

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 41/DB/2018

1. Sh. Surendra Singh Samant S/o Late Ram Singh at presently working and posted as Inspector under the respondent department at U.P.C.L., Vigilance, Dehradun, R/o G-65, Survey State, Hathibarkala, Dehradun, Uttarakhand.
2. Sh. Anil Singh Manral S/o Late Ram Singh Manral at presently working and posted as Inspector, Civil Police, High Court Security, Under the respondent department R/o H. No. 26, Mohalla Lakhanpur, Ramnagar, Uttarakhand.
3. Sh. Chander Singh Bisht, S/o Late Khem Singh Bisht at presently working and posted on the post of Inspector, C.B.C.I.D., Haldwani, R/o 58/6, E-Block, Judge Farm, Haldwani, Uttarakhand.
4. Smt. Prakash Kamboj, W/o Inderjeet Singh at Presently working and posted as Inspector LIU, Rudrapur, R/o B-137, Alliance City, Bhura Rani Road, Rudrapur, Uttarakhand.

.....Petitioners

VERSUS

1. State of Uttarakhand through Secretary, Home, Govt. of Uttarakhand, Dehradun, Secretariat, Subhash Road, Dehradun, Uttarakhand.
2. Director General of Police, Uttarakhand Police Headquarters, Dehradun, Uttarakhand.
3. Sh. Diwan Singh, Dal Nayak, S.D.R.F.
4. Sh. Om Prakash Bhatt, Dal-Nayak, IRB-II,
5. Sh. Shiv Raj Singh, Dal-Nayak, 46, PAC.

6. Sh. Matver Singh, Dal Nayak, IRB-II
7. Sh. Prabodh Kumar Ghildiyal, Traffic Inspector, District Dehradun.
8. Sh. Surendra Prasad Balooni, Reserve Inspector, Dehradun.
9. Sh. Ashok Kumar Singh, Dal-Nayak, S.D.R.F.
10. Sh. Narendra Singh Bhandari, Dal-Nayak, 31, PAC.
11. Sh. Mohan Lal, Dal-Nayak, IRB-II,
12. Sh. Prem Lal Tamta, Reserve Inspector, Haridwar.
13. Sh. Hira Lal Bijalwan, Dal-Nayak, S.D.R.F.
14. Satish Rana, Dal-Nayak, IRB-I
15. Sh. Puran Singh, Dal-Nayak, S.D.R.F.
16. Sh. Rajendra Singh, Reserve Inspector, Bageshwar.
17. Sh. Mahesh Chandra, Reserve Inspector, Pithoragarh.
18. Sh. Ratanmani Pandey, Reserve Inspector, Chamoli.
19. Sh. Kundan Lal Arya, Dal-Nayak, S.D.R.F.

.....Respondents

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioners
Sri V.P.Devrani, Ld. A.P.O.
for the respondents No. 1 & 2
Sri S.K.Jain, Counsel
for the respondents No. 4,7,9 & 15

JUDGMENT

DATED: JULY 31, 2019

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

1. The petitioners have filed this claim petition for the following reliefs:-

“(a) To quash the impugned order dated 20.01.2018 upto the extent where it is relate to disposal of the representations/objections of the petitioners against the interim seniority list dated 06.04.2017.

(b) To issue an order or direction to the concerned respondents to correct and redraw the final seniority list dated 20.01.2018 (the annexure of impugned order dated 20.01.2018) and placed the name of the petitioners above to the private respondents No. 3 to 19 in the fresh joint seniority list of Inspector/Reserve Inspector/Dal-Nayaks.

(c) To issue an order or direction to the concerned respondents to reconsider the promotion of the petitioners to the post of Inspector and grant it notionally from the date of their junior persons i.e. the date 27.02.2013, the date when the promotion were granted to the respondents No. 3 to 19, with all consequential benefits.

(d) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(e) Award the cost of the petition to the petitioner."

2. Briefly stated, the petitioners were recruited as Sub-inspectors in Civil Police branches under the respondents department in 1989-90, whereas, the private respondents were recruited later in time. The petitioners are much senior to the private respondents in their tenure of service. In both the branches of Police Department i.e. Civil Police and Armed Police/Dal-Nayak, the Sub Inspectors are promoted to the next cadre of Inspectors, as per their vacancies and quota.

