

**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. 47/NB/DB/2023

Shyam Lal Vishwakarma, aged about 58 years, s/o Sri Madho Ram Vishwakarma, presently posted as Sub Inspector, Civil Police, Police Station- Rudrapur, District Udham Singh Nagar.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Home, Government of Uttarakhand, Dehradun.
2. Inspector General of Police (Personnel), Uttarakhand, Dehradun.
3. Director General of Police, Uttarakhand Police Headquarters, Dehradun.

..... Respondents

Present: Sri Sanjay Bhatt, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

Judgement

Dated: 07th June, 2023

Justice U.C. Dhyani (Oral)

Hon'ble High Court has been pleased to pass an order on 22.03.2023 in WPSS No. 616 of 2021, Shyam Lal Vishwakarma vs. State of Uttarakhand and others, which (order) reads as below:

“Mr. Sanjay Bhatt, Advocate, for the petitioner.

Mr. P.C. Bisht, Additional CSC, for the State/respondents.

Petitioner is a police officer and, therefore, a public servant, He has raised a service dispute before this Court. Since petitioner is a public servant, as defined under Section 2(b) of U.P. Public Service (Tribunals) Act, 1976, (as is applicable to the State of Uttarakhand), therefore, he has remedy of approaching the Tribunal constituted under the aforesaid Act.

Accordingly, writ petition is dismissed on the ground of alternative remedy.

Registry is directed to transmit the entire record of this case to the Public Services Tribunal, Bench at Nainital.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 5602 /UHC/ Service Section (S/S)/ PST/ Nainital dated 31.03.2022 of the Registrar (Judicial) of the Hon'ble High Court. The same has been registered as Claim Petition No. 47/NB/DB/2022.

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

“A- A writ, order or direction in the nature of certiorari to quash the impugned order dated 28-04-2021 whereby claim of Petitioner for promotion to the next higher post of Inspector in civil police has been rejected.

B. A writ, order or direction in the nature of mandamus commanding the Respondents to reconsider claim of Petitioner, by way of review DPC or otherwise, promotion to the next higher post of Inspector with effect from the date juniors to him were promoted *vide* order dated 31-08-2020 and consequently give him all consequential benefits including arrears of salary and seniority.

C. Any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

D. Award cost of the Petition to the present Petitioner.”

4. Facts giving rise to present petition are as follows:

4.1 Petitioner is challenging the legality of impugned order dated 28.04.2021, passed by respondent no. 2, whereby his claim for seeking promotion on the post of Inspector has been rejected. Petitioner also seeks a relief to command the

respondents to consider his claim for promotion on the post of Inspector from the date junior to him was promoted *vide* order dated 31.08.2020 and pay him all consequential benefits including arrears of salary and seniority.

4.2 As per the petition, the petitioner is senior most sub-inspector and juniors to him have been promoted on the post of Inspector *vide* order dated 31.08.2020 but the petitioner was denied promotion without disclosing any valid reason. Probably, the reason for denial of promotion to him was one adverse entry in his service record but without resorting to the procedure of sealed cover, promotion was denied to him. Now, the order of adverse entry dated 31.08.2018 has been cancelled by the superior authority *vide* order dated 04.12.2020 but his representation for seeking redressal of his grievance has been rejected, which has prompted the petitioner to file present petition.

4.3 On 06.04.2017, one FIR No. 247/2017 was registered at P.S. Rudrapur relating to offences punishable under Sections 302, 419 and 420 I.P.C. After initial investigation, which was entrusted to other sub-inspectors, from time to time, the investigation was handed over to the petitioner. This was done *vide* order dated 11.06.2017. During April to June, 2017, as many as 43 cases were entrusted to the petitioner for investigation, therefore, it was not possible for him to complete the investigation promptly. On 17.07.2017, a show cause notice was issued to the petitioner calling upon him to be present before Additional Superintendent of Police on 19.07.2017 for recording the statement with regard to the negligence in the investigation of FIR No. 247/2017 under Sections 302, 419 and 420 I.P.C registered at P.S. Rudrapur, District Udham Singh Nagar. According to the petition, the investigation of such criminal case was entrusted to him on 20.05.2017. The petitioner replied to the show cause notice. He stated, among other things, in his reply,

that he did the investigation diligently, he was also on medical leave for about 13 days and some of the papers like inquest report and post mortem report were not handed over to him by his predecessors i.e. earlier investigating officers. The enquiry officer submitted report on 15.03.2018 holding the petitioner guilty of negligence in not completing the investigation in time. The disciplinary authority accepted the enquiry report and issued show cause to him about proposed punishment. Show cause notice was again duly replied by the petitioner. According to the petition, without considering the reply submitted by the petitioner by him and other material available on record, S.S.P., Udham Singh Nagar, passed impugned order dated 29.06.2018, whereby a censure entry was awarded to him under Rule 14(2) of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (herein after referred to as 'Rules of 1991') (copy of punishment order dated 29.06.2018: Annexure 1).

