

**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. 46/DB/2020

Shri Ajay Kumar, aged about 43 years, S/o Late Sri Jai Pal Singh, Senior Assistant, presently posted in the office of Joint Commissioner (Executive) State Tax, Roorkee Sambhag, Roorkee.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary (Finance) Civil Secretariat, Dehradun.
2. Secretary, Financial Anubhag-8, State of Uttarakhand, Dehradun.
3. Additional Commissioner (Upper Ayukt), State Tax (GST), Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Advocate, for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents

JUDGMENT

DATED: MARCH 31, 2021

Per: Rajeev Gupta, Vice Chairman (A)

1. This claim petition has been filed by the petitioner for seeking the following reliefs:

“(i) The Hon'ble Tribunal may kindly be directed to the Respondents to promote the petitioner from the post of Junior Assistant. “Kanishth Sahayak” to Pravar Assistant “Pravar Sahayak” notionally w.e.f. 02.12.2011 as when his juniors were promoted actually from the date the effect of minor punishment/censure entry was over i.e. 21.09.2013 giving the benefits of additional salary w.e.f 21.09.2013 and entitled for fixation of on the date of promotion i.e. w.e.f. 02.12.2011 and subsequently annual increment of this period shall to be counted as qualifying service period, on the promoted post for next higher promotion.

(ii) The Hon'ble Tribunal may kindly be directed to promote the petitioner from the post of Varishth Sahayak to Pradhan Sahayak w.e.f. 23.10.2015 when his juniors were promoted with financial benefits.

(iii) The Hon'ble Tribunal may kindly be directed to the respondents to promote the petitioner from the post of Pradhan Sahayak to Prashasanik Adhikari w.e.f. 01.07.2019 when the junior were promoted with financial benefits an arrears of pay.

(iv) To grant all the consequential benefits with arrears of pay arising due to promotion under the above relief clause 8(i) to 8(iii) with interest @8% per annum.

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

(vi) To award the cost of this petition."

2. The respondents have filed Counter Affidavit against which, petitioner filed Rejoinder Affidavit. Respondents further filed Supplementary C.A. against which Supplementary R.A. has been filed by the petitioner.

3. Briefly, the facts of the case are as follows:

The petitioner was appointed on the post of Junior Assistant in the respondent department on 03.01.2006. He was given a punishment of censure entry and stoppage of one increment without cumulative effect on 21.09.2010. Petitioner's appeal against this punishment was dismissed. Subsequently, petitioner approached this Tribunal which again upheld the punishment awarded to the petitioner. Petitioner's writ petition in the Hon'ble High Court, challenging the punishment awarded to him was also dismissed on 12.07.2018.

Petitioner was confirmed w.e.f. 02.01.2008 *vide* letter dated 27.10.2018. Due to the censure entry against him, petitioner's promotion was delayed and certain persons were promoted on 02.12.2011 from the post of Junior Assistant to Senior Assistant, on 23.10.2015 from the post of Senior Assistant to *Pradhan Sayayak* and on 01.07.2019 from the post of *Pradhan Sahayak* to Administrative Officer. The petitioner was given promotion from the post of Junior Assistant to the post of Senior Assistant

only *vide* order dated 08.07.2019 along with promotion of very junior persons.

Petitioner's various representations requesting for promotion from the dates of juniors have been rejected. The Additional Commissioner, State Tax, Hardwar Zone, Hardwar *vide* his letter dated 13.05.2019 (Annexure: A12) had recommended notional promotion of the petitioner to the Commissioner, State Tax.

4. We have heard learned Counsel for the petitioner and Learned A.P.O. We will advert to their pleadings and arguments in the following discussion:

Discussion:

5. The petitioner has claimed that the effect of the 'censure entry' was over after three years i.e., on 21.09.2013 and he should be given first promotion actually from this date and notionally from the date of promotion of his juniors i.e. 02.12.2011. Respondents have contended that as per the *Uttarakhand (Lok Sewa Ayog Ki Paridhi Ke Bahar) Rajyadheen Sewaon Main Padonnati Ke Liye Chayan Prakriya Niyamawali, 2013 (Annexure: 1 to Supplementary C.A.)*, the Annual Confidential Reports of latest five years have to be seen. Since the petitioner was awarded 'censure entry' on 21.09.2010, its effect was upto five years i.e. 21.09.2015. Regarding notional promotion, Office Memorandum dated 11.06.2003 of the Personnel Department of Uttarakhand Government (Annexure: 2 to Supplementary C.A.) states that notional promotion is to be considered from the date of promotion of the juniors, but the restriction is that for notional promotion from such date, the concerned Government servant should be found fit by the Selection Committee. Since the 'censure entry' was awarded to the petitioner on 21.09.2010, he cannot be given notional promotion from the date of promotion of his juniors i.e. 02.12.2011 as this entry will figure in the five years' service record preceding this date. Replying to the question as to why the petitioner was not granted promotion w.e.f. 21.09.2015, it has been