3. For the vacancies of Civil Police, upto the year 2010, the selection/promotion process was started in the month of April 2011, for the vacancies year of 2010-11. The applications were invited for recruitment and promotion to the post of Inspector and their eligibility criteria was fixed as per the Notification dated 23.09.2004. Sub-Inspectors having 10 years of service were eligible for promotion to the post of Inspector. On the basis of the selection process, the interviews of the petitioners for the post of Inspector were held in the Month of December, 2011. Some other persons (Not present petitioners) of lower cadre of Civil Police filed a writ petition (S/S) No. 1841 of 2011 with Writ Petition No. 1896/2011, 985/2011 and 592/2012, on the ground that

they are being treated in a hostile manner and they are not being considered for promotion for the post of Inspector. In their writ petition, vide order dated 16.12.2011, an interim order was passed by the Hon'ble High Court of Uttarakhand with the following directions:

“Having heard the learned counsel for the parties and upon examining the material available on record, inasmuch as considering the fact that similarly situated Sub-Inspectors in the State of U.P. have been given benefit of seniority from the year 1999, it is directed that the petitioners shall be permitted to participate in the promotion exercise of Inspectors, provisionally pursuant to the Notification dated 19.04.2011 and 08.12.2011. However, result of the petitioners shall not be declared until further orders of this Court.”

4. Accordingly, the petitioners of that petition were provisionally allowed to appear in the process of interview for promotional post of Inspector. It was made clear in the interim order that the result of the petitioners (of that petition) shall not be declared till further orders i.e. till pendency of the petition. The petitioners have contended that by wrong interpretation of the order of the Hon'ble Court, the result of the present petitioners was also withheld. The petitioners were not party to that petition and their promotional exercise was already completed, but its result was not declared.

5. It has also been contended that from the quota of Armed Police, the promotional exercise was started in 2012 for the vacancies of selection year 2012-13 and as per the criteria set in the G.Os. dated 26.04.2006/15.02.2013, their interviews were held on 26.02.2013. Thereafter, vide order dated 27.02.2013, the promotions were granted to the private respondents No. 3 to 19 on the post of Inspector. The petitioners have also contended that the private respondents are much junior to them in service, but inspite of prior appointment/promotion of the petitioners, the respondent department, withholding the promotion of petitioners, granted promotion to the private respondents illegally and arbitrarily.

6. The said writ petitions filed in the year 1999 by the other persons, were finally dismissed by the Hon'ble High Court vide order dated 29.05.2013. Thereafter, the result of the interview given by the petitioners in the year 2011 was declared on 15.07.2013, after a period of about one and half year and they were promoted accordingly.

7. It is also contended that on 06.04.2017, a seniority list of the Inspectors was published by the respondents whereby, the petitioners were placed below the private respondents i.e. the persons of the cadre of Company Commanders and other inspectors, junior to them. Petitioners also submitted their representations against the seniority list, but the same were decided against them and vide impugned order dated 20.01.2018, the petitioners were placed below private respondents. It is also contended that the petitioners were appointed to the posts of Sub-Inspector, much prior to the appointments of the private respondents, hence, they were senior to the private respondents in tenure of service and placing the petitioners below private respondents, is wrong and illegal. The appointments of the petitioners to the post of Inspector were delayed by the respondents, by making wrong interpretation of the stay order of the Hon'ble Court.

8. It is also contended that the petitioners were eligible to be promoted to the posts of Inspector since the date of promotions of their juniors and earlier in time w.e.f. 2011 or when the result of the interview was withheld, on account of stay order of the Hon'ble Court. The petitioners have also contended that the respondents no. 7 and 16 whose cadre of Uttarakhand was allotted later in time, were also granted notional promotion since 27.02.2013, the date when other respondents were promoted hence, on the basis of equity, the petitioners are also entitled to get notional promotion from the date of their juniors i.e. the private respondents. According to the Seniority Rules, 2002, the petitioners will regain their seniority, but the respondents have denied

the petitioners from their legal rights, hence, this petition has been filed for the relief sought as above.

9. Respondents No. 1 & 2 filed their C.A./W.S. and other private respondents No. 4, 7, 15 and 19 adopted the same. Other respondents never appeared before the court and the case proceeded ex-parte against them. The respondents present before the court have submitted that the seniority list was prepared as per the concerned G.O. dated 26.04.2006, according to which, there is also a provision for combined seniority list of both the cadres.

