

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

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**CLAIM PETITION NO. 73/DB/2024**

Manoj Kumar Singh, aged about 52 years, s/o Late Sri Ram Singh, r/o Khasra No. 34-A, Opp. M.B. Homes, Aamwala Uprala, Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary (Finance), Section-6, Civil Secretariat, Dehradun.
2. Additional Secretary (Finance), Section-6, Civil Secretariat, Dehradun.
3. Director, Directorate of Audit, Government of Uttarakhand, 37-A, I.T. Park (SIDCUL), Sahastradhara Road, Dehradun.

.....Respondents

**Present:** Sri H.M.Bhatia, Advocate, for the petitioner. (virtual)  
Sri V.P.Devrani, A.P.O., for Respondents.

**JUDGMENT**

**DATED: FEBRUARY 24, 2025.**

**Justice U.C.Dhyani (Oral)**

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

*"I. Issue a writ, order or direction in the nature of certiorari to quash the order dated 04.07.2024 (Annexure No. 1 to the writ petition).*

*II. Issue a writ, order or direction in the nature of mandamus directing and commanding the official respondents to consider the case of the petitioner for granting the relaxation to the petitioner in view of Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010 and Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion (Amendment) Rules 2023 as amended in 2023 for the purpose of considering the case of the petitioner for promotion on the post of Joint Director, Audit for the selection year 2023-24.*

*III. Issue any other or further writ, order or direction of the nature, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

*IV. To award the cost of the petition in favour of the petitioner."*

*[Emphasis supplied]*

2. Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Petition has been contested on behalf of respondents. Affidavit on behalf of Respondents No. 1 & 2 has been filed by Sri Gajendra Singh Kaphalia, Deputy Secretary, Finance Department, Govt. of Uttarakhand. Counter Affidavit on behalf of Respondent No. 3 has been filed by Sri Vinod Kumar Suman, Director, Directorate of Audit, Govt. of Uttarakhand. Relevant documents have been filed in support of Counter Affidavits.

4. Rejoinder Affidavit has been filed by the petitioner, reiterating the facts mentioned in the claim petition.

5. Facts, relevant for deciding present claim petition are as follows:

5.1 Petitioner was initially appointed through Public Service Commission as a direct recruit officer on the post of Audit Officer,

Grade-I (Lekha Pariksha Adhikari, Grade-I) in the pay scale of Rs. 8000-275-13500/- in the department of Cooperative Society and Panchayat Audit. Copy of the appointment letter dated 06.07.2005 has been brought on record as Annexure: 2 to the claim petition. In pursuance to such appointment letter, petitioner joined on the post of Audit Officer, Grade-I on 18.07.2005. Such post was the State Cadre post as per the relevant Service Rules applicable at the relevant point of time.

5.2 On 11.05.2012, departmental promotion committee was constituted for promotion for the vacant post of Deputy Director in the pay scale of Rs. 15600-39100 grade pay Rs.6600/- as per the relevant Service Rules, namely, the *Uttar Pradesh Sehkari Evam Panchayat Lekha Pariksha Sewa Niyamawali*, 1979. Since the petitioner was eligible for promotion as per rules, therefore, as per recommendation of the DPC the case of the petitioner was considered for promotion on the post of Deputy Director ( Audit). Copies of the minutes of the meeting dated 11.05.2012 and promotion order dated 28.05.2012 are brought on record as Annexure: 3 and Annexure: 4 to the claim petition.

5.3 As per the minutes of meeting dated 11.05.2012, promotion of the petitioner on the post of Deputy Director (Audit) was recommended with the condition that if any person senior to Sri Soban Singh Nagnayal, who has been recommended on the post of Joint Director by the said meeting, will join the State of Uttarakhand in view of final allocation, the petitioner as well as Sri Soban Singh Nagnayal will be reverted to their original posts.

5.4 Promotion order dated 28.05.2012 also stipulated, as condition no.3, that if any person senior to Sri Soban Singh Nagnayal will join the State of Uttarakhand after final allocation, then the petitioner will be reverted to his original post. Petitioner was promoted to the post of Deputy Director (Audit) *vide* order dated 28.05.2012 after the regular selection as per the prevailing Service Rules. The petitioner was put on two years' probation period. The promotion order dated 28.05.2012 nowhere speaks that the promotion of the petitioner is on officiating capacity or temporary basis for any stipulated period, meaning thereby

the petitioner has been promoted to the post of Deputy Director (Audit) on the basis of regular selection, as per the rules, as recommended by the DPC.

5.5 Petitioner worked from 28.05.2012 till 25.02.2016 on the post of Deputy Director (Audit). He worked on the said post for three years, eight months and 27 days as regular incumbent and his Annual Confidential Reports were also prepared by the respondents for the said period. The petitioner passed several orders in the capacity of the regular Deputy Director (Audit) during said period.

5.6 Thereafter, *vide* order dated 26.02.2016, the petitioner was reverted to his original post of Audit Officer, Grade-I, in view of Condition No.3, mentioned in the promotion order dated 28.05.2012 ( Copy of Order dated 26.02.2016: Annexure- 5). The reversion of the petitioner on the post of Audit Officer, Grade-I was not as a punishment. It was not on account of any penalty given in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, or in violation of any G.O. or Rules. Petitioner was merely reverted on the post of Audit Officer, Grade-I, on the ground mentioned in the promotion order dated 28.05.2012, that if any senior person to Sri Soban Singh Nagnayal will join the State of Uttarakhand after its final allocation, then not only Sri Soban Singh Nagnayal, who was promoted to the post of Joint Director will be reverted but petitioner will also be reverted back to his original post. It is admitted fact, on the basis of the record, that the petitioner worked as Deputy Director (Audit) as a regular incumbent for about three years eight months and twenty seven days.

