

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

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. A.S. Rawat

-----Vice Chairman (A)

CLAIM PETITION NO. 31/DB/2023

Dr. Sanjeev Dutt s/o Late Sri Suresh Dutt, aged about 61 years r/o 20- Adarsh Nagar, Ballupur Road, District Dehradun, Uttarakhand.

....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Medical & Health, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director General, Medical, Health and Family Welfare, Uttarakhand, Dehradun.

....Respondents

Present: Sri L.K. Maithani, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: OCTOBER 25, 2024

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks following relief, among others:

“(i). To issue an order or direction to the respondent no.1 to amend and modify the promotion order dated 24.09.2020 of the petitioner and promote the petitioner on the post of Joint Director since the date

12.04.2013 when the promotion to the post of Joint Director was granted to Dr. Shambhu Kumar Jha and Dr. Lalit Mohan Joshi, the junior persons to the petitioner, with all consequential benefits of further promotional pay scale and accordingly revise the pension of the petitioner and after getting notional promotion, pay the arrears of the pay and pension to the petitioner with interest.

.....”

2. Earlier, this claim petition was disposed of by the Tribunal *vide* order dated 16.02.2023. Since the same was disposed of without calling upon the respondents to file C.A., therefore, the Hon’ble High Court remanded the matter back to the Tribunal. State was directed to file C.A. Petitioner was given liberty to file rejoinder.

3. After the matter was remanded back to the Tribunal, the respondents filed C.A. along with documents, to which the petitioner filed R.A. After exchange of pleadings, the Tribunal now proceeds to decide the claim petition on merits.

4. The backdrop of the claim petition was reproduced in Tribunal’s order dated 16.02.2023, in the following paragraphs:

“.....

4. Ld. Counsel for the petitioner submitted that although the petitioner has been given promotion *vide* Office Memorandum dated 24.09.2020 (Copy: Annexure- A 1), but the promotion to the petitioner should have been given from the date junior to the petitioner was promoted. Ld. Counsel for the petitioner informed the Tribunal that junior to the petitioner was promoted on 31.10.2014 *w.e.f.* 12.04.2013.

5. Ld. A.P.O. pointed out that in Claim Petition No. 64/SB/2017, Dr. Sanjeev Dutt vs. State of Uttarakhand and others, the Tribunal passed an order on 26.10.2016, as follows:

“The petition is hereby allowed. The impugned orders dated 28.10.2012, Annexure: A-1 and 17.07.2014, Annexure: A-2 are set aside. Impugned Adverse remark entered in the Character Roll of the petitioner be expunged within a period of two months from today. The petitioner will also be entitled for consequential benefits, if any, as per law and rules. No order as to costs.”

6. Aggrieved against the order of the Tribunal, the State of Uttarakhand filed WPSB No. 60/2017 before Hon’ble High Court of Uttarakhand (Annexure: A 4). The writ petition filed by the State of Uttarakhand was dismissed *vide* order dated 04.08.2017 by the Hon’ble Court, as follows:

“Petitioner challenges order dated 26.02.2016 (Annexure No. 1) passed by the Public Services Tribunal.

2. Respondent No. 1 / claimant was communicated an adverse entry on 18.10.2012. He represented against the said adverse entry on 19.11.2012. The said representation was rejected on 17.07.2014. Respondent No. 1 / claimant challenged the adverse entry and the rejection of the representation.

3. The Tribunal, after having taken note of the dates, referred also to Rules 4 & 5 of the Uttaranchal Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002. Rule 4(4) and Rule 4(5) are relevant. After noting the dates and the aforesaid Rules, the Tribunal, without going into the other contentions, found that the representation against the adverse entry was rejected beyond 120 days and directed that the adverse entry be expunged within a period of two months. It was also observed that the petitioner would also be entitled to the consequential benefits as per law.

4. We have heard Mr. Pradeep Joshi, learned Standing Counsel for the State / petitioner and Mr. Bhagwat Mehra, learned counsel for respondent No. 1 / claimant.

5. Learned Standing Counsel is not able to establish any illegality in the order passed by the Tribunal on the stated facts and the statutory rules in question.

6. Accordingly, the writ petition will stand dismissed. No order as to costs.”

7. *Vide* office order dated 04.08.2017 (Copy: Annexure- A 7) of the Director General, Medical, Health and Family Welfare, the respondent department expunged the Annual Confidential Remark of the petitioner for the year 2011-12. In order dated 04.08.2017 of the Director General, Medical, Health and Family Welfare, it was also mentioned that a proposal for giving consequential benefits to the petitioner shall be sent to the Govt.

8. In Execution Application No. 08/DB/ 2016 , Dr. Sanjeev Dutt vs. State and others, an order was passed by this Tribunal on 01.06.2018, as follows;

“Learned A.P.O. has stated that the compliance of the order of the Tribunal has been made and the same has been submitted on 01.05.2018 through an affidavit of Nitesh Kumar Jha, Secretary, Medical, Health & Family Welfare, Government of Uttarakhand. A letter dated 19.04.2018 has also been enclosed with the compliance report which says that there is no post of Joint Director available and the department has sent a proposal to create post of Joint Director to the Finance and Personnel Departments and after creation of the additional post, the promotion of the petitioner may be considered. The petitioner is not satisfied with this order dated 19.04.2018.

