

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 40/DB/2019**

Dhinga Dass, S/o Sh. Shiva Dass, age about 58 years, Senior Administrative Officer, in the office of Labour Commissioner, Uttarakhand, Haldwani, at presently attached to the office of Additional Labour Commissioner, Garhwal Region, Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Labour Department, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Labour Commissioner, Uttarakhand, Haldwani, Nainital.
3. Dy. Labour Commissioner, Uttarakhand, Haldwani, Nainital.

.....Respondents

Present: Sri L.K.Maithani, Ld. Counsel  
for the petitioner.  
Sri V.P.Devrani, Ld. A.P.O.  
for the respondents

**JUDGMENT**

**DATED: JULY 29, 2019**

**HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)**

1. This claim petition has been filed by the petitioner for the following reliefs:-

*"i) To quash the impugned order dated 26.12.2018 passed by the respondent No. 3 (Annexure No. A1) and order dated 30.08.2017 passed by the respondent No. 2 (Annexure*

*No. A2) declaring the same wrong and illegal in the eyes of law.*

*ii) To issue an order or direction to the respondents to include the period dated 25.02.1982 to 13.03.1995 i.e. the period during which the petitioner was posted and working on the post of "Project Worker" under the Vimukta Bandhit Shramik Punarvas Yojana, Dehradun in the office of Pariyojana Director, Janjati Pariyojana Authority as a qualifying service on the lower post for the purpose of promotion to the post of Chief Administrative Officer or granted relaxation as per Relaxation Rules as the petitioner is the only eligible senior most person in the cadre.*

*iii) To issue an order or direction to the respondents to consider the petitioner for promotion to the vacant post of Chief Administrative Officer against the selection year 2018-19 as the petitioner is the alone senior most eligible Senior Administrative Officer in the cadre.*

*iv) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.*

*v) To award the cost of petition."*

2. Brief facts giving rise to the petition are that the petitioner was initially selected and appointed on the post of Project Worker in the pay scale of Rs. 250-425 under the *Vimukta Bandhit Shramik Punarvas Yojana, Dehradun* in the respondent department. The services of the petitioner were terminated vide order dated 29.01.1992 under the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975, on the closure of that scheme. The petitioner challenged his termination order before the Hon'ble High Court at Allahabad whereby, vide order dated 28.02.1992, effect of the termination order was stayed and finally the termination order was quashed by the Hon'ble High Court vide order dated 26.10.1993 and the respondents were directed to pass the suitable orders for absorption of the petitioner in Government

service. The SLP filed against the order of the Hon'ble High Court was dismissed by the Hon'ble Supreme Court vide order dated 07.11.1994. Thereafter, petitioner was absorbed on the post of Junior Assistant and his services were continued in the department, from the date, termination order was passed, without any break.

3. The petitioner also contended that after merger on the post of Junior Assistant in 1995, he was promoted upto the post of Senior Administrative Officer and in the seniority list of Junior Assistant cadre, he was at sl. No. 7. It is further contended that all six persons who were above him, in the seniority list, have been promoted/retired. After amendment in the staffing pattern of ministerial cadre, one post of Chief Administrative Officer is vacant. Petitioner moved representation to the respondent No. 2 with the prayer to relax the qualifying service for promotion to the post of Chief Administrative Officer, but such representation was rejected. The petitioner moved another representation on 20.08.2018.

4. Petitioner filed a claim petition No. 68/DB/2018, Dhinga Dass vs. State of Uttarakhand & others before this Tribunal which was decided by this Tribunal vide order dated 26.10.2018 and a direction was issued to respondent No. 2 to decide the representation of the petitioner dated 20.08.2018, by a reasoned and speaking order, in accordance with law, at the earliest possible time but not later than eight weeks of presentation of certified copy of the order.

5. In compliance of that order dated 26.10.2018, the representation of the petitioner dated 20.08.2018 was heard and decided vide order dated 26.12.2018 (Annexure: A1) by the respondents and his prayer, to count his previous service of Project Worker, was not accepted and his prayer for promotion to the post of Chief Administrative Officer was not allowed, in view the fact that his service on the subordinate post was only 23 years and 7 months and the

required 25 years of service was not completed. Thereafter, this claim petition has been filed by the petitioner for the relief sought as above.