5.7 *Vide* Govt. Order dated 30.11.2018 the official respondents restructured the departmental edifice and created two posts of Additional Director, four posts of Joint Director and six posts of Deputy Director (Copy of order dated 30.11.2018: Annexure-6). Thereafter on 08.07.2019, the official respondents unified two Audit Departments in one combined Audit Department and on 21.11.2019 published the Service Rules for the officers working in the unified

department, namely the Uttarakhand Audit Gazetted Service Rules, 2019 (for short, Service Rules of 2019).

5.8 The case of the petitioner was again considered for promotion on the post of Deputy Director (Audit), in view of the Service Rules of 2019 and petitioner was promoted vide order dated 11.04.2023 once again to the post of Deputy Director (Audit). Petitioner immediately joined on the said post and is still working as such in the respondent department.

5.9 As per the structure of unified Audit Department, there are four posts of Joint Director, created by the respondents and all four posts are vacant in the department. As per the final seniority list of Audit Officers, Grade-I, prepared by the respondent department, the petitioner is the senior most officer in the said seniority list and as on date, six incumbents are working as Deputy Director in the respondent department and all the six incumbents were promoted *vide* order dated 11.04.2023. The petitioner is, therefore, the senior most Deputy Director.

6. Sri V.P.Devrani, Ld. A.P.O., while arguing the case for Respondents No. 1 & 2, submitted that the claim petition is devoid of merits, hence, the same should be dismissed. Ld. A.P.O. drew attention of the Tribunal towards the affidavit of Sri Gajendra Singh Kaphalia, Deputy Secretary, Finance, Govt. of Uttarakhand, to submit that the petitioner was initially appointed on the post of Audit Officer, Grade-1 (*Lekha Pariksha Adhikari*) in the Pay scale Rs 8000-275- 13500 grade pay Rs 5400/- (level 10) in the department of Cooperative Society and Panchayat Audit, and he joined the services on 18.07.2005 in the department.

6.1 The services of the petitioner (till the date of unification *i.e.* 08.07.2019) were governed by the rules known as "U.P Cooperative & Panchayat Audit (First Amendment) Service rules 1994", whereby Rule 2(b) clearly provides that for promotion to the post of Deputy Director, 03 years' service as an Audit Officer Grade-1 (Assistant Director)

(*Lekha Pariksha Adhikari*) should be completed on the first day of recruitment year.

6.2 *Vide* office order dated 28.05.2012 the petitioner was promoted to the next higher post of Deputy Director in the pay scale Rs 15600-39100 /- with grade pay Rs 6600/- (Level-11) with the condition that if any senior officer to Shri Soban Singh Nagnayal is allocated from the State of U.P to Uttarakhand, then the petitioner will be reverted back to his original post of Audit Officer Grade-1 (*Lekha Pariksha Adhikari*). *Vide* office order dated 26.02.2016 the petitioner was reverted back on the said post of Audit Officer Grade 1(*Lekha Pariksha Adhikari*) due to the final allocation of senior namely Shri Vipin Bihari who was allocated to the State of Uttarakhand from the State of U.P in compliance of the above mentioned condition in the promotion order dated 28.05.2012. Thus, according to W.S., as highlighted by Ld. A.P.O., the services rendered by the petitioner as a Deputy Director, i.e. from 28.05.2012 till 26.02.2016 were in officiating capacity on the basis of conditional order which may not be treated as qualifying service for promotion on the post of Joint Director as there is no such provision in the Uttarakhand Government Servant Promotion Relaxation in Qualifying Service Rules 2010 as amended in year 2023.

6.3 On 08.07.2019 the respondent department unified two Audit Departments into one Combined Audit Department and accordingly promulgated the Service Rules for employees working in Unified Department namely "Uttarakhand Audit Gazetted Service Rules 2019 ". Thereafter the petitioner *vide* order dated 11.04.2023 was duly promoted as Deputy Director in the Grade pay Rs 6600/- in the Audit Department which is the actual substantive/ actual promotion order of the petitioner on the post of Deputy Director.

6.4 Rule 5(3) of the Uttarakhand Audit Gazetted Service Rules 2019 states, 'by promotion from amongst such Substantively appointed Deputy Director who have completed 05 years of service in that capacity and have completed total 15 years of service in the Gazetted Audit

Service Cadre on the first day of recruitment year on the basis of seniority subject to rejection of unfit through the DPC’.

6.5 Ld. A.P.O. submitted that since the petitioner had neither completed 05 years of qualifying service on the post of Deputy Director nor completed total 15 years of service in the gazetted audit service cadre for promotion on the post of Joint Director in the selection year 2023 -2024, therefore, he was not eligible for promotion to the post of Joint Director. Ld. A.P.O. further submitted that according to Service Rules 2010 , as amended in year 2023, the petitioner is not eligible for promotion to the post of Joint Director as he has not fulfilled the 50% qualifying service *i.e.* 2.5 years and moreover the Amended Rule 4 of the said Rules clearly states that the benefit of relaxation prescribed in the original Rules will be applicable for the selection year 2023-2024 (*i.e.* 01.07.2023 till 30.06.2024), hence the petitioner is not entitled to get the benefit of amended relaxation Rules of 2023 as no relaxation rules are in existence since 01.07.2024. Hence, in the absence of the relaxation rules, the petitioner is not legally entitled to get the benefit of 50% qualifying services.

6.6 It is further submission of Sri V.P.Devrani, Ld. A.P.O., that in view of the above facts & circumstances, it is clear that the order dated 04.07.2024 is legally correct and valid in the eyes of law and requires no interference, as such the claim petition based on such facts has no legal force and being devoid of any legal merit, the same is liable to be dismissed.

