

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 13/NB/DB/2016**

Pooran Singh Bisht, S/o Sri Diwan Singh Bisht, retired Principal Class-I, Extension Training Centre (ETC), Rudrapur, District Udham Singh Nagar, R/o Shanti Colony, Behind Agrasain Hospital, Kichha Road, Rudrapur, District Udham Singh Nagar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Rural Development Department, Government of Uttarakhand, Dehradun.
2. Commissioner, Rural Development, Uttarakhand, Pauri.
3. Secretary, Appointment and Personnel Department, Government of Uttarakhand, Dehradun.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel  
for the petitioner.  
Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: FEBRUARY 22, 2018**

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

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

*"A. To set-aside the impugned rejection order dated 19.02.2016 passed by the Respondent No. 1 (Annexure No. 1 to the Compilation-I).*

*B. To direct the Respondents, particularly, Respondent No. 1 to promote the petitioner to the post of Deputy Commissioner, Rural Development Department against the vacancies of Recruitment year 2010-11 from the due date in the Pay Scale of Rs. 37400-67000 Grade Pay Rs. 8700.*

*C. To direct the Respondents to grant all consequential benefits.*

*D. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*E. To allow the claim petition with cost."*

2.1 The petitioner belongs to the Rural Development Department, Government of Uttarakhand. There are two wings in the Rural Department—Executive Wing and Training Wing. The petitioner belongs to the Training Wing. The petitioner was initially appointed as Senior Instructor in 1976. He was promoted on the post of Principal Class-I in the cadre of Extension Training on 06.06.2005.

2.2 The service conditions of the officers of the Rural Development Department were regulated by the Service Rules namely "Uttar Pradesh Rural Development Department Gazetted Officers Service Rules, 1991" (hereinafter referred as the Service Rules of 1991). The Service Rules of 1991 provide that 75% posts of Deputy Development Commissioners shall be filled by promotion from those who have completed 5 years of substantive service on the post of District Development Officer and 25% posts of Deputy Development Commissioners shall be filled by

promotion from those persons who have completed 5 years substantive service as Principal-I, Extension Training Centres.

2.3 The petitioner as Principal Class-I, Extension Training Centre became eligible for promotion on the post of Deputy Development Commissioner (DDC) under 25 % posts reserved for Extension Training Branch on 05.06.2010 after completion of 5 years service on the post of Principal. One post of Deputy Development Commissioner was vacant since 2004-05 but due to unavailability of eligible Principals, the same could not be filled up.

2.4 The Government of Uttarakhand framed its own Service Rules namely "The Uttarakhand Provincial Development Service Rules, 2011" (hereinafter referred as the Service Rules of 2011), which were notified on 27.05.2011. The Service Rules of 2011 superseded all existing Service Rules.

2.5 The Service Rules of 2011 provide 100% promotion quota for the Executive Wing and no promotion quota was provided for the Extension Training Cadre for promotion on the post of DDC. As a result, 25% quota which was prescribed for the Principals Class-I, Extension Training Centres under the Service Rules of 1991 does not exist in the Service Rules of 2011.

2.6 The petitioner and others, who were aggrieved by the Service Rules of 2011, approached the Hon'ble High Court by filing Writ Petition No. 152 (S/B) of 2012. The subject matter before the Hon'ble High Court for adjudication was whether the Service Rules of 1991 or Service Rules of 2011 will be applicable for considering the promotion of the Principals-I, Extension Training Centres to the post of DDC. The Hon'ble High Court deciding the Writ Petition, held on 7.05.2013 that for promotion on the post of

Deputy Development Commissioner, the Service Rules of 1991 will be applicable as the petitioners had accrued the right under these Rules. The operative part of the order of the Hon'ble High Court is reproduced below:

*“2. Having considered the respective submissions of the parties and taking note of the fact that the petitioners acquired, before coming into force of the new rules, a right to be considered for being promoted to the post of Deputy Development Commissioner and there being no contention that a post of Deputy Development Commissioner, available under the old Rules, was available for Principals (group “A”), Extension Training Centres and the said post, now renamed as the post of Deputy Commissioner, is still available for Principals (group “A”), Extension Training Centres, we direct the State Government to consider supplying the said post by promotion from amongst all eligible Principals (group “A”), Extension Training Centres in terms of the old Rules as quickly as possible, but not later than four months from the date of service of the certified copy of this order upon respondent No. 1.”*

