

Virtual

**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)

**REVIEW APPLICATION NO. 01/NB/DB/2022
[IN CLAIM PETITION NO. 60/NB/DB/2020]**

Smt. Pushpa Arya, aged about 58 years, W/o Sri Daleep Kumar Arya, R/o Uday Vihar Colony, Mukhani, Haldwani, District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Cooperative, Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Managing Director, Uttarakhand State Cooperative Federation Limited, UCF Sadan, Deep Nagar Road, Vishnu Vihar, Dehradun.
3. Director, Soyabean Project, Halduchaur, A Unit of Uttarakhand State Cooperative Federation Limited, Soyabean and Vanaspati Industries Complex, Halduchaur, District Nainital.

.....Respondents

Present: Sri Tarun Prakash Singh Takuli, Advocate for the review applicant.
Sri Kishore Kumar, A.P.O. for the respondent No. 1
Sri Subhash Upadhyay, Advocate for the Respondents No. 2 & 3.

JUDGMENT

DATED: JANUARY 13, 2022

Justice U.C.Dhyani (Oral)

By means of present review petition, the review applicant seeks the following relief:

“..... that this Hon'ble Tribunal may graciously be pleased to allow the present review application by setting aside/ quash the judgment and order dated 31.03.2021 passed by the Hon'ble

Tribunal in claim petition No. 60/NB/DB/2020, Smt. Pushpa Arya vs. State of Uttarakhand & others, and further be pleased to allow the claim petition of the petitioner, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.”

2. It will be apposite to reproduce the judgment dated 31.03.2021, passed by this Tribunal in Claim Petition No. 60/NB/DB/2020, Smt. Pushpa Arya vs. State & others, review of which has been sought by the review applicant, to understand the controversy in hand, as below:

“1. The petitioner has filed present claim petition for the following reliefs:-

“i. To pass an order setting aside the order dated 11.08.2020 (Annexure No. 1 to the claim petition).

ii. To pass an order directing the respondents to promote the applicant on the post of District Manager/Assistant Manager/Office Superintendent on the basis of her length of service.

iii. To pass an order summoning the whole service record of the employees working in the office which will show the actual position of the irregularity made against the applicant in regard to her promotional proceeding. iv. To pass an order directing the respondent No. 1 to withdraw the order dated 11.08.2020 and fix the grade pay of the applicant on the basis of 7th Pay Commission taking into the consideration the length of service of the applicant. v. Any other relief which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.”

2. As per the petitioner’s case, on 06.12.1985, she was appointed as Clerk/Typist in Soyabeen and Vanaspati Industries Complex, Halduchaur, District Nainital. On 26.11.1987, she was again appointed on the post of Typist on *ad-hoc* basis for a period of 89 days, in the pay scale of Rs. 354-550 in the Soyabeen and Vanaspati Unit, run by U.P. Cooperative Federation.

3. On 19.05.1991, petitioner was given the pay scale of Office Assistant but despite giving her higher pay scale of Rs. 1200-2040, her promotion was not done. The pay scales of the employees were further revised on 05.01.1995 as per the approval of the Management Committee. Since 1993, petitioner continuously sent representations to the higher authorities for her promotion on the post of Office Superintendent, as she acquired the eligibility for such post but her request was not responded. On completion of 8 years of service as Office Assistant, petitioner was given increment on 19.05.1999. In the year 2000, when State of Uttarakhand came into existence, new Federation of Uttarakhand was formed. The petitioner opted for Uttarakhand and she was absorbed therein, as the Soyabeen and Vanaspati Industrial Complex was taken over by the Federation of Uttarakhand.

4. Between the year 2003-04, various similarly situated employees were promoted and given appointment on higher post but the matter of the petitioner was not considered. The petitioner, time and again represented to her higher authorities that despite completion of 28

years of service, no promotion was given to her and there being a very short period, left in her retirement, she requested for her promotion, but no action was done in this respect.