10. According to the respondents, the representations of the petitioners were decided vide order dated 20.01.2018 with detained reasons. The respondents No. 7 & 16 were granted notional seniority as per the order of the Hon'ble Court and the result of the interview of the petitioners was not declared, in view of the interim order passed by the Hon'ble High Court and when the petition was dismissed by the Hon'ble Court, they were appointed at the earliest, and as per the Rules, they have been granted seniority from the date when they joined on the post of Inspector. The process for promotion of the private respondents, although started in 2012, but was completed on 26.02.2013. After declaring their result on 27.02.2013, they were appointed prior in time whereas, the petitioners were appointed on 15.07.2013, hence, as per the Uttarakhand Government Servants Seniority Rules, 2002, the seniority has rightly been fixed. The petitioners are not entitled for any relief, as the private respondents were appointed on the post of Dal Nayak and were promoted to the post of Inspector hence, they ranked senior to the petitioners. The cadres of Civil Police and Armed Police are different hence, on the basis of the vacancies, their process was started. In case of promotion from different cadres, combined seniority can only be fixed from the date of joining the service. The claim petition has no merit and deserves to be dismissed.

11. By filing Rejoinder Affidavit, the petitioners denied the contentions of the respondents and reiterated the facts as stated in their petition and further submitted that the petitioners joined their services as Sub Inspector 10 years prior to the joining of the private respondents and they were having 20 years of experience in the year 2010 whereas, private respondents completed 10 years of service as Sub Inspector only in the year 2012. The vacancies of the Civil Police cadre was of the year 2010 whereas, vacancies for the Armed Police cadre was of the year 2012. The selection process for the vacancy of the petitioners about selection year 2010-11 was not only started, but completed in all respects in December, 2011. The only result of interview was withheld by wrong interpretation of the order of the Court whereas, the vacancy for private respondents cadres accrued for the selection year 2012-13 and their interviews were held much later in time in Feb. 2012.

12. According to the petitioners, their selection was previous selection in comparison to the selection of the private respondents hence, they have a right to be promoted earlier and get seniority over them. There is no fault of the petitioners in delaying the result of promotional exercise of the petitioners and it is due to wrong, arbitrary and *malafide* act of the respondents. There was no such order of court against the selection and result of the petitioners, but the respondent No. 2 on his own and to give undue advantage to the private respondents No. 3 to 19, illegally withheld the result of the petitioners and started the promotional proceedings for the vacancies of the next/subsequent selection year, due to which seniority of the petitioners has adversely been affected.

13. It is also contended that the respondents adopted discriminatory attitude towards the petitioners, because the respondents No. 7 & 16 namely Sh. Prabodh Kumar Ghildiyal and Sh. Rajendra Singh Koshiyari who were allocated the State of Uttarakhand, first time in Nov. 2014 and September, 2015, were given promotion from

back date i.e. the date of promotion of other private respondents w.e.f. 26.02.2013. Their names were not included in the selection list, but after their allocation to the State of Uttarakhand, vide promotion order dated 08.12.2014 and 25.04.2016 they were granted notional promotion w.e.f. 27.02.2013. Hence, on this analogy, the petitioners being the promotees of the previous selection year, were also entitled to get notional promotion from the date of promotion of their juniors i.e. private respondents, but they were illegally denied the same and were treated discriminately. The order of the respondents is violative of Article 14 of the Constitution of India and against the principles of natural justice and their petition deserves to be allowed. The promotion order of the petitioners needs to be made effective notionally from the date when other private respondents, junior in service, were given promotion and accordingly, the seniority also needs to be revised.

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

15. The question for consideration before the court is, whether the petitioners, whose promotional exercise was started against the vacancies of 2010-11 and the formalities of interview were also completed, will rank senior to the persons promoted against the vacancies of later year. The result of promotional exercise of the petitioners was not declared on account of the interim order dated 16.12.2011, passed by the Hon'ble High Court, in writ petition No. 1841 (S/S) 2011 along with other connected petitions (in which the petitioners were not party). Although, those writ petitions were dismissed on 29.05.2013, but during their pendency, the process for promotion of the petitioners was kept pending without any such specific order, relating to them. In the mean time, for the next selection year, the promotional exercise of private respondents No. 3 to 19, relating to armed police cadre was started and completed, and they were appointed in the month of February 2013. While, the promotion orders of the petitioners were issued in July, 2013 without giving them the benefit of promotion

with back date i.e. 2011 when their selection process was completed and the result was withheld on account of a wrong interpretation of the stay order of the Hon'ble High Court. In these circumstances, the petitioners have sought relief to consider and reissue their promotion orders notionally from the back date, when their other juniors were promoted against the vacancy of next selection year and accordingly, the relief has been sought to set aside the seniority list and to redraw it afresh.

