

**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)

**ORDERS ON INTERIM RELIEF APPLICATION**

In

**[CLAIM PETITION NO. 08/NB/DB/2022]**

Tapan Kumar vs. State of Uttarakhand

Present: Sri Sandeep Kothari, Advocate, for the petitioner

Sri Kishore Kumar, A.P.O., for the Respondent

**DATED: MARCH 29, 2022**

**Justice U.C.Dhyani, Chairman**

**Sri Rajeev Gupta, Vice Chairman(A)**

The claim petition has been filed by the petitioner for the following reliefs:

*“a) To quash the order dated 15.02.2022 passed by the respondent, whereby, the application of the petitioner dated 18.09.2021 has been rejected and the request of the petitioner to forgo the promotion granted to him vide order dated 16.09.2021 to the post of Deputy Excise Commissioner has been turned down, and the petitioner has been directed to report the joining within a period of fifteen days in Headquarter of Excise Department (Contained as Annexure No. to this petition).*

*b) To award the cost of the petition and compensation or to pass any such order or direction which this Hon'ble Tribunal may deem fit and proper.”*

2. A prayer has also been made to stay the effect and operation of the order dated 15.02.2022 passed by the respondent, as an interim measure.
3. The petitioner has filed a copy of the Office Memorandum dated 15.02.2022 (Annexure No. A1) with his claim petition along with other documents.
4. Sri Ravinath Raman, Secretary, Excise Department has narrated the facts which came to the fore on a perusal of service record relating to promotion of the petitioner. The Secretary to the respondent department at para 5 of the impugned order has given reasons as to why the petitioner's petition is liable to

be rejected. The rejection of petitioner's request for forgoing his promotion is in the teeth of present claim petition. Pleadings are yet to be exchanged. Interim relief is under consideration of this Tribunal.

5. Rule 3 of the Uttarakhand State Services Forgo of Promotion Rules, 2020 (for short, the Rules of 2020) reads as follows:

*"3. The following procedure may be adopted by the Appointing authority on the forgo of the promotion by personnel under the state services-*

*(1) On the recommendation of the Departmental Promotion Committee in the state services, a maximum period of fifteen days shall be fixed by the Appointing authority for joining in the promotion order, but in the inevitable circumstances, on the written request by the concerned personnel to take charge, additional time of fifteen days by the appointing authority may be given;*

*(2) If a personnel, by not joining the post of promotion within the prescribed period, forgo the promotion in writing for the first time, the Appointing authority may take decision based on merit in such cases;*

*(3) If the meeting of the departmental promotion committee is called again in the same selection year, the decision taken by the appointing authority as per sub-rule (2) shall be conveyed to the departmental promotion committee and recommendation of promotion of the junior personnel (eligible/fit for promotion) to the personnel forgoing the promotion may be requested;*

*Provided that the personnel forgoing the promotion shall not be able to claim the notional promotion from the date of promotion of junior notwithstanding anything in any rule or government order.*

*(4) If a written request is made by any personnel to forgo the possible selection/promotion before the departmental promotion process starts, such request shall be considered as indiscipline and under section 18(2) of the Uttarakhand Annual Transfer for Public Servants Act, 2017 the attempt to avoid possible transfer and on the basis of not taking interest in the work, etc. under section 18(4) of the Act, he may be transferred on administrative basis on his holding post;*

*(5) If a written request is made to forgo the promotion given to him by a personnel for the second time, the appointing authorities shall be able to take action as per sub-rule(3) and (4) on the request of the concerned personnel.*

*(6) If a written request is made by a personnel to forgo of promotion more than two times, notwithstanding anything contained in the Uttarakhand Government Servant Seniority Rules, 2002 or any other Rule/Government Orders, such personnel shall lose their seniority in the post of promotion and shall not be able to recover the lost seniority."*

*[Emphasis supplied]*

6. Learned Counsel for the petitioner has argued that the impugned order dated 15.02.2022 *vide* which the request of the petitioner for forgoing his promotion has been rejected, should be stayed, as it was his first request made *vide* his letter dated 18.09.2021 subsequent to the promulgation of the Rules of 2020. Even assuming for the sake of arguments that the respondent has promoted the petitioner for the second time *vide* order dated 16.09.2021 and

that the Rules of 2020 are applicable with retrospective effect, it is the right of the petitioner under the Rules of 2020 to retain his seniority upto forgoing of promotions two times. The impugned order states that before the promulgation of the rules of 2020, the petitioner has availed of the opportunity of forgoing promotions twice which is factually incorrect, according to learned Counsel for the petitioner. The respondent department has held in its earlier order dated 12.01.2021 that the Rules of 2020 do not have retrospective effect. Therefore, the request for forgoing of the promotion made by the petitioner should have been accepted and the impugned order dated 15.02.2022 needs to be stayed.

7. Learned A.P.O. has argued that the Rule 3(2) of the Rules of 2020 states that “if a personnel, by not joining the post of promotion within the prescribed period, forgoes the promotion in writing for the first time, the Appointing authority may take decision based on merit in such cases.” A bare reading of this rule clearly shows that even for forgoing promotion for the first time, the appointing authority is not bound to accept such request but has the discretion to take suitable decision based on merit. Seeing the past conduct of the petitioner and merits of the case, the respondent had taken suitable decision which calls for no interference.

8. **We find force in the arguments of the learned A.P.O. that the Rules of 2020 do not mandate that the appointing authority shall necessarily accept the request of forgoing of promotion even for the first time. Therefore, *prima facie*, we find no reason to stay the operation of the impugned order dated 15.02.2022.**

9. The interim relief application is, accordingly, dismissed.

List on 19.04.2022 for filing C.A/W.S.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

DATE: MARCH 29, 2022.

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KNP