5. Very late, on 11.08.2020, respondents promoted the petitioner on the post of Senior Assistant for which, she was entitled in the year 2003-04 and, in that promotion order, her pay scale has been reduced from Rs. 4800 to Rs.4200. Such act was not as per the law hence, petitioner represented against such promotion order with the contention that the department has discriminated petitioner with others and the other officials having less qualifications were given higher benefit in time whereas, petitioner entitled for promotion to the post of District Manager/Assistant Manager was deprived from the due benefit. It is also contended that the respondents illegally promoted her to the post of Senior Assistant after such a long period, for which, she was entitled on 01.01.2006 hence, her promotion was only an eyewash. Her Grade Pay was downgraded from Rs. 4800 to Rs. 4200. The petitioner who is a Scheduled Caste candidate has been deprived from her genuine fundamental right, other unsuitable candidates were promoted and she was treated with discrimination. She is due for retirement in the month of March, 2021. Aggrieved by the inaction of respondent, and very late promotion order dated 11.08.2020, petitioner has approached this Court asking for the reliefs mentioned, as above.

6. Respondent department have opposed the petition with the contention that the petitioner has stated the wrong facts in her claim petition. She had earlier approached the Hon'ble High Court, concealing material facts and that petition was also withdrawn.

7. It is also contended that the Uttarakhand Cooperative Federation is not a unit of the Government, neither it is under the control of the Cooperative Secretariat of the Government. Cooperative Federation is an apex society governed by its own bye-laws, without the control of the State Govt. and elected members govern the day-to-day functions of the society. Even there is no funding from the government, hence, the order issued by the Govt. regarding pay scale or its revision are not applicable *ipso-facto* in the Federation and the same are made applicable by the management committee, looking into the financial condition of the Federation. Accordingly, the 6th Pay Commission recommendations, which was made applicable for the Government servant w.e.f. 01.01.2006, were allowed to the Federations' employees from the year 2018.

8. The petitioner has filed this claim petition, concealing the material facts, for claiming the post of District Manager/Assistant Manager, on the basis of her length of service, whereas, in the cadre, she was working on the post of Assistant and can only be promoted to the next higher post of Senior Assistant in her cadre. Before the Hon'ble High Court, petitioner had filed a writ petition concealing the facts and prayed to consider her case for promotion on the post of Office Superintendent by concealing some facts but the same was withdrawn. Further, petitioner also made false complaint to the SC/ST Commission for putting undue pressure on the department. Even legal notice, wrongly sent by her was duly replied by the department on 27.02.2019. Petitioner is aware of the fact that she continued to work under the U.P. Federation till December, 2004 hence, the grievance, if any, for non-consideration of her promotion till that time, can only be redressed by the U.P. Cooperative Federation, which was not impleaded as party to the petition.

9. Respondents also contended that the claim petition is liable to be dismissed on the ground of non-joinder of necessary parties. Petitioner was having knowledge of the fact that prior to 01.01.2005, she was not an employee of Uttarakhand Cooperative Federation as she was appointed under the U.P. Federation on the post of Junior Assistant. Her initial appointment was made purely on temporary basis vide order dated 26.11.1987 for 89 days on the post of Typist. In U.P. Cooperative Federation, the Junior Assistants were absorbed in the pay scale of Assistant and as such, petitioner and other junior Assistants were given the pay scale of Assistant from 01.01.1991 for 89 days. Thereafter, one day break was given to the services of the petitioner and the break system was discontinued from 19.05.1991. Till 31.12.2004, the petitioner worked under U.P. Cooperative Federation.

10. In view of the agreement between the two Corporations, petitioner was allowed to work in Uttarakhand as Assistant and on completion of 14 years of service on the post of Assistant in the pay scale of 4500-7000 (revised scale 5200-20200, Grade Pay 2800), she was granted the first promotional pay scale of Rs. 5000-8000 (revised pay scale of Rs. 9300-34800, Grade Pay Rs. 4200). Under the ACP scheme, she was further given Grade Pay of Rs. 4800 and was working in such Grade at Halduchaur. Thus, the original pay scale of the petitioner of Rs. 5200-20200, Grade Pay Rs.2800, under the ACP Scheme, after completion of 26 years of service, was upgraded in Grade Pay of Rs.4800.