16. It is an admitted fact that the petitioners and the private respondents were recruited on the post of Sub-Inspectors belonging to different streams/branches in the police department. The petitioners and private respondents were promoted on the post of Inspectors from the post of Sub-Inspectors against their respective quota and the vacancies of respective years. The Executive Orders of that time, were having the effect of the Rules, which prescribed minimum 10 years of experience on the post of Sub-Inspector for promotion to the next higher post of Inspector/Dal Nayak. There is a provision for preparing combined seniority list of both the cadres.

17. It is also an admitted fact that the petitioners were appointed in the year 1989-90 batch and they completed 20 years of service in the year 2010 whereas, the private respondents No. 3 to 19 joined their services in the police department much after them and they completed 10 years of service on the post of S.I. in the year 2012 and in the length of service, although in different streams/branches, the petitioners are more than 10 years senior.

18. The petitioners have also submitted that from the cadre of civil police/Intelligence, vacancies for promotion occurred in the year 2010 whereas, the vacancies for other cadre (Armed Police, belonging to the private respondents) occurred only in 2012. The selection process for promotion of the petitioners cadre was started against the vacancies of 2010-11 in the end of 2011 and their interview/examination was completed in 2012, but by a wrong interpretation of the stay order dated

16.12.2011, passed by the Hon'ble High Court on the petition of some other persons (in which neither the petitioners nor the private respondents were parties), the result of the petitioners was not declared and their promotion orders were not issued.

19. Learned counsel for the petitioners has contended that, in that petition, neither the petitioners were party nor there was any stay order of the Hon'ble High Court, against the declaration of the result of the petitioners, and only the result of the petitioners of those writ petitions was to be withheld. The relevant part of the stay order of the Hon'ble High Court is that "**however, result of the petitioners shall not be declared until further orders of this Court.**" Apparently, this stay order was in relation to the petitioners of that petition (obviously, not petitioners of this petition) and they were allowed to participate in the promotion process and ultimately, their petitions were dismissed by the Hon'ble Court in 2013.

20. This court agrees with the argument of the petitioners that the stay order of the Hon'ble High Court to withhold the result of interview or examination was not in relation to the petitioners. However, making the wrong interpretation of that stay order, the petitioners, whose selection process for promotion was completed in all respect, were not given promotion orders whereas, nothing was left to be done on their part. The court finds that when whole process for promotional exercise was completed and nothing was left to be done on the part of the petitioners and only the formal order of the promotion was to be issued, in these circumstances, without any specific stay order of the court, the result of the petitioners was wrongly withheld. In such circumstances, the respondents were required, not to make promotion of the next year for other junior candidates, without either waiting for the result of the petition, or without giving effect to the promotion of the present petitioners. We find that the action of the respondents was

against the principles of natural justice and it violates the provisions of Article 14 of the Constitution of India.

21. Withholding the result of completed promotional exercise of the petitioners against the vacancy year 2010-11, the respondents took up the process of promotion against the vacancies of the year 2012-13 for the Armed Police quota and private respondents were promoted on 26.02.2013 after holding their interview. Such an act of the respondents is discriminatory and unjustified. It is an admitted fact that the petitioners came into service of the respondent department much before the private respondents; the vacancies of promotion in their cadre also occurred prior to the vacancies of the private respondents; the selection process of the petitioners was completed in December 2011, prior to selection process of the private respondents completed in 2012-13; the selection of the petitioners was of previous selection year and the selection of the private respondents was of 2012-13 even though, withholding the result of the petitioners (senior persons) for the prior years, promotion was granted to the private respondents, who were much juniors in service and they completed the required tenure of service later in time. Their vacancy for promotion also occurred in later year but they were given promotion in the month of February, 2013 earlier than the petitioners and the petitioners were made to suffer on account of the stay order of the Hon'ble High Court, granted in relation to some other persons, in a petition, in which the petitioners of the present petition, were not a party and were having no opportunity of hearing. In these circumstances, it was the requirement of the law and the principles of natural justice, that either the result of the petitioners should have been declared, prior to take up the matter of promotion of the private respondents, or the result of the promotional exercise of the private respondents must have been withheld till the decision of the petition of other persons.