The contention of learned counsel for the petitioner is that the juniors to the petitioner have been promoted and, therefore, the petitioner is also entitled for promotion in view of the Tribunal's order dated 26.02.2016 passed in C.P. No. 64/SB/2014 as consequential benefit after adverse entry of the petitioner was expunged.

We find that the Government has already expunged the adverse entry and in so far as the issue of consequential benefit is concerned, the government has stated its stand through letter dated 19.04.2018. Though, the petitioner is no satisfied but we find that the compliance of the Tribunal's order has been made. Therefore, execution application is disposed of accordingly as the execution has been made for full satisfaction.

The petitioner if he so desires may approach the Government through representation for addressing his grievances.”

(Emphasis Supplied)

9. In the execution application, copy of G.O. dated 19.04.2018 (Copy: Annexure- A 5) was filed by the respondents. In the said G.O., it was stated that the petitioner shall be given notional promotion from the date his junior was promoted subject to availability of vacancy.

10. Ld. A.P.O. submitted that a proposal was sent to the Finance Department to create a supernumerary post and for granting promotion to the petitioner from the date his junior was promoted, but no supernumerary post could be created and the petitioner has been promoted *w.e.f.* the date when vacancy in the Cadre of Joint Director arose. The petitioner has retired on 31.10.2021.

11. It is trite law that an employee/ officer is entitled to promotion from the date his junior was promoted, provided, there is nothing adverse against him. In the instant case, although adverse entry was there against the petitioner, but the same was set aside by the Tribunal, which order was affirmed by the Hon'ble High Court. Such order has effect of setting aside the adverse entry on the date it was given. When a junior was promoted, it does not lie in the mouth of respondent department to say that no promotional post was available on that date.

.....

13. The claim petition is disposed of at the admission stage by directing Respondent No.1 to modify the promotion order of the petitioner. It is directed that the petitioner be given notional promotion from the date his junior was promoted along with consequential benefits thereof. No order as to costs.”

5. It will also be apposite to reproduce the decision dated 09.08.2023, given by the Hon'ble Court in WPSB No. 354/2023, State of Uttarakhand and another vs. Dr. Sanjeev Dutt, as below:

“Issue notice.

2) Counsel for the respondent appears and accepts notice.

3) He states that the matter may be proceeded with without calling for a reply.

4) The impugned order has been passed by the Tribunal without calling for the petitioners, i.e., the State reply, in the claim petition preferred by the respondent.

- 5) Counsel for the respondent fairly does not oppose the petition.
- 6) Accordingly, we allow the present writ petition. The impugned order is set aside, and the matter is remanded back to the Tribunal.
- 7) The petitioner/ State shall file its counter- affidavit in the claim petition within four weeks from today. The respondent / claim petitioner may file rejoinder within four weeks thereafter
- 8) The matter shall be listed before the Tribunal on 01.11.2023.”

6. Learned A.P.O. drew the attention of the Bench towards paras 16 to 23 of the C.A., which has been filed by Dr. Ajeet Mohan Johari, Joint Director. Medical Health & Family Welfare, Uttarakhand, Dehradun, on behalf of the respondents, to submit that before 30.01.2014, Uttarakhand Medical and Health Service Rules, 2009, were in force, in which the criteria for promotion on the post of Joint Director, grade pay Rs. 7600/- was only seniority subject to rejection of unfit. These rules were amended in the year 2014 *w.e.f.* 30.01.2014, in which the criteria for promotion on the post of Joint Director is merit-cum-seniority. Petitioner had one adverse entry and four downgraded entries, therefore, he was not found fit for promotion. The adverse entry was subsequently expunged by the order of Tribunal, which (order) was affirmed by the Hon’ble High Court.

7. In other words, when DPC was convened on 12.09.2014, (at that point of time) petitioner had one adverse entry and four downgraded entries, therefore, he was not considered fit for promotion on the basis of merit. Subsequently, adverse entry was expunged under the orders of the Court.

8. When new rules came into force, the grade pay of Joint Director was upgrade to Rs. 8700/-, in which the criteria for promotion was merit-cum-seniority, in which too, the petitioner was not found fit for promotion on the basis of grading of marks. Since Dr. Shambhu Kumar Jha, who was junior to the petitioner, obtained highest marks, therefore, he was promoted.

9. When second DPC was convened in the year 2020, entries between 2014-19 were seen, in which the petitioner was found suitable for promotion on the basis of merit, therefore, he was given promotion *vide* order dated 24.09.2020 on the post of Joint Director grade pay Rs. 8700/-.

10. Once the adverse entry of the year 2011-12 was expunged by the Tribunal, as affirmed by the Hon'ble High Court, the performance of the petitioner from the back date ought to have been seen by the DPC, which has not been done in the instant case. Hence, it is a case of review DPC.

11. Since the adverse entry, which was given to the petitioner for the year 2011-12 was expunged under the orders of the Court, which (entry) relates back to the performance of the petitioner in the past, therefore, his performance ought to have been seen by the DPC, which has not been done in the instant case. The Tribunal should, therefore, direct that a review DPC be convened to assess and evaluate the performance of the petitioner on the basis of the fact that his adverse entry of the year 2011-12 was expunged under the orders of the Court.

12. The claim petition is, accordingly, disposed of by directing the respondent department to convene review DPC of the DPC dated 12.09.2014 and if the petitioner is found suitable, he should be given promotion, as per rules. No order as to costs.

(A.S. RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: OCTOBER 25, 2024
DEHRADUN

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