

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 26/NB/DB/2015

Dinesh Chandra S/o Sri Gushai Ram, presently working as Mali,
Ramnagar, Forest Division, Ramnagar, District Nainital.

.....**Petitioner**

VERSUS

1. State of Uttarakhand through its Secretary, Forest, Govt. of Uttarakhand.
2. The Divisional Forest Officer, Upper Yamuna Forest Division, Barkote, District Uttarkashi.
3. The Divisional Forest Officer, Ramnagar Forest Division, District Nainital.

.....**Respondents**

Present: Sri Prabhat Bohra, Ld. Counsel
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: JANUARY 11, 2018

(HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A))

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

“(i) Pass an order directing to the respondents to reinstate the petitioner on the post of Forest Guard alike to the Shri Prayag Datt Dhondhiyal and thereafter, second promotion on the post of “Forester ”as per the seniority and consequential service benefits thereof.

(ii) Pass an order directing to the respondents to release all the arrears of the petitioner in compliance of judicial order dated 01.07.2011 from the date petitioner was entitled to get these.

(iii) Pass an order directing to the respondents to pay all the expenses incurred for this multiple round of litigation and damages against being deprived from exercising his legal and fundamental rights.

(iv) Pass an order directing to the respondents to pay damages of Rs. 500000(Five lakh) against causing illegal mental harassment of the petitioner by violating the constitutional and fundamental rights and causing irreparable injury the petitioner, to meet the ends of justice.

(v) Pass an order directing to the respondents to pay heavy cost as the Hon’ble Tribunal deems fit to meet the ends of justice.”

2. The facts in brief are that the petitioner was initially appointed as Mali (Class IV post) in the year 1982. The petitioner passed Prathma examination from Hindi Sahitya Sammellan, Allahabad in the year 1994.

3. The Subordinate Forest Service Rules, 1980, provides that 10 % of the posts of Forest Guards are to be filled up from such employees of Class IV who have passed High School examination with Science or Agriculture as one of the subject. The petitioner

was promoted from the post of Mali (Class IV post) to the post of Forest Guard in the year 2001 and his certificate of Prathma examination of Hindi Sahitya Sammellan, Allahabad was considered as equivalent to the High School examination.

4. On some complaints received, the promotion of the petitioner was reviewed and by order dated 29.07.2003, the promotion of the petitioner was cancelled.

5. **The petitioner filed a claim petition No. 26/NB/2008 as Dinesh Chand Vs. State of Uttarakhand & others**, and the Tribunal vide its judgment dated 01.07.2011 held as under:-

“The petition is allowed. Impugned order is set-aside. The respondents are directed to pass appropriate orders within a period of three months from today after affording opportunity of hearing to the petitioner and after conducting a thorough enquiry whether the ‘Prathma’ is equivalent to the ‘High School’. No orders as to costs. Interim stay stands vacated.”

6. In compliance of the above order of the Tribunal, the respondents have stated that a thorough enquiry was conducted about the validity of the ‘Prathma’ certificate with regard to its High School equivalence after affording full opportunity of hearing to the petitioner and it was found that ‘Prathma’ certificate qualification of Hindi Sahitya Sammellan, Allahabad is not recognized by the State of Uttarakhand or the State of Uttar Pradesh equivalent to the High School and, therefore, the representation of the petitioner in this regard was rejected.

7. The petitioner in his present claim petition has sought a relief to reinstate the petitioner on the post of Forest Guard alike to Sri Prayag Dutt Dhaundiyal and thereafter, second promotion on the post of "Forester" as per the seniority and consequential service benefits thereon.

