

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh
----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal
-----Member (A)

CLAIM PETITION NO. 39/NB/DB/2019

Mohan Chandra Joshi, aged about 62 years (Male) S/o Shri Radha Ballabh Joshi, R/o Village Matana, Post Office Matana, Tehsil Garur, District Bageshwar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Education Department, Government of Uttarakhand, Dehradun.
2. Director, Secondary Education, Uttarakhand, Dehradun.
3. Chief Education Officer, Bageshwar District.

.....Respondents

Present: Sri Amar Murti Shukla, Ld. Counsel
for the petitioner

Sri Kishore Kumar, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: MARCH 18, 2020

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

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

"a) To set aside the impugned orders dated 07.06.2018 & 26.11.2018, passed by respondent No. 2 (contained as Annexure No. 1 & 2) and further be pleased to direct the respondents to pay the same Grade Pay i.e. Rs. 7600/- as has been given to his juniors vide order dated 29.12.2016 from the same date i.e. 29.12.2016.

b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

c) Award cost of the petition. ”

2. Briefly stated, petitioner was initially appointed as C.T. Grade Teacher on 11.11.1980 and was upgraded in L.T. Grade in 1982 in the respondent department and his service record has been unblemished. On 19.09.2007, the respondent department promoted the petitioner as Lecturer (Economics) and posted him at Government Inter College, Dhaina, District Bageshwar. Thereafter, final seniority list was published, in which petitioner's name figured at sl. No. 3635, whereas, the name of Sri Ghanshyam Prasad Pant figured at Sl. No. 3691, hence, petitioner was senior to Sri Pant.

3. In the seniority list, a mistake was committed by the department, by entering wrong place of posting and his wrong date of birth. In the seniority list, the date of birth of the petitioner was wrongly mentioned as 28.05.1955 whereas, in the service record, his actual date of birth is 15.11.1957. The service book of the petitioner was always available with the department, but by mentioning his wrong date of birth, he was deprived from promotion as Head Master. On 24.02.2016, the promotional exercise was undertaken in the department and, on the basis of wrong date of birth i.e. 28.05.1955, mentioned in the seniority list, he was assumed as retired from service whereas, he was very much in the service, as his actual date of birth in the service record was 15.11.1957. Sri Ghanshyam Prasad Pant, junior to him was promoted as Head Master vide order dated 24.02.2016 and was further promoted as Principal vide order dated 29.12.2016 whereas, petitioner was denied such benefit, only on account of mentioning his wrong date of birth in the seniority list, as 28.05.1955.

4. The said seniority list, issued by the department, was never circulated and was simply placed on the net. Petitioner being posted in a very remote area, having no internet facility, never noticed the mistake committed by the department about the wrong entry of his

date of birth, wrong place of posting and the subject of which he was lecturer. When petitioner filed representation, pointing out the mistakes, his date of birth was corrected in the record and accordingly, vide order dated 13.10.2017, respondent promoted him to the post of Head Master as temporary/stopgap arrangement in the grade pay of Rs. 5400. The petitioner moved representation dated 16.10.2017 to the Director, Education requesting for promotion w.e.f. 29.12.2016, the date when his juniors were promoted in the Grade Pay of Rs. 7600/-. In his representation, petitioner submitted that he is much senior to Sri Ghanshyam Prasad Pant, who has been promoted on the post of Principal on 29.12.2016 with the Grade Pay of Rs. 7600/-, whereas, he has been deprived from the same because of the mistakes committed by the department. Request was made to treat the petitioner like his juniors. When, respondents did not grant the benefit, petitioner approached the Hon'ble High Court by filing a writ petition No. 61 of 2018 (S/B), which came up for hearing on 07.02.2018 and an interim order was issued by the Hon'ble High Court, directing respondent to consider the case of petitioner for granting of Grade Pay of Rs. 7600/- to him, like his juniors.

