Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2483 of 2019 (S/S)

Chandra Shekhar ..... Petitioner

Versus

State of Uttarakhand & another ..... Respondents

Mr. H.C. Bisht, Advocate for the petitioner.
Ms. Anjali Bhargava and Mr. P.C. Bisht, Addl. C.S.C. with Mr. N.P. Sah and Mr. Sushil Vashistha, Standing Counsel for the respondent State.

[Per: Hon'ble Lok Pal Singh, J.]

Present writ petition has been filed by the petitioner seeking following relief:

i) Issue a writ, order or direction in the nature of mandamus commanding / directing the respondents to promote the petitioner expeditiously to the post of Senior Administrative Officer in the office of Director General, Medical Health and Family Welfare, Government of Uttarakhand, Dehradun w.e.f. 31.05.2016 on the basis of next below rule, which is applicable to the petitioner, as mandated by the Uttarakhand Government Order no. 1595/Karmik-2/2002 dated 13.05.2003 (Annexure 6 to the writ petition).

2) Brief facts, leading to filing of present writ petition, are that the petitioner was initially appointed as Junior Clerk in the Directorate of Medical & Health Services, Uttar Pradesh, Lucknow on 11.05.1999 and

continued to work in the same capacity till 2004, when he was promoted as Upper Division Clerk in the said office. Subsequently, after creation of the State of Uttarakhand on 09.11.2000, the petitioner gave his joining in the directorate of the second respondent on the selfsame date.

3) It is averred in the writ petition that unfortunately, the petitioner was prosecuted, in case crime no. 220 of 2006, P.S. Vigilance Sector, Kotwali Dehradun under Section 7/13(1)(d) read with Section 13(2) of Prevention of Corruption Act in the court of Special Judge (Vigilance), Dehradun in Special Sessions Trial no. 48 of 2007, State Vs Chandra Shekhar. However, vide judgment and order dated 19.03.2019, the Special Court acquitted the petitioner in respect of the offences he was charged. Thereafter, the petitioner was promoted notionally w.e.f. 02.04.2009 as Head Assistant vide order dated 14.06.2019 in the office of second respondent on the basis of next below rule. It is also averred that the petitioner was further notionally promoted as Administrative Officer w.e.f. 30.03.2012 vide order dated 29.06.2019 passed by the second respondent and the petitioner is continuously functioning on said post at Dehradun. It is further averred that the petitioner became due and eligible for next promotion to the post of Senior Administrative Officer in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4800 w.e.f. 31.05.2016 on the strength of Notification dated 01.06.2011 issued by the Department of Personnel (Section-2) through which the rules of 2011 were introduced in the conditions of service for Uttarakhand Clerical Cadre Post which stipulates that such employees,

who had completed minimum two years period as Administrative Officer in the pay scale of Rs.9300-34800, Grade Pay Rs.4600 or had completed 20 years of service in subordinate post, were eligible for the post of Sr. Administrative Officer on the principle of seniority subject to rejection of unfit.

4) It is contended that alternatively, seven officials, out of whom one official was senior to the petitioner and six officials junior to the petitioner were promoted to the post of Sr. Administrative Officer vide order dated 31.05.2016 issued by the second respondent. The above mentioned seven officials were promoted through DPC held on 28.05.2016. As per the proceedings of the DPC, the name of the petitioner was mentioned at serial no. 2, with the comment that the petitioner is not eligible. It is alleged that there is nothing to indicate in the proceedings of DPC dated 28.05.2016 that any post was kept vacant for the petitioner in this DPC, which was necessary to be done and, as such, only six officials were required to be promoted on the basis of seniority-cum-fitness.