8. It would be pertinent to mention at this stage that Sri Prayag Dutt Dhaundiyal was also a Class IV employee and he had also passed the 'Prathma' examination of Hindi Sahitya Sammellan, Allahabad. Sri Prayag Dutt Dhaundiyal was also promoted along with the petitioner in the year 2001 and since the 'Prathma' certificate was not treated equivalent to the High School, the promotion of Sri Prayag Dutt Dhaundiyal was also cancelled on 29.07.2003 alongwith the petitioner. Sri Prayag Dutt Dhaundiyal also filed a Claim Petition (No. 130 of 2008) in Principal Bench of the Tribunal at Dehradun against the cancellation of his promotion dated 29.07.2003 and it was held by the Tribunal on 26.08.2015 that the "Prathma" qualification of Hindi Sahitya Sammellan, Allahabad has not been recognised equivalent to "High School" examinations by the State of Uttarakhand or the State of Uttar Pradesh and, therefore, Sri Prayag Dutt Dhaundiyal did not possess the essential qualification of High School for promotion from Class IV post to the post of Forest Guard and cancellation of his promotion vide order dated 29.07.2003 was found in order.

9. Learned counsel for the petitioner has contended that while the petitioner was actually reverted from the post of Forest Guard to the post of Mali, Sri Prayag Dutt Dhaundiyal was not reverted from the post of Forest Guard to Class IV post in

accordance with the order dated 29.07.2003. Moreover, Sri Prayag Dutt Dhaundiyal was given further promotion on the post of "Forester". The contention of the petitioner is that the respondents have discriminated against the petitioner violating the principle of equal opportunity of promotion in the public employment. In view of this contention, the petitioner in the second round of litigation, has sought relief for his reinstatement alike to Sri Prayag Dutt Dhaundiyal.

10. Respondents No. 1,2 and 3 have opposed the claim petition and in their joint written statement, it has been stated that the prayer of the petitioner in the claim petition is misconceived and cannot be accepted. While it has been admitted by the respondents that due to mistake, Sri Prayag Dutt Dhaundiyal was not reverted from the post of Forest Guard to Class IV post, the petitioner cannot take advantage of the situation as Sri Prayag Dutt Dhaundiyal wrongly continued on the promoted post of Forest Guard. It has further been stated by the respondents that the claim petition of Sri Prayag Dutt Dhaundiyal against the cancellation of promotion order dated 29.07.2003 filed by him in the Principal Bench at Dehradun (No. 130/2008) was decided on 26.08.2015 and the claim petition of Sri Prayag Dutt Dhaundiyal was dismissed.

11. It has also been contended by the respondents that the order of the Tribunal in Claim Petition No. 26/NB/2008, Dinesh Chand Vs. State of Uttarakhand, has been fully complied with. A thorough enquiry was conducted by the department and the petitioner was provided full opportunity to present his case. After the order of the Tribunal on 01.07.2011, the petitioner was

written letters on 25.08.2011, 15.09.2011 and on 30.09.2011 to submit his claim regarding equivalence of 'Prathma' to the High School. The petitioner presented himself on 19.10.2011 and provided a list of documents on the basis of which, the petitioner claimed that the 'Prathma' should be treated as equivalent to the High School. The petitioner also submitted two more letters on 18.11.2011 and 23.03.2012 in support of his claim regarding equivalence. The respondents department after ascertaining from the department of School Education found that the 'Prathma' of Hindi Sahitya Sammellan, Allahabad is not recognized as equivalent to the High School examination. All the representations of the petitioner were rejected by the forest department on 11.4.2012 and the petitioner was informed through Divisional Forest Officer, Ramnagar regarding rejection of his representations.

12. It has also been contended by the respondents that the Tribunal in claim petition No. 26/NB/2008 vide order dated 01.07.2011 had set aside the order of reversion of the petitioner dated 29.07.2003 but the Tribunal had not given any specific direction to reinstate the petitioner. The petitioner was not reinstated but enquiry was conducted and in the enquiry, the 'Prathma' was not found equivalent to the High School. Since, the petitioner had already been reverted in 2003 and the enquiry revealed that the 'Prathma' is not equivalent to the High School, it was found that no further order was required as the petitioner continued to be reverted. Under these circumstances, the prayer of the petitioner for reinstatement on the post of Forest Guard is misconceived. Moreover, no relief has been sought by the petitioner to set aside the enquiry report dated 11.4.2012. The

petitioner continues to be reverted from the post of Forest Guard to Mali (Class IV post).