5. After order of the Hon'ble High Court, petitioner, annexing the certified copy of order of the Hon'ble High Court represented to the department and prayed for compliance of the order, but his representation was rejected vide order dated 07.06.2018 (Annexure: 2). The said writ petition came up for final hearing before the Hon'ble High Court on 10.08.2018 and it was disposed of, directing the respondents to consider the case of petitioner for granting the Grade Pay of Rs. 7600/- from the date, his juniors were granted, within a period of ten weeks from the date of passing of order.

6. The respondents never disputed the fact that the date of birth of the petitioner was wrongly written in the seniority list and it was corrected later on. After correction, the petitioner was entitled to

same facility, which was given to his juniors. His case was again considered, in view of the directions of the Hon'ble High Court, but the facility was not granted and claim of the petitioner was dismissed vide order dated 26.11.2018 (Annexure: 1), on the ground that since petitioner was not promoted on the post of Principal, Government High School, and he did not complete necessary five years of service, hence, he cannot be promoted to the post of Principal, Government Inter College. Respondent adopted a different policy for his juniors who were given promotion as Principal on 29.12.2016, just after a period of 10 months of their promotion as Head Master on 24.02.2016, but the petitioner was denied from this facility. Where juniors are allowed higher pay, it is settled law, that senior cannot get lesser salary than his junior.

7. The petitioner has submitted that due to mistake at the hands of respondent authority, the petitioner is compelled to get lesser salary and grade pay in comparison to his juniors. He is being punished for no fault of him. The actual date of birth of petitioner i.e. 15.11.1957, and it was available with the respondents in his service record even at the time of issuance of final seniority list, in which the mistake was committed. The respondents were under an obligation to take appropriate action against erring officer who entered wrong entries in the tentative/final seniority list prepared by them, but instead of doing so, respondents punished the petitioner for no fault of him.

8. While disposing the representation of petitioner, respondents had taken a contrary stand to their action, as the juniors of the petitioner, who were promoted to the post of Head Master on 24.02.2016 in the Grade Pay of Rs. 5400, were again promoted to the post of Principal in the Grade Pay of Rs. 7600/- vide order dated 29.12.2016, just within 10 months, without completing necessary five years of regular service as Head Master. When, such facility was allowed to his juniors without completion of five years of service, the

claim of petitioner was rejected on the ground that he has not completed five years of service as Head Master. The petitioner was treated discriminated, which is against the principles of natural justice and Article 14 of the Constitution of India. The action of the respondent is not justified hence, petitioner filed this petition for the reliefs as mentioned above.

9. Respondents opposed the petition but admitted this fact that the actual date of birth of the petitioner is 15.11.1957. It is admitted to respondents that while tentative seniority list was issued, his date of birth was wrongly entered as 28.05.1955. The respondents have contended that tentative seniority list was circulated but the petitioner never submitted any representation for correction of his date of birth or other particulars. Accordingly, he was not promoted as Head Master in February, 2016 along with other persons, as he was assumed to have retired, considering his date of birth as 28.05.1955. When his date of birth was corrected, he was given promotion on 13.10.2017 on the post of Head Master on temporary basis and was confirmed later on. As he did not complete five years of service as Head Master, he cannot claim for promotion as Principal as a matter of right. It is also contended by the respondents that other persons who were promoted as Head Master on 24.02.2016, were temporarily promoted as Principal on 29.12.2016, in case of exigencies and scarcity of the persons, as huge posts were lying vacant. The representation of petitioner was considered in compliance of the order of the Hon'ble High Court as per the rules. The petition deserves to be dismissed.

10. The petitioner submitted R.A., reiterating the facts of his petition and has contended that if his juniors were given the benefit temporarily, he was to be treated equally and like them, he should have been given this benefit on the same basis. The discrimination made by the respondents is not justified, which violated the principles of natural

justice as well as the settled law that a senior cannot be forced to get lesser salary than his junior.

