

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

EXECUTION PETITION NO. 03/SB/2025

*(Arising out of judgment dated 02.12.2024,
passed in Claim petition No. 177/SB/2024)*

Sri Dinesh Chandra Gaur, s/o Late Sri Vidhya Dutt Gaur, r/o 96-Gangotri
Vihar, Dehradun, Uttarakhand.

.....Petitioner/applicant

vs.

State of Uttarakhand through Secretary, Education, Dehradun,
Uttarakhand.

.....Respondent

Present: Ms. Medha Gaur (online) & Sri Sahil Rana, Advocate, for the
petitioner-applicant.
Sri V.P. Devrani, A.P.O. for the Respondents.

JUDGEMENT

DATED: FEBRUARY 24 , 2024

Justice U.C.Dhyani (Oral)

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

“(a) Direct the Respondent to open the sealed envelope
expeditiously i.e. within a specific time frame, in terms of the
order dated 02.12.2024 and thereby granting notional promotion
to the petitioner for the post of Additional Director, in accordance

with the law effective from the date his juniors were promoted in terms of the order dated 02.12.2024.

- (b) Award the cost in favour of the petitioner for sufferings and the litigations cost.
- (c) Any other order, which the Hon'ble Court deems fit ad proper in the facts and circumstances of the case and in the interest of justice."

2. Earlier claim petition No. 177/SB/2024 was decided by the Tribunal *vide* judgment dated 02.12.2024. It will be apposite to reproduce the order passed by the Tribunal on 02.12.2024 for understanding the background of the case, herein below for convenience:

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

- (i) Direct the Respondent to decide the Review Application expeditiously i.e. within one week, since the Petitioner retirement is due for December and the undue pronged delay in the proceedings shall cause irreparable loss to the Petitioner in light of the judgment dated 27.11.2024 passed by the Hon'ble Supreme Court in West Bengal & ors vs. Dr. Amal Satpathi & ors.
- (ii) Direct the Respondent to opened the sealed cover whereby the Petitioner Promotion is still on hold, in timely manner after the decision on Review Application.
- (iii) Direct the Respondent to grant promotion to the petitioner for the post of Additional Director, in accordance with the law and the decision of the sealed cover, before his retirement, effective from the date his juniors were promoted so that he is not subjected to Double Jeopardy under Article 20(2)."

2. It is the submission of learned Counsel for the petitioner that the petitioner is going to retire on 31.12.2024, his review petition has not been decided as yet, copy of the order of Tribunal was served upon the reviewing authority well on time, if the review is not decided within a week, it will cause irreparable loss to the petitioner, his legal right for considering his promotion shall be violated, therefore, a direction be given to reviewing authority to decide the review petition of the petitioner within a week and thereafter, 'sealed cover' for promoting him should be opened.

3. Learned Counsel for the petitioner also submitted that three officers, who are junior to the petitioner, have been promoted and because of 'sealed cover', his name has not been considered for promotion. Ms. Medha gaur, learned Counsel for the petitioner further submitted that Ms. Asha Rani Painuly and Sri Ashok Kumar Jukariya have since retired, the vacancies are available for promotion. Other three names mentioned in order dated 29.08.2024 are junior to him.

4. Earlier, the Tribunal decided the claim petition no. 58/SB/2024, Dinesh Chandra Gaur vs. State of Uttarakhand and others, *vide* order dated 20.06.2024, which (order) reads as under:

