

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 38/ DB/2014

Surat Singh Chauhan, S/o Shri Bhushawa Singh, aged about 39 years, presently posted as Fireman, Fire Station, SIDCUL, Haridwar.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary (Home), Govt. of Uttarakhand, Civil Secretariat, Dehradun.
2. Director General of Police, Uttarakhand, Police Head Quarter, Subhash Road, Dehradun.
3. Additional Director General of Police (Administration), Uttarakhand, Dehradun.
4. Inspector General of Police, Garhwal Region, Uttarakhand.
5. Senior Superintendent of Police, Dehradun.

.....Respondents.

Present: Sri L.D.Dobhal, Ld. Counsel
for the petitioner.

Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents.

JUDGMENT

DATED: MAY 24, 2017

(Hon'ble Mr. D.K.Kotia, Vice Chairman (A))

1. The petitioner has filed the claim petition for seeking the following relief:-

“a. To issue an order or direction to quash the order dated 14.03.2013 by which the petitioner has been denied the benefit of promotion.

b. To issue order or direction to the respondents to consider the case of the petitioner for promotion under the special case.

c. To issue any other direction as the Hon'ble Tribunal deems fit in the facts and circumstances of the case.

d. To give cost of petition to the petitioner."

2.1 The petitioner is a Fireman in the Police Department and posted at Fire Station, SIDCUL, Haridwar. The petitioner completed the "Sub-Officers Course" of the National Fire Service at R.T.C. Kolkata from 02.07.2007 to 21.12.2007 successfully in distinction class (Annexure: A 3).

2.2 The services of the petitioner are governed by the Uttar Pradesh Fire Service (Recruitment and Conditions of Service) Rules, 1945 (Annexure: A 4). The said Rules have been referred as the Rules of 1945 hereinafter. The relevant Rules of the Rules of 1945 are reproduced below:-

"4. Strength of the establishment—The sanctioned strength of the service and the nature of the posts therein shall be determined by the Governor from time to time and shall, on the commencement of these rules, be as specified in the Schedule given in Appendix A to these rules:

Provided that-----

5. Section of the Service—The service is divided into three sections. viz., Section I consisting of Fire Station Officers and Fire Station Second Officer, Section II of drivers and Section III of Leading Firemen and Firemen.

18. Promotion (1) Promotions to Section I of the Service shall be made on the basis of seniority subject to the rejection of the unfit, provided that, in any special case, the Inspector General of Police may promote out of his turn or pass over any member.

(2)....."

"Appendix 'A'

Sl. No.	Designation of Post		Sanctioned number of post	Scale of pay
		Section I		
1.	Fire Station Officer	.....	" "	180-5-240
2.	Fire Station Second Officer	.....	""	65-2-90-3-120
		Section II		
3	Drivers	.....	19	45-1-1/2-60
		Section III		
4.	Leading Firemen	.....	19	35-1-45
5.	Fireman	....	133	25-1(biennial)-35

- 2.3 After completing the Sub-Officers Course, the petitioner asked for consideration of his name for “out of turn” promotion on the post of “Fire Station Second Officer” (Section I) under Rule 18(1) of the Rules of 1945.
- 2.4 The request of the petitioner was rejected by the respondents on 14.03.2013 (Annexure: A 1).
- 2.5 The contention of the petitioner is that in the identical set of facts, the Hon’ble Public Services Tribunal, Uttar Pradesh in claim petition No. 176/2011 (which was upheld by the Hon’ble High Court, Lucknow Bench) directed to the Director General of Police, U.P., Lucknow to consider the case of one Sri Nagendra Prasad Dwivedi (petitioner in the claim petition before the U.P. Tribunal) for promotion to the post of “Fire Station Second Officer” as a special case under Rule 18 (1) of the Rules of 1945, (Annexure : A 5). On the basis of the judgment of the Uttar Pradesh Public Services Tribunal, Sri Dwivedi was promoted to the post of “Fire Station Second Officer” on 08.07.2012 (Annexure: A 6).
- 2.6 The grounds on the basis of which the petitioner in the present case has challenged the rejection of his promotion request vide letter dated 14.03.2013 (Annexure: A 1) are that the claim of the petitioner, who is similarly situated as Shri Nagendra Prasad Dwivedi, has been wrongly rejected by the respondents; the respondents have failed to appreciate that the judgment of the Hon’ble Tribunal of U.P. was delivered on facts which are identical in the present case; and the discrimination between two similarly situated employees, although in different States, is a clear violation of the Article 14 and 16 of the Constitution of India.
3. Respondents have opposed the claim petition and in their joint written statement have stated that the case of the petitioner is not a case on identical facts compared to the case decided by the Hon’ble Public Services Tribunal of Uttar Pradesh and the petitioner is not similarly situated as compared to Sri Nagendra Prasad in the case before the U.P. Tribunal due to following reasons:-

