

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 01/DB/2017**

R.P. Upadhyay, Labour Enforcement Officer, r/o Mothrowala Road, Kedar Pur  
Near Sidheshwar Mahadev Temple, P.O. Mothrowala, Dehradun.

.....Petitioner

**VS.**

1. State of Uttarakhand through its Principal Secretary, (Labour), Uttarakhand Secretariat, Subhash Road, Dehradun.
2. Labour Commissioner Uttarakhand, 2 Bhotia Padav Haldwani, Uttarakhand.

.....Respondents.

Present: Sri B.B.Naithani, Counsel  
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: MAY 17, 2018**

**Justice U.C.Dhyani (Oral)**

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

“1. (a) This Hon'ble Tribunal may be pleased to quash the impugned order dated 05.02.2016 by which the representation filed by the

petitioner has been rejected without application of mind and in most capricious manner.

(b) This Hon'ble Tribunal may be pleased to pass suitable direction to the respondents to consider the case of the petitioner exactly and completely in terms and on the basis of the facts shown in the policy decision dated 25.11.2004 and DPC/ Selection proceedings dated 19.01.2005 and as per facts shown in the recommendation dated 17.03.2005 made by Labour Commissioner.

(c) This Hon'ble Tribunal may be pleased to direct the respondent to review the order dated 21.02.2006 by which the petitioner had been promoted on the post of Labour Enforcement Officer w.e.f. taking of the charge because the W.P. No. 33890/2000 has been dismissed by Hon'ble High Court, Allahabad and to promote the petitioner on the post of Labour Enforcement Officer w.e.f. 27.05.1986. .

(d) This Hon'ble Tribunal may further be pleased to direct the respondents to place the name of the petitioner in the seniority list dated 03.01.2008 (Annexure: No.3) of Labour Enforcement Officer on the basis of the date of appointment i.e. 27.05.1986 as it is already shown in the seniority list (Annexure: A-15).

(e) To grant consequential benefits like fixation of pay as per rules after making review of the above said order of promotion dated 21.02.2006 (Annexure A-11).

2. To issue any order or direction which this Hon'ble Tribunal may deem fit and proper under circumstances of the case.

3. To grant any other relief/ reliefs which this Hon'ble Tribunal deem fit and proper to pass in consequences of this petition.

4. To award cost to the petitioner."

2. Brief facts, giving rise to present claim petition, are as follows:

Petitioner was initially appointed on the post of Welfare Assistant in Labour Department in the erstwhile State of U.P. on 22.03.1973 at Dehradun. On creation of U.P. Hill Sub Cadre, petitioner was allotted the same. A seniority list of employees, working in U.P. Hill Sub Cadre, was prepared. Such seniority list has been brought on record as Annexure: A-5 to the petition. The following chart will show

the hierarchy of the posts in the Labour Department from top to bottom:

- (i) Labour Commissioner
- (ii) Additional Labour Commissioner
- (iii) Deputy Labour Commissioner
- (iv) Assistant Labour Commissioner
- (v) Labour Enforcement Officer
- (vi) Welfare Superintendent
- (vii) Assistant Welfare Superintendent
- (viii) Welfare Assistant.

After creation of new State of Uttarakhand, petitioner was deemed to have been appointed in this State, by virtue of U.P. Reorganization Act, 2000.

The promotions of Welfare Assistants were pending in the office of Labour Commissioner, U.P. since 21.02.1977. Various writ petitions were filed in Hon'ble High Court of Judicature at Allahabad and thereafter a policy decision was taken on 25.11.2001 by State of U.P., to promote Welfare Assistants. The said G.O. has been enclosed as Annexure: A 6 to the claim petition. The petitioner along with others were promoted subject to final decision of Writ Petition No. 33890/2000 Pratap Bhanu Singh & others vs. State of U.P. and others. Copies of interim orders, passed by Hon'ble High Court of Judicature at Allahabad, have also been brought on record as Annexures : A7 & A 8 to the claim petition. In compliance of the order of Hon'ble Allahabad High Court, Selection Committee held its meeting on 19.01.2005 to consider the names of the Welfare Assistants for promotion. Proceedings of said Selection Committee has been brought on record as Annexure: A 9 to the petition. The names of Sri Ravindra Singh, of the petitioner and Sri Dashrath Singh, all Welfare Assistants, find place at Sl. No. 10,22 and 30 respectively in selection list dated 19.01.2005. Promotion of petitioner on Class-II post of Labour Enforcement Officer was recommended w.e.f. 27.05.1986 by Selection Committee in its proceedings dated 19.01.2005. Subsequent thereto, petitioner was allotted State of

Uttarakhand. Labour Commissioner, U.P., vide letter dated 17.03.2005, requested Principal Secretary, Labour, Uttarakhand to pass suitable order to promote the petitioner as per recommendations of the said Selection Committee dated 19.01.2005.

