

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 126/SB/2021

Surendra Dutt Bijalwan, aged about 47 years, s/o Sri J.P.Bijalwan, r/o D- 108, Nehru Colony, Dehradun, Uttarakhand. Presently posted as Administrative Officer, Ayurvedic and Unani Services Directorate, Uttarakhand, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Ayurvedic and Unani Services, Govt. of Uttarakhand, Secretariat at Dehradun, Uttarakhand.
2. Director, Ayurvedic and Unani Services, Uttarakhand Dehradun.
3. Sri Vijay Singh Bisht, Senior Administrative Officer, Ayurvedic and Unani Services Directorate, Uttarakhand, Dehradun

.....Respondents.

Present: Dr. N.K.Pant, Advocate, for the petitioner. (online)
Sri V.P.Devrani, A.P.O., for the Respondents No. 1 & 2.
Sri Vijay Singh Bisht, Respondent No.3.

JUDGMENT

DATED: JUNE 18, 2024

Justice U.C.Dhyani (Oral)

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

- “i) Issue an order or direction to set aside the impugned decision of Departmental Promotion Committee dated 28.06.2021 whereby

Petitioner has been declared ineligible for promotion on the post of Senior Administrative Officer.

ii. Issue an order or direction to set aside the impugned order of promotion dated 10.09.2021 whereby private Respondent, who is junior to the petitioner, has been promoted on the post of Senior Administrative Officer.

iii. Issue an order or direction to the official Respondents to consider claim of Petitioner by way of review DPC under clause 18.1 of the office memorandum Dated 10.04.1989 for promotion on the post of Senior Administrative Officer carrying pay matrix of Rs 47600-151100 level-8 with effect from the date juniors to him have been given promotion i.e. 28.02.2019 and consequently pay him all consequential benefits including arrears of salary etc.

iv. Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

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

2. At the very outset, Ld. A.P.O. submitted that the petitioner has been given promotion to the post of Senior Administrative Officer in the respondent department, during the pendency of present claim petition, therefore, the petition has rendered infructuous. He submitted that since the promotion has been given to the petitioner during pendency of present claim petition, therefore, claim petition should be dismissed as infructuous.

3. In reply, Ld. Counsel for the petitioner submitted that no doubt the petitioner has been promoted to the post of Senior Administrative Officer during pendency of present claim petition, but petitioner's prayer is to promote him from the date his junior was promoted to the post of Senior Administrative Officer.

4. Ld. A.P.O. drew attention of the Bench towards *Uttarakhand Rajyadheen Sewaon Mein Padonnati Ka Parityag (forgo) Niyamawali, 2020*, to submit that the petitioner, by not giving joining at Pithoragarh, has forgone his promotion, therefore, he is not entitled to get the promotion from the date his junior (Respondent No.3) was promoted. Ld. A.P.O. also submitted that this fact has been acknowledged by the petitioner in his R.A.

5. Ld. Counsel for the petitioner submitted that the petitioner wants to bring some new facts to the notice of the official respondents (which facts he could not bring to their notice earlier). He submitted that petitioner will make a representation to Respondent No.2, who should be directed to decide the representation of the petitioner, as per law. In reply, Ld. A.P.O. submitted that no cause of action survives to the petitioner, inasmuch as he has already been promoted and the petitioner had forgone his promotion on an earlier date. He further submitted that representation of the petitioner has already been decided by the Director, *Ayurvedic Evam Unani Sewayein*, Dehradun, *vide* order dated 18.09.2019 (Annexure: CA-R 1), by a reasoned and speaking order, against which present claim petition has been filed, therefore, it does not lie in the mouth of the petitioner to say that he wants to bring some more facts to the notice of Respondent No.2.

6. A perusal of impugned order dated 18.09.2019 (Annexure: CA-R 1) would indicate that the same has been rejected, *inter alia*, on the ground that no post of Senior Administrative Officer is available in the subordinate offices situated in accessible area. It has also been mentioned in the impugned order that the petitioner nowhere made a prayer that, at the time of promotion, he should be posted in accessible area. Petitioner was given posting in difficult (*durgam*) area.

7. There is no harm, if the petitioner, in the peculiar facts of the case, is given an opportunity to make representation to Respondent No.2, to highlight some new facts, and Respondent No.2 is requested to decide such representation of the petitioner as per law, but, at the same time, the petitioner should remember that this should not be an unending process.

8. Ld. Counsel for the petitioner submitted that a direction to decide the representation of the petitioner, may be given by Single Bench of the Tribunal.

9. The claim petition is disposed of, by making a request to Respondent No.2 to decide the representation of the petitioner by a reasoned and speaking order, in accordance with law, without unreasonable

delay, on presentation of certified copy of this order along with fresh representation, enclosing the documents in support thereof. No order as to costs.

10. It is made clear that the Tribunal has not expressed any opinion on the merits of the claim petition.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 18, 2024.
DEHRADUN

VM