

**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. 34/NB/DB/2019**

Harish Singh Kaira, S/o Late Sri Bir Singh Kaira, Presently posted as Stenographer, Office of the Advocate General, Uttarakhand High Court Campus, Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Law, Government of Uttarakhand, Dehradun.
2. Advocate General, Uttarakhand having its Office at High Court Campus, Nainital.
3. Ms. Smita Joshi, presently posted as Additional Private Secretary, Office of the Advocate General, Uttarakhand, High Court Campus at Nainital.

.....Respondents

Present: Sri Vinay Kumar & Niranjana Bhatt, Advocates for the petitioner.  
Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2.  
Sri D.S.Mehta, Advocate for respondent No. 3.

**AND**

**CLAIM PETITION NO. 36/NB/DB/2019**

Kheema Nand Tiwari, S/o Late Sri P.C.Tiwari, Presently posted as Stenographer, Office of the Advocate General, Uttarakhand High Court Campus, Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Law, Government of Uttarakhand, Dehradun.
2. Advocate General, Uttarakhand having its Office at High Court Campus, Nainital.

3. Ms. Smita Joshi, presently posted as Additional Private Secretary, Office of the Advocate General, Uttarakhand, High Court Campus at Nainital.

.....Respondents

Present: Sri Sanjay Bhatt & Sri Prem Prakash Bhatt, Advocates for the petitioner.  
Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2.  
Sri D.S.Mehta, Advocate for respondent No. 3.

**JUDGMENT**

**DATED: JULY 31, 2020**

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

1. In both the petitions, the issues involved are almost the same hence, both are taken up jointly.
2. In both the claim petitions, the petitioners have sought the following reliefs:

*I. To issue direction in the nature of Certiorari quashing the impugned Office Order dated 5<sup>th</sup> July 2019 passed by the Respondent No. 2/Appointing Authority.*

*II. To issue direction in the nature of Certiorari quashing the impugned Minutes of Meeting of the Review DPC/Reports dated 13<sup>th</sup> June 2019 and 17<sup>th</sup> June 2019 being in violation of the findings and directions given in the judgment of the learned Tribunal dated 9<sup>th</sup> April 2019.*

*III. To issue direction in the nature of Certiorari quashing the continuance of promotion of the Respondent No. 3 on the post of Additional Private Secretary as affirmed by the 03 Members Review Promotion Committee in its Reports of the Review DPC dated 13<sup>th</sup> June 2019/17<sup>th</sup> June 2019.*

*IV. To issue direction in the nature of Mandamus holding the claimant suitable for promotion on the post of Additional Private Secretary and directing the Appointing Authority to promote the petitioner on the said post w.e.f. 22.12.2014 along with all consequential service benefits.*

*V. To award the cost of the petition or to pass such other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

3. Both the claim petitioners are aggrieved by the Office Order dated 05.07.2019 issued by the Appointing Authority (Respondent No.2) whereby on the basis of the report of the Review DPC, they were declared unsuitable for promotion on the post of Additional Private Secretary (APS). The petitioners have challenged the validity of the said order on the ground that the impugned order is based on wrong interpretation of the judgments dated 09.04.2019, passed by this Tribunal in Claim Petitions No. 02/NB/DB/2018 and 01/NB/DB/2018 and some part of the judgment was treated as a part of punishment. Whereas, the punishment awarded on the basis of the disciplinary proceedings were already set aside by this Tribunal vide judgment dated 08.09.2016 passed in claim petition nos. 24/NB/DB/2014 and 07/NB/DB/2015 with liberty to the respondents to proceed afresh as per law within a stipulated period, but the respondent department never opted for with the liberty given to them hence, after finalization of the judgment of the Tribunal dated 08.09.2016, the punishment was no more in existence.

4. After the judgment of the Tribunal dated 08.09.2016, the prayer was made by the petitioners with the appointing authority, to grant them the service benefits i.e. ACP, pay of the suspension period and other benefits. In response to the representations of the petitioners, respondent No. 2 granted all the service benefits of ACP, increments and other benefits except of Bonus with prospective effects.

5. Petitioners again approached this Tribunal through Claim Petition No. 02/NB/DB/2018 and 01/NB/DB/2018 challenging that part of the order whereby Bonus was denied and the other benefits and increments were not paid from back date. Continuity of temporary promotion of Smita Joshi (Respondent No. 3) was also challenged with the prayer to hold a review DPC and grant promotion to the petitioners before or from the date of her promotion. Vide judgment dated

09.04.2019, both the petitions were allowed by the Tribunal with the following order (separately passed):

*“The claim petition is partly allowed. The prayer of the petitioner for granting the benefit of Bonus to him for the period July 2013 to September 2016 is not allowed and is rejected. Modifying the impugned order dated 15.12.2017, the respondent Nos. 1 and 2 are directed to grant other service benefits, pertaining to the post and to allow and release the withheld increments of the petitioner from back date i.e. 28.08.2014 onwards.*

*Respondent No. 2 is also directed to consider the candidature of the petitioner for promotion to the post of Additional Private Secretary (APS), by holding a review DPC of DPC, by which the respondent No. 3 was considered and recommended for promotion, as per rules, instead of allowing temporary promotion of respondent No. 3 for indefinite period. Respondent No. 2 is also directed to complete the regular promotional exercise, as per the provisions of the concerned Service Rules, within a period of three months from the date of this order of the court, and the temporary promotion order dated 22.12.2014 of respondent No.3, will become ineffective automatically after such period of three months from today with all its future consequences.*