6.7 Detailed para-wise replies have been given in the C.A. The Tribunal need not mention the same, for they are already part of record.

6.8 Ld. A.P.O. further emphasized that the Service Rules, 2019, provide for promotion from amongst such substantively appointed Deputy Directors who have completed five years of service in that capacity and who have completed fifteen years of service in the Gazetted Audit Service Cadre on the first day of recruitment year, on the basis of seniority subject to rejection of unfit.

6.9. Ld. A.P.O., while defending the departmental action, submitted that it is an admitted case of the petitioner that he was promoted to the post of Deputy Director in the year 2023. It is also imperative to bring to the knowledge of the Hon'ble Court that the petitioner was given benefit of 1<sup>st</sup> ACP on 18.07.2015 after duly taking into account the services rendered by him on the post of Audit officer Grade-1 from 28.05.2012 to 26.02.2016.

6.10 It has been stated in the C.A., filed on behalf of Respondent No.3, that as per Rule 5(3) of the Uttarakhand Audit Gazatted Service Rules, 2019, the promotion on the post of Joint Director shall be done from amongst such substantively appointed Deputy Directors, who have completed 05 years of service in that capacity and have completed total 15 years of service in the Gazatted Audit Service Cadre on the first day of the recruitment year on the basis of seniority subject to rejection of unfit. The petitioner cannot be considered for promotion under the aforesaid provision because from 28.05.2012 to 26.02.2016 the petitioner rendered his service as Deputy Director on conditional basis. It is only *w.e.f.* 11.04.2023 that the petitioner was promoted on the post of Deputy Director, therefore, he will be treated as substantively appointed on the post of Deputy Director only *w.e.f.* 11.04.2023.

6.11 It has further been stated in the C.A. filed on behalf of Respondent No.3 that in the recommendation of the DPC held on 11.05.2012 and promotion order dated 28.05.2012, it was categorically stated that the petitioner is being promoted on the post of Deputy Director on conditional basis that if any incumbent senior to Mr. Soban Singh Nagnayal will join in the State of Uttarakhand after its final allocation then Mr. Manoj Kumar Singh will be reverted back to his original post. Further, State Election Commission is separate entity and the orders issued by the Commissioner, cannot be made applicable to the respondents. The petitioner being an employee of Audit Department cannot seek parity with any other department.

6.12 Since the promotion order passed in 2012 was a conditional order based on the circumstances prevalent at that point of



time, therefore, the said conditional promotion cannot be treated as substantive appointment. The petitioner rendered his service as Deputy Director from 28.05.2012 to 26.02.2016 on conditional basis, which is clear from paragraph no.3 of the promotion order and in furtherance of the said condition, the petitioner was repatriated to his original post on 26.02.2016. In view of Rule 22 (Kha) 3 of Part 2 to 4 Section 2 of Financial Handbook after repatriation the pay scale of the employee is re- determined. There is no provision under which, after repatriation to the original post, the services rendered by the petitioner as Deputy Director can be taken into consideration for promoting him on the post of Joint Director. After repatriation of the petitioner to his original post, he was granted the benefit of 1<sup>st</sup> ACP @ grade pay 6600/- w.e.f. 18.07.2015 after counting his services from 28.05.2012 to 26.02.2016 as Audit officer Grade-1. As stated above, *vide* office order dated 03.07.2023, the pay scale of the petitioner was duly re-determined and he was paid arrears of Rs.7,27,590/-on account of benefit of 1<sup>st</sup> ACP. Since the petitioner has already availed the aforesaid benefit he is duly bound by the Principle of Estoppel and cannot take a plea that he was substantively appointed on the post of Deputy Director.

6.13 Personnel Department duly considered the service of the petitioner as Audit officer Grade-1 from 2012 to 2016 and approved him the benefit of 1<sup>st</sup> ACP. *Vide* office order dated 14.06.2023, issued by the Finance Department, the petitioner was granted benefit of 1<sup>st</sup> ACP as Grade Pay Rs. 6600/- w.e.f. 18.07.2015 and in view of the aforesaid office order, *vide* office order dated 03.07.2023 issued by the Directorate of Audit, the pay scale of the petitioner was revised and he was duly paid the arrears of Rs.7,27,590/- of ACP. In case the services of the petitioner are treated on the post of Deputy Director w.e.f. 28.05.2012 then the benefit of ACP granted w.e.f. 18.07.2015 shall be erroneous and the aforesaid amount will be recovered from the petitioner. (Copy of office order dated 14.06.2023 along with the office order dated 03.07.2023 and copy of bill of arrears are enclosed as Annexure No.C-A-R-5 *colly*).

7. Ld. Counsel for the petitioner has relied upon the decision rendered by the Hon'ble Supreme Court in *Civil Appeal No. 6977/15, Bihar State Electricity Board and others vs. Dharamdeo Das* on 23.07.2024.

## **DISCUSSION**

8. Letter/ Order dated 04.07.2024, issued by the Finance Section-6, which has been addressed to Director, Audit, under intimation to the petitioner (Annexure: 1), is in the teeth of present claim petition. Relaxation was denied to the petitioner on the ground that he has not completed required service period as provided in the Service Rules of 2019.

9. The prayer of the petitioner is for directing the official respondents to consider the case of the petitioner for granting the relaxation to the petitioner in view of Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010 and Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion (Amendment) Rules 2023, for the purpose of considering the case of the petitioner for promotion on the post of Joint Director, Audit, for the selection year 2023-24.