11. According to the respondents, under Administrative structure of the department, the next promotional post available from the post of Assistant is the post of Senior Assistant. As per final seniority list, the persons mentioned upto Sl. No. 19 only, were promoted as Senior Assistant against 9 sanctioned vacant posts. As the petitioner was placed at Sl. No. 37 in the said seniority list dated 19.05.2010, hence she was not promoted at that time. No person junior to the petitioner was earlier promoted as Senior Assistant from the post of Assistant. Now, the petitioner has been promoted as Senior Assistant as per the seniority list settled on 11.08.2020. The Uttarakhand Cooperative Federation is not liable for any liability, which existed prior to 01.01.2005. The so-called representation of the petitioner dated 04.07.2003 was also addressed to the Managing Director, U.P. Cooperative Federation hence, petitioner herself was aware that on 04.07.2003, she was also an employee of U.P. Federation, which has not been impleaded as party.

12. According to respondents, it is wrong to say that the Grade Pay of the petitioner has been reduced. The petitioner is getting the Grade Pay of Rs.4800/- as per the ACP Scheme and the promotion to the post of Senior Assistant has been made in the corresponding grade pay of Rs. 4200/- for the post of Senior Assistant. Vide order dated 11.08.2020, various employees similarly situated, like petitioner, who were working in Grade Pay of 4800, have also been promoted to the post of Senior Assistant with Grade Pay of Rs. 4200 and salary of none of the employees, including petitioner, has been reduced. The Grade Pay of Rs.4800 is the personal pay of the petitioner, neither it has been reduced nor it will be reduced hence, such promotion order is neither arbitrary nor mischievous nor illegal. It does not take away any rights of the petitioner, rather regular promotion has been allowed to the petitioner as per the Rules.

13. It is also contended that the petitioner has levelled frivolous allegations against serving and retired officers without impleading them as party to the claim petition. Such allegations appear to be an afterthought, as no such allegations were ever raised before the Hon'ble High Court when the writ petition was previously filed. Such allegations have been made just to give colour to her case, which has no merit. The order passed on her representation is as per law and the petition has no merit and deserves to be dismissed.

14. Rejoinder Affidavit and Supplementary R.A. have also been filed on behalf of the petitioner, reiterating the same facts as have been mentioned in the claim petition.

15. We have heard both the sides and perused the record.

16. Petitioner in her claim petition has sought the reliefs for a direction to the respondents to promote her on the post of District Manager/Assistant Manager/Office Superintendent on the basis of her length of service and also sought a direction to withdraw her promotion order dated 11.08.2020 and to fix her grade pay on the basis of 7th Pay Commission, considering the length of her service.

17. Admittedly, petitioner is an employee of Uttarakhand Cooperative Federation working on the post of Assistant, was promoted by the department on the post of Senior Assistant, carrying the Grade Pay of Rs. 4200. She has challenged her promotion order on the ground that she was already getting the scale with higher grade pay of Rs. 4800 hence, her promotion order with Grade Pay of Rs. 4200/- was passed with malicious and to damage her right. It is also contended that she must have been promoted in the year 2006, when other employees were promoted and now she is entitled for further next promotion. In spite of her representations, she was not given promotions in time and her right was infringed.

18. The department has replied to her contention and submitted that her representation for promotion was decided on 03.12.2013. Even her legal notice was duly replied on 27.02.2019. She was granted promotion as per the Rules and on her turn as per the settled seniority of the employees and none of her junior was promoted earlier to her. Petitioner had come up with the case, deliberately concealing the material facts and all allegations are an afterthought.

19. Admittedly, petitioner who was appointed under U.P. Cooperative Federation Ltd. at its unit, known as Soyabean Project at Halduchaur on the post of Junior Assistant. Her appointment was made purely on temporary basis for a period of 89 days as typist. In U.P. Cooperative Federation Ltd., Junior Assistants were absorbed in the scale of Assistant and as such, petitioner and other Junior Assistants were given the pay scale of Assistant and she continued to work till 31.12.2004 under the U.P. Cooperative Federation. After division of the State, she became an employee of Uttarakhand Federation on 01.01.2005. In view of the agreement between two Federations, the petitioner was continued and allowed to work as Assistant in Uttarakhand. On completion of 14 years of service on the post of Assistant in the pay scale of Rs. 4500-7000 (revised pay scale of Rs. 5200-20200, Grade Pay 2800), she was granted first personal promotional pay scale (ACP) of Rs.