*No order as to costs.”*

6. In compliance of the order passed by this Tribunal, the appointing authority, respondent No. 2 constituted a three members committee *vide* Office Order No. 507.PPS/2019 dated 13.05.2019 to consider the claims of the petitioners for promotion to the post of APS, consisting of (1) Sri G.S.Sandhu, Government Advocate (2) Sri M.C.Pandey, Senior Advocate/Additional Advocate General and (3) Sri H.M. Raturi, Deputy Advocate General. However, no representative of the Public Service Commissioner was included in the committee. Three members committee submitted their reports to the Appointing Authority. One of the members, Sri M.C.Pandey, Additional Advocate General submitted his report dated 17.06.2019 and recommended for the promotion of the petitioners as per the rules, while two other members, Sri G.S.Sandhu, Government Advocate and Sri H.M. Raturi,

Deputy Advocate General, making a different interpretation of the judgment of the Tribunal and taking into consideration the observations of the appointing authority, in its order dated 13.05.2019, submitted a different report, whereby the petitioners were held not entitled to be promoted on the post of APS. Two members of Committee found the record of Ms. Smita Joshi, respondent no. 3 unblemished and hence, they submitted that there is no need to interfere in her earlier promotion.

7. On the basis of the committee report, respondent No. 2 vide his office order dated 05.07.2019, also made his own interpretation of the judgment passed by this Tribunal and picking some para of the order and ignoring the conclusion of this Court, held that the petitioners not entitled for promotion and their claims for promotion were rejected. Now, the petitioners have challenged the above orders, passed by the respondent, seeking the relief mentioned above on the following grounds:-

- (i) that the minutes of meeting of the review DPC report dated 13.06.2019 and 17.06.2019 are not sustainable, as none of the members have adjudged the suitability of the petitioners on the post of APS w.e.f. 22.12.2014 on the basis of the ACR/entries of the petitioners. While on the contrary, the suitability of the petitioners has been adjudged on wrong interpretation of the judgment passed by this Tribunal in various round of litigation. The members of the review DPC committee have not acted in an independent and impartial manner and have submitted their report based on the observation of the Appointing Authority contained in Office Order dated 13.05.2019 by which the Committee for review DPC was constituted;
- (ii) that there were separate and different reports of the members of the committee and the only majority members-committee-report was relied upon. The matter was not considered with an

independent application of mind for judging the suitability of the petitioners. The suitability of the petitioners must have been judged on the basis of the service records whereas, majority of the members committee have interpreted the judgment of the Tribunal as per their own convenience and had not considered the judgment of the Tribunal dated 09.04.2019 in its entirety and the grounds to hold unsuitability of the petitioners were taken beyond the service rules.

- (iii) that the appointing authority passed the order dated 05.07.2019 only after considering the report of the majority members and there is no finding as to why the report of the third member (who held the petitioners suitable for promotions) was rejected. The appointing authority wrongly applied the ratio of the judgment of the Hon'ble Apex Court regarding suitability of the petitioners for promotion because of the reasons that as per the Hon'ble Apex Court's verdict, "an employee found guilty of misconduct cannot be placed on par with other employees", but in the present case, the petitioners at no point of time, were found guilty of misconduct by the disciplinary authority as per the rules. There were no adverse entries in their service record. Hence, there is no reason to treat the petitioners guilty of misconduct for being treated differently. The finding of the Hon'ble Apex Court mentioned in para 29 of the impugned order of the appointing authority citing the judgment in the case of Union of India vs. K.V.Jankiraman, has wrongly been relied upon as the facts to the case of the petitioners are totally different as they were never found guilty of misconduct.
- (iv) that the appointing authority vide impugned order dated 05.07.2019 had already paid the salary for the period, petitioners remained under suspension, and grant of ACP and other service benefits were allowed in compliance of the

previous orders of the Tribunal as they have never initiated any disciplinary proceedings against the petitioners.

- (v) That the appointing authority as well as the members of the review DPC have acted in an arbitrary, discriminatory and in an erroneous manner with the sole objective to hold the petitioners unsuitable and to uphold the promotion of the respondent No. 3, as is evident from the fact that they have selectively relied upon some part of the judgment of the Tribunal dated 09.04.2019.
- (vi) that the judgment of the Tribunal should be read in toto. Moreover, this Tribunal specifically held that Bonus is not a part of service employment, while right to be considered for promotion was specifically recommended by the Tribunal, but in spite of the direction of the Tribunal, the committee and the appointing authority have denied the promotion beyond the service record and disobeyed the direction of the court. The order of the Tribunal, denying Bonus to the petitioners, was specifically clarified in the judgment, as it was held not a part of the service employment while other benefits attached with the service, were clearly allowed by the court. The respondents had deliberately declared the petitioners unsuitable for promotion, only to give undue benefits to the respondent No. 3, in a discriminatory manner. There was no disciplinary proceedings in existence against the petitioners neither there was any punishment order in existence. The petitioners were held to be guilty of misconduct beyond the record.
- (vii) that the promotional exercise was not done as per the order of the Tribunal and was not as per the rules. The temporary promotion granted to respondent No. 3 was wrongly continued, whereas, the court order was to discontinue it and to hold DPC for regular promotion.

(viii) that the petitioners were denied their right because of the reasons that they have approached the court for the protection of their rights against respondent No. 2, appointing authority. The action of the respondent department in denying the service benefits to the petitioners by giving its own wrong interpretation, without challenging the judgment before the appropriate forum, is contempt of the judgment passed by the Tribunal.

(ix) Hence, this petition.

8. The State and private respondent opposed the petition by filing separate Counter Affidavit with the contention that the petitioners were granted all the benefit of ACP, increments and other service benefits, without granting them Bonus. The post of APS is a permanent post in the office of Advocate General, as per the Uttarakhand Advocate General Office Establishment (Service of Employees) Rules, 2013. In compliance of the order of the Tribunal, Respondent No. 2 constituted a review DPC committee which considered the matter of the petitioners as well as of private respondent No.3. The matter of promotion of private respondent No. 3 has been sent to Public Service Commission Uttarakhand for concurrence through Principal Secretary, law for confirmation on the post of APS and law department had forwarded the same vide its order No. 97(1)/xxxiv(1)/2019/21 dated 06.08.2019 (Annexure: CA-3 and CA-4).