10. Rule 5 of the Uttarakhand Audit Gazetted Service Rules, 2019, provides for recruitment. Recruitment to the post of Joint Director has been mentioned in Rule 5 (3) of the Service Rules of 2019, which reads as under:

*"(3) Joint Director - By promotion from amongst such substantively appointed Deputy Director who have completed five years of service in that capacity and have completed total fifteen years of service in the gazetted Audit Service Cadre on the first day of the recruitment year on the basis of seniority subject to rejection of unfit through the Departmental Promotion Committee."*

*[Emphasis supplied]*

11. On a bare reading of Rule 5(3) of the Service Rules of 2019, it is culled out that for promotion on the post of Joint Director, the

incumbent should complete five years of service in the capacity of (substantive) Deputy Director and should complete total fifteen years of service in the Gazetted Audit Service Cadre. Admittedly, petitioner has completed about nineteen years of service in the Gazetted Audit Service Cadre and has also completed three years eleven months and sixteen days in the capacity of Deputy Director as on 30.06.2023. It is an admitted fact that the petitioner was promoted on the post of Deputy Director (Audit) *vide* order dated 28.05.2012, after his regular selection in view of the recommendation of the DPC held on 11.05.2012 and he worked in such capacity till 25.02.2016 for about 03 years, 08 months and 27 days. Thereafter the petitioner was reverted to his original post *vide* order dated 26.02.2016 as per the condition mentioned in promotion order dated 28.05.2012. Later, the petitioner was again promoted on the post of Deputy Director (Audit), *vide* order dated 11.04.2023 in the Unified Audit Department. As on 30.06.2023, for the purpose of promotion on the post of Joint Director in the Selection Year 2023-24, the petitioner has worked in the capacity of Deputy Director for 03 years, 11 months and 16 days, therefore he moved a representation before the competent authority to give relaxation to him in view of the Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010, as amended *vide* G.O. dated 29.12.2023 (Copy of representation: Annexure- 7), which was rejected.

12. Rule 4 of the Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010 provides as under:

*“ Relaxation in qualifying service;*

*4. In case a post is filled by promotion and for such promotion a certain minimum length of service is prescribed on the lower post or posts, as the case may be, and the required number of eligible persons are not available in the field of eligibility, such prescribed minimum length of service may be suitably relaxed up to fifty percent by the Administrative Department in consultation with the Personnel Department of the Government, excluding the period of probation as laid down for the said lower post or posts, as the case may be.*

*provided that relaxation in prescribed qualifying service for promotion will be allowed once in entire service tenure of any employee;*

*provided further that the employees, who have availed the benefit of relaxation of prescribed qualifying service for promotion earlier, shall not be entitled for such benefit again."*

*[Emphasis supplied]*

13. By way of amendment in 2023, the Govt. of Uttarakhand provided that the benefit of relaxation will only be granted to the incumbent only when all the senior persons have been promoted. True copy of the Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010, as amended in 2023, has been brought on record as Annexure: 8 to the claim petition. On 30.06.2023, the petitioner has completed his service as Deputy Director (Audit) for a period of 03 years, 11 months and 16 days, which is more than the 50% of the qualifying service as prescribed in the Relaxation Rules of 2010, therefore, he is eligible to get the benefit of relaxation of qualifying service for consideration for promotion on the post of Joint Director, as all the senior persons to the petitioner in the cadre of Deputy Director have already been promoted and all the 04 posts of Joint Director are vacant.

14. Petitioner moved several representations for relaxation in qualifying service as prescribed in view of the Rule 5(3) of the Uttarakhand Audit Gazetted Service Rules, 2019 and as per Rule 4 of the Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010, as amended in 2023. His representation was forwarded by the official respondents to the Department of Personnel, Govt. of Uttarakhand for seeking its opinion. Department of Personnel opined that the petitioner was promoted on the post of Deputy Director *vide* order dated 28.05.2012 with the condition and he remained posted in the capacity of Deputy Director till 26.02.2016, thereafter he was again promoted on the post of Deputy Director on 11.04.2023 and before that in February 2016 till April 2023 he was reverted to his original post, therefore, from 11.04.2023 till 01.07.2023 the petitioner has worked in the capacity of Deputy Director for a period of two months and 20 days.

15. Promotion of the petitioner in the year 2012 was not in temporary, ad hoc or officiating capacity, he was promoted as a regular incumbent on the post of Deputy Director (Audit). In para 5 of the impugned order dated 04.07.2024, respondents have stated that the promotion of the petitioner on the post of Deputy Director has been made conditionally and he remained posted as Deputy Director from 2012 to 2016. Since the petitioner was promoted conditionally on the post of Deputy Director, therefore, he has no lien on the post of Deputy Director and his services in the said capacity will be treated as officiating Deputy Director and cannot be calculated for qualifying service for the purpose of promotion on the next higher post.

16. It is relevant to mention here that petitioner's promotion order dated 28.05.2012 nowhere speaks that the promotion of the petitioner was in officiating capacity or on ad hoc basis or was temporary in nature.

17. Petitioner's promotion order dated 28.05.2012 was issued with the condition that if any senior officer senior to Sri Soban Singh Nagnayal will join the State of Uttarakhand after its final allocation to the State of Uttarakhand, then the petitioner will be reverted to his original post. On 16.08.2012, one Sri Vipin Bihari joined the State of Uttarakhand in view of his final allocation order dated 22.06.2012 and Sri Bihari filed writ petition No. 265 (S/B) of 2015 Vipin Bihari vs. State of Uttarakhand with a prayer to consider his case for promotion to the post of Joint Director or on the post of Additional Director. Hon'ble Court directed that if Mr. Vipin Bihari represents his grievance before the Principal Secretary, Finance, then the Principal Secretary will consider and take a decision on the same in accordance with law. In compliance of the judgment of the Hon'ble Court dated 24.07.2015, the competent authority took the decision on the representation of Mr. Vipin Bihari that since Mr. Vipin Bihari Lal was senior (in the State of Uttar Pradesh) to Mr. Soban Singh Nagnayal therefore *vide* order dated 24.12.2014 Mr. Vipin Bihari Lal has been treated in the State of Uttarakhand as senior to Mr. Soban Singh Nagnayal and the promotion of Mr. Manoj Kumar Singh (Petitioner) has been done on the post of Deputy Director *vide*

