

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Claim Petition No. 37/SB/2022

Manoj Kumar Singh, aged about 52 years, s/o late Sri Ram Singh, r/o
Khasra No. 34-A, Opposite M.B. 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 (*online*)
Sri V.P. Devrani, A.P.O. for the respondents

Judgement

Dated: 21st March, 2025

Per: Mr. Rajendra Singh, Vice Chairman (J)

This claim petition has already been decided by the Bench comprising Hon'ble Chairman and Hon'ble Vice Chairman(A) but both the Hon'ble members of the Bench have given different opinions, therefore, the claim petition has been referred to me by Hon'ble Chairman *vide* his order dated 27.02.2025 to hear the matter and decide the same, in accordance with law.

2. I have heard learned Counsel for the petitioner and learned A.P.O. and perused the record carefully and came to the following conclusions:

2.1 Learned Counsel for the petitioner has argued that the petitioner was initially appointed through Public Service Commission on the post of Audit Officer, Grade-I in the pay scale of Rs. 8000-275-13500 in the department of cooperative society and Panchayat Audit, which was gazetted post.

2.2 Learned Counsel for the petitioner further argued that on 11.05.2012, Departmental Promotion Committee was constituted under Chairmanship of Finance Secretary and three other members for promotion for the vacant post of Deputy Director in the pay scale of Rs. 15600-39100 Grade Pay Rs. 6600/- and committee has considered the petitioner 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 on record as Annexures No. 3 and 4 to the claim petition.

2.3 The promotion committee recommended the petitioner for promotion on the post of Deputy Director and promotion order dated 28.05.2012 was passed by Secretary with the condition that if any person senior to Sri Soban Singh Naganyal, who has been recommended on the post of Joint Director by the said meeting, joins the State of Uttarakhand in view of final allocation of cadre then the petitioner as well as Sri Soban Singh Naganyal will be reverted to their original post.

2.4 Learned Counsel for the petitioner further argued that the promotion of the petitioner was not on ad-hoc basis, temporary or officiating that is on regular basis, as per rule with the direction to complete two years' probation period as mentioned in his promotion order. The petitioner has worked on

the post of Deputy Director *w.e.f.* 28.05.2012 to 26.02.2016, total period of 3 years 08 months and 27 days.

2.5 Learned Counsel for the petitioner also emphasized that his Annual Confidential Reports have been written as Deputy Director and he also worked and signed as regular Deputy Director. 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. Hence, the petitioner is entitled for relaxation in qualifying service for considering the promotion of the petitioner on the post of Joint Director (Audit) for the Selection Year 2023-24.

2.6 Learned A.P.O. has contended on behalf of the respondents that while the petitioner's pre-unification service (prior to 2019) may be counted for service benefits, it does not automatically qualify as substantive service for promotion eligibility. The period between May 2012 and February, 2016 cannot be treated as qualifying service for promotion, as it was rendered under a conditional and revocable promotion order.

2.7 Learned A.P.O. has relied upon the Hon'ble Supreme Court's judgement in Union of India and another vs. D.P. Singh and others, 2016 SCC OnLine Del 5381, in which Hon'ble Apex Court has held that services can only be counted for promotion eligibility if explicitly permitted by the governing rules.

2.8 Learned A.P.O. drew attention of the Tribunal towards Rule 4 of the Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010, which reads 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.”

3. Admittedly, the petitioner was promoted on 28.05.2012 on the post of Deputy Director as per the recommendation of Departmental Promotion Committee in the pay scale of Rs. 15600-39100 Grade Pay Rs. 6600/- as per the relevant service rules with a direction that petitioner has completed two years' probation period and another condition that if any incumbent senior to Sri Soban Singh Naganyal will join the services in the State of Uttarakhand after its final allocation, then the petitioner will be reverted to his original post. These conditions are clearly mentioned in the petitioner's promotion order dated 28.05.2012. It is also admitted that on 26.02.2016, the petitioner was reverted on the post of Audit Officer Grade-I, in view of final allocation of Sri Vipin Bihari to State of Uttarakhand.

4. Further, it is also admitted that the petitioner once again was promoted on the post of Deputy Director vide order dated 11.04.2023.

5. Now, where is the question arise by the petitioner to consider his case for granting the relaxation to him in view of Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010 and Uttarakhand Government Servant Relaxation in Qualifying Service for Promotion

(Amendment) Rules, 2023. Rule 4 of the Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010, is 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]

6. In the aforesaid Rule 4, it is clearly mentioned that such prescribed minimum length of service may be suitably relaxed upto 50% by the Administrative Department in consultation with the Personnel Department of the Govt. excluding the period of probation as laid down for the said lower post or posts, as the case may be.

7. The opinion of the Personnel Department as available on record also reads that the appointment of the officer on the post of Deputy Director from 28.05.2012 to 26.02.2016 was not ad-hoc basis, Temporary or Officiating. The officer has completed probation period also but the Finance Department, the Administrative Department in this case does not agree with the advice of Personnel Department as it finds the advice presumptive and contradictory. The Administrative Department has advised that the officer did not have a lien to the post of Deputy Director as the promotion was conditional. It means the promotion of petitioner was not permanent promotion.

Consequently, the petitioner after promotion was reverted to his original post on 26.02.2016. Hence, the period spent on the post of Deputy Director from 28.05.2012 to 26.02.2016 and the petitioner was again promoted on 11.04.2023 on the post of Deputy Director, therefore from 11.04.2023 till 01.07.2023, the petitioner has worked in the capacity of Deputy Director for the period of two months and 20 days, which period cannot be considered for the qualifying service for promotion after excluding two years' probation period.

8. 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."

9. Even if it is presumed that the earlier period working the capacity of Deputy Director from 28.05.2012 to 26.02.2016 is to be considered for qualifying service, the petitioner has completed 03 years 08 months and 27 days' service in the capacity of Deputy Director from 28.05.2012 to 26.02.2016, in which two years' probation period is excluded, which comes to 01 year 08 months and 27 days, which is less than 50% required relaxation service i.e. 2 years 6 months. So the petitioner is not eligible for the relaxation of the qualifying service envisaged in the aforesaid relevant rules.

10. In view of the above law laid down by the Hon'ble Apex Court in the matter of Union of India and another vs. D.P. Singh and others, 2016 SCC OnLine Del 5381, and also on the basis of Rule 4 of Uttarakhand Government Servants Relaxation in Qualifying Service for Promotion Rules, 2010, the claim

petition has no legal force being devoid of merits and is liable to be dismissed and is accordingly dismissed.

ORDER

The claim petition is dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MARCH 21, 2025
DEHRADUN
RS