

**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.20 /DB/2018

Ravindra Kumar aged about 39 years, s/o Shri Ram Singh, Head Operator, Police Control Room, District Dehradun, permanent resident of Subhash Nagar, Gali No. 1, Near Rathi Bhusa Store, Jawalapur, District Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through its Principal Secretary, Home Department, Secretariat, Subhash Road, Dehradun.
2. Superintendent of Police, (Police Wireless Communication) Headquarters Uttarakhand, Dehradun.

.....Respondents.

Present: Sri J.P.Kansal, Counsel for the petitioner.

Sarvsri U.C.Dhaundiya and V.P.Devrani, A.P.Os., for Respondents.

JUDGMENT

DATED: JULY 30, 2018

Justice U.C.Dhyani (Oral)

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

“ (a) The Impugned order Annexure: A 1 and Annexure: A 9 be kindly held/ declared void, illegal, against fundamental, constitutional, civil rights of the petitioner, rules, orders and principles of natural justice and be kindly quashed and set aside.

(b) The respondents be kindly ordered and directed to hold meeting of the Departmental Promotion Committee to review its meeting held on 09.07.2013 for promotion to the post of Head Operator and consider the petitioner for promotion to the post of Head Operator according to rules.

(c) If the petitioner is found fit for promotion to the post of Head Operator by the Review DPC, the respondents be kindly ordered and directed to promote the petitioner to the post of Head Operator w.e.f. 16.07.2013, the date of promotion of his juniors and to pay to the petitioner salary and other benefits of the promoted post from 16.07.2013 together with interest thereon @ 10% per annum from the date of accrual till the actual date of payment to the petitioner.

(d) The petitioner be kindly allowed against the respondents any other relief in addition to or in modification of the above reliefs as this Hon'ble Tribunal deems fit and proper in the context of the facts of this claim petition; and.

(e) Rs.20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents."

2. Key facts, necessary for adjudication of present claim petition, are as follows:

Petitioner was substantively appointed on the post of Assistant Operator in the department of Respondent No.2 on 03.08.2009. He was declared permanent *vide* order dated 26.04.2013 on successful completion of training, as provided under Rule 21 of the U.P. Police Radio Subordinate Service Rules, 1982 (as applicable to the State of Uttarakhand) (for short, Rules of 1982). State Radio Officer, Police Communication Headquarter, Dehradun, *vide* letter dated 24.05.2013 circulated provisional seniority list of Assistant Operators, inviting objections on the same, within 7 days. Subsequent thereto seniority list became final. In the final seniority list, petitioner is placed at Sl. No. 81. In accordance with Rule 5(3) of the Rules of 1982, all the vacancies of Head Operator are required to be filled by promotion from amongst Assistant Operators under Rule 16 of the Rules of 1982. The criteria for promotion to the post of Head Operator is seniority subject to rejection of unfit. Under Rules, according to claim petition, an Assistant Operator is not required to pass Grade-II course to be eligible for consideration for promotion to the post of Head Operator.

In the recruitment year 2013-14, 162 vacancies of Head Operator were required to be filled in by promotion of Assistant Operators. State Radio Officer, Police Communication Headquarters, submitted

requisite documents of eligible 127 Assistant Operators, including petitioner, to the Departmental Promotional Committee (DPC). In a meeting held on 09.07.2013, DPC did not consider the name of the petitioner for promotion to the post of Head Operator, on the ground that he did not pass Grade-II examination prescribed under Schedule Ka of the Rules of 1982. According to the pleadings, Rules do not provide for passing said examination before consideration for promotion to the post of Head Operator.

Petitioner filed a claim petition before this Tribunal in the year 2015. During pendency of said claim petition, respondents, *vide* order dated 18.03.2017, promoted the petitioner to the post of Head Operator *w.e.f.* 19.03.2017. On 26.02.2018, this Tribunal decided the claim petition with a direction upon Respondent No.3 to decide the representation of the petitioner by a reasoned and speaking order, in accordance with law. Accordingly, petitioner moved a detailed representation to Respondent No.2 (of this claim petition), who summarily rejected the representation on 23.03.2018 (Annexure: A 1), without hearing the petitioner (his version). True photocopy of the representation along with its enclosures has been brought on record as Annexure: A 7 to the claim petition.

Vide order dated 26.04.2013 (Annexure: A 8), respondents declared the petitioner as Assistant Operator *w.e.f.* 04.02.2012, which was cancelled *vide* office order dated 08.03.2016, which has been brought on record as Annexure: A 9 to the claim petition. Said order was passed by the respondents without notice. This order was not even communicated to the petitioner. He came to know of it only on 18.06.2018 when a copy of Counter Affidavit was given to him. Order dated 26.04.2013 (Annexure: A 8) is, therefore, also under challenge in the present claim petition.

According to claim petition, petitioner fulfilled all the criteria, required for his consideration for promotion to the post of Head Operator by DPC, which met on 09.07.2013, and he is, therefore,

entitled for his promotion from 16.03.2013, the date on which his juniors were promoted, along with salary and other benefits.