order dated 28.05.2012 on a condition that if any incumbent senior to Mr. Soban Singh Nagnayal will join in the State of Uttarakhand after its final allocation, then Mr. Manoj Kumar Singh will be reverted to his original post and looking into the condition mentioned in promotion order dated 28.05.2012, the Government processed to revert Sri Soban Singh Nagnayal and Manoj Kumar Singh to their original posts. Mr. Vipin Bihari Lal requested for his promotion on the post of Additional Director and since petitioner is presently posted as Deputy Director, therefore, he cannot be promoted directly on the post of Additional Director and his promotion will be considered after the unification of the Audit Department only. Copies of the judgment dated 24.07.2015 and order dated 15.10.2015 have been brought on record as Annexure- 11 *colly* to the claim petition.

18. In view of the order dated 15.10.2015 Mr. Vipin Bihari Lal was not promoted to the post of Joint Director and in separate proceedings the petitioner was reverted to the post of Audit Officer, Grade-I in view of the order dated 15.10.2015 in the year 2016. Thereafter on 11.04.2023, the petitioner was again promoted to the post of Deputy Director. In the cadre of Deputy Director, the petitioner is the senior most officer.

19. Admittedly, the petitioner is presently holding the permanent post of Deputy Director. He is enjoying the status of Deputy Director as per promotion order dated 28.05.2012, which has been issued as per recommendation of the Departmental Promotion Committee on 11.05.2012, therefore, after about 12 years of the order dated 28.05.2012, the respondents cannot be permitted to say, *vide* impugned order, that the petitioner was holding the post of Deputy Director in an officiating capacity from 28.05.2012 till 25.02.2016. All his annual confidential reports for the said period have been maintained by the respondents by mentioning that the petitioner is holding the post of Deputy Director. As the petitioner was holding permanent post and enjoying the status of Deputy Director, therefore, the petitioner cannot be said to be holding the post of Deputy Director in officiating capacity.

20. Rule 5(3) of the Service Rules of 2019 does not speak about regular service. It speaks about the capacity. The DPC, which was convened on 11.05.2012, under the chairmanship of the Secretary Finance, in para 4 of the minutes, has mentioned the condition of promotion of the petitioner. It says about the reversion of Sri Soban Singh and Sri Manoj Kumar Singh on their original posts, if any officer senior to Sri Soban Singh is allocated the State of Uttarakhand. The Tribunal has been informed that Sri Soban Singh has since retired, petitioner was recommended for promotion to the post of Deputy Director in the pay scale of Rs.15600-39100 grade pay Rs. 6600/- with these conditions. Sri Vipin Bihari Lal is presently holding the post of Addl. Director.

21. On the basis of recommendation of DPC, the petitioner was promoted as a result of regular selection process *vide* notification dated 28.05.2012 (Annexure: 4). Words "*Niyamit Chayanoprant*" have been used in Annexure: 4. Petitioner was reverted as Audit Officer Grade-I *vide* order dated 26.02.2016 (Annexure: 5). He has worked in the capacity of Deputy Director (Audit) from 28.05.2012 till 26.02.2016. G.O. dated 30.11.2018 (Annexure: 6) provides that the posts of Joint Director are available in the department. Even Finance Department, in its noting dated 15.03.2024, has opined that the petitioner was promoted as Deputy Director (Audit) after regular selection process. His selection was neither under stop-gap arrangement nor *ad hoc*, nor officiating or in temporary capacity. He has performed the duties of Deputy Director. The services rendered by him as Deputy Director (Audit) should be reckoned with for the purpose of relaxation, although he cannot be given seniority, which the petitioner is not claiming. He is only praying for relaxation under the Relaxation Rules of 2010. The Department of Personnel and Vigilance has given opinion in favour of the petitioner. The note-sheet is signed by the Additional Secretary (15.03.2024) and Additional Chief Secretary (12.04.2024).

22. It is admitted fact that on 28.05.2012 the petitioner was promoted on the post of Deputy Director as per the recommendation of Departmental Promotion Committee in view of provisions contained in

Rule 2(b) of 1994 Rules and his selection on the post of Deputy Director was regular selection with a rider that if any incumbent senior to Mr. Soban Singh Nagnayal will join the services in State of Uttarakhand after its final allocation, then the petitioner will be reverted to his original post of Audit Officer Grade-1 (Lekha Praiksha Adhikari). Rule 2(b) of UP Cooperative & Panchayat Audit (First Amendment) Service Rules, 1994 provides that the post of Deputy Director shall be filled up from amongst Audit Officers Grade-1 (Assistant Director).

23. Further, there is no dispute that on 26.02.2016 the petitioner was reverted to the post of Audit Officer Grade-1, in view of Final Allocation of Sri Vipin Bihari to State of Uttarakhand, but it would be wrong to infer that the petitioner rendered his services as Deputy Director from 28.05.2012 to 26.02.2016 in Officiating Capacity. On a bare reading of the promotion order dated 28.05.2012 along with the minutes of meeting of DPC Dated 11.05.2012, it is clear that the promotion of the Petitioner on the post of Deputy Director was a regular promotion as per Rule 2(b) of the 1994 Rules and the petitioner worked as Deputy Director from 28.05.2012 to 26.02.2016 as regular Deputy Director, in substantive capacity. It would also be wrong to infer that the services rendered by the Petitioner from 28.05.2012 to 26.02.2016 on the post of Deputy Director may not be treated as qualifying service for promotion on the post of Joint Director as there is no such provision in the Uttarakhand Government Servant Promotion Relaxation in Qualifying Service Rules, 2010 as amended in the year 2023. Petitioner rendered his services from 28.05.2012 to 26.02.2016 on the post of Deputy Director as a regularly selected officer and in substantive capacity.