9. As per contention of the respondents, the promotion of respondent No. 3 was considered for the post of APS as per rules and she was found eligible for promotion while, the petitioners were not found eligible that time. Now, they cannot claim any right for promotion. There were various charges against the petitioners, to which, this Tribunal also did not give them clean chit on merits of the case hence, they cannot claim promotion as a matter of right. Referring to para 21 of the judgment dated 09.04.2019 passed by this Tribunal, respondents have also contended that the court held the petitioners not entitled for grant



of Bonus in view of the fact that the petitioners were not exonerated from the charges against them on merit hence, they are not entitled for any arrears of such Bonus for past years. Taking note of this para of the judgment, the petitioners were not found suitable for promotion as the matter pertains to receive the illegal gratification from the official pairakar in that particular year, when private respondent No. 3 was promoted. Although, the court set aside the punishment order on procedural lapses but respondents were given liberty to restart the inquiry proceedings but respondents never opted for it.

10. One of the members of the DPC did not take the note of para 21 of the judgment dated 09.04.2019. The post of APS would be filled up by promotion subject to rejection of unfit on the basis of seniority-cum-merit through a Selection Committee from amongst substantively appointed stenographers. The Committee after considering the record, found the petitioners not entitled for promotion hence, they are not entitled for any relief, because for granting promotion, one must have unblemished service record, which petitioners were lacking. The claim petitions of the petitioners' in previous round of litigations were allowed purely on technical grounds and not on merits. The Hon'ble Apex Court in number of cases held that an employee who found guilty of misconduct cannot be placed at par with other employees. At the relevant point of time, the petitioners were not eligible for promotion hence, private respondent No. 3 was promoted in 2014. Petitioners were never acquitted from the charges levelled against them rather this Tribunal granted a liberty to the department to initiate departmental proceedings against the petitioners afresh. Petitioners taking the advantage of this situation are trying to take the benefits for which they are legally not entitled. Respondents have further contended that the promotion of the respondent No. 3, Ms. Smita Joshi on the post of APS was not a temporary promotion, rather it was a regular promotion. The petitioners misunderstood the language of the promotion order of the respondent No. 3 because under the service jurisprudence every order including

appointment and promotion in initial stage is issued by saying that the appointment/promotion is temporary and after completion of probation period, the appointment/promotion are continued. Hence, on the basis of the facts, the respondents have contended that the petitions deserve to be dismissed.

11. Respondent No. 3 contested the petition almost on the same ground with additional contention that the reliefs cannot be granted, as it is barred by principles of estoppel. The review DPC committee rightly considered the matter of promotion of the petitioners as well as of private respondent No. 3 and same has been sent to Public Service Commission, Haridwar through Principal Secretary, Law department for confirmation on the said post vide their letter dated 06.08.2019. The claim petitions are based on the twisted facts. The prayer made in the claim petitions is liable to be rejected.

12. The petitioners through their Rejoinder Affidavits reiterated the facts in the petition and denied the contention raised in the Counter Affidavit and specifically reiterated that in view of the judgment dated 08.09.2016, the three members committee was constituted by Respondent No. 2 which made a recommendation with the following words:

*".....In view of the above state facts, Mr. Harish Singh Kaira is entitled for all consequential benefit of his service as per service jurisprudence with effect from the date of suspension order. As such, he is entitled for all the benefit of service as well as benefit of accelerated promotion, if any. For the promotional avenue, his seniority will be counted in continuity of his service, since the date of his joining."*

On the basis of the report, the respondent granted the service benefits to the petitioners only from the date of judgment, also with salary for the suspension period. It was also stated therein that on creation of post of Additional Private Secretary by the State Govt., the petitioners would be granted promotion on priority basis. The copy of such order dated 13.12.2017 is Annexure: R2. The matter was again

adjudicated in the claim petitions No. 01/NB/DB/2018 and 02/NB/DB/2018 and this Tribunal vide judgment dated 09.04.2019, clearly directed to discontinue the departmental promotion of the respondent No. 3 and to consider the petitioners for granting promotion to them by holding a review DPC. It was specifically held by the court that granting of Bonus is a separate issue and is not attached with the service employment. Moreover, the petitioners were granted all the benefits attached with the service i.e. ACP, increments etc, but the committee members and the appointing authority, in total disregard to the judgment passed by the Tribunal, made its own interpretation, and continued with the promotion of private respondent No. 3, which has become ineffective as per the order of the Tribunal, passed on 09.04.2019. The whole exercise done by the respondents in continuing temporary promotion of private respondent No. 3 is without observing the promotion Rules and is not as per law. It has wrongly been contended that the matter was sent to the Public Service Commission through Law Secretary vide letter dated 06.08.2019, because such letter is simply a requisition sent by the Law Secretary to the Commission. It can never be said a confirmation of the recommendation of promotion of Respondent No. 3. The proposal for promotional exercise was submitted by the respondent No. 2 through their letter dated 03.07.2019 along with *Adhyachan Patra*. The claim petitions deserve to be allowed.

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

14. Petitioners of both the petitions and private respondent No. 3, Smita Joshi along with some others, entered in the employment of the office of respondent No. 2 on the post of Stenographers under the Uttarakhand Advocate General Office Establishment (Service of Employees) Rules, 2013. Till the year 2013, following persons were working in such cadre in order of their seniority:

- i. Renu Shah
- ii. Harish Singh Kaira (Petitioner)

- iii. Kheemanand Tiwari (Petitioner)
- iv. Smita Joshi (respondent No.3)

15. The petitioners have now approached this court in 3<sup>rd</sup> round of litigation for redressal of their grievances. Till the year 2013, petitioners continued to be senior to respondent No. 3 on the post of Stenographer. As per the rules, further promotional post of Stenographer is APS. Although, as per rules published in Hindi version, there is discrepancy about the source of recruitment (by way of direct and by promotion) on the post of APS but that is another matter, not to be considered now. On the record of department submitted before respondent No. 2, the matter was reported that two posts lying vacant, were to be filled up.

