके पश्चात के सेवाभिलेखों के आधार पर ही सन्तोषजनक सेवाओं को पुनः विचार में न लिया जाये, वरन् उसके पश्चात के सेवाभिलेखों के आधार पर ही सन्तोषजनक सेवाओं का निर्धारण किया जाये।

(ब) यदि उस अवधि में उसके सेवाभिलेख उपरोक्तानुसार विचार क्षेत्र में आते हैं, किसी वर्ष की सत्यनिष्ठा प्रमाणित न की गयी हो, परन्तु अनुवर्ती समस्त वर्षों (जिसकी संख्या कम से कम 5 अवश्य हो) की सत्यनिष्ठा लगातार प्रमाणित की जाती रही हो तो केवल उस एक वर्ष की अप्रमाणित सत्यनिष्ठा के आधार सेवाओं को असन्तोषजनक न माना जाय।

(स) यदि उस अवधि में, जिसके सेवाभिलेख उपरोक्तानुसार विचार क्षेत्र में आते हो, कोई निन्दा प्रविष्टि विद्यमान हो और उस निन्दा प्रविष्टि से सम्बन्धित घटना की तिथि के बाद की अगले पांच वर्ष की अवधि में कोई अन्य प्रतिकूलता (यथा प्रतिकूल प्रविष्टि, दण्ड आदि) न हो तो उस निन्दा प्रविष्टि को सन्तोषजनक सेवा के मूल्यांकन हेतु विचार में न लिया जाये अर्थात् उसे नजरन्दाज कर दिया जाये।

(द) यदि सम्बन्धित अवधि में किसी सरकारी सेवक को कोई सुझावात्मक प्रविष्टि या चेतावनी दी गई हो तो सुझावात्मक प्रविष्टि/चेतावनी को सन्तोषजनक सेवा के मूल्यांकन हेतु विचार में न लिया जाये।

(य) यदि सम्बन्धित अवधि में निन्दा प्रविष्टि से भिन्न कोई अन्य लघु दण्ड या वृहद दण्ड दिया गया हो अथवा एक से अधिक बार पांच वर्ष के अन्तराल से कम अवधि में निन्दा प्रविष्टि दी गयी हो, तो सन्तोषजनक सेवा के मूल्यांकन हेतु सम्बन्धित अवधि के समस्त सेवाभिलेखों के आधार पर सावधानीपूर्वक विचार कर सक्षम प्राधिकारी द्वारा स्वविवेक से समुचित निर्णय लिया जाये।

(र) यदि सम्बन्धित अवधि में एक से अधिक वर्षों की सत्यनिष्ठा पांच वर्ष के अन्तराल से कम अवधि में अप्रमाणित कर दी गयी हो तो सामान्यतया उक्त अवधि की सेवाओं को असन्तोषजनक समझा जाये।

We are only concerned to the paragraph 'स' in which the Government has issued a guideline as to when the penalty of censure would be counted towards the calculation of the satisfactory service. It is clearly provided in the aforesaid clause, if the employee has earned any censure entry during the aforesaid 8 years, that would not alone be sufficient to deny the benefit which he is entitled for under the time bound career growth scheme and the said entry would be ignored. It is however, further provided that if from the date of the first censure entry, he has earned penalties and censure entries within the period of 5 years, that would be counted as unsatisfactory service. In the instant case petitioner's 8 years were completing on 1.11.1997, whereas he earned the penalty of censure entry on 21.7.1997. Thus, in the intervening period of 8 years, he only earned single adverse entry by way of punishment. Ld. A.P.O. could not demonstrate that there was anything more adverse in his service record from the date

of joining i.e. 1.11.1989 to 1.11.1997 except the adverse remark, which has been stated above. Thus, it is apparent that the respondent had to ignore the said entry according to the Annexure-A-3 government order filed by the petitioner. Ld. A.P.O. appearing for the respondent could not demonstrate that anything contrary to this order Annexure-A-3.

11. The next question arises whether the entire record of the employee along with all the penalties has to be seen on the date on which the benefit of time bound Career Growth Scheme was provided to the employee by the State Government or till the date he completes 8 years of satisfactory service. It is clear from the Annexure- A-4, the Government Order read with Annexure-A-3 that all the clauses of the aforesaid G.Os clearly indicate the word (सम्बन्धित अवधि) (उस अवधि) that means the dates of completion of 8 years, 14 years and 20 years are relevant and not the date on which the consideration has been made by the State. As a principle of prudence also the employee becomes entitled to the benefits of the time bound Career Growth Scheme as provided in the Government Orders from the date when he completes the stipulated service and the State should provide the said benefit immediately after completion of the aforesaid period, but the delays which occurred due to Slackness of the department that cannot deprive the employee of his accrued benefits.
12. Ld. A.P.O. contended that the clause-2 (घ) of Annexure-A-3 is relevant and he also contended that in view of the above clause, the petitioner is not entitled to get the benefit of the Government Order. The said clause which has been extracted in preceding para 10 of the judgment, clearly provides that, in the relevant period the petitioner had earned the penalty of censure entry and apart from that other major and minor punishments have been awarded to him during the period of 5 years from the said date that would deprive him the benefit of the Government Order. The petitioner has earned the punishment on 16.6.1999 by ways of reduction of his pay to the minimum for three years and thereafter a punishment of censure entry was awarded in 2003 also. Thus, during the period of 5 years he earned the penalties, so he is not entitled for the said benefits.