2.7 Meanwhile, the petitioner after attaining the age of superannuation retired on 31.08.2012.

2.8 In pursuant to the order of the Hon'ble High Court, the respondents initiated the promotion under the Service Rules of 1991 in respect of the Principals-I belonging to the Extension Training Cadre and a DPC was held on 25.10.2013. There were in all 9 vacancies of the DDC in Executive as well as Extension Training Cadres. According to the Service Rules of 1991,

promotion of two Principals-I (25% of the total cadre strength of DDC) belonging to Extension Training was taken up for promotion to the post of DDC. As the petitioner had retired on 31.08.2012 and no Principal junior to him had been promoted earlier, he was not considered by the DPC for promotion. The proceedings of the DPC were challenged by some other persons (other than the petitioner) by filing a Writ Petition in the Hon'ble High Court at Nainital and an interim order was passed by the Hon'ble High Court on 02.12.2013 for maintaining status-quo. Ultimately, the promotion order of two Principals-I was issued on 11.8.2015.

2.9 The petitioner submitted representations against the promotion order dated 11.8.2015 to the respondent on 24.8.2015 and 7.09.2015 which remained unanswered. The petitioner approached the Hon'ble High Court by filing Writ Petition No. 562 (S/B) of 2015. The Hon'ble High Court vide order dated 23.12.2015 directed the respondent No. 1 to consider and take a decision on the representations of the petitioner strictly in accordance with law within a period of two months. After considering the representations of the petitioner, the respondent No. 1 rejected the same on 19.2.2016 (Annexure: A-1).

3. The main grounds on the basis of which, the petitioner has challenged the impugned order are that the impugned order is a cryptic one and has been passed without application of mind; the petitioner had become eligible for promotion on 5.6.2010 and DPC was not held up to 31.8.2012 when the petitioner retired; the delay in finalization of seniority in 2013 is not justified; the petitioner was the senior most Principal-I; the petitioner should have been considered for promotion for the recruitment year 2010-11 against the vacancies which were available in 2010-11;

and the promotion should be given to the petitioner from the date when he became eligible for promotion.

4. Respondents no. 1, 2 & 3 have opposed the claim petition and it has been stated in their joint written statement that the respondent no. 1 has passed a speaking and reasoned order on 19.2.2016 against the representations of the petitioner. The petitioner was not considered by the DPC as he had retired on 31.08.2012 and no person junior to him was promoted before the date of his retirement. There was delay in holding the DPC because the seniority list of the Principals-I was not available. The tentative seniority list which was issued in 2009 remained disputed till the year 2013 as some persons of the Training Extension cadre had challenged the seniority list before the Hon'ble High Court at Nainital by filing different writ petitions. Thus, in spite of petitioner being eligible in 2010-11, the DPC could not be held due to non-availability of undisputed seniority list. The DPC was held on 25.10.2013 after the finalization of the seniority list. The vacancies on which promotions were made on 11.8.2015 pertain to the year 2004-05 and 2009-10. The petitioner could not be promoted as he was no more in the service on the date when promotion order was issued. It has also been stated by the respondents that since the DPC could not take place and the promotion of the petitioner was not considered but the benefit of 3<sup>rd</sup> ACP (Assured Career Progression) was granted to the petitioner w.e.f. 01.09.2008 in accordance with the scheme of the State Government.

5. The petitioner has also filed Rejoinder Affidavit and the same averments have been made and elaborated in it which were stated in the claim petition.

6. We have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of the respondents.

7. Learned counsel for the petitioner has argued that the petitioner had become eligible for promotion on 5.06.2010 and he could not get promotion because of the delay by the respondents in holding the DPC. There were vacancies available before the retirement of the petitioner and had the DPC been held timely, he would have got promotion. It has also been argued by the learned counsel for the petitioner that as per the Govt. order of the Govt. of Uttar Pradesh issued in 1984 (Annexure: 14) and the Govt. Order of the Govt. of Uttarakhand dated 23.6.2003 (Annexure: 15), the petitioner should have been included in the eligibility list for promotion.

8. In his counter argument, learned A.P.O. has submitted that promotions could not be taken up because the undisputed seniority list was not available till 2013 and, therefore, there was delay in holding the DPC. Learned A.P.O. has further stated that by merely becoming eligible for promotion, no right accrues to the petitioner for promotion. Learned A.P.O. has also contended that when the promotions are made for the vacancies of different years, the retired persons are also considered but they are considered only for the notional promotion. The notional promotion is made only from the date of the promotions of the persons junior to the petitioner and in the case at hand, juniors to the petitioner were promoted on 11.8.2015 much after the retirement of the petitioner on 31.8.2012 and, therefore, the petitioner could not be given the notional promotion. Learned A.P.O. has referred to the specific Govt. Order of the State Govt. dated 11.6.2003 in this regard.