16. In the year 2013, on the basis of some complaint, both the petitioners were suspended vide order dated 22.07.2013 with some allegation of corruption. Later on, their suspension was revoked on 28.07.2014. The disciplinary proceedings were finalized and punishment of stoppage of two increments for a period of one year was imposed upon the petitioners, and they were also not paid the salary for the suspension period, that order was challenged by the petitioner (Harish Singh Karia) in Claim petition No. 24/NB/DB/2014, with the following words:

*I. To quash the impugned Punishment Order No. 86/2014 dated 28/08/2014 (Annexure No.1), after calling the record of Enquiry Proceedings, whereby the Disciplinary Authority has imposed punishment of stoppage of two increments for one year.*

*II. To quash the impugned Charge sheet dated 29.08.2013 (Annexure No. 2), issued by the Disciplinary Authority and Enquiry Report dated NIL (Annexure No.3.).*

*III. To issue direction in the nature of mandamus directing the respondents to pay the entire salary for the period from 22<sup>nd</sup> July 2013 to 28<sup>th</sup> August 2014 and treat the entire suspension period of the claimant to be spent in service .*

*III A. To quash the impugned office Order No. 165/Estt./2015 dated 04<sup>th</sup> March, 2015 passed by the*

*learned Advocate General, State of Uttarakhand, Nainital, after calling the record.*

*III B. To issue direction in the nature of mandamus directing the respondents to pay the entire salary for the period from 22<sup>nd</sup> July 2013 to 28<sup>th</sup> August 2014 along with interest thereupon and to grant all consequential benefits such as financial up-gradation (ACP) promotion etc.*

*IV. To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case. "*

17. In another Claim Petition No. 07/NB/DB/2015, Keemanand Tiwari (petitioner) also challenged that order, almost with the similar prayers, with the following words:

*"I. To quash and set aside the impugned Punishment Order No. 87/2014 dated 28/08/2014 (Annexure No.1), after calling the record of Enquiry Proceedings, whereby the Disciplinary Authority has imposed punishment of stoppage of two increments for one year.*

*II. To quash and set aside the order No. 166/Esta./2015 dated 4/3/2015 (Annexure No. 2), whereby it has been ordered that the claimant would not be entitled to any other pay and allowances, except the subsistence allowance already paid to him, for the period of suspension.*

*III. To issue direction in the nature of mandamus directing the respondents to pay the entire salary for the period from 22<sup>nd</sup> July 2013 to 28<sup>th</sup> August 2014; treat the entire suspension period of the claimant to be spent in service and to grant all consequential benefits including A.C.P. & Promotion etc.*

*IV. To award the cost of the petition or to pass such order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case. "*

18. The claim petitions were heard on merits by this Court and both the claim petitions of the petitioners were allowed vide orders dated 08.09.2016. The claim petition No. 24/NB/DB/2014 was decided with the following words:

*"The claim petition is, hereby, allowed. The impugned orders dated 28.08.2014(Annexure: 1) and order dated 04.03.2015 are set aside. However, it would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law from the stage of reply to the charge sheet. The respondents would be at liberty to suspend the*

*petitioner if they find that he is liable to be suspended in accordance with law. The question regarding payment of salary for the period of suspension would be decided by the competent authority at the appropriate time during the inquiry or after the inquiry as the law permits. If the said proceeding of inquiry is started against the petitioner, the same would be concluded according to rules and law expeditiously, preferably within a period of six months from the date of this order. No order as to costs."*

19. Claim petition No. 07/NB/DB/2015 was also decided on 08.09.2016 with the following orders:

*"The claim petition is, hereby, allowed. The impugned orders dated 28.08.2014(Annexure: 1) and dated 04.03.2015 (Annexure: 2) are set aside. However, it would be open to the disciplinary authority to proceed afresh against the petitioner in accordance with law from the stage of reply to the charge sheet. The respondents would be at liberty to suspend the petitioner if they find that he is liable to be suspended in accordance with law. The question regarding payment of salary for the period of suspension would be decided by the competent authority at the appropriate time during the inquiry or after the inquiry as the law permits. If the said proceeding of inquiry is started against the petitioner, the same would be concluded according to rules and law expeditiously, preferably within a period of six months from the date of this order. No order as to costs."*

20. In the meantime, due to the punishment order in force, passed by the Disciplinary Authority against the petitioners, they were not considered for next promotional post of APS. In the year 2014 (before the judgment passed by this Court in their favour), they were superseded and respondent No. 3 was temporarily promoted on the post of APS. The order dated 08.09.2016 passed by the Tribunal was not challenged and it attained finality. The punishment awarded to the petitioners, which were set aside, was not again imposed, neither in the meantime, fresh disciplinary proceedings against the petitioners, were undertaken hence, petitioners moved an application to the appointing authority, with the request to release their increments as well as to pay the allowance for the suspension period and also requested to grant other service benefits.