stated on behalf of the respondents that the petitioner had challenged the punishment awarded to him in this Tribunal and subsequently in the Hon'ble High Court. His writ petition was finally decided on 12.07.2018 and only after that he has been given promotion. Respondents have also pointed out that from 21.09.2015 to 08.07.2019, no DPC has been held for promotion from the post of Junior Assistant to the post of Senior Assistant.

6. In the Supplementary R.A., the petitioner has stated that the effect of punishment was over after expiry of five years i.e. 21.09.2015 and thereafter, the petitioner was entitled for all the benefits of promotion actually from 21.09.2015 and notionally from the date of promotion of his juniors. He has further stated that his date of appointment was 03.01.2006 and his confirmation was not declared due to litigation about the censure entry and after the decision of Hon'ble High Court on 12.07.2018, the petitioner was regularized/confirmed *vide* order dated 22.10.2018 *w.e.f.* 01.02.2008 which was the due date after completion of two years of service. Similarly, the petitioner is entitled to be promoted notionally from the dates of promotions of the juniors and actually from the date when the effect of censure entry was over. It has been argued by learned Counsel for the petitioner that the case of petitioner is squarely covered by the judgment dated 06.05.2020 of this Tribunal in similar claim petition No.73/DB/2019, *vide* which promotion to the petitioner of that claim petition was ordered to be given, actually from the date when the effect of the censure entry over and notionally from the date when his juniors were promoted. This judgment of the Tribunal and certain other case-laws have also been cited in the pleadings of the petitioner and argued by his learned Counsel.

7. We find no force in the contention of the respondents that delay in the promotion of the petitioner after 21.09.2015 was due to the pendency of the dispute about censure entry in Hon'ble High Court or that no DPC for promotion from the post of Junior Assistant to Senior Assistant was held from 21.09.2015 to 08.07.2019. The petitioner deserved to be

promoted on 21.09.2015 as the effect of 'censure entry' was over at that time and if the Hon'ble High Court had subsequently quashed the punishment awarded to the petitioner, he would have been eligible for promotion even from an earlier date when his juniors were promoted. Therefore, we hold that the petitioner deserves to be considered for promotion w.e.f. 21.09.2015.

8. Learned Counsel for the petitioner has argued that the petitioner deserves to be notionally promoted from the date of promotion of his juniors as has been ordered by this Tribunal in Claim Petition No. 73/DB/2019, Ravindra Kumar vs. State of Uttarakhand & another. The relevant para 10 of this Tribunal's judgment dated 06.05.2020 is reproduced below:

"10. The petitioner has been subsequently promoted to the post of Head Operator w.e.f. 19.02.2017. As per the departmental orders, the fact of censure entry was to be effective for three years, which period expired on 17.11.2016. There is no doubt that the petitioner could have been promoted w.e.f. 18.11.2016. The petitioner is demanding promotion w.e.f. 16.07.2013, the date of promotion of his juniors and payment of salary and other benefits of promoted post from that date, with interest thereon. In the DPC held on 09.07.2013, the petitioner was rightly not considered for promotion as he had not passed the Grade-II examination, which he passed subsequently on 14.10.2013. The first question that arises is, whether after passing the examination, if there was nothing else against him, could he have been promoted from the earlier date i.e., 16.07.2013, the date from which his juniors were promoted. While the relevant Rules do not prescribe the passing of this examination as a mandatory condition for granting promotion, the requirement of passing Rules and subsequently confirmation of the person on the lower post cannot be ignored by any DPC. However, a view can be taken that after the examination has been passed, the promotion can be given notionally from the previous date when the juniors have been promoted and actually after the date the examination has been passed."