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

- “(i) Quash and set aside the impugned order dated 07.06.2024 passed by Respondent No. 1; and/ or
- (ii) Award the cost in favour of the Petitioner;
- (iii) Any other order, which the Hon’ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Office Memorandum dated 07.06.2024, issued by Secretary, Secondary Education, Govt. of Uttarakhand (Annexure No. 1) is in the teeth of the present claim petition. Recovery of Rs. 2,17,392/- from pay of the petitioner for pecuniary loss caused to the Govt. has been ordered. Minor penalty under Rule 3(a)(iii) of the Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010) (for short, ‘Rules of 2003’) has been imposed. Such pecuniary loss has been ordered to be recovered in seven monthly installments from pay of the petitioner, who will retire in December, 2024.
3. It has specifically been mentioned in the penultimate paragraph of impugned order dated 07.06.2024 (Annexure No. 1) that the mistake on the part of the petitioner was not deliberate but was done under misinterpretation of Hon’ble Court’s order dated 07.04.2017.
4. Ms. Medha Gaur, learned Counsel for the petitioner drew attention of the Bench towards grounds (A) to (T) taken in the claim petition to submit that the petitioner wants to file review application against the impugned order dated 07.06.2024, inasmuch as various material error of law have occurred, which have the effect of changing the nature and outcome of the case, therefore, liberty may be granted to make a representation to the reviewing authority under Rule 14 of the Rules of 2003.
5. Learned Counsel for the petitioner also pointed out that the beneficiary Sri Pramod Prasad Joshi has been ordered to be reinstated by the Hon’ble Court *vide* order dated 04.06.2024 in WPSS No. 466/2021.
6. In reply, learned A.P.O. submitted that if the petitioner wants to file representation in the form of review, it is his ‘entitlement’ under Rule 14 of the aforesaid Rules. Liberty to file representation is not required from the Tribunal.
7. Rule 14 of the Rules of 2003 reads as under:

“14. Review— The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case.”
8. Learned Counsel for the petitioner further submitted that if need be, the petitioner may deposit the amount ‘under protest’, if at all he is unable to get the relief from any corner, therefore, recovery of money under the impugned order may be kept in abeyance till review application is decided.
9. The Bench is of the opinion that considering the facts of the case, the petitioner may file representation, in the form of review application, to the appropriate authority, as per law. It will also be in the fitness of things, considering the peculiar facts of the case, and in the interest of justice, if recovery from the salary of the petitioner is kept in abeyance till such review application is decided.

10. Learned Counsel for the parties submitted that the claim petition may be disposed of by Single Bench of the Tribunal, at the admission stage.
11. The claim petition is disposed of, at the admission stage, by leaving it open to the petitioner to make a representation to the appropriate authority under Rule 14 of the Uttaranchal Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010), as per law. Till such review application is decided, the recovery under the impugned office-memorandum dated 07.06.2024 shall be kept in abeyance. No order as to costs.”
5. Learned A.P.O. has no objection to the innocuous prayer of learned Counsel for the petitioner if a direction is given by the Tribunal to decide the review application as expeditiously as possible and without unreasonable delay, and petitioner’s name be considered for promotion after opening sealed cover, as per law.
6. The claim petition is disposed of, at the admission stage, with the consent of learned Counsel for the parties, by making a request to the reviewing authority to decide the review petition of the petitioner as expeditiously as possible, without unreasonable delay, considering the facts, which have been mentioned in paras 2 & 3 of this judgement. Petitioner may also be considered for promotion after opening the ‘sealed cover’, as per law.”
3. Reviewing authority has decided the review petition of the petitioner. The review has been retained. *Vide* Office Memorandum dated 23.12.2024 (Annexure: 4), the punishment order dated 07.06.2024 has been revoked. The reason for revocation of the punishment order has been given by the Secretary, Secondary Education, in his order dated 23.12.2024. The order was passed after due consultation with the Finance Department of the Govt.
4. When the punishment order was revoked, the petitioner ought to have been considered for promotion, after opening the sealed cover, in accordance with law, as per the directions of the Tribunal, as contained in Para 6 of the decision dated 02.12.2024. The same has not been done. Ld. Counsel for the petitioner submitted that exemplary cost should be imposed on the respondent department for delaying the matter unnecessarily
5. Sri V.P.Devrani, Ld. A.P.O., on seeking instructions from the respondent department, submitted that the petitioner has since retired, he will be considered for notional promotion after opening the sealed cover.
6. The Tribunal takes note of such submission of Ld. A.P.O.

7. No useful purpose would be served by keeping the execution petition pending. The same is, accordingly, closed with the direction to the respondent department to consider the petitioner for notional promotion after opening the sealed cover, as expeditiously as possible and without unreasonable delay, and in any case, within 04 weeks of presentation of certified copy of this order.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 24, 2025.
DEHRADUN

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