6. The respondents contested the petition on the ground that after retrenchment and termination of service, the petitioner again joined as Junior Assistant on 10.04.1995 in the cadre and his seniority was fixed accordingly. Thereafter, he was promoted upto the cadre of Senior Administrative Officer. For the post of Chief Administrative Officer, as per the required qualification, one must complete at least one year of service as Senior Administrative Officer and also on the very first day of the year of appointment, he must have completed at least 25 years of service in subordinate posts. The words 'subordinate posts' stand for either Junior Assistant, Senior Assistant, head Assistant, Administrative Officer or Senior Administrative Officer. The petitioner did not complete the 25 years of service in the subordinate posts as per the eligibility criteria of promotion to the post of Chief Administrative Officer. Accordingly, the representation of the petitioner was dismissed as per law and he was informed accordingly.

7. It was also contended that the petitioner cannot be promoted to the post of Chief Administrative Officer in the absence of requisite eligibility. The petitioner was already granted other benefits of service. The services rendered by the petitioner as Project Worker does not come under the definition of subordinate service of clerical cadre, hence, the petitioner is not entitled for any relief and the claim petition deserves to be dismissed.

8. The petitioner filed Rejoinder Affidavit, reiterating the facts of his petition and also submitted that the respondents under the Rules of 1991 and G.Os. dated 22.10.2003, passed orders dated 11.12.2003 and 28.11.2008, providing continuity of service to the petitioner till the date he was absorbed in the clerical cadre and all the service benefits i.e. Pay, ACP etc. from period of retrenchment i.e. 22.01.1992 to 13.03.1995 were also given to the petitioner. The petitioner was absorbed on

13.03.1995 on the same pay scale and same grade post. The Project Worker is the post of group-C and is equal to the post of Junior Assistant. After counting the entire service on lower post and the present post and the petitioner fulfills all the required eligibility. He has already completed more than 26 years of service; he is senior most in the seniority in clerical cadre and the post of Chief Administrative Officer fell vacant since 2016 but due to inaction of the department, promotion could not be made on the above post. However, by way of relaxation, the petitioner should be promoted on the above post on the basis of the seniority and long service experience. The petitioner has already completed more than one year of service as Senior Administrative Officer and 25 years on lower posts. Even otherwise, he should be granted relaxation in view of the fact that continuity to service was granted to him since the date of his termination to the date of his appointment and the claim petition deserves to be allowed for the relief as sought above.

9. We have heard both the sides and perused the record.

10. It is an admitted fact to both the parties that the petitioner was employed as Project Worker in a scheme, under the Labour Department of the State, in February, 1982 and continued his services till the year 1992. When he became surplus, his services were terminated under the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 on completion of the scheme. It is also admitted that his termination order was challenged before the Hon'ble High Court of Allahabad, which was set aside by the Hon'ble High Court with a direction to the respondents to absorb the petitioner in the department. Thereafter, on 13.03.1995, the petitioner was absorbed on the post of Junior Assistant in the Labour Department and after getting promotion on different posts, he is working on the post of Senior Administrative Officer. This contention is not denied by the respondents that he is the senior most in the cadre and his seniority was at Sl. No. 7, and 6 senior persons to him, have already been promoted/retired. It is also an

admitted fact that after change in staffing pattern, one post of Chief Administrative Officer is lying vacant for which the eligibility criteria is, that, a person must have completed one year service as Senior Administrative Officer and 25 years of service on the subordinate posts. Obviously, the subordinate post covers the post of Junior Assistant, Senior Assistant, head Assistant, Administrative Officer and Senior Administrative Officer etc. in the cadre.

11. The petitioner has contended that he has already completed more than one year service on the post of Senior Administrative Officer and from his appointment as Junior Assistant, he has already completed more than 23 years, 7 months. It has been argued before this Tribunal that by this time, petitioner has completed 24 years of service on the subordinate posts. However, his 10 years of service as Project Worker, which was a Group-C post, must also be counted for his experience, because of the reasons that his continuity in service was granted for all purposes with the order of the Court.

12. Respondents agree with this fact that petitioner was granted continuity in the service; he has allowed all the benefits of service, including ACP and also the protection of pay, even for the interim period from his termination in 1992 to his absorption in 1995. It has been argued by the respondents that for 25 years experience on subordinate posts, the experience of the petitioner as Project Worker, cannot be counted, because of the reason that it was not mentioned in the rules and the nature of the work was different. Whereas, learned counsel for the petitioner has argued that the pay scale of that post was much higher than the post of Junior Assistant and in view of the fact that continuity of service was allowed to him, such experience of the petitioner should be counted for length of service and experience of 25 years.

13. The court finds that although, technically, 25 years experience on subordinate posts of that very cadre was not completed, but while

counting the experience of the petitioner of the post of Project Worker, as experience of service, petitioner is having experience of much more period than the required length of service. By technically speaking and making very rigid interpretation of the rules, this court finds that when the continuity of his service was granted, then there is no point to debar him from the post on such a technical ground, by making very hard and fast interpretation of the provisions of experience. It is an admitted fact that the petitioner has completed almost 24 years experience in subordinate cadre of service starting from the post of Junior Assistant and being senior most and if allowed relaxation in other eligibility conditions, he can be considered for the post lying vacant.