It is clear from the above that in *Ravindra Kumar's* case after his passing the Grade-II examination on 14.10.2013, there was nothing

against him to promote him w.e.f. 16.07.2013, the date of promotion of his juniors. The 'censure entry' was awarded to him on 18.11.2013, which could not be considered against his notional promotion w.e.f. 16.07.2013. While in the case of the present claim petitioner, 'censure entry' has been awarded on 21.09.2010 i.e. within five years preceding the date of promotion of his juniors i.e. 02.12.2011. Therefore, the present claim petitioner is not fit to be promoted notionally w.e.f. 02.12.2011 and his notional promotion can be considered only on or after the date falling after 5 years from awarding of this censure entry i.e. 21.09.2015. The following case laws have been cited by learned Counsel for the petitioner:

- (i) Coal India Ltd. & Ors vs. Saroj Kumar Mishra, 2007 0 AIR (SC) 1706.
- (ii) Kedar Nath vs. Union of India, AIR 1994 0 Supreme (SC) 651.
- (iii) Kalawati Thakur and Ors vs. Union of India and another, AIR 1998 SC 1094.
- (iv) Union of India & Ors vs. Dr. (Smt.) Sudha Salhan, 1998(1) Supreme 501.

9. The perusal of these cases laws reveals the following:

- (i) *Coal India Ltd. & Ors vs. Saroj Kumar Mishra (Supra)*, relates to the case where promotion was delayed due to pendency of vigilance case. In the present case, a punishment has been awarded to the petitioner before the date of promotion of his juniors. The facts of the case law are different from the facts of the case in hand.
- (ii) In the matter of *Kedar Nath vs. Union of India (Supra)*, the Central Administrative Tribunal had given the direction that the appellant will also be considered for promotion as Assistant Sub-Inspector and Sub-Inspector from the date, his next junior was promoted. Learned Senior Counsel for the Union of India tried to point out before the Hon'ble Apex Court that his case was considered but he was not found fit for promotion. The Hon'ble Apex Court observed that- *no such averment or argument seems to have been made before the tribunal as we do not find*

mention thereof in the impugned order. If that was so it should have been specifically averred in the pleadings in which case the tribunal would have dealt with it. If the tribunal omitted to deal with it despite the prayer having been made, the proper course would be to request the tribunal to reconsider his case.

The above shows that for promotion from the date, on which next junior has been promoted, one has to be found fit for promotion.

(iii) *Kalawati Thakur and Ors vs. Union of India and another (Supra)*, deals with the issue of CRPF women Sub-Inspectors being entitled to the same benefit as are granted to the male Sub-Inspectors and no issue of punishment or censure entry is involved.

(iv) *Union of India & Ors vs. Dr. (Smt.) Sudha Salhan (supra)*, this case lays down the following service law:

“Promotion-date on which name of a person is considered by Departmental Promotion Committee for promotion-If person is neither under suspension nor has any departmental proceedings been initiated and if found meritorious and suitable-He has to be brought on select list-“Sealed cover” procedure cannot be adopted in such case.”

This case also has no relevance to the present case in hand.

10. The petitioner cannot be given notional promotion from the date of promotion of his juniors i.e. 02.12.2011 as the ‘censure entry’ awarded to the petitioner on 21.09.2010 will figure in the five years’ service record preceding this date and render him unfit for promotion from this date. His notional promotion can only be considered after the period of five years.

11. The petitioner deserves to be considered for promotion to the post of Senior Assistant *w.e.f.* 21.09.2015 notionally with all related service benefits. He also deserves to be considered for further promotions to the posts of *Pradhan Sahayak* and Administrative Officer subsequently in accordance with the relevant Service Rules, as his juniors have been promoted to these posts. *Uttarakhand Rajyadheen Sewaon Ke Antargat*

Lipik Vargeeya Sanvarg Ke Padon Par Paddonatti Hetu Patrata Avadhi Ka Nirdharan (Sanshodhan) Niyamawali, 2015 (annexure 3 to Supplementary C.A.), prescribes that for promotion to the post of *Pradhan Sahayak*, minimum three years of service as Senior Assistant and at least 10 years of service on subordinate posts is required. Some of the petitioner's juniors got promoted to this post on 23.10.2015. From the post of Senior Assistant, he can be considered for promotion to the post of *Pradhan Sahayak* only on 21.09.2018 (after three years of deemed working as Senior Assistant), but this period of three years can be suitably relaxed by the Government as similar relaxations have been granted to some other persons junior to the petitioner for considering their promotion. After the petitioner is promoted as *Pradhan Sahayak*, he can be further considered for promotion to the post of Administrative Officer after minimum three years of service as *Pradhan Sahayak* according to the above *Niyamawali* of 2015.

12. On the basis of the above analysis, we hold that the petitioner is entitled to be considered for notional promotion to the post of Senior Assistant w.e.f. 21.09.2015 with all related service benefits and further promotions as detailed above. The respondents are directed to convene a Departmental Promotion Committee (DPC) to consider the promotions of the petitioner as above, within a period of two months from the date of presentation of certified copy of this order. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN(A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 31, 2021
DEHRADUN

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