21. As the record of the petitioners became clean after the order passed by this Court on 08.09.2016, hence, on their request, the appointing authority respondent No. 2, allowed the facility of increments and other allowances to the petitioners *vide* order dated 15.12.2017, which reads as under:

“कार्यालय महाधिवक्ता, उत्तराखण्ड उच्च न्यायालय परिसर, नैनीताल

संख्या:— /महा.अधि./2017 दिनांक: 15.12.2017

कार्यालय आदेश

श्री हरीश कैंडा, आशुलिपिक को दिनांक 18 अप्रैल, 2013 से प्रथम सुनिश्चित कैरियर प्रोन्नयन (ए0सी0पी0) का लाभ एवं निलम्बन अवधि का पूर्ण वेतन स्वीकृत किया जाता है किन्तु दिनांक 22 जुलाई 2013 से दिनांक 08 सितम्बर, 2016 (मा0 लोक सेवा अधिकरण, उत्तराखण्ड के पारित आदेश की तिथि) तक का बोनस अनुमन्य नहीं होगा अर्थात् दिनांक 08 सितम्बर, 2016 की तिथि से पदजनित समस्त लाभ एवं रूकी हुयी दो (02) वार्षिक वेतन वृद्धि अवमुक्त करने की स्वीकृति प्रदान की जाती है।

(एस0एन0बाबुलकर)

महाधिवक्ता”

“कार्यालय महाधिवक्ता, उत्तराखण्ड उच्च न्यायालय परिसर, नैनीताल

संख्या:— /महा.अधि./2017 दिनांक: 15.12.2017

कार्यालय आदेश

श्री खैमानन्द तिवारी, आशुलिपिक को दिनांक 18 अप्रैल, 2013 से प्रथम सुनिश्चित कैरियर प्रोन्नयन (ए0सी0पी0) का लाभ एवं निलम्बन अवधि का पूर्ण वेतन स्वीकृत किया जाता है किन्तु दिनांक 22 जुलाई 2013 से दिनांक 08 सितम्बर, 2016 (मा0 लोक सेवा अधिकरण, उत्तराखण्ड के पारित आदेश की तिथि) तक का बोनस अनुमन्य नहीं होगा अर्थात् दिनांक 08 सितम्बर, 2016 की तिथि से पदजनित समस्त लाभ एवं रूकी हुयी दो (02) वार्षिक वेतन वृद्धि अवमुक्त करने की स्वीकृति प्रदान की जाती है।

(एस0एन0बाबुलकर)

महाधिवक्ता”

22. As by this order, all the benefits of service were allowed from the date i.e. 08.09.2016 and not from the back date, and Bonus was denied to the petitioners, hence, aggrieved by the order dated 15.12.2017, petitioners again approached this Court in second round of litigation by filing the claim petitions No. 02/NB/DB/2018, Harish Singh Kaira vs. State & others and Claim Petition No. 01/NB/DB/2018,

Kheemanand Tiwari vs. State & others, almost with the similar prayers as below:

*I. To issue direction in the nature of certiorari quashing the part of the impugned Office Order dated 15<sup>th</sup> December 2017 issued by the Appointing Authority to the extent it denies the Bonus to the claimant for the period 22<sup>nd</sup> July 2013 (date of suspension) to 8<sup>th</sup> September 2016 (the date of order of learned Tribunal) and portion "the claimant would be entitled for all service benefits pertaining to the post after 8<sup>th</sup> September, 2016 only" be quashed and all the service benefits be given to the claimant w.e.f. 22<sup>nd</sup> July, 2013.*

*II. To issue direction in the nature of certiorari quashing the impugned office order/promotion order dated 22<sup>nd</sup> December 2014 of the Private respondent No. 3, whereby, the private respondent has been temporarily promoted on the post of Additional Private Secretary subject to the regular promotion being made in consultation with the Public Service Commission as well as the recommendation of the Selection Committee in favour of respondent No.3*

*III. To issue direction in the nature of mandamus directing the respondent No. 2 to hold the Review DPC of the DPC wherein the candidature of the private Respondent No. 3 was considered and recommended for promotion on the post of Additional Private Secretary and to direct the respondent No. 2 to consider the candidature of claimant and all Stenographers who were eligible as on 1<sup>st</sup> July 2014 for promotion on the post of APS.*

*IV. To issue direction in the nature of mandamus directing the respondent No. 2 to consider and promote the claimant on the post of Additional Personal Secretary by holding regular promotion exercise as per the provisions of the Service Rules of 2013.*

*V. To issue direction in the nature of mandamus directing the respondent No. 2 to release the Bonus of the claimant for the period from 22<sup>nd</sup> July 2013 (date of suspension) to 8<sup>th</sup> September 2016 (date of judgment of the learned Tribunal), which has been illegally stopped by the respondent No. 2 vide his Office Order dated 15<sup>th</sup>*



*December 2017 along with penal interest from the date it has become due to the claimant till the date of actual payment.*

*VI. To issue direction in the nature of mandamus directing the respondent No. 2 to release the two withheld annual increments of the claimant from the date 28/8/2014 to onwards instead of 8/09/2016 as has illegally been held by the respondent No. 2 vide office order dated 15/12/2017 along with penal interest from the date it has become due to the claimant till the date of actual payment.*

*VII. To issue direction in the nature of mandamus directing the respondent No. 2 to pay the interest on the delay in payment of the amount of arrears of 1<sup>st</sup> ACP i.e. from 18<sup>th</sup> April 2013 and arrears of difference of salary during suspension period till the date of its actual payment.*

*VIII. To award the cost of the petition or to pass such other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

23. In this second round of litigation, petitioners challenged the orders dated 15.12.2017, passed by the respondents, requesting for all the service benefits from back date i.e. from the date, they were debarred and also requested for the facility of payment of Bonus, claimed for promotion before private respondent No.3, who was junior to them, and also challenged the promotion of respondent No. 3 being beyond the rules.

24. In this second round of litigation, the respondents state, the appointing authority, as well as private respondent No. 3 were also impleaded as parties. Respondents opposed the petition on the ground that due benefit of service has already been granted to the petitioners and Bonus was denied to them on account of the fact that the punishments of the petitioners were not set aside on merit and taking the plea that respondent No. 3 was rightly allowed promotion temporarily as per the rules.