- (i) The petitioner is a "Fireman" in the Fire Service. Next promotion of Fireman is on the post of "Leading Fireman/Fire Service Driver". The promotion on the post of "Fire Station Second Officer" is made out of Leading Fireman/ Fire Service Drivers. Sri Nagendra Prasad Dwivedi in the claim petition before the U.P. Tribunal was a "Leading Fireman". He was promoted out of turn from the post of "Leading Fireman" to the post of "Fire Station Second Officer". The petitioner who is a "Fireman" has claimed out of turn promotion from "Fireman" to "Fire Station Second Officer" directly. Thus, the petitioner in the present case and Sri Nagendra Prasad Dwivedi, the petitioner before the U.P. Tribunal cannot be said to be similarly situated employees.
- (ii) Sri Nagendra Prasad Dwivedi had passed the "Sub-Officers Course" securing 2nd rank in the 8th Sub-Officers Course and, therefore, his case was treated as a special case under Rule 18(1) of Rules of 1945 for out of turn promotion (Anneuxre: A 6). The petitioner in the present case though completed the 20th Sub-Officers Course with distinction but unlike Sri Nagendra Prasad Dwivedi, he did not secure any rank. The petitioner in the present case, therefore, cannot be equated with Sri Nagendra Prasad Dwivedi.
- (iii) The petitioner in the present case had given an affidavit to the Department at the time of going for the Sub-Officers Course that after completing the course, he would not claim any promotion. .

4. The petitioner preferred not to file any rejoinder affidavit.
5. We have heard both the parties and perused the record carefully.
6. Learned counsel for the petitioner and learned A.P.O. on behalf of respondents have stated in their arguments the same points which are stated in Paragraphs 2 and 3 of this order.
7. After hearing learned counsel for the petitioner as well as learned A.P.O., perusing pleadings of both the parties and going through the record, we are of the view that the plea of the petitioner that the facts in the present case and the case which was before the Hon'ble Tribunal

of U.P. are identical and the petitioner in the present case and Sri Nagendra Prasad Dwivedi in the case before the U.P. Tribunal are similarly situated employees, cannot be accepted. The petitioner, of course, completed "Sub-Officers Course " with distinction but there is a significant difference between him and Sri Nagendra Prasad Dwivedi as the latter secured the 2nd rank in the course on the basis of which the DGP of U.P. as a special case, promoted Sri Dwivedi out of turn under Rule 18(1) of the Rules of 1945. Further, the petitioner after completing "Sub-Officers Course" has claimed promotion from the post of "Fireman" to the post "Fire Station Second Officer" jumping the post of "Leading Fireman" between the post of "Fireman" and "Fire Station Second Officer" unlike Sri Dwivedi who was already working on the post of "Leading Fireman". Thus, the ground of the petitioner to claim the promotion on the post of Fire Station Second Officer under Rule 18(1) of the Rules of 1945 on the basis of the judgment of the Hon'ble Public Services Tribunal, Uttar Pradesh in the claim petition No. 176/2011 is misconceived and cannot sustain.

8. Learned counsel for the petitioner and learned A.P.O. have not raised any other point.
9. For the reasons stated above, we do not find any merit in the claim petition and, therefore, the same is liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K.KOTIA)
VICE CHAIRMAN (A)

DATE: MAY 24, 2017

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