

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 73/DB/2019

Ravindra Kumar aged about 40 years, s/o Sri Tej Ram Singh, Head Operator Police Control Room, Rishikkesh District Dehradun, permanent resident of Subhash Nagar, Gali No. 1, Near Rathi Bhusa Store, Jwalapur District Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Home, Secretariat, Subhash Road, Dehradun.
2. Superintendent of Police (Police Wireless Communication) Head Quarters, Uttarakhand, Dehradun.

.....Respondents

Present: Sri V.P.Sharma, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: MAY 06, 2020

Justice U.C.Dhyani, Chairman
Rajeev Gupta, Vice Chairman(A)

This is third round of litigation between the parties. First claim petition, being Claim Petition No. 12/DB/15 was disposed of by this Tribunal *vide* order dated 26.02.2018. Second claim petition, being claim petition No. 20/DB/2018 was decided by this Tribunal *vide* order dated 30.07.2018, operative portion of which is as under:

"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."

2. 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.

According to the 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.

As per order dated 30.07.2018, review DPC was held by the respondent department on 18.02.2019 (Copy: Annexure- A 1), assigning certain reasons in review DPC. It was found that the petitioner is not eligible for promotion. Aggrieved against the same, present claim petition has been filed.

3. Since Counter Affidavits were already filed by the respondent department in Claim Petition Nos. 12/DB/15 and 20/DB/18, therefore, we did not consider it necessary to direct the respondent department to file its C.A. in present claim petition, more so, when the facts are clear on the face of it.

4. According to C.A. filed earlier, 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 had been given in support thereof, stating that 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 awarded 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.

5. This Tribunal had observed, in its order dated 30.07.2018 that after perusal of the earlier minutes of DPC, which was held on 24.12.2013, it was stated in Para 5 of the minutes of earlier DPC that the Assistant Operator Ravindra Kumar was awarded 'censure entry' on 18.11.2013, therefore, his name was not considered for promotion. This Tribunal also observed on 30.07.2018 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. Review DPC was, therefore, directed to be held with reference to DPC dated 24.12.2013. It was also directed that 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 DPC, he 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.

6. The situation is back to square one when we passed the order dated 18.02.2019 (Annexure: A 1). Review DPC dated 24.12.2013 was with reference to DPC dated 09.07.2013.

7. To be precise, the petitioner has challenged the order dated 18.02.2019 of the Superintendent of Police (Communication), Headquarters (Annexure: A-1), according to which the petitioner has not been found fit for promotion on 24.12.2013, by the review DPC held in compliance of this Tribunal's order dated 30.07.2018, passed in claim petition no. 20/DB/18. This consideration has again been based on the censure entry dated 18.11.2013, awarded to the petitioner.

8. Order passed by this Tribunal dated 30.07.2018, is being reiterated as under, for facilitating discussion:

"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."

9. The only difference between the then DPC held on 24.12.13 and the review DPC has been that, while in the earlier DPC of 24.12.2013, the petitioner's name was not considered because of the censure entry of

18.11.2013, in review DPC, his service record was not found satisfactory because of this censure entry and, therefore, he was not found fit for promotion.

10. The petitioner has been subsequently promoted to the post of Head Operator w.e.f. 19.02.2017. As per the departmental orders, the fact of censure entry was to be effective for three years, which period expired on 17.11.2016. There is no doubt that the petitioner could have been promoted w.e.f. 18.11.2016. The petitioner is demanding promotion w.e.f. 16.07.2013, the date of promotion of his juniors and payment of salary and other benefits of promoted post from that date, with interest thereon. In the DPC held on 09.07.2013, the petitioner was rightly not considered for promotion as he had not passed the Grade-II examination, which he passed subsequently on 14.10.2013. The first question that arises is, whether after passing the examination, if there was nothing else against him, could he have been promoted from the earlier date i.e., 16.07.2013, the date from which his juniors were promoted. While the relevant Rules do not prescribe the passing of this examination as a mandatory condition for granting promotion, the requirement of passing Rules and subsequently confirmation of the person on the lower post cannot be ignored by any DPC. However, a view can be taken that after the examination has been passed, the promotion can be given notionally from the previous date when the juniors have been promoted and actually after the date the examination has been passed.

11. In the petitioner's case there was an inquiry going on, on the basis of complaints made by him against the training system, which were found to be false and consequently the censure entry was awarded to him on 18.11.2013, by following the procedure of imposing minor penalty. Had this not been the case, the petitioner along with others could have been promoted in the DPC held on 24.12.2013. By ordering further review DPC to be held, this Tribunal in its order dated 30.07.2018, did not state clearly whether this censure entry awarded on 18.11.2013 will be taken into consideration along with other entries of the petitioner or not? In review DPC, this censure entry was also considered along with other relevant annual entries and the review DPC did not hold his service record to be satisfactory.

12. Arguments have been advanced by both the sides about whether this censure entry should have been considered, what should have been its effect, etc. After passing departmental Grade-II examination, the petitioner was fit for promotion otherwise. However, the pendency of inquiry and subsequent minor penalty imposed upon him, cannot be considered to be absolutely effect-less in affecting his promotion. This Tribunal observes that the fair thing would be to grant promotion to the petitioner actually from the date the effect of censure entry was over, i.e., 18.11.2016 and notionally from the date his juniors were promoted, i.e., 16.07.2013, without giving him any benefit of additional salary etc. for the intervening period. He shall be entitled for pay fixation on the promoted post *w.e.f.* 16.07.2013 and subsequent annual increment and this period shall also be counted as qualifying service period, on the promoted post for the next higher promotion.

13. The above decision places the things in their proper perspective— the petitioner's future promotion prospects are not altered and he suffered adequately for delay in passing the Grade- II examination and the minor penalty of censure entry.

14. Order in terms of Para 12 of the judgment.

15. The claim petition thus stands disposed of. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 06, 2019
DEHRADUN

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