25. During second round of litigation, after hearing all the parties and considering their pleadings and evidences, both the claim petitions were partly allowed with the following orders:

*“The claim petition is partly allowed. The prayer of the petitioner for granting the benefit of Bonus to him for the period July 2013 to September 2016 is not allowed and is rejected. Modifying the impugned order dated 15.12.2017, the respondent Nos. 1 and 2 are directed to grant other service benefits, pertaining to the post and to allow and release the withheld increments of the petitioner from back date i.e. 28.08.2014 onwards.*

*Respondent No. 2 is also directed to consider the candidature of the petitioner for promotion to the post of Additional Private Secretary (APS), by holding a review DPC of DPC, by which the respondent No. 3 was considered and recommended for promotion, as per rules, instead of allowing temporary promotion of respondent No. 3 for indefinite period. Respondent No. 2 is also directed to complete the regular promotional exercise, as per the provisions of the concerned Service Rules, within a period of three months from the date of this order of the court, and the temporary promotion order dated 22.12.2014 of respondent No. 3, will become ineffective automatically after such period of three months from today with all its future consequences.*

*No order as to costs”*

26. In compliance of the order passed by this Tribunal on 09.04.2019, the petitioners again submitted representations before their Appointing Authority (respondent No. 2) with the request to grant of ACP, remaining salary of suspension period w.e.f 22.07.2013 to 28.04.2014, payment of two increments and to grant them promotion as per the order of the Court.

27. Respondent No. 2 constituted a three members committee consisting of (1) Sri G.S.Sandhu, Government Advocate (2) Sri M.C.Pandey, Senior Advocate/Additional Advocate General and (3) Sri H.M. Raturi, Deputy Advocate General, to consider the representations of the petitioners in the light of the judgment and the reference made by the appointing authority and to submit its report on the point of promotion of the petitioners and respondent No. 3. The three members Committee never held its meeting jointly, rather two of its members, Sri

G.S.Sandhu and Sri H.M.Raturi, jointly submitted their report and interpreting the judgment of this Court, in its own way, after taking the note of only para-21 of the judgment, ignoring the court's observation in succeeding paras and directions issued, recommended that the petitioners were not eligible for promotion in 2014 and were not recommended for promotion as their record was not clean whereas, record of respondent No. 3 was found clean, hence, they are also not entitled now. The third member of the Committee, Sri M.C.Pandey, Additional Advocate General opined, in favour of the petitioners and interpreting the judgment of the Court in their favour, recommended to promote them by holding a review DPC.

28. It is to be noted that the review DPC was not constituted as per the rules. No member of Public Service Commission was included in DPC inspite of the fact that the posts were within the purview of the Commission, and accepting the separately submitted report of two members of the Committee, the Appointing Authority/Respondent No. 2 passed the impugned order dated 05.07.2019, and interpreted the judgment of this Tribunal in his own way and held that the petitioners' record is still unsatisfactory on account of the punishment awarded to them earlier, which was set aside by the Court. The petitioners were denied promotion on the basis that the service record of the petitioners was not unblemished *vis-à-vis* the record of private respondent No. 3, Ms. Smita Joshi and petitioners were found unsuitable and their claim was rejected, and private respondent No. 3 was allowed to continue on the same post. It is to mention here that no separate order of further regular promotion of any person was passed, including respondent No. 3. This order dated 05.07.2019 has now been challenged by the petitioners by way of these claim petitions before this Court, seeking the directions to set aside the same, as this has been passed in violation of the rules and by wrong interpretation of the judgment of the Tribunal dated 09.04.2019, with a further direction in the nature of mandamus to

declare the petitioners suitable for promotion for the post of APS w.e.f. 22.12.2014 along with other consequential benefits.

29. It has been contended by the petitioners that all the issues about grant of service benefits to the petitioners, including right to get promotion, were already discussed in detail and were clearly allowed by this Court in Claim petitions No 01/NB/DB/208 and 02/NB/DB/2018.

30. We hold that when both the petitioners (although senior to respondent No. 3) were superseded by allowing temporary promotion to private respondent No. 3 in the year 2014, on the ground that in the record of the petitioners, there was a punishment order by the appointing authority, passed on 28.08.2014. It is clearly proved that the said order of punishment was set aside by this Tribunal vide judgment dated 08.09.2016 passed in claim petitions no. 24/NB/DB/2014 and 07/NB/DB/2015 and by way of this judgment of the Court, the punishment order passed by the respondent No. 2 were set aside and respondents were granted liberty to proceed against the petitioners in accordance with law from the stage of reply to the charge sheet. It was also ordered that if the respondent department opts to start or re-continue with the departmental proceedings, then it should be completed as per the rules, within a period of six months from the date of order. That judgment was nowhere challenged and became final, and by taking the benefit of liberty granted to the respondents, no further disciplinary proceedings were ever started or completed against the petitioners. After the stipulated period, the petitioners submitted their representations to the department, to grant them the service benefit, which were denied to them on account of punishment previously passed, and set aside by this Court.

31. It is very pertinent to note that the respondents never challenged the order of this court rather complied the order of the court dated 08.09.2016 and service benefits were allowed to the petitioners vide order dated 15.12.2017 (Annexure: A4). As the benefits for interim

period were not allowed and the Bonus was also denied to the petitioners hence, the same order was again challenged by them in another round of litigation, with an additional request, to promote them and to set aside the promotion of private respondent No. 3, who was junior to them. Those petitions (No. 02/NB/DB/2018 and 01/NB/DB/2018) were also heard on merits and both were allowed almost by similar orders. It was specifically ordered to grant other service benefits pertaining to the posts and release of withheld increments to the petitioners from back date i.e. 28.08.2014. A direction was also issued to consider the candidature of the petitioners for promotion to the post of APS by holding a review DPC of DPC, by which respondent No. 3 was considered and was recommended for promotion as per rules, instead of allowing temporary promotion of respondent No. 3 for indefinite period. Respondent No. 2 was also directed to complete the regular promotional exercise of the petitioners and of respondent No. 3 afresh, as per the provisions of the concerned Service rules, within a period of three months from the date of the order of the court and temporary promotion of respondent No. 3 dated 22.12.2014 was made to be ineffective after a period of three months.