4.4 Aggrieved by such punishment order, petitioner filed statutory appeal before the Inspector General of Police under Rule 20 of the Rules 1991. The appellate authority dismissed the appeal *vide* order dated 31.08.2018. Petitioner filed writ petition, being WPSS No. 01/2019. Hon'ble Court disposed of the writ petition on the ground of alternate remedy. The petitioner filed statutory revision before the next higher authority on 05.09.2020. The revisional authority considered the matter at length and passed an order on 04.12.2020. The impugned order of punishment dated 29.03.2018 and appellate order dated 31.08.2018 were set aside *vide* order dated 04.12.2020 (copy of the order: Annexure 3).

4.5 During pendency of the petition, a promotional exercise was undertaken by publishing a final seniority list. In the final seniority list dated 30.07.2020, the name of the petitioner was at serial no. 2 (copy of final seniority list dated 30.07.2020:

Annexure 4). On 31.08.2020, promotion orders were passed, whereby 88 sub-inspectors were promoted on the next higher post of Inspector. Except one Sri Jitendra Singh Garbyal, whose name was at the top of seniority list, all others are junior to the petitioner.

4.6 It may be noted here that writ petition, being WPSS No. 01/2019 was pending for disposal when the promotional exercise was undertaken by the respondent-department. It was incumbent upon the respondents either to keep the promotional exercise on hold or keep the result of D.P.C. under sealed cover till the decision of writ petition or subsequent proceedings but the same was not done. Revisional authority passed the order on 04.12.2020, whereby the punishment order, which was affirmed by the appellate authority, was set aside. The petitioner, therefore, deserved to be given promotion on the next higher post. Petitioner moved a representation to the S.S.P., Udham Singh Nagar, on 05.12.2020 seeking promotion to the next higher post. Petitioner also moved a representation to the Director General of Police on 01.01.2021 seeking promotion on the next higher post. No decision was taken on it. Petitioner would reach the age of superannuation on 30.06.2023. Therefore, petitioner is seeking timely disposal of his representation so that he may get promotion and other benefits, which are being given to his juniors. The Hon'ble Court directed respondent no. 2, in writ petition *vide* order dated 26.03.2021, to take a final decision on the representation moved by the petitioner within a stipulated time (copy Annexure 5). Representation of the petitioner has been decided on 28.04.2021. The claim of the petitioner seeking promotion to the post of Inspector has been rejected on the ground that on the date of D.P.C. i.e. 31.08.2020, there was an adverse entry in the service record of the petitioner, which disentitled him from being promoted to the next higher post and that the adverse entry was expunged on 04.12.2020, therefore, his claim for promotion

would be considered only in respect of future vacancies. The impugned order also discloses that against 89 vacant posts, only 88 persons were found suitable and the result with regard to one similarly situated person was kept in sealed cover (copy Annexure 7).

5. The question is, whether the petitioner is entitled to get promotion retrospectively or prospectively after his order of punishment has been set aside by the competent authority?

6. It is the submission of learned Counsel for the petitioner that the reasoning given in the impugned order cannot sustain for the reason that instead of declaring the petitioner ineligible for promotion, his candidature ought to have been considered and the result could be kept in sealed cover procedure, as was done in the case of similarly situated person, which is evident from disclosure made in clause 4 of the impugned order dated 28.04.2021. Dispute with regard to adverse entry was pending before the competent court during the process of D.P.C. It is also the submission of learned Counsel for the petitioner that the only embargo against the candidature of petitioner was adverse entry against him *vide* order dated 29.06.2018, which was objected by the petitioner before the appellate authority, then before the Hon'ble Court at the time of D.P.C. and finally under the direction of the Court, the same was challenged before the revisional authority. The revisional authority set aside the adverse entry *vide* order dated 04.12.2020, therefore, after order of revisional authority, petitioner became entitled to get the promotion from the date his juniors have been promoted i.e. 31.08.2020 with all consequential benefits.

