



2026:UHC:2473-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA

AND

THE HON'BLE JUSTICE SHRI SUBHASH UPADHYAY

7th April, 2026

Writ Petition (S/B) No. 45 of 2025

Madan Mohan Pathak

-----Petitioner

Versus

State of Uttarakhand and others

-----Respondents

Presence:-

Mr. Dushyant Mainali, learned counsel for the petitioner.
Mr. J.P.Joshi, learned Additional Advocate General, assisted by Mr.
B.P.S.Mer, learned Standing Counsel for the State.

JUDGMENT: (per Manoj Kumar Gupta, C.J.)

1. The question which arises for consideration in the instant writ petition is whether the petitioner is entitled for promotion to the post of Assistant Deputy Commandant General, Home Guards, by extending him the benefit of Rule 4 of the Uttarakhand Government Servant Relaxation Rules in Qualifying Service for Promotion, 2010. Rule 4 is as follows:

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

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

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



2. The petitioner sought benefit of Rule 4 for promotion to the post of Assistant Deputy Commandant General, Home Guards, while he was posted as District Commandant. Under the service rules, the minimum experience required for promotion was 8 years service, whereas the petitioner had completed 6 years and he prayed for relaxation of 2 years service. The claim was initially rejected by the State Government by order dated 13.07.2020, relying on a Government Order dated 04.09.2017, whereby the Rules, 2010 were kept in abeyance pending receipt of report from the Committee constituted by the Government for purposes of making recommendation for making uniform provisions in matters of promotion etc. in different services. The petitioner again filed an application on 14.08.2020 claiming relaxation under Rule 4.

3. The Personnel department refused to make recommendations for relaxation again in view of the order dated 04.09.2017. On 31.07.2020, the petitioner retired. By order dated 04.02.2025, passed by the Home Department, State of Uttarakhand, the representation of the petitioner for giving promotion to him by relaxing the prescribed service has been rejected. The present writ petition has been filed



challenging the said order.

4. Learned counsel for the petitioner vehemently submits that the Government Order dated 04.09.2017, which is in shape of an executive instruction cannot supersede the rules framed under Article 309 of the Constitution. He further submits that the said Government Order has been quashed by a Single Judge Bench in WPSS No. 3510 of 2017. Consequently, the respondents have erred in relying on the said Government Order.

5. Learned counsel for the petitioner further submits that even if the petitioner has retired, his case for notional promotion and consequent financial benefits deserves to be considered by applying Rule 4 of the Rules, 2010.

6. On the other hand, learned State Counsel submits that the petitioner having retired from service, the claim has become infructuous. He submits that there is no right in favour of the petitioner to seek promotion on basis of Rule 4. It is the sole discretion of the Government.

7. It is not disputed that the minimum service prescribed for considering any person for promotion to



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the post of Assistant Deputy Commandant General under the service rules was 8 years, which the petitioner did not fulfill. Thus, it was not a case where the petitioner was falling under the zone of consideration, but was not considered for promotion. A bare perusal of Rule 4 reveals that it does not confer right in favour of employee to claim relaxation rather it is an enabling provision which empowers the Government to grant relaxation in the prescribed service period in case it is in need of filling the post but no eligible person is available. The said intent also becomes clear from first and second proviso to Rule 4. Thus, question of grant of notional promotion by extending benefit of Rule 4 even if the said Rule was applicable does not arise after the petitioner has retired.

8. The petition is accordingly dismissed.

9 Pending application, if any, also stands disposed of.

(MANOJ KUMAR GUPTA, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 07.04.2026
Kaushal



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