In compliance thereof, Labour Commissioner, Uttarakhand promoted petitioner to the post of Labour Enforcement Officer at Dehradun, on the basis of policy decision dated 25.11.2004 (Annexure: A 6) and letter dated 17.03.2005 (Annexure: A 10). Pratap Bhanu Singh's Writ Petition stood dismissed on 26.02.2014. Petitioner continued to make representations to promote him, as per policy decision dated 25.11.2004, proceedings and recommendations of Selection Committee dated 19.01.2005 and as per recommendations by Labour Commissioner, U.P. to promote the petitioner w.e.f. 27.05.1986, but to no avail. Hence, present claim petition.

3. In C.A./W.S., an objection has been taken that since the appointment of petitioner was subject to decision in Pratap Bhanu Singh's Writ Petition and since Pratap Bhanu Singh's writ petition has not been decided on merits, therefore, the petitioner could not be promoted from the date, on which his recommendation for promotion was made. The contention of Ld. A.P.O. is that the Pratap Bhanu Singh's writ petition was dismissed as infructuous and, therefore, the petitioner is not entitled to desired relief.
4. When the petitioner made a request to Labour Commissioner to review his order dated 21.02.2006, such review application was dismissed under the directions of Labour Commissioner, by Deputy Labour Commissioner, Uttarakhand, on the ground that writ petition No. 33890/2000 Pratap Bhanu Singh, pending before Hon'ble High Court of Allahabad, was disposed of on 26.02.2014, without giving any direction.
5. Ld. A.P.O. argues that present claim petition is not maintainable before this Tribunal. Ld. A.P.O. has cited the decisions rendered by

Hon'ble Supreme Court in *State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583*, and subsequent judgment delivered by Hon'ble High Court of Uttarakhand in *Dr. Kamaljeet Singh, and another vs. State of Uttarakhand and others 2018(1) UD, 337*, which is based on Umakant Joshi's decision, in support of his contention.

6. We respectfully disagree with such submission of Ld. A.P.O., for the reason that it is a case in which the recommendation itself was made by State of U.P., which was acted upon by State of Uttarakhand through Labour Commissioner, Haldwani, as is evident from Annexure A-11, which is a copy of order dated 21.02.2006. The petitioner has been promoted to the post of Welfare Enforcement Officer on the basis of Office Order dated 25.11.2004, issued by Government of U.P. and on the recommendations of Selection Committee, constituted for promotion of Welfare Assistants echoed by Labour Commissioner, U.P., *vide* letter dated 17.03.2005. These letters and recommendations formed the nucleus of order dated 21.02.2006 (Annexure: A 11). It contains two names. One is petitioner and another is Sri Anil Agarwal. The same was subject to decision in Pratap Bhanu Singh's Writ Petition. This order was issued by Labour Commissioner, Uttarakhand, which means the recommendations of Selection Committee and letters issued by Labour Commissioner, U.P. were acted upon by Labour Commissioner, Uttarakhand. The petitioner is praying for relief, on the basis of selfsame order (Annexure: A 11) and not beyond that. Therefore, this Court is the considered opinion that Umakant Joshi's and Dr. Kamaljeet Singh's cases (*supra*) will not come in the way of petitioner to get the desired relief.