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

12. It is admitted to the petitioner & respondents that the actual date of birth of the petitioner in the service record is 15.11.1957. It was never disputed that the petitioner was senior to Sri Ghanshyam Prasad Pant. As per the appointment (Annexure: 3), their posting was made and name of the petitioner figured at sl. No. 69, whereas name of Sri Ghanshyam Prasad Pant figured at sl. No. 76. In the seniority list (Annexure: 4), his date of birth was wrongly shown as 28.05.1955, which was not correct. The promotion list dated 24.02.2016 (Annexure: 5) also reflects that name of the petitioner was not there whereas, the name Sri Ghanshyam Prasad Pant was mentioned at sl. No. 189. The petitioner has contended that his name was not considered for promotion on 24.02.2016, assuming that he has already retired in the year 2015, on the basis of wrong entry of his date of birth, whereas, he was within the service, as his date of birth was 15.11.1957. When this fact was brought into the notice of the respondents, the correction about his date of birth was accordingly made and he was given promotion as Head Master, not from the date of his junior but with a later date, and that too, on temporary basis.

13. We find that when the mistake of the department was brought into the notice of the respondents, promotion of the petitioner was made as Head Master on 13.10.2017. It must have been given effect from the date when his juniors were promoted i.e. the date of 24.02.2016. By not giving similar benefit to the petitioner, a discriminatory attitude was adopted which is illegal and violative to the Article 14 of the Constitution of India. Furthermore, the petitioner, who got promotion as Head Master on 13.10.2017, was also entitled to be promoted w.e.f. 24.02.2016 like his juniors. He made his representation for his promotion as Principal, like his juniors, but he was not allowed

the similar benefits even after filing of the writ petition before Hon'ble High Court and the direction of the Hon'ble High Court as an interim order dated 07.02.2018. The representation filed by the petitioner was decided and dismissed vide order dated 07.06.2018 on the analogy that he has not completed five years of service as Head Master whereas, other persons including his junior, Sri Ghanshyam Prasad Pant, were granted this promotion, although temporarily, as Principal on 29.12.2016 just after 10 months of their tenure as Head Master. The writ petition of the petitioner was finally disposed of by the Hon'ble High Court vide order dated 10.08.2018 with the direction to consider the case of the petitioner for grant of grade pay of Rs. 7600 from the date his juniors were granted. The petitioner again filed his representation with the department, but the same was also dismissed on the above analogy vide order dated 26.11.2018 (Annexure: 1).

14. The petitioner has contended that the stand of the respondents had been contrary, because of the reasons that while they allowed the benefit of the Grade Pay of Rs. 7600 of the post of Principal even to his juniors, without completion of necessary five years service as Head Master, but on the other hand, claim of the petitioner was dismissed on the analogy that he has not completed 10 years of service as Head Master, rather it was also mentioned that he was temporarily promoted as Head Master.

15. This court finds that when petitioner was entitled to be considered for promotion with his juniors on 24.02.2016 as Head Master, he was wrongly left out from the promotional exercise, taking into account of his wrong date of birth in seniority list and assuming him as retired from service. This date of birth was considered, on the basis that it was mentioned in the seniority list, while in the service record, his date of birth was mentioned as 15.11.1957. In the seniority list not only his date of birth was wrongly mentioned, but his place of posting was also wrongly written. That seniority list was not physically

circulated, rather it was placed on net for circulation. Petitioner was posted in a very remote area, having no internet facility, accordingly, he could not point out the mistake recorded in his record in time but he cannot be penalized for the same because duty to maintain correct records lies with the department and not to the petitioner.

16. We hold that when the service record of the petitioner was available with the department in which his actual date of birth was mentioned, the department was under obligation to consider that date of birth before taking promotional exercise. Furthermore, petitioner was well within service at that time although he was posted in a very remote area. The department cannot ignore and assume him retired simply on the ground that some employee of the department has wrongly written his date of birth in the seniority list. Petitioner was having no role in maintaining such seniority list. The mistake was committed by the officers of the respondent department and for the fault of the employees maintaining the record, petitioner cannot be penalized rather the authorities were under obligation to take appropriate disciplinary action against the erring officers, in accordance with law. But instead of doing so, respondents have punished the petitioner for no fault of him. When his correct date of birth i.e. 15.11.1957 was available in his service record with the department, there was no occasion to leave the petitioner from the promotional exercise taken on 24.02.2016 and later on 29.12.2016.

