

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO.10/NB/DB/2021

Deepak Negi, aged about 40 years, s/o Sri Khilap Singh Negi, presently serving as Lecturer (Computer Science and Engineering), Government Polytechnic Jakhnidhar, New Tehri, District Tehri Garhwal.

.....Petitioner

vs.

State of Uttarakhand, through Secretary, Technical Education Department, Government of Uttarakhand, Dehradun.

.....Respondent

Present: Sri Bhagwat Mehra, Advocate, for the petitioner
Sri Kishor Kumar, A.P.O., for the Respondent

JUDGMENT

DATED: DECEMBER 20, 2021

Justice U.C.Dhyani (Oral)

RELIEFS CLAIMED

By means of the present claim petition, the petitioner seeks following reliefs:

"I. To declare the inaction on the part of the respondents in the matter, as arbitrary and illegal.

II. To direct the Respondent to forthwith hold review DPC for considering the claim of the petitioner for promotion to the post of Head of Department (Computer Science and Engineering), w.e.f. 14.10.2015, when as many as 05 juniors to him were promoted to the said post.

III. *To direct the Respondent to promote the petitioner to the post of Head of Department (Computer Science and Engineering), from due date i.e. 14.10.2015, when as many as 5 juniors to him were promoted to the said post.*

IV. *To direct the Respondent to grant all consequential benefits to the petitioner from due date.*

V. *To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

VI. *To allow the claim petition with cost."*

BRIEF FACTS

1. The petitioner was appointed on regular and substantive basis on the post of Lecturer (Computer Science and Engineering), Government Polytechnic *vide* G.O. dated 30.12.2008. He joined duties on 28.01.2009. The said appointment was made on the recommendation of the Uttarakhand Public Service Commission. His initial appointment was in the pay scale of Rs. 8000-13500/-

Disciplinary proceedings were initiated against the petitioner *vide* order dated 27.08.2015. The petitioner has assailed the charge sheet on various grounds. Such grounds have been mentioned by the petitioner in the body of the claim petition itself. The Tribunal does not feel it necessary to reproduce the same, for the sake of brevity.

A DPC for promotion in Computer Science Department for the post of Head of the Department was conducted on 02.09.2015. As consequence thereof, promotion orders were issued in respect of 5 persons, who were junior to the petitioner, on 14.10.2015. They were promoted to the post of HOD.

According to the petitioner, he has been exonerated from all the allegations levelled against him. It was, therefore, incumbent upon the respondent no. 1 to hold a review DPC and to grant promotion to the petitioner to the post of HOD from due date *i.e.* 14.10.2015, when his juniors were promoted to the said post. There was nothing adverse against the

petitioner except the pendency of the disciplinary proceedings, which have been closed *vide* order dated 29.07.2020.

Other relevant facts necessary for adjudication of present claim petition, will be set out subsequently, while discussing the merits of the claim petition.

INTERIM ORDER

2. When interim relief application was filed by the petitioner, this Tribunal passed an order on 04.08.2021, as follows:

“An interim relief application has been filed by the petitioner to decide the instant claim petition today itself or at the earliest, or, alternately pass interim order as deem fit and proper.

It is the submission of learned Counsel for the petitioner that since the written test for the post of Head of Department (Computer Science and Engineering) has been convened on 06.08.2021 therefore, urgent hearing is required on interim relief application, although claim petition has been listed on 09.08.2021 for filing Counter Affidavit.

Having heard learned Counsel for the parties on interim relief application and having considered the facts, as stated in the interim relief application, it is provided, as an interim measure, that petitioner’s participation in the examination for Head of Department (Computer Science and Engineering) shall be without prejudice to his rights and contentions in present claim petition.

Interim relief application is thus disposed of.”

Learned Counsel for the petitioner informed the Bench that the petitioner participated in the examination for HOD (Computer Science Engineering) and the same has been kept in a sealed cover.

DISCUSSION

3. Office Memorandum dated 29.07.2020 (Annexure: A11) has been filed to show that the departmental proceedings were concluded by the disciplinary authority, conditionally, by stating that the delinquent petitioner shall improve his conduct and shall not repeat (the mistake) in

future. No punishment, major or minor, has therefore, been awarded to the petitioner.

4. The imputation against the petitioner was that he remained absent for months together and thereafter applied for leaves. Sri Rajeev Singh, Joint Director, Technical Education was appointed as Inquiry Officer. According to the inquiry officer, the petitioner remained absent for two years and 10 months, out of his initial service of 4 years 10 months, on different dates and was therefore, careless in discharging his duties. The reply of the petitioner was that the circumstances compelled him to avail such leaves. The petitioner also stated before the Inquiry Officer that he was never given warning (for his conduct).

5.1 Another imputation against the petitioner was that he did Computer Course, from outside the State, without taking prior departmental permission.

5.2 Disciplinary Authority, in his order dated 29.07.2020 (Annexure: A11), has concluded that the inquiry officer has not given any finding as regards the fact that the petitioner took leaves under (compelling) circumstances. It was also mentioned in the Annexure: A11 that leave cannot be taken as a matter of right under Fundamental Rules 67 and 73 read with Subsidiary Rule 97, Financial Handbook, Vol. II, Part 2 to 4.

5.3 Inquiry officer has further observed that due to long leave of the petitioner, intermittently, affected teaching and had also adverse impact on other faculty members. The delinquent petitioner availed such long leaves without completing his probation period.

5.4 The Disciplinary Authority, in his order dated 29.07.2020 has also mentioned the replies of the delinquent to conclude that the departmental proceedings are being closed conditionally against the petitioner, to improve upon his conduct and not to repeat (such mistake) in future.

5. The Tribunal is of the view that the conditions, which were mentioned while closing the departmental inquiry, are not punishments

under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. Such Rules are being reproduced herein below for convenience:

“3. Penalties- *The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servant-*

(a) **Minor Penalties-**

- (i) *Censure;*
- (ii) *Withholding of increments for a specified period;*
- (iii) *Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;*
- (iv) *Fine in case of persons holding Group “D” posts*

Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

(b) **Major Penalties-**

- (i) *Withholding of increments with cumulative effect;*
- (ii) *Reduction to a lower post or grade or time scale or to lower stage in a time scale;*
- (iii) *Removal from the Service which does not disqualify from future employment;*
- (iv) *Dismissal from the Service, which disqualifies from future employment.*

Explanation:- *The following shall not amount to penalty within the meaning of this Rule, namely:-*

- (i) *Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to full any other condition in accordance with the rules or orders governing the service;*
- (ii) *Reversion of a person appointed on probation to the Service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation;*
- (iii) *Termination of the Service of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the Service for the rules and orders governing such probation.”*

6. The conditions imposed upon the petitioner, while closing the departmental proceedings vide order dated 29.07.2020 (Annexure: A11) are not the punishments under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. This Tribunal has, therefore, no hesitation in coming to the conclusion that the sole respondent should be directed to hold review DPC, by opening sealed cover, for considering

the claim of the petitioner for promotion to the post of Head of Department (Computer Science and Engineering) *w.e.f.* 14.10.2015, when his juniors were promoted to such post.

7. Order accordingly.

ORDER

8. The claim petition is disposed of by directing the sole respondent to forthwith conduct review DPC for considering the claim of the petitioner for promotion to the post of Head of Department (Computer Science and Engineering) *w.e.f.* 14.10.2015, when his juniors were promoted to the said post.

9. In the circumstances, there shall be no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 20, 2021
DEHRADUN.
KNP