5000-8000 (revised pay scale of Rs. 9300-34800, Grade Pay of Rs. 4200). As petitioner was not promoted for a long period, hence, she was also allowed the next promotional scale under ACP scheme. This contention of the respondents has not been denied by the petitioner.

20. We find that under the ACP Scheme, petitioner was given Grade Pay of Rs. 4200 and was allowed to work in the said grade pay at Halduchaur. Under the ACP scheme, after completion of 26 years of service, she was further allowed the Grade Pay of Rs. 4800. This fact is also not disputed that under the administrative structure of the department, next promotional post from the post of "Assistant", is the post of "Senior Assistant" and to such post, persons are promoted as per their seniority. It is also clear from the record that in the final seniority list dated 19.05.2010, issued by the department, the petitioner's name figured at sl. No. 37. This seniority list was finalized after disposing of the objections on the temporary seniority list. Petitioner nowhere challenged the seniority list issued by the department on 19.05.2010. It is the case of the respondents that none of her juniors was promoted earlier to her. When, as per the cadre structure of the department, next promotional post of Assistant is Senior Assistant then the petitioner cannot claim her promotion directly from the post of Assistant to the post of Office Superintendent (next higher post from Senior Assistant). Respondents have also contended that on earlier occasion, only the candidates whose names were mentioned upto Sl. No. 19 in the seniority list were promoted as Senior Assistant against 9 sanctioned vacant posts. As the petitioner was placed lower at Sl. No. 37 in the seniority list, so she could not be promoted that time.

21. The court finds that the right to be considered for promotion, is the constitutional right of every employee, but promotion can be granted only to the extent, as the number of posts falling vacant in next cadre as per the seniority. If the employee did not get promotion for a long time, then under the ACP scheme, promotional pay scale is allowed to him. When petitioner could not get promotion due to non-vacancy, she was allowed promotional pay scale. Petitioner has not come up with the case that any of her junior in the seniority list, was ever promoted prior to her. As per the cadre structure, the petitioner was working on the post of Assistant and she was promoted to her next promotional post as Senior Assistant on 11.08.2010. We find no illegality in this procedure. The petitioner could claim her notional promotion, if any of her junior was allowed the same. But in this case, no person junior to the petitioner was promoted earlier to her and any promotion claimed by the petitioner in the years 2003, 2004 and 2005 cannot be allowed in the manner, petitioner has prayed.

22. Learned Counsel for the petitioner has argued that she is getting the Grade Pay of Rs. 4800, while she has been promoted vide order dated 11.08.2020 in the grade pay of Rs. 4200 which is a junior scale and such action of respondents is not justifiable. The department has replied to point and contended that her grade pay has not been reduced. The petitioner is getting Grade Pay of Rs. 4800 as per the ACP scheme and promotion to the post of Senior Assistant has been made in the corresponding Grade Pay of post of Senior Assistant, which is of Rs.4200. Other similarly situated employees with the petitioner, who were working in the Grade Pay of Rs. 4800 have also been promoted to the post of Senior Assistant in the grade pay of Rs. 4200 and the salary of none of the employee including the petitioner, having the Grade Pay of Rs. 4800 has been reduced nor it will be reduced.

23. We agree with this contention of the respondents that even if the petitioner has been promoted on the post of Senior Assistant, which is carrying the Grade Pay of Rs. 4200, her salary will not be and cannot be reduced as she is already getting the scale with higher Grade Pay of Rs. 4800 under the ACP scheme. Thus, the promotion order of the petitioner dated 11.08.2020, is as per the rules, it does not take away any right of the petitioner rather petitioner has been allowed the promotion on her turn. Petitioner's contention for allowing promotion with back date, cannot be accepted, because of the reason that promotion to the higher post can only be granted and allowed as per the seniority and to the next higher post when it falls vacant. Hence, in this respect, petition has no merits.

24. Petitioner also raised some points about the irregularity in the department that some other persons were allowed the benefit while petitioner was denied. Respondents have contended that other persons were of different cadre, they were not similarly situated persons, and the petitioner was allowed promotion as per her seniority. Petitioner tried to claim her right being a candidate of reserved category. It was not allowed in view of the judgment of the courts for not granting reservation in promotion.