24. Once again the petitioner was promoted on the post of Deputy Director *vide* order dated 11.04.2023. On 28.05.2012 also the petitioner was actually/substantively promoted on the post of Deputy Director in view of recommendation of DPC Dated 11.05.2012 . On both the occasions the petitioner worked in substantive capacity.



25. Rule 5(3) of Uttarakhand Audit Gazetted Services Rules, 2019 provides for qualification for promotion on the post of Joint Director that the incumbent should complete 05 years of Service in the Capacity of Deputy Director and should complete total 15 years of service in the Gazetted Audit Service cadre. Petitioner has, undisputedly, completed 15 years of Service in the Gazetted Audit Service Cadre and also rendered his Service in the capacity of Deputy Director for a period of 03 Years 11 Months and 16 Days as on 30.06.2023 (3 Years 08 Months and 27 Days from 28.05.2012 to 26.06.2016 and 11.04.2023 to 30.06.2023 02 Months 19 Days) in substantive capacity, therefore, in view of Rule 4 of Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010 as amended in 2023, the petitioner is entitled to be considered for the benefit of relaxation. It would be worthwhile to note here that in Rule 5(3) the Legislature, in its wisdom, has used the words "Deputy Director who have completed five years of service in that capacity". There is no dispute that the petitioner served in the capacity of Deputy Director for a period 03 Years 11 Months 27 Days as on 30.06.2023.

26. Respondents have admitted the Noting Dated 15.03.2024 of Department of Personnel and have also admitted that the said noting was approved by Additional Chief Secretary, Government of Uttarakhand on 12.04.2024. By reading the entire noting (Annexure No.9 to the Claim Petition) it is clear that the department of Personnel, in so many words, has observed that for the purpose of relaxation in view of Rule 4, the Petitioner rendered his services in the Capacity of Deputy Director for about 04 Years on a substantive post of Deputy Director and his promotion and appointment was neither in the officiating capacity nor on ad-hoc basis nor on temporary basis, vide order dated 28.05.2012, and as per law his services in the capacity of Deputy Director may be counted for the purpose of relaxation or eligibility except for the benefit of Seniority/Financial Benefits.

27. Rule 5(3) of the Rules of 2019 provides for consideration for promotion on the post of Joint Director, that the officer should complete the service in the capacity of Deputy Director for 05 Years and here in

this case, the petitioner as on 30.06.2023, has completed the service in the capacity of Deputy Director for a period of 03 Years 11 Months and 16 Days (3 Years 08 Months and 27 Days from 28.05.2012 to 26.06.2016 and 11.04.2023 to 30.06.2023 02 Months 19 Days) in substantive capacity, therefore, in view of Rule 4 of Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion Rules, 2010 as amended in 2023, the petitioner is entitled to be considered for the benefit of relaxation. Petitioner claimed the benefit of Relaxation prior to 01.07.2024 well within time and same was denied by the Respondents vide order dated 04.07.2024, therefore it cannot be said that the benefit of relaxation is now not available to the petitioner. Respondents should consider all these aspects while granting him the relaxation.

28. Respondents have admitted that the petitioner passed all his orders in the capacity of Deputy Director, he discharged his duties as Deputy Director, therefore, the ACRs of the petitioner were also maintained as per the post occupied by him at the relevant point of time. Petitioner was not reverted to the post of Audit Officer as a punishment.

29. Respondents, on one hand, admitted that the petitioner worked in the capacity of Deputy director and on the other hand are taking a contrary stand by submitting that the petitioner was given benefit of 1<sup>st</sup> ACP on 18.07.2015 after taking into account the services rendered by him on the post of Audit Officer, Grade-I. It may be noted here that no arrears were given to the petitioner for the period he has worked as Deputy Director, while giving him (notional) benefit of 1<sup>st</sup> ACP.

## **CONCLUSION**

30. Petitioner moved representation for relaxation in the capacity of Deputy Director (Audit), for promotion to the post of Joint Director. He himself conceded that he does not fulfil required length of service, hence, requires relaxation. It may be noted here that relaxation can be applied ONLY ONCE by any employee. Additional Secretary to the Govt., in Finance department-6, did not find favour with such representation. It was mentioned in the

impugned letter dated 04.07.2024 (Annexure No. 1) that there is no occasion to give relaxation to the petitioner under the Rules of 2019.

31. One of the reasons thus given is that petitioner's promotion on the post of Deputy Director was conditional order. In order dated 28.05.2012, it was mentioned that if any official, senior to the petitioner, comes from Uttar Pradesh, then the petitioner shall be reverted to his original post of Audit Officer Grade-I.

31.1 Petitioner was reverted to his original post of Audit Officer *vide* order dated 26.02.2016. Pay fixation was done on the basis of order dated 26.02.2016. According to Annexure No. 1 (impugned order), such order has attained finality.

31.2 Petitioner was promoted as Deputy Director (from Assistant Director) in Uttarakhand Audit Department after the unification of different divisions of Audit Department on 11.04.2023.

31.3 It was further mentioned in impugned order (Annexure No. 1) that there was no lien of the petitioner between 2010-16 and his promotion was conditional. Since the service rendered by the petitioner on the post of Deputy Director was in stop gap arrangement/ or officiating (*sthanapan*), it is not possible to include such period in the qualifying service.

31.4 As per impugned order dated 04.07.2024 (Annexure No. 1), requirement for promotion to the post of Joint Director is— 5 years of service as Deputy Director and 15 years of service AS gazetted audit officer. Since the petitioner does not complete required length of service (or qualifying service) (minus probation period), so, it is not possible to give him the benefit of relaxation.