22. This court is also of the view that even if by taking wrong interpretation of the order, the promotion order was not issued during pendency and till dismissal of the petition, then after dismissal of the petition, the petitioners must have been promoted with back date i.e. the date of their selection year or the date of completion of their selection process or from the date of giving promotion to their juniors in February 2013 and without giving promotion to petitioner with back date i.e. the date of promotion of later batch, the great injustice has been done to the petitioners and they have been punished down for no fault of them.

23. According to the petitioners, promotions of the persons against the vacancies of previous selection year, specifically when their promotional exercise was completed in all respects in 2011-12, must be made effected from the date, against the vacancy of their selection year. Learned A.P.O. on behalf of the respondents has submitted that the promotion order was not issued on account of the stay order and as there was no such stay order against further promotion, hence, the private respondents were promoted in the month of February 2013. After vacation of the stay order and dismissal of the writ petition of other persons, the promotion order of the petitioners was issued in July 2013. According to the respondents, as the petitioners were promoted later in time, hence, their seniority has been decided accordingly.

24. Learned counsel for the petitioners has submitted that the promotion can be made effective notionally, with retrospective effect and the respondents themselves had done so in the matter of the respondents No. 7 & 16, Sh. Prabodh Kumar Ghildiyal and Sh. Rajendra Singh Koshiyari, who were allocated to the State of Uttarakhand first time in the year November, 2014 and September, 2015 respectively. On the date of promotion of private respondents i.e. 26.02.2013, their names were not included in the selection list, in the selection process of Armed Police cadre and after allocation to the State of Uttarakhand,

their promotion orders were passed on 08.12.2014 and 25.04.2016 respectively and they were granted notional promotion w.e.f. 27.02.2013. Petitioners have contended that on the same analogy, petitioners, whose selection was made against the vacancies of previous year and the process of selection was completed prior to the selection of private respondent, but their result was withheld on a wrong interpretation of the stay order so the petitioners are also entitled for notional promotion from the date of their year of vacancy or from the date of promotion of their juniors w.e.f. 27.02.2013.

25. The court finds that in this respect too, the respondents have adopted a discriminatory attitude because of the reasons that when the respondents No. 7 and 16 were granted notional promotion with back date, on the same analogy, the petitioners must have been given notional promotion from the date of completion of their selection process for promotion in December, 2011 or latest from the date of promotion of private respondents, i.e. the persons selected for promotion about next year w.e.f. 27.02.2013.

26. This court holds that the petitioners must be placed in a position senior to the private respondents. In this respect, the respondents have violated the principles of equality and principles of natural justice and also the Service Rules. The contention of the respondents cannot be accepted in any respect because of the reasons that there was no such stay order, granted by the Hon'ble High Court against the result of the petitioners of this petition and, withholding their result till the disposal of the writ petition No. (S/S) No. 1841 of 2011 was wrong. Withholding the result of the previous selection and delaying the issue of promotion order and promoting the persons against the vacancies of later years, was wrong and against the principles of natural justice. Accordingly, placing the private respondents no. 03 to 19, above the petitioners in the combined seniority list is also wrong and illegal.

27. This court is of the view that the claim petition succeeds and there is a need for a direction to the State respondents to redraw and reissue the promotion orders of the petitioners to the post of Inspectors and to grant them promotions notionally, prior to the date of promotion of the private respondents no. 3 to 19 and, accordingly, the seniority list dated 20.01.2018 needs to be set aside, with a direction to redraw the seniority afresh, after issuance of the fresh promotion orders of the petitioners. Hence, the following order is hereby passed.

ORDER

The claim petition is hereby allowed. The impugned final seniority list dated 20.1.2018 (Annexure: A1) is hereby set aside. The respondents No. 1 & 2 are directed to redraw and reissue the promotion order of the petitioners, issued on 15.07.2013 and to give promotion to the petitioners on the post of Inspectors, by granting them promotion notionally, prior to the date of promotion of the private respondents No. 03 to 19. Respondents No. 1 & 2 are also directed to settle the seniority afresh and to place the names of the petitioners above the private respondents no. 3 to 19, in the joint seniority list of Inspectors/Dal-Nayak, within a period of three months from today.

No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JULY 31, 2019

DEHRADUN

KNP