

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

Writ Petition No. 178 (S/B) of 2021

[Reclassified and Renumbered as Claim Petition No. 96/NB/SB/2022]

Sri Madan Mohan Pathak, aged about 61 years, s/o late Sri Chandra Ballabh Pathak, r/o Lohariyasal Malla, Gali No. 8, Narain Vihar, Unchapul, Haldwani, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Department of Home Affairs, Secretariat, Dehradun.
2. Commandant General, Home Guards, Director Home Guards and Civil Defence, Uttarakhand, Tapowan Road, Dehradun.
3. Pension Accounts, Government of Uttarakhand, Dehradun through Directorate, Lekha, Pension and Haqdari, Uttarakhand, Dehradun.

..... Respondents

Present: Sri Dushyant Mainali, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

Dated: 01st August, 2024

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 02.09.2022 in WPSB No. 178 of 2021, Madan Mohan Pathak vs. State of Uttarakhand and others, which (order) reads as under:

“The petitioner has preferred the present writ petition to seek the following substantial reliefs:

- i) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondent Nos. 1 and 2 to provide notional

benefit to the petitioner for the post of Assistant Deputy Commandant General from the date of his acquiring eligibility for the said post i.e. April 2020.

- ii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondent No. 1 and 2 to provide financial / pensionary benefit to the petitioner for the post of Assistant Deputy Commandant General from the date of his acquiring eligibility for the said post i.e. April 2020.

2) The petitioner is a public servant and, therefore, the Uttarakhand Public Services Tribunal has jurisdiction to deal with the claim raised by the petitioner.

3) Counter-affidavit filed by the respondents is taken on record.

4) Since counter-affidavit has been filed, and the writ petition is pending since 2021, we direct that the record of the writ petition be transmitted to the Tribunal, which shall be registered as a claim petition, and shall be dealt with by the Tribunal accordingly.

5) With the direction as above, the writ petition stands disposed of.

All pending applications also stands disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 13517 /UHC/Service (S/B)/ 2022 dated 21.09.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 96/NB/SB/2022.

3. The petitioner is challenging, through this petition, inaction on the part of respondents in not providing him notional benefits of the post of Assistant Deputy Commandant General, to which he, according to the petition, was fully eligible under the departmental rules in view of the prevailing relaxation in promotions in Service Rules, 2010. According to the petition, the petitioner has been deprived of the promotion on the said post during his service period despite being fully eligible and after his retirement, he is being deprived of notional benefits including financial benefits for the said post, for which he was eligible and was not granted promotion despite repeated requests made by the petitioner.

4. The petitioner's case has been mentioned, in detail, in the petition. The Tribunal need not reproduce those details, for they are already part of record.

5. Petitioner has filed affidavit in support of his petition. Relevant documents have been filed with the petition.

6. The petition has been contested on behalf of the respondents. Sri Pankaj Tiwari, the then Director, Treasury, Pension and Entitlement, Uttarakhand, has filed counter affidavit on behalf of respondent no. 3.

6.1 In para 2 of the C.A., it has been averred that in case of retirement of government employee, his pension case has to be forwarded five months prior to retirement of such employee by the Head of Department for sanction. Sanctioning Authority of the pension payment order would examine and scrutinize the pension papers within two months from the date of receipt and if there is any objection or deficiency, then the department will be written for removal of the same.

6.2 In para 3 of the C.A., it has been mentioned that the pension payment authority of Group 'A' and 'B' and employees of Garhwal region will be issued by Directorate, Treasury, Pension and Entitlement, Uttarakhand. Para 4 of such C.A. deals with E-Pension system and online payment of superannuation pension, family pension etc.

6.3 In para 5 of the C.A., it has been stated that the department concerned prepared the online pension cases to forward the same online for sanction of pension to the pension sanctioning authority.

6.4 In paras 6 to 8 of the C.A., it has been mentioned that the petitioner was promoted from the post of Inspector/ Company Commander to the post of District Commandant Home Guard *vide* office memorandum dated 18.04.2015. The post of District Commandant is Group 'B' post. The petitioner has retired from the post of District Commandant, district Udham Singh Nagar.

6.5 In para 9 of such C.A., it has been averred that the provision of relaxation in prescribed requisite length of service for

promotion has been kept in abeyance. It is not possible to consider and accord relaxation of three years in requisite length of service to the petitioner for promotion from the post of District Commandant Home Guard to the post of Assistant Deputy General Commandant.

6.6 In para 12 of the C.A., it has been stated that pension case of the petitioner is not pending with respondent no. 3.

7. Sri Dushyant Mainali, learned Counsel for the petitioner submitted that the response of respondent no. 2 has not been forthcoming, therefore, the said respondent be directed to hear the petitioner on the grievances raised by him in this petition and take suitable decision thereafter, according to law.

8. Considering the facts of the case, the Tribunal is of the view that innocuous prayer of Sri Dushyant Mainali, learned Counsel for the petitioner should be accepted.

9. Learned Counsel for the parties submitted that such an order may be passed by Single Bench of the Tribunal.

10. The petition is disposed of by directing respondent no. 2 to decide the representation of the petitioner and consider his case by a reasoned and speaking order after giving opportunity of personal hearing, in accordance with law, without unreasonable delay, on presentation of certified copy of this order along with representation enclosing the documents in support thereof. No order as to costs.

11. Rival contentions are left open.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 01st August, 2024
DEHRADUN
RS