32. We find that the judgment of this Court attained finality but it was wrongly interpreted by the Appointing Authority, respondent No. 2 in its impugned order, by withholding the promotion of the petitioners. The punishment awarded to the petitioners in 2014 was specifically set aside by this Court. Not only that, in second round of litigation also, it was further concluded that the previous punishment (which was later on set aside) has no bearing on the career of the petitioners and not only, in the body of the judgment, but in the operative portion of the judgment, the petitioners were admitted to be entitled for promotion through a regular promotional exercise, and the punishments, which were once upon imposed upon the petitioners, and set aside by the Court, would have no impact on their career.

33. When the petitioners claimed the arrears of the benefit of Bonus, the same were not allowed by this Court, on a different analogy. In the judgment dated 09.04.2019, the Court at length had discussed this issue, as well as the issue of promotion, starting from the paragraphs No. 20 to 25, but by wrongly reading the finding recorded in para 21, the respondents had ignored the detailed findings of this Court, recorded in the corresponding paras and has wrongly interpreted the judgment of this Court in his own way, contrary to the spirit of the judgment. Hence, it is very much relevant and necessary to reproduce all those paragraphs of the judgment, for further reading of the respondents in toto:

*“20. Before the court, learned A.P.O. has contended that grant of Bonus by the government is not such a benefit which necessarily accrued to the petitioner as a matter of right, on account of his employment. We agree with this argument because of the reason that right to Bonus is not a benefit of service, which accrued to an employee, simply because of being in the employment. It cannot be said that it is a benefit of service as a matter of right. It is usually granted by the government through a specific government order for a particular period, on some conditions and Government Order of a particular period, cannot be made applicable for other financial years, automatically. The grant of Bonus is like an ex-gratia payment, made as an incentive by the government, for a particular financial year, to its employees, who rendered unblemished and good services to the government, and simply because of his being in the government employment, every employee is not entitled for the same.*

*21. Admittedly, the petitioner, against whom disciplinary proceedings were undertaken and resulted into the punishment in those particular years, was not entitled for such Bonus for that year, on account of non-fulfillment of the conditions of the concerned G.O., granting the Bonus. In view of the fact that the petitioner was not exonerated from the charges against him on merit, this court finds that he is not entitled for any arrears of such Bonus for past years. As this benefit of Bonus is not attached with the service conditions hence, court finds that the prayer of the petitioner for granting the arrears of Bonus for the year 2013 to 2016 cannot be accepted now and to this extent, the impugned order dated 15.12.2017 passed by the respondents, is correct and needs no interference.*

*22. As regards the other benefits, attached with the employment i.e. payment of withheld increments and also right to be considered for promotion, are the rights, which accrued to the petitioner, on account of his employment in the government. Hence, the impugned order, by which the petitioner was denied*

*such benefits for the interim period, is not correct and needs to be set aside and corrected accordingly and the petitioner is entitled for the payment of withheld increments from the date, the same were withheld, as the order to withhold the increment was set aside by this Court vide order dated 08.09.2016 and such order will be made effective from the back date. Hence, the part of the impugned order dated 15.12.2017 for not allowing such benefit from July 2013 to September 2016 needs to be set aside and the petitioner is entitled for such monetary benefits from back date and to this extent, petition needs to be allowed.*

*23. The petitioner has also sought the relief of considering him for promotion to the post of APS. It has been contended by the petitioner that in the year 2014, respondent no. 3, who is more than 5 years junior to the petitioner, was promoted. Although such promotion was made temporarily and the petitioner was denied such promotion on account of disciplinary proceedings, which later on resulted into punishment, but when such punishment order was set aside by this court on 08.09.2016 and the ineligibility of the petitioner for considering him promotion, has been washed away with retrospective effect, hence, now, the petitioner is entitled to be considered for promotion from the date, when his junior was considered. We agree to the same.*

*24. The petitioner also contended that respondent no. 3 was not eligible for promotion at the time when the promotion order was passed because she did not complete requisite 5 years of compulsory service as stenographer. Whereas, respondents replied to the fact that she was granted promotion from the date after she completed the 5 years of her service as stenographer. Respondents have also contended that it was not a regular promotion, and was made temporarily and regular promotion is yet to be made, as per the rules. Learned counsel for the petitioner has contended that since last more than four years, respondent no.3 is enjoying all the benefit of promotion and there is no provision in the Rules to make such promotion on temporary basis, without being recommended by a proper selection committee, constituted in consultation with the Public Service Commission.*

*25. The petitioner has also contended that promotion of the respondent no. 3 was not as per law and it needs to be set aside and the review DPC should be held in accordance with the law and the petitioner should be promoted. This court finds that even if she was promoted temporarily, but under the rules, promotion could be made only after consultation with the Public Service Commission, in accordance with law. For such promotion, permanent or temporary, constitution of promotion committee has been prescribed in the rules, according to which, the committee was not constituted. However, at the time of promotion of respondent no. 3, petitioner was not eligible for promotion on account of disciplinary proceedings, but once the order of the court was passed, setting aside the punishment order, and respondent did not start a fresh inquiry on this count, within the stipulated period for which liberty was granted, then it*

*becomes necessary to consider the petitioner for promotion to the next stage in accordance with law, specially when respondent No. 3, junior to him, is enjoying the benefit of promotion and also drawing the salary, higher to him. The Fundamental rules also require that a senior employee should be considered and granted promotion, if eligible, from the date, his junior was allowed."*

34. This Court finds that the respondents without filing any appeal against the judgment of this Court, has sit over the judgment of this Court by interpreting it in his own way and side lined the track, warranted by the judgment of this Court and denied promotion to the petitioners wrongfully.