7. Learned Counsel for the petitioner also submitted that as per Rule 16(1) of the Uttarakhand Police Sub Inspector and Inspector (Civil Police/ Intelligence) Service Rules, 2018, as

amended in 2019, the criterion for promotion is seniority. Sub-Rule 3(b) provides that a candidate must have completed 10 years of service on 1st July of recruitment year and service record of past five years must be satisfactory. Meaning thereby, there should not be any adverse entry in the service record for the last five years in the form of major penalty, minor penalty or doubtful integrity (copy of Rules: Annexure 8).

8. Learned Counsel for the petitioner further submitted that the petitioner has right to have his case considered for promotion on his turn. In order to avoid arbitrariness, the respondents were obliged to follow uniform principles but this was not done because in case of one employee, sealed cover procedure was adopted, whereas in the case of petitioner, no such procedure was resorted to. Now, when the petitioner is exonerated from the punishment of adverse remark, petitioner is suitable and is entitled to get promotion from the date on which his juniors were promoted.

9. The petition is supported by the affidavit of the petitioner.

10. The documents have also been filed in support of the contents of the petition.

11. Counter affidavit has been filed on behalf of the respondent no. 2 by Sri Pushpak Jyoti, Inspector General of Police (Personnel), Uttarakhand. In the counter affidavit, Rule 16(1) of the Uttarakhand Police Sub Inspector and Inspector (Civil Police-/ Intelligence) Service Rules, 2018, and Rule 5(b) of the Uttarakhand Police Sub Inspector and Inspector (Civil Police-/ Intelligence) Amendment Service Rules , 2019, have been quoted, to state that as per the provisions contained in the Rules of 2018 and amendment Rules 2019, the selection committee for selection year 2017-18, 2018-19 and 2019-20 made recommendations for promotion of 88 eligible sub-inspectors

against 89 posts, based on seniority subject to rejection of unfit. Since the case of one sub-inspector was under consideration before the Hon'ble Court, therefore, the result was kept in a sealed cover. After the recommendation of the selection committee, promotion orders of 88 sub-inspectors were issued on 31.08.2020. Sub-Inspectors were made Inspectors. The petitioner was awarded 'censure entry' *vide* order dated 29.06.2018 by S.S.P., Udham Singh Nagar and during the selection year 2017-18, 2018-19 and 2019-20, the censure entry was existing in his character roll. Since five years' period of censure entry was not completed, therefore, the selection committee did not recommend his name for promotion. He was not found eligible for promotion (copy of office order dated 20.06.2018: Annexure B1).

11.1 According to C.A., in the year, 2016, the name of the petitioner was included in the promotional exercise but he could not be promoted. When promotional exercise was conducted on 31.08.2020, censure entry dated 29.06.2018 was in existence, therefore, the petitioner was not found eligible for promotion to the post of Inspector (Civil Police). The censure entry dated 29.06.2018 has been expunged *vide* office order dated 04.12.2020. As a consequence, on the basis of recommendation of the special committee, petitioner has been promoted as Inspector (Civil Police) *vide* order dated 22.06.2021 (copy: Annexure B2). It is clear that the name of the petitioner was included in the promotional exercise but on account of the fact that he had censure entry, therefore, he could not be promoted earlier and now, subsequently, he has been given promotion as Inspector (Civil Police).

12. Learned A.P.O. submitted that as per G.O. dated 13.05.2003, the following conditions for keeping the recommendation in 'sealed cover' are prescribed:

- (a) If the employee is under suspension.
- (b) If the charge-sheet in disciplinary proceedings has been submitted to the employee.
- (c) If criminal proceedings are pending against the employee and charge-sheet has been submitted.

The case of the petitioner was not covered by any of the above three situations, therefore, there was no occasion for keeping his matter in the sealed cover (copy of G.O. dated 13.05.2003: Annexure B3)

13. Learned A.P.O. further submitted that at the time of promotional exercise on 31.08.2020, the censure entry was existing in the character roll of the petitioner, therefore, he was found ineligible at that time and could not be promoted as Inspector but subsequently *vide* order dated 22.06.2021, he has been granted promotion as Inspector and in the Service Rules, there is no provision for granting promotion from the back date.