9. After hearing both the parties and perusing the record, we find that the Govt. Order dated 11.6.2003 is applicable in the present case. The said G.O. reads as under:

“उत्तराखण्ड शासन  
कार्मिक अनुभाग-2  
संख्या : 737/कार्मिक-2/2003  
देहरादून : दिनांक 11 जून, 2003

कार्यालय-ज्ञाप

शासन के समक्ष यह प्रश्न आया है कि क्या किसी कार्मिक का रिक्ति घटित होने की तिथि से पदोन्नति पाने का अधिकार है तथा क्या किसी सेवा निवृत्त अथवा दिवंगत कार्मिक को किसी ऐसे पूर्वगामी तिथि से नोशनल पदोन्नति दी जा सकती है, जिस तिथि को वह कार्मिक न तो स्वयं पदोन्नति से संबंधित पद पर कार्यरत था और न ही उसका कोई कनिष्ठ पदोन्नति से सम्बन्धित उक्त पद पर कार्यरत था।

2- पूर्व में यह स्पष्ट किया गया था कि पदोन्नति हेतु विलम्ब से चयन सम्पन्न किये जाने की दशा में ऐसे सेवानिवृत्त/दिवंगत कार्मिकों के नाम भी पात्रता सूची में शामिल किये जायं जिनके नाम संगत सेवा नियमावली के अन्तर्गत पात्रता सूची में होते, यदि चयन समय से कराया गया होता, भले ही चयन के समय उसमें से कुछ कार्मिक सेवानिवृत्त हो चुके हों अथवा उनकी मृत्यु हो चुकी हो। मृत्यु एवं सेवानिवृत्त सरकारी सेवकों को, उपयुक्त पाये जाने पर संबंधित वर्ष (दिनांक) से नोशनल पदोन्नति दिये जाने पर विचार के लिए कहा गया है।

3- उपरोक्त के संबंध में अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि लोक सेवा आयोग सपरामर्श चयनोन्नति प्रक्रिया नियमावली के नियम-8 तथा लोक सेवा आयोग की परिधि के बाहर के पदों पर चयनोन्नति पात्रता सूची नियमावली के नियम-2 के अनुसार प्रत्येक वर्ष के संबंध में पृथक-पृथक पात्रता सूची तैयार करने का प्रावधान है। इसका आशय यह है कि सम्बंधित वर्ष में जो कार्मिक पात्रता सूची में रखे जायेंगे, भले ही चयन के समय कार्मिक की मृत्यु हो चुकी हो अथवा सेवानिवृत्त हो चुका हो। परन्तु जहाँ तक नोशनल पदोन्नति का प्रश्न है रिक्ति की तिथि से पदोन्नति दिये जाने की कोई बाध्यता नहीं है। सम्प्रति नोशनल पदोन्नति सदैव कनिष्ठ की पदोन्नति की तिथि से विचारणीय होती है प्रतिबन्ध यह है कि कनिष्ठ की पदोन्नति से नोशनल पदोन्नति प्रदान किये जाने हेतु सम्बंधित सरकारी सेवक को चयन समिति द्वारा उपयुक्त पाया गया हो।



4- अतः अनुरोध है कि कृपया ऐसे मामलों में उपरोक्तानुसार कार्यवाही की जायं।

सुरेन्द्र सिंह रावत  
अपर सचिव।”

10. It is clear from the Govt. Order dated 11.6.2003 above that if the DPC takes place after the retirement of a person, he will be included in the eligibility list but he can at the most be given the notional promotion. Such retired person can be given the notional promotion only from the date juniors to the retired persons were promoted. In the case at hand, the persons junior to the petitioner were promoted from 11.08.2015 and the petitioner retired on 31.8.2012 and, therefore, the petitioner cannot get notional promotion (as he was not in the service on 11.8.2015) in accordance with the Govt. Order dated 11.6.2003.

11. Learned counsel for the petitioner could not demonstrate (any rule or law) according to which the petitioner is entitled to get promotion from the date of his eligibility or from the date when the vacancies occurred. The petitioner also failed to establish his entitlement for the promotion when the persons junior to him were promoted from 11.08.2015 after his retirement on 31.8.2012.

12. It is a settled law that unless the rules specifically provides, the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post. The Service Rules of 1991, by which the petitioner is governed, do not provide granting of promotion from the date of eligibility or from the date of vacancy.

13. In view of above, the petitioner is neither entitled for the promotion nor for the notional promotion.

14. 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: FEBRUARY 22, 2018*  
*NAINITAL*  
*KNP*