13. We are not agreeable to the said contention of the Ld. A.P.O. because the relevant period is only up to 1.11.1997 and the second punishment has been awarded after 1.11.1997. If the petitioner would have earned all these penalties during the period of 8 years, he would have been deprived of the benefits of the time bound career growth scheme, but the said entries can be looked into for further granting him the time bound Career Growth Scheme which was due in the year 2003. Thus, in view of the above the petitioner is entitled to get the first benefit of the said G.O. of 1995 on completion of 8 years on 1.11.1997 and not on the later dates as has been pointed out by the respondents. Thus, the order is bad to that extent.
14. Now we have to decide as to whether the petitioner is entitled to get the benefits of 1995 Government order after completion of 14 years' satisfactory services or not?
15. According to the petitioner the first benefit was to accrue on 1.11.1997 after the 8 years of his service and we have concluded as above that he was entitled to get the said benefit w.e.f. 1.11.1997 because his services were satisfactory during the above period. The petitioner has claimed that he is entitled to the benefit of time bound Career Growth Scheme after completion of 6 years of continuous satisfactory service from 1.11.1997 to 1.11.2003 and he claims the second benefit under the time bound Career Growth Scheme w.e.f. 1.11.2003. By the impugned order the petitioner was granted the first benefit of 8 years' service on 25.7.2002 instead of 1.11.1997. Thus, the period of 8 years of first benefit was extended, so the second benefit accrued under the G.O. of 1995, was also postponed and granted on later dates viz, 25.7.2002, 25.7.2008 and 25.7.2012 respectively. Thus, respondents had not considered the punishment which had accrued to the petitioner in granting the second benefit to him. Likewise, the next benefit, which was to accrue to the petitioner on 1.11.2009, that was granted on 25.7.2012. Thus, the period of getting the benefit under the Government order was given on a different date. While considering these benefits the case of the petitioner had not been considered vis-à-vis penalties imposed upon the him. The Government Order (Annexure-A-3) clearly provides

that granting of the said benefit is a subjective satisfaction of the respondents subject to the guidelines laid down in the Government Order. The principle of judicial review provides that if the material which is to be considered and had not been considered of either side and the decision has to be taken by the competent authority on the basis of the record available to him, the authority should be allowed to pass the suitable orders, so that the Court may scrutinize the matter after the decisions are passed by the quasi judicial authorities. In view of the above, we think it appropriate that for granting the second and third benefits, provided in the time bound Career Growth Scheme, the matter should be remitted to the S.S.P., Dehradun who is the competent authority to pass the order according to the said G.O.

16. The respondents will decide the benefits which had to be accrued to the petitioner in the light of the Government Order of 1995 of the composite State of U.P. within a period of two months after presentation of the copy of the order before the competent authority.
17. In view of the above discussion, we conclude as follows:-
  - (i) Petitioner is entitled to get the first benefit under the time bound Career Growth Scheme i.e. one increment in selection grade in the pay scale of the post of Fireman along with consequential benefits D.A. etc. and the due amount may be paid within 5 months from the date of presentation of the order before the respondents; in case the said amount is not paid within the stipulated period, the respondents will pay an interest of 6% per annum from the date of the accrual till the actual date of payment to the petitioner.
  - (ii) We remit the matter and direct the respondents to decide as to whether the petitioner is entitled to get the second and third benefits which are due in accordance of law, according to the petitioner on 1.11.2003 and 1.11.2009, or not and pass a speaking order for the same. Respondents will decide the above matter within a period of 60 days from the date of presentation of the copy of this order. The order passed by the authority would be communicated to the petitioner also.

(iii) The order of respondents as marked Annexure-1 to the claim petition is hereby quashed to the above extent. In view of the quashment, no recovery during the pendency of the matter before the respondents shall be made from the petitioner.

18. The petition is disposed accordingly. No order as to costs.

Sd/-

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

Sd/-

**(JUSTICE J.C.S.RAWAT)**  
CHAIRMAN

DATE: OCTOBER 23 , 2013  
DEHRADUN

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