35. On the point of considering the candidature of the petitioners for promotion, respondents have now argued that the promotion of respondent No. 3 already made, was correct, and is still continuing with the same, by rejecting the claim of the petitioners. In this regard, paragraphs No. 26 to 28 of the judgment dated 09.04.2019 (already finalized) are very much relevant, and again reproduced for guidance of the parties:

*"26. The respondents have argued that the promotion of the respondent No. 3 is temporary and it was made with a condition that regular promotion will be made, later on, in accordance with law. We find that since, passing of two years of the judgment of this Tribunal, respondent has not considered the petitioner's case for promotion and they are sleeping over the matter since last three years and temporary promotion of a person for a long period of 4-5 years, without following the provisions of law and without considering the case of others who stands above in the seniority, is not desirable in law. A temporary promotion cannot continue for a such long period, especially when the senior employee, like petitioner became eligible for promotion in the year 2016, after claim petition of the petitioner was allowed on 08.09.2016.*

*27. Hence, this court do agree with the argument of the petitioner that respondents 1 and 2, instead of allowing the respondent no. 3 to continue temporarily on promotional post, should be directed to hold a review DPC and to consider the case of the petitioner, alongwith respondent No. 3, for promotion to the post of Additional Private Secretary, in accordance with law, within a reasonable period.*

*28. Learned counsel for the respondents has argued that there is no such post vacant for which the petitioner can be considered. This court does not agree with this argument because of the fact*



*that the post which is occupied by the respondent No. 3, will still be deemed to be vacant for considering the employees for regular promotion, and the petitioner as well as respondent no. 3 and all other persons coming under the zone of consideration, should be considered for promotion, by holding a DPC, in accordance with law. Hence, instead of allowing respondent no. 3 to continue on the promotional post indefinitely, there is a need for such a direction to respondent Nos. 1 and 2 to hold a review DPC of DPC, wherein the candidature of the private respondent no. 3 was considered in the year 2014, and such respondents should be directed to hold a regular promotional exercise and to consider the petitioner as well as all other eligible candidates for the post of APS, as per the provisions of service rules and other concerned Rules."*

36. We find that the respondents have denied promotion to the petitioners, just for the reasons that petitioners were not allowed the benefit of Bonus by this Court vide judgment dated 09.04.2019. Although, the matter was discussed in detail in the previous judgment and we again reiterate that grant of Bonus is not a benefit, attached to the service. The Bonus is granted by the government as a payment by specific G.O. for a particular period with some conditions and that cannot be made applicable in other financial year automatically. The Bonus is not the benefit of the service, which accrued to an employee simply because of his being in employment. It may or may not be granted in a particular year, while, the government employee has a right to continue with the benefit of regular service. He cannot claim the Bonus as a matter of right every year whereas, other benefits viz: salary, seniority, promotion etc., he/she can claim as a matter of right, on account of his/her employment.

37. The promotion to an employee can be and should be granted in accordance with the rules, based on service record, obviously, on the basis of his ACR and other service record. While, holding DPC proceedings, there is a set procedure to be adopted. The post of APS is undoubtedly within the scope of Public Service Commission and hence, for constitution of Departmental Promotion Committee, representative of Public Service Commission should be made a part of it, and all the

proceedings of DPC should be completed as per rules, set out by the government. There is also a provision to prepare a comparative sheet to assess the candidature of a person for promotion, but in this case neither the constitution of the Committee was made by including the representative of the Commission nor, any such sheet was prepared. Hence, the proceedings of Review Departmental Committee, which was done in the case, was not as per the rules.

38. The temporary promotion of private respondent No. 3 which was clearly declared ineffective after a certain period, cannot be continued in this manner without holding a regular DPC as per the rules and without passing a fresh specific promotional order, after completing the promotional exercise.

39. We find that the impugned orders dated 05.07.2019, passed by respondent No.2 are not as per the rules, nor it is as per the directions of the Court, hence, it deserves to be quashed and set aside, with a further direction to the respondents to complete the review DPC exercise of the petitioners as well as private respondent No. 3 afresh, by taking into consideration the service record of all the candidates. It is, however, again made clear that the punishment order dated 15.12.2017, which was made a part of their service record in 2014, after its quashing vide order dated 09.04.2019, cannot be said to be a part of service record of the petitioners and denial of Bonus will have no adverse effect on their service record. Independent of these, other service record of the petitioners and of private respondent No. 3 can be taken into consideration for deciding the issue of promotion, hence, following order is hereby passed.

### **ORDER**

Both the claim petitions are hereby allowed.

The impugned orders dated 05.07.2019, passed by respondent No. 2 are hereby quashed. The minutes of meeting of review DPC

dated 13.06.2019 and 17.06.2019 are also quashed and declared that they were passed by wrongly interpreting the judgment of this Court dated 09.04.2019. The continuance of promotion of respondent No. 3 on the post of APS, on the basis of the said report dated 13.06.2019 and 17.06.2019 is hereby quashed and declared as non-est.

The respondent No. 2 is further directed to consider the candidature of the petitioners, private respondent No. 3 and of other qualified persons, if any, for promotion on the post of APS, by holding a review DPC of the DPC as per direction given in the judgment of this Court, passed on 09.04.2019, and the promotional exercise, thus taken, be completed as per the concerned service rules, within a period of three months.

It is again clarified that the temporary promotion order dated 22.12.2014 of respondent No. 3 has already become ineffective automatically in view of the judgment dated 09.04.2019, passed by this Court, after the stipulated period mentioned therein.

No order as to costs.

Let copy of this judgment be kept on the file of Claim Petition No. 36/NB/DB/2019.

**(A.S.NAYAL)**  
MEMBER (A)

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

*DATE: JULY 31, 2020*

*NAINITAL*

KNP