5) It is also alleged that though the petitioner has been granted notional promotion to the post of Head Assistant and Administrative Officer, but he is being denied the promotion to the post of Sr. Administrative Officer. Petitioner moved a representation dated 01.07.2019 before respondent no. 2 and prayed for granting him promotion to the post of Sr. Administrative Officer. The said representation is still pending consideration. It is averred that though the second respondent is the competent authority for promoting the petitioner to the post of Sr. Administrative Officer as per rules, but

since there is only one post of Sr. Administrative Officer, which is occupied by one Smt. Geeta, who is senior to the petitioner, therefore, a request was made by the second respondent to the first respondent vide letter dated 04.07.2019. It is requested that since there is one post of Chief Administrative Officer (which is one step higher to the post of Sr. Administrative Officer) which is lying vacant, as such, by keeping the post of Chief Administrative Officer in abeyance and transferring / merging the said post as Sr. Administrative Officer post the petitioner could be promoted to the post of Sr. Administrative Officer on the basis of next below rule, in view of the already made promotion of six officials, who are junior to the petitioner. It is stated that the first respondent is competent to accord such a sanction.

6) It is averred that the representation of the petitioner dated 01.07.2019 as also the letter dated 04.07.2019 are still pending consideration. The representation dated 01.07.2019 has not been disposed of by the first respondent despite letter dated 04.07.2019 being sent by the second respondent in this regard. It is also averred that petitioner gathered an information that vide G.O. dated 11.09.2019, passed by the Chief Secretary, Government of Uttarakhand, Dehradun, it was directed that till final decision of the Review Petition filed before this Court against the order dated 01.04.2019, passed in WPSB no. 117 of 2019, Gyan Chand Vs State of Uttarakhand & others, a policy decision is to be taken by the Government of Uttarakhand and, accordingly, all the promotion orders are to be kept in abeyance till further orders. Lastly, it is submitted that in any case, even in the face of G.O. dated 11.09.2019, the

petitioner, being a member of Scheduled Caste community, is eligible for promotion to the post of Sr. Administrative Officer. Hence, present writ petition.

7) Counter affidavit has been filed by the respondent no. 2, stating therein that the relief of 'next below rule' sought by the petitioner is not applicable in his case. The Uttarakhand Subordinate Service Rules, under which the eligibility for promotion has been fixed in clerical cadre [amended Rules 2015, point 02, 04 (2)] provides that substantively appointed Administrative Officers, who have completed two years of service on first day of appointment year on the said post and minimum rendered 20 years service in the subordinate posts subject to rejection to unfit on the basis of seniority, the promotion will be made on the post of Sr. Administrative Officer. It is stated that a Committee was constituted under the chairmanship of the second respondent. The minutes of the Committee convened on 28.05.2016 would clearly reveal that the Committee has made the recommendation and mentioned that the petitioner did not fulfill the eligibility criteria to the post of Senior Administrative Officer. It is further stated that in para 1 of the minutes of the meeting and in table – serial no. 2 it has been mentioned that neither the petitioner is holding the post of Chief Assistant (ad hoc) and is not possessing the post of Administrative officer nor had he rendered 20 years of satisfactory service in lower post of clerical cadre. It is further stated that no such post of Sr. Administrative Officer is vacant in the office of the second respondent and, as such, petitioner cannot be promoted to the post of Sr. Administrative Officer. In reply to the contents of

para 6 of the writ petition, it is submitted that in the promotion order dated 29.06.2019 of the petitioner it has been specifically mentioned that the promotion of the petitioner shall be subject to the final decision of the Court, in case, any appeal be preferred against the judgment and order dated 19.03.2019 passed by the Special Judge (Vigilance), Dehradun.

8) In the rejoined affidavit, most of the averments made in the writ petition are reiterated. In reply to the contents of paragraph no. 4 of the counter affidavit it has been stated that Rule “02, 04, (2) of the Uttarakhand Subordinate Service Rules, 2010 (as amended in 2015) has wrongly being quoted. It is averred that the relevant rule is 4(1), according to which the eligibility for Sr. Administrative Officer is two years substantive appointment as Administrative Officer or minimum 20 years of service on subordinate posts. It is stated that on 28.05.2016, the date when DPC was convened, the petitioner would have completed 4 