25. We find that the contention of the petitioner about denial of her right of promotion to the senior post can only be allowed if any of her junior in the seniority list was allowed promotion before her. This was not the case of the petitioner. The petitioner never challenged the final seniority list, settled by the department in 2010, hence, her case for seeking promotion to the post of District Manager/Assistant Manager/Office Superintendent is not made out, because she was working on the post of Assistant and can only claim for promotion to the next higher post, which is admittedly the post of Senior Assistant, to which department has rightly allowed her promotion vide order dated 11.08.2020. We find that the petitioner's claim has no merit and deserves to be dismissed. Accordingly, the following order is hereby passed.

ORDER

The claim petition is hereby dismissed. No order as to costs."

3. Main grounds taken by the review applicant (petitioner) in this review application, are as follows:

3.1 Petitioner was working on the post of Assistant *w.e.f.* 19.05.1991 to 31.12.2004. After completion of 14 years of service on the post of Assistant in the pay scale of 4500-7000/-, she was granted the first promotional pay scale of Rs.5000-8000/- *w.e.f.* 19.05.2005. In the meeting convened on 10.01.2009, the Management Committee adjusted the Stenographers, working in the pay scale of Rs.5000-8000/-, on the post of Senior Assistant. The Purchase Assistants, whose educational qualification was equivalent to the Assistant, were adjusted on the posts of Assistant in the pay scale of Rs.4500-7000/-.

Petitioner was granted next higher pay scale as second financial upgradation w.e.f. 19.05.2009, in the grade pay of Rs.4600/-, with the pay scale of Rs. 9300-34800/-.

3.2 Petitioner was working on the pay scale of Senior Assistant w.e.f. 19.05.2005. However, the Stenographers who were merged on the post of Senior Assistant *vide* meeting's order dated 10.01.2009, have been promoted on the post of Assistant Manager (General)/ District Manager in the pay scale of Rs.5500-175-9000/-, from the date of joining, but the petitioner has been denied without any reason. The Purchase Assistants, who were merged on the post of Assistant *vide* meeting's order dated 10.01.2009, have also been promoted *vide* order dated 13.09.2013 on the post of Senior Assistant in the pay scale of Rs.9300-34800/-, grade pay Rs.4200/-, from the date of joining.

3.3 Petitioner was promoted *vide* impugned order dated 11.08.2020 on the post of Senior Assistant, after 07 years, from the date when similarly situated persons have been promoted on the post of District Manager/ Assistant Manager/ Office Superintendent. All these facts were in existence, but by inadvertent mistake of the petitioner, such facts could not be produced before the Tribunal in claim petition no. 60/NB/DB/20, therefore, the same are being brought by way of filing present application.

3.4 Selection grade as well as the promotional pay scale was not granted to the petitioner only because she was not promoted on the next higher post, but similarly situated employees have been promoted on the higher posts. Petitioner was also entitled for promotion on the post of District manager/ Assistant Manager/Office Superintendent as the similarly situated persons were given promotion in the year 2013, while the petitioner was getting the pay scale of Senior Assistant from 19.05.2005.

4. There is 255 days' delay in filing the review application, which is not seriously opposed by Ld. Counsel for the respondents. Section 5 of Limitation Act, 1963, applies to the review application. Moreover,

Hon'ble Apex Court has passed the order in SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020, 'that period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended *w.e.f.* 15th March 2020 onwards (*till 2nd October, 2021*).'

5 The delay in filing the review application is condoned. The application made, therefor, is allowed in the interest of justice.

6 There is very limited scope of review. Review application may be entertained when the review applicant is able to show that there is error apparent on the face of record. While going through the judgment under review, the Tribunal finds that there is no error on the face of it. Further, review application may also be entertained when there is clerical or arithmetical mistake, which is also not so in the instant case. Review application may also be allowed 'for any other sufficient reason'. But there is no other sufficient reason to indicate that the order sought to be recalled should be recalled/ reviewed in the interest of justice.

7 If due to inadvertent mistake, as admitted by the review applicant, the petitioner could not produce some documents during the pendency of claim petition, the same is not a ground for reviewing the judgment.

8 By means of present review application, the review applicant seeks to reargue the claim petition, which is not permissible in law.

9. The review application thus fails and is dismissed at the admission stage.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 13,2022

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