17. Admittedly, Sri Ghanshyam Prasad Pant was junior to the petitioner, when he was allowed promotion on 24.02.2016 as Head Master on regular basis, the petitioner who pointed out the mistakes of the department, was very much entitled for his regular promotion as Head Master w.e.f. 24.02.2016 and, like Sri Ghanshyam Prasad Pant, admittedly his junior, he was also entitled for further promotion, although temporarily, as Principal in the Grade Pay of Rs. 7600 w.e.f. 29.12.2016. The respondents cannot discriminate between two

employees and cannot put a senior person on a lesser pay scale even in the case of temporary promotion, because it violates Article 14 of the Constitution and it is very much discriminatory and against the principles of natural justice. While deciding of the representation of the petitioner through impugned order dated 07.06.2018, respondents denied the similar facility to the petitioner on the ground that he did not complete five years on the post of Head Master, whereas, other persons including his junior Sri Ghanshyam Prasad Pant were promoted to the post of Principal on 29.12.2016 with grade pay of Rs. 7600, just within a period of 10 months from their promotion as Head Master on 24.02.2016. If the junior person can be granted promotion by completing only 10 months as Head Master, then his senior, petitioner cannot be denied this facility on the ground that he has not completed five years of service as Head Master. The different yardsticks cannot be applied between the similarly situated persons. The petitioner was senior to Sri Sri Ghanshyam Prasad Pant and it is a settled principle that a senior person cannot get lesser salary to their juniors whereas, in the instant case, petitioner is compelled to receive lesser salary to his junior inspite of the fact that mistake committed by the department was brought to their notice, which was ratified by them, but the petitioner was illegally denied the benefit of his promotion with the date when his juniors was granted and also the benefit of the grade pay of Rs. 7600 without any sufficient and reasonable reasons. The order dated 07.06.2018 and 10.08.2018 were also challenged by the petitioner before the Hon'ble High Court in writ petition (S/B) No. 141 of 2019 from where, his writ petition was disposed of vide order dated 23.04.2019 on the ground of alternative remedy before this Tribunal. Thereafter, the petitioner approached this Tribunal for redressal of his grievances.

18. We hold that the respondents have illegally denied the benefits of promotion and grade pay of Rs. 7600/- to the petitioner and his claim petition deserves to be allowed, with cost of litigation and this

cost needs to be allowed in view of the fact that even after successive order of the Hon'ble High Court, to grant the similar benefit like his juniors, the benefit was denied to the petitioner, and he was again forced to approach the Court. In such circumstances, we are of the view that cost of litigation should also be awarded in favour of the petitioner.

19. The respondents have also argued that the petitioner has retired from service, we hold that it makes no difference about the matured right of the petitioner to get proper and equal pay like his juniors with effect from the date it was allowed to his juniors.

ORDER

The claim petition is allowed with cost of litigation along with a special cost of Rs. 5000/- (Rupees Five Thousand). Such amount may be recovered from the erring officers, who entered wrong date of birth of the petitioner in the record.

The impugned orders dated 07.06.2018 and 26.11.2018, passed by the respondent No. 2 are hereby set aside and respondents are directed to grant notional promotion to the petitioner on the post of Head Master w.e.f. 24.02.2016 instead of 13.10.2017 like his juniors and to grant similar benefit of promotion/grade pay of Rs. 7600/- to the petitioner w.e.f. 29.12.2016, as has been given to his juniors vide order dated 29.12.2016, within a period of four months from the date of this order.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: MARCH 18, 2020
NAINITAL
KNP