3. Counter Affidavit has been filed, along with annexures on behalf of Respondents No. 1 & 2. It has been averred in C.A./W.S. that the petitioner was not found eligible for promotion by DPC in its meeting dated 09.07.2013. A reference of Rule 5, Appendix Ka and Rule 21 of the Rules of 1982 has been given in support thereof. It was necessary for the petitioner to have passed prescribed training in which the petitioner has failed in 'Morse Sending'. He was made permanent earlier on 26.04.2013, but since he could not complete the training successfully, therefore, amended order for their permanent appointment in the department was issued. The department could not have ignored specific provisions for promotion in the Rules, since petitioner could not complete the training successfully, therefore, he was not eligible for permanent appointment, as also for promotion. Petitioner was a warded censure entry on 18.11.2013. He was not found entitled for promotion on 09.07.2013, when DPC held its meeting. Petitioner himself has admitted in his application dated 20.11.2016 that since effect of censure entry awarded to him, has expired on 17.11.2016, therefore, he should be promoted to the post of Head Operator. Petitioner, on the basis of recommendations of DPC, was promoted to the post of Head Operator. Respondent No.3, by a reasoned and speaking order, has decided the representation of the petitioner in compliance of Tribunal's direction dated 26.02.2018. It is wrong on the part of the petitioner to contend that personal hearing was required to be given to him.
4. When petition was amended, then supplementary C.A. was filed on behalf of respondents. Supplementary C.A. was filed to substantiate respondents' contention and contradict petitioner's claim.
5. After arguing the claim petition at some length, Ld. Counsel for the petitioner confined his relief only to a limited extent, which is precisely reflected in the following paragraphs along with its resolution.

6. Ld. Counsel for the petitioner has argued that the petitioner had passed the examination after the training on 14.10.2013 and thereafter, by order dated 08.03.2016, he was confirmed on the post of Assistant Operator *w.e.f.* 14.10.2013 (Annexure: A9). The contention of Ld. Counsel for the petitioner is that after confirmation of the petitioner on 14.10.2013, a Departmental Promotion Committee (DPC) was held on 24.12.2013 and petitioner was not promoted while he was eligible and vacancies were also available.
7. In reply to the arguments of Ld. Counsel for the petitioner, Ld. A.P.Os. have submitted that the petitioner was awarded 'censure entry' on 18.11.2013, and therefore, petitioner was not found suitable for promotion by the DPC held on 24.12.2013 and also further DPC held on 24.08.2015.
8. It is admitted to both the parties that under the Service Rules, promotion from the post of Assistant Operator to the post of Head Operator is made according to the criterion of seniority subject to rejection of unfit. It is also admitted that the exercise for promotion is governed by '*Uttarakhand (Lok Sewa Aayog Ki Paridhi Ke Bahar) Rajyadheen Sewaon Mein Padonnati Ke Liye Chayan Prakriya Niymawali, 2013*' (hereinafter referred to as Promotion Rules of 2013). According to the Rule 3 of the Promotion Rules of 2013, when the promotions are to be made according to the criterion of seniority subject to rejection of unfit, the Annual Character Reports (ACRs) of five years, preceding to the year in which promotions are to be made, are considered by the DPC and a person is declared fit for promotion when out of his five ACRs, minimum four ACRs are 'Good' or above category.
9. Ld. Counsel for the petitioner has argued that the respondents have not made promotions in accordance with the Promotion Rules of 2013. As per the Rules, ACRs for the period of five years, up to the year 2012-13, were required to be considered by the DPC, which was held on 24.12.2013. Since the petitioner was awarded censure entry on 18.11.2013, the same could not be considered by the DPC for

promotion, and therefore, petitioner's non promotion is in violation of Promotion Rules of 2013. It has further been argued by the Ld. Counsel for the petitioner vehemently that the petitioner was not even considered by the DPC in its meeting held on 24.12.2013.

10. **We have perused the minutes of the DPC which was held on 24.12.2013 and it has been stated in Para 5 of the minutes of the DPC that the Assistant Operator Sri Ravindra Kumar was awarded censure entry on 18.11.2013, therefore, his name was not considered for promotion. It is, therefore, clear that the petitioner was not even considered by the DPC for promotion in spite of the fact that, admittedly, he was eligible and vacancies were available and he was senior enough to be included in the zone of consideration for promotion.**
11. In view of above, there is a case of review DPC to be held with reference to the DPC dated 24.12.2013 and in this Review DPC petitioner should be considered for promotion, in accordance with relevant Rules and in case petitioner is found suitable for promotion by the DPC, petitioner shall be given promotion according to his seniority from the date other Assistant Operators were promoted as a result of DPC held on 24.12.2013.
12. Order accordingly.
13. Claim petition thus stands disposed of. No order as to costs.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 30, 2018
DEHRADUN

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