7. To recapitulate, considering the stagnation in the cadre of Welfare Assistants, Government of U.P. constituted a Committee, who recommended promotion of Welfare Assistants. Labour Commissioner, U.P., agreeing to the recommendations of the Selection Committee, promoted Welfare Assistants, working in that State. Petitioner was working in U.P.Hill Sub Cadre. He was allotted State of

Uttarakhand, consequent upon the creation of this State. Labour Commissioner, Uttarakhand, agreed to the proposal of Labour Commissioner, U.P. and promoted the petitioner on the post of Welfare Enforcement Officer, which was subject to the decision of Pratap Bhanu Singh's case. The only anomaly, in such order dated 21.02.2006 (Annexure: A 11), was that promotion was given to the petitioner and another, from the date they assumed charge, whereas in fact, the recommendation of Labour Commissioner, U.P. (Annexure: A 10) was that such Welfare Assistants were to be promoted from different dates and the petitioner was to be promoted from 27.05.1986. There is internal inconsistency in Annexure: A 11. On the one hand, it suggested that the letters and recommendations of Labour Commissioner, U.P. were being acted upon, while on the other hand, it directed that the promotion shall be given on the date, when petitioner and another (working in Uttarakhand) shall assume charge. This internal contradiction in Annexure: A 11 has to be reconciled. When there is ambiguity, one has to make an endeavour for harmonious construction [even if it is not a piece of legislation].

8. A reasonable prudent person, on a bare reading of Annexure: A 11, will believe that the petitioner ought to have been given promotion on the post of Labour Enforcement Officer from the date U.P.'s Labour Commissioner suggested, on the basis of recommendation of Selection Committee, constituted for the purpose.
9. A plea has been taken by the respondents- department that there was no direction of Hon'ble Allahabad High Court in Pratap Bhanu Singh's case. Admittedly, Pratap Bhanu Singh's case has been disposed of without giving any direction. Nothing in that decision has been said regarding promotion of the petitioner. Had there been any adverse comment on petitioner's promotion in Pratap Bhanu Singh's decision, things would have been different. It is a usual course, in such matters, that the Government, while giving appointment to somebody, always mentions, as an abundant caution, that such appointments/

promotions shall be subject to writ petition, which might reflect on the merits of appointments/ promotions, as the case may be. In the instant case, since nothing adverse has been said about petitioner's promotion in Pratap Bhanu Singh's case, therefore, it does not lie in respondents' mouth to say that petitioner is not entitled to the desired relief, i.e., promotion from the date, it was recommended by Labour Commissioner, U.P.

10. This Court is, therefore, of the opinion that petitioner is entitled to the relief sought by him in present claim petition. It may be noted here that Departmental Promotion Committee or the Selection Committee adjudges suitability of a candidate. It does not usually say, as to from which date the promotion order should become effective. The recommendations of DPC are forwarded to the Government and it is for the Government to say, as to from which date, the same will become effective. Since petitioner is entitled to be promoted from the date it was recommended by Labour Commissioner, U.P., therefore, he is also entitled to consequential benefits.
11. Ld. Counsel for the petitioner has placed copy of judgment dated 30.05.2013, rendered by Hon'ble Allahabad High Court in *W.P. (SS) 8233/2016, Ravindra Singh and others vs. State of U.P. and others*, praying that similar order be passed in present claim petition also. Petitioners of W.P. No. 8233/2006 were similarly situated to the petitioner, but were posted in U.P. and in respect of whom same recommendation was made by the Selection Committee, as that of petitioner. This Court is, therefore, inclined to pass a similar order, as was the one passed in W.P. (SS) No. 8233/06, *Ravindra Singh and others vs. State of U.P. and others*, decided on 30.05.2013 by Hon'ble Allahabad High Court, on the basis of parity.
12. The claim petition is allowed. Respondents are directed to promote the petitioner to the post of Labour Enforcement Officer from 27.05.1986, the date it was recommended by Labour Commissioner, U.P. (Annexure: A 10). Annexure: A 11 is modified to the extent that

the petitioner shall be granted promotion from 27.05.1986, the date, his counterparts, in the State of U.P., were promoted in pursuance to judgment of Hon'ble High Court of Allahabad, Lucknow Bench, dated 30.05.2013, in writ petition No. 8233/2006. Since petitioner has retired on 30.11.2010 from the post of Labour Enforcement Officer, Class-II, therefore, a direction is given to the respondents to grant promotion to the petitioner on the post of Labour Enforcement Officer w.e.f. 27.05.1986. In addition, the petitioner will also be entitled for consequential benefits, if any. It is made clear that consequential benefits, relating to seniority, promotion, ACP etc., if any, will be given to the petitioner on notional basis in accordance with law for the purpose of retiral benefits.

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

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MAY 17, 2018*  
*DEHRADUN*

VM