32. Prior to that, when the matter was referred to the Personnel and Vigilance Department for advice/ concurrence, opinion was recorded in the positive. Review Officer, Section Officer and all other officers wrote positive in favour of the petitioner. Details of service rendered by the petitioner have been mentioned in the information dated 08.07.2024 (Annexure No. 9), which was obtained under RTI.

32.1 Note 13 (Annexure No. 9 *colly*, page 101) is relevant in the context of deciding the controversy in hand. In para 3 of note 13, it has clearly been

mentioned that the petitioner was promoted after regular selection. The promotion was neither on *ad-hoc* basis nor temporary, nor officiating nor in stop gap arrangement. Petitioner has completed two years' probation period. Reference of decisions of Hon'ble Supreme Court has been given in the same by saying that even if certain conditions have been imposed, the nature of appointment / promotion is permanent. In other words, it is permanent in nature.

32.2 The petitioner has been discharging the duties and obligation of Deputy Director. As per the opinion given by the Personnel and Vigilance Department, petitioner's matter is covered by Rule 4 of the Relaxation Rules, 2010 as amended in 2023.

32.3 It may be noted here that the officer, who has rejected the representation of the petitioner (Annexure No. 1) was signatory to note-4 dated 05.03.2024, who referred the matter to Personnel Department, which was finally approved by Additional Secretary and Additional Chief Secretary on 15.03.2024 and 12.04.2024 respectively.

32.4 The fact that the petitioner was kept on probation period itself shows his posting/ promotion on which he was kept on probation, was substantive in nature.

32.5 The Tribunal is not aware of any instance in which a person who is given *ad-hoc* promotion or is given promotion under stop-gap arrangement or is officiating on a higher post is ever kept on probation.

32.6 Further, probation period is never excluded from the length of service, except only when it is provided under the Rules.

32.7 In the instant case, the Tribunal has not been able to lay its hands on any paper to indicate that probation period was to be excluded from the length of service of the promotional post or the post which is occupied by the petitioner on promotion.

32.8 "What's in a name? That which we call a rose by any other name would smell as sweet (as rose)" is a quote from 'Romeo and Juliet' by William Shakespeare. It is applicable to this case. The Tribunal has to see the nature of employment (read: promotion) to resolve the dispute.

32.9 The Court or Tribunal has the power to lift the veil and peep through, as is often done by the constitutional Courts while looking into the real intent of the legislation to find out whether it is under colourable exercise of power or not. The Tribunal may look into the matter from any point of view, but one thing is clear, that it is a case of 'admission and avoidance' by the Finance Department.

33. The Tribunal may hold any opinion, ultimately it is the Govt., who has to consider whether to grant relaxation to the petitioner or not, but certainly those are not the grounds for denying relaxation, which have been mentioned by the Finance Department while rejecting the representation of the petitioner in impugned order dated 04.07.2024 (Annexure No. 1). Further, the opinion of the Personnel Department has not been discussed by the Finance Department while issuing impugned order. It may be true that the opinion of the Personnel Department is not binding on the Finance Department, but the Finance Department should have discussed the opinion of the Personnel Department while taking a contrary view (to it).

33.1 Other documents, which have been filed by the petitioner and which (documents) have been discussed in the body of the judgement, also make out a case for relaxation.

33.2 Finally, even if the petitioner is denied relaxation for promoting him as Joint Director, for any reason, the fact remains that he has completed 15 years of service as gazetted audit officer and 5 years of service in the capacity of Deputy Director, including probation period, therefore, the respondent department may very well consider him for promotion as Joint Director as per law. He is the senior most Deputy Director and 04 posts of Joint Director are vacant in the respondent department.

33.3 A case for interference is made out. The impugned order calls for interference. The same should be set aside and is accordingly set aside, sending the matter for consideration of the Govt.

34. Petitioner has, therefore, been able to make out a case of relaxation for promotion on the post of Joint Director , Audit, for the selection year 2023-24, on the basis of above discussion. Even if it be conceded, for the sake of arguments, that the petitioner cannot be considered for relaxation, as no relaxation rules may exist as of now,

the fact remains that the petitioner is the senior most Deputy Director, who has completed 5 years of service in the capacity of Deputy Director as on date (besides completing 15 years in the Gazetted Audit Service Cadre), therefore, the respondents may well consider his case for promotion on the post of Joint Director, even *de hors* Relaxation Rules.

35. Order dated 04.07.2024 (Annexure: 1), whereby petitioner was denied the benefit of relaxation, is hereby set aside. Official respondents are directed to consider the case of the petitioner for granting him relaxation under the relevant Rules for promotion on the post of Joint Director, Audit, as prayed for by him.

In the alternative, since the petitioner is the senior most Deputy Director, who has completed 05 years of service in the capacity of Deputy Director as on date (besides completing 15 years in the Gazetted Audit Service Cadre), therefore, the respondents are directed to consider his case for promotion on the post of Joint Director, even *de hors* Relaxation Rules

36. The respondents are directed to complete such exercise as expeditiously as possible and without unnecessary delay. No order as to costs.

37. Claim petition is, accordingly, disposed of.

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

*DATE: FEBRUARY 24, 2025*  
*DEHRADUN*

**Sri Arun Singh Rawat, Vice Chairman (Admin)**

Heard learned Counsel for the petitioner and Ld. A.P.O. Ld. Counsel for the petitioner pleaded that the Departmental Promotion Committee considered the petitioner for promotion to the post of Deputy Director and as per recommendations of the committee, the petitioner was promoted on the post of Deputy Director, Audit on 28.05.2012.