13. The petitioner has also filed a rejoinder affidavit and the same points have been reiterated in it which were stated in the claim petition. Additionally, the petitioner has given a detailed account of his reasoning for equivalence of "Prathma" to the High School in the rejoinder affidavit. Respondents also filed additional written Statement. The petitioner also filed Supplementary affidavit and he also filed written submissions. The petitioner in his written submissions has also stated that the present claim petition is for execution of the order passed on 01.07.2011 in Claim petition No. 26/NB/2008, Dinesh Chand Vs. State of Uttarakhand.

14. We have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of the respondents and perused the record.

15. Learned counsel for the petitioner has argued that the respondents have not complied with the order of the Tribunal dated 01.07.2011 and the present claim petition is for execution of the Tribunal's order dated 01.07.2011. It is difficult to agree with the contention of the learned counsel for the petitioner. The present claim petition is not an execution application. The relief sought in the present claim petition is confined to reinstate the petitioner on the post of Forest Guard alike to Sri Prayag Dutt Dhaundiya. Therefore, the argument of learned counsel for the petitioner for execution is out of place and it is not the subject matter of the present claim petition.

16. Learned counsel for the petitioner has also argued that while the orders in respect of the petitioner as well as Sri Prayag Dutt Dhaundiyal for cancellation of promotion were issued together on 29.7.2003, the petitioner was actually reverted but Sri Prayag Dutt Dhaundiyal was never reverted. The contention of the learned counsel for the petitioner is that like Sri Prayag Dutt Dhaundiyal, the petitioner should have also not been reverted and, therefore, relief sought is to reinstate the petitioner on the post of Forest Guard. Learned A.P.O. in his counter argument has stated that even if Sri Prayag Dutt Dhaundiyal was not reverted (through it was wrong on the part of respondent department not to revert him), no right accrues to the petitioner for not reverting him or now reinstating him. Learned A.P.O. has also stated that Sri Prayag Dutt Dhaundiyal had also filed a claim petition No. 130/2008 in the Principal Bench of this Tribunal at Dehradun which was decided on 26.8.2015 and the 'Prathma' was not found to be equivalent to the High School examination and the petition of Sri Pyagag Dutt Dhaundiyal was dismissed. We tend to agree with the contention of the learned A.P.O. that the petitioner does not get any right for his reinstatement on the basis of the wrongful act in respect of Sri Prayag Dutt Dhaundiyal for not actually reverting him. The claim petition of Sri Prayag Dutt Dhaundiyal has also been dismissed by Principal Bench of this Tribunal at Dehradun on 26.08.2015 and none of the parties have stated that any appeal was made by Sri Prayag Dutt Dhaundiyal against the dismissal of his claim petition. Learned A.P.O. has not made it clear whether the respondents have now reverted Sri Prayag Dutt Dhaundiyal particularly after dismissal of his claim petition No. 130/2008. However, we are of the view that the

petitioner cannot be given any benefit on the basis of wrong action on the part of the respondents for not reverting Sri Prayag Dutt Dhaundiya. The concerned officials in the respondents department will be responsible for such an illegal act on their part. The petitioner cannot be entitled for retaining his promotion on the basis of wrong acts of the respondent department in respect of Sri Prayag Dutt Dhaundiya. Moreover, Sri Prayag Dutt Dhaundiya, is not a party in the present claim petition.

17. Learned counsel for the petitioner has also argued that the 'Prathma' is equivalent to the High School and necessary documents in support of this were not duly considered by the respondents while conducting the enquiry. The petitioner has not prayed for any relief for setting aside the enquiry report dated 11.4.2012. In the absence of any prayer for quashing the enquiry report, we find that the enquiry conducted by the respondents is outside the scope of the present claim petition and the same cannot be dealt with in the present claim petition.

18. For the reasons stated above, we do not find any merit in the claim petition and the same is liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: JANUARY 11, 2018
NAINITAL
KNP