14. In reply, learned Counsel for the petitioner submitted that the petitioner visited with minor punishment, which was subsequently set aside by the revisional authority and in the meanwhile juniors to him were promoted on the post of Inspector *w.e.f.* 31.08.2020 but the petitioner's claim was rejected *vide* impugned order dated 28.04.2021. Now, the petitioner has been given promotion, but *w.e.f.* 22.06.2021 whereas the same ought to have been given to him *w.e.f.* 31.08.2020. Petitioner is due to retire on 30.06.2023, therefore, his claim petition should be heard and decided on priority basis.

15. It is also the submission of learned Counsel for the petitioner that the reasoning given in the impugned order cannot sustain in the eyes of law for the reason that instead of declaring the petitioner ineligible for promotion, his candidature ought to

have been considered and the result should have been kept in sealed cover as was done in the case of similarly situated person, which is evident from the disclosure made clause 4 of the impugned order dated 28.04.2021. The dispute with regard to adverse entry was pending consideration before the competent Court during the process of D.P.C.

16. The Tribunal observes that the issue in hand is no longer *res-integra* inasmuch as the Hon'ble High Court of Uttarakhand in writ petition no. 393 (S/S) of 2019, Dinesh Singh Rana vs. State of Uttarakhand and others, decided on 27.10.2021, has observed as under:

“

5. Since petitioner's claim for promotion was not considered only on account of punishment of censure given to him on 08.11.2013, therefore, in view of the judgment rendered in WPSB No. 19 of 2018, respondents were under a duty to consider his claim for promotion. After the said judgment, petitioner made a representation for his promotion, which has been rejected by the impugned order.

6. In the humble opinion of this Court, the impugned order is unsustainable in the eyes of law. The punishment of censure imposed upon the petitioner did not attain finality by dismissal of his departmental appeal, as petitioner went further and challenged it before this Court and this Court quashed the same vide judgment dated 07.09.2018. Thus, respondents cannot rely upon the punishment of censure given by Superintendent of Police, Pauri, after the judgment of this Court. The view taken by respondent no. 3, if accepted, would render judgment in WPSB No. 19 of 2018 otiose.

7. Even otherwise also, the stand taken by respondent no. 3 that result of a candidate who has suffered punishment has to be kept in a sealed cover only till disposal of his departmental appeal, cannot be accepted. A police personnel like any other government servant is entitled to avail the remedy under U.P. Public Service Tribunals Act, 1976 and thereafter he can approach the High Court seeking judicial remedy against the punishment order. Thus, his result has to be kept in a sealed cover till decision in his claim petition and writ petition, as the case may be. The inaction on the part of the respondents to keep petitioner's result in a sealed cover during pendency of his claim petition and writ petition was therefore, wrong.

8. It is settled position in law that no one can take benefit of his own wrong, therefore, respondents cannot be permitted to deny promotion to the petitioner for a wrong committed by them.

Thus, this Court has no hesitation in holding that rejection of petitioner's representation by respondent no. 3 is unsustainable in the eyes of law.

.....”

[emphasis supplied]

17. The Tribunal also observes that the only embargo against the candidature of the petitioner was adverse entry given to him *vide* order dated 29.06.2018, which was objected to by the petitioner before the appellate authority and then before the Hon'ble High Court of Uttarakhand at the time of D.P.C. Finally, the same was challenged before the revisional authority. The revisional authority expunged the adverse entry *vide* order dated 04.12.2020, therefore, after order of revisional authority, petitioner became entitled to get the promotion from the date his juniors were promoted. The petitioner is also entitled to all consequential benefits.

18. The Tribunal further observes that during the pendency of proceedings, petitioner has been given promotion but from subsequent date and not from the due date. In case the petitioner is not given promotion from due date i.e. the date his juniors were promoted on 31.08.2020, the petitioner would suffer for no wrong committed by him but a mistake committed by the respondents in not keeping his result in the 'sealed cover'.

19. The petition is decided in terms of the decision rendered by Hon'ble High Court on 27.10.2021 in writ petition no. 393 (S/S) of 2019, Dinesh Singh Rana vs. State of Uttarakhand and others. When DPC was held, petitioner's result ought to have been kept in a 'sealed cover' during pendency of his Appeal/ Revision. His juniors were promoted on 31.08.2020. Although the petitioner has been given promotion during pendency of present petition but he has been given promotion from subsequent date and not from due date when his juniors were promoted (on 31.08.2020). The petitioner, in the peculiar

facts of the case, deserves to be considered for promotion from the date his juniors were promoted by holding a review DPC, as if the adverse entry was never in existence.

20. Order accordingly.

21. The petition is disposed of with the direction as above. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 07th June, 2023
DEHRADUN
RS