2. The DPC recommended the petitioner for promotion to the post of Deputy Director with a condition that if any person senior to Sh. Soban Singh Nagnayal, who has been recommended to the post of Joint Director by the said meeting in the State of Uttarakhand, in view of the final allocation of cadre, Manoj Kumar Singh and Soban Singh will be reverted to the original post. This is mentioned as condition No. 3 in the promotion order dated 28.05.2012.

3. The promotion of the petitioner has been done as per prevailing Service Rules. The order does not speak that the petitioner has been promoted in officiating capacity, on temporary basis for the time being or for any stipulated period.

4. The promotion is on regular basis as per the Rules, there is a direction to complete two years' probation period in the promotion order. The petitioner has worked on the post of Deputy Director w.e.f. 28.05.2012 to 26.02.2016, a total period of 3 years 8 months and 27 days. His Annual Confidential Reports have been written as Deputy Director and he also signed several orders as a regular Deputy Director.

5. The petitioner was again promoted on the post of Deputy Director on 11.04. 2023 and is working on the post at present. The Govt. of Uttarakhand restructured, the department and constituted a Unified Audit Department, created four posts of Joint Directors, but all the four posts are lying vacant as there are no Deputy Directors available for promotion and the petitioner is the senior most Deputy Director as per seniority list.

6. Rule 5 of Uttarakhand Audit Gazetted Service Rules, 2019 provides qualification for recruitment and Rule 5(3) provides recruitment on the post of Joint Director, as under:

*5(3) Joint Director:- By promotion for amongst substantively appointed Deputy Director who have completed five years of service in that capacity and have completed 15 years of service in the gazette Audit Service cadre on the first day of the recruitment year on the basis of seniority, subject to rejection of unfit through departmental promotion committee.*

The rule does not mention that in what manner the officers has worked and the promotion order does not speak on temporary or ad-hoc basis.

8. The petitioner has completed 3 years 8 months of service in the capacity of Deputy Director and completed total fifteen years of service in the Gazetted Audit Cadre. The period of five years includes the period from 28.05.2012 to 26.02.2016 (3 years 8 months and 27 days) before his reversion to original post, and from 11.04.2023 to till now. The petitioner has requested to consider for relaxation in the qualifying service as per Promotion Rules of 2010 as amended vide Govt. Order dated 29.12.2023.

9. Petitioner has completed more than 50% of the qualifying service in the Relaxation Rules, 2010 and for promotion to the post of Joint Director as all the senior officers have already been promoted and retired and four posts of Joint Directors are lying vacant.

10. Rule 4 of the aforesaid Rules provides for consultation with Department of Personnel for considering relaxation in qualifying service. The department accordingly, submitted representation of the petitioner for opinion of the Department of Personnel.

11. The learned Counsel stressed on the term that “Capacity” used in the Rule 5(3) – Deputy director who has completed 5 years of the service in that capacity---”and that petitioner has completed 3 years 8 months 27 days service in the capacity of Deputy Director from 28.05.2012 to 26.02.2016 and he has been appointed further as Deputy



Director on 11.04.2023. There is no mention of the continuous period of five years in the rule.

12. The learned Counsel for the petitioner further pleaded that the petitioner is liable to get the benefit of the Rule 4 of Uttarakhand Govt. Servant Relaxation in Qualifying Service for Promotion Rules, 2010 as amended in 2023 as one-time relaxation in the service.

13. The opinion of the Personnel Department as available in the records also reads that the appointment of the officer on the post of the Deputy Director from 28/5/2012 to 26/2/2016 was not ad hoc basis, temporary or officiating. The officer has completed probation period also. In view of the judgements of the Hon'ble Supreme Court the appointment of the officer appears to be permanent irrespective of any condition imposed on the promotion. The officer has discharged the duties of the deputy director which are valid today. The officer is eligible for the relaxation in the qualifying service today as per Rule 2010 (as amended Rule 2023). But before issuing the order for the relaxation, the Administrative Department will ascertain that no officer senior to the officer under consideration is available for the promotion, so that there is no problem in the cadre management.

14. The Finance Department, the Administrative Department in this case does not agree with the advice of the Personnel department as it finds the advice vague and contradictory. The Administrative Department considers that the officer did not have a lien to the post of the deputy director as the promotion was conditional. The language of the promotion order makes it very clear that the promotion was a stand-in arrangement as the regular incumbent was not available, it was not a permanent promotion. The officer after promotion was reverted to the feeder cadre, so the period spent on the post of the deputy director from 28/5/2012 to 26/2/2026 cannot be considered for the qualifying service for the promotion. The officer was promoted to the post of deputy director on 11/4/2023 and he does not fulfill the required residency period, continuous service on the post of deputy director for the

relaxation as per the Relaxation Rule 2010 (Amended Rule 2023). So, the officer is not eligible for the relaxation of the qualifying service.

15. On the basis of the pleadings of the Learned Counsel and the learned APO and documents related to the Claim petition, I hold that period spent by the officer on the post of the Deputy Director from 28/5/2012 to 26/02/2016 cannot be considered for the benefit of relaxation as the promotion of the officer for the aforesaid period was conditional and it was a Stand-in arrangement. This period will not count for seniority as per Rule as also opined by the Personnel Department, which show that, that period cannot be considered for substantive appointment to the post of Deputy Director.

16. Neither any Rule nor ruling of the Hon'ble Supreme Court has been brought to the knowledge of the Tribunal which covers the broken period spent on the feeder cadre for the purpose of counting as qualifying service for the promotion. Even the petitioner failed to cite such precedence also.

17. In view of the above, the Claim petition is liable to be dismissed.

### **ORDER**

The Claim petition is dismissed.

**(ARUN SINGH RAWAT)**  
VICE CHAIRMAN (A)

*DATE: FEBRUARY 24, 2025*  
*DEHRADUN*