14. Petitioner also contended that to overcome such a situation, under the *Uttarakhand Sarkari Sewak Padonnati Ke Liye Aharkari Sewa Mei Shithilikaran Niyamawali, 2010* (which was amended in 2015), such relaxation can be granted accordingly. Amended Rule 4 of the said Niyamawali reads as under:-

“4. अर्हकारी सेवा में शिथिलीकरण—यदि कोई पद पदोन्नति द्वारा भरा जाता है और ऐसी पदोन्नति के लिए, यथास्थिति, निम्नतर पद या पदों पर कोई निश्चित न्यूनतम सेवा अवधि विहित हो और पात्रता के क्षेत्र में अपेक्षित संख्या में पात्र व्यक्ति उपलब्ध न हो तो सरकार के प्रशासनिक विभाग, सरकार के कार्मिक विभाग के परामर्श से यथास्थिति उक्त निम्नतर पद या पदों पर यथा निर्धारित परीक्षा अवधि को छोड़कर, ऐसी विहित न्यूनतम सेवा अवधि में पचास प्रतिशत तक यथोचित रूप से शिथिलीकरण कर सकते हैं।

परन्तु यह कि किसी कार्मिक को पदोन्नति के लिए अर्हकारी सेवा में शिथिलता पूरे सेवाकाल में केवल एक बार के लिए अनुमन्य होगी;

परन्तु यह और कि पदोन्नति हेतु निर्धारित सेवा अवधि में शिथिलता का लाभ पूर्व में जिन कार्मिकों को अनुमन्य हो चुका हो उसे पुनः उक्त लाभ अनुमन्य नहीं होगा।

“परन्तु यह भी समूह ‘ग’ सेवा संवर्ग के पद धारकों को पदोन्नति के लिये तथा स्थिति निम्नतर पद या पदों पर पदोन्नति के लिये यथास्थिति परीक्षा अवधि को छोड़कर ऐसी विहित न्यूनतम अवधि में 50 प्रतिशत तक यथोचित रूप से सम्बन्धित विभागाध्यक्ष उनकी अध्यक्षता में गठित समिति जिसमें वित्त नियन्त्रक तथा विभागाध्यक्ष द्वारा नामित एक अन्य अधिकारी सदस्य के रूप में होंगे की संस्तुति पर शिथिलीकरण कर सकेंगे।”

15. The post of Chief Administrative Officer is purely a post to be filled by promotion from the post of Senior Administrative Officer. The petitioner is senior most and eligible candidate, short of one year experience. Although he has completed more than 25 years of service in the department in total, but technically speaking, he is short of one year experience, as per such rules. In view of non-availability of other eligible person, the Administrative Department of the Government, in consultation with the personnel department of Government, can grant such a relaxation of one year for granting promotion to the petitioner and this court finds that it is a fit case where such powers can be exercised by the government.

16. We find that petitioner should submit representation for such relaxation for the decision of the department. This court is also of the view that petitioner should be granted such an opportunity and he may be allowed to move the department for such relaxation in consultation with the government, and thereafter, he should be considered for promotion to the post of Chief Administrative Officer accordingly.

17. The petitioner has sought cancellation of order dated 26.12.2018, passed by the respondent No. 3 and order dated 30.08.2017, passed by the respondent No. 2. This court finds that when previous representation was made by the petitioner, he made a request for relaxation, but he was short of minimum service of 25 years and also of one year service as Senior Administrative Officer, but when the order dated 26.12.2018 was passed on his representation, the petitioner



already completed one year service as Senior Administrative Officer. The court finds that there was no such request for granting relaxation in his representation dated 20.08.2018. Now, court finds that petitioner may be allowed to make such representation again, which will be decided by the respondents as per law and thereafter, the claim of the petitioner for promotion should be considered as per law. Consequently, the claim petition deserves to be partly allowed.

**ORDER**

The claim petition is partly allowed. The petitioner is allowed/directed to move his representation to the respondents, seeking relaxation under the rules, in granting him promotion to the post of Chief Administrative Officer, within a period of 15 days, and the respondents will decide his representation with reasons, at appropriate level, within a period of two months, from the date of presentation of such representation by the petitioner.

After deciding his request for relaxation, the claim of the petitioner for promotion to the post of Chief Administrative Officer will be considered by the respondents, as per the law.

No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATED: JULY 29, 2019*  
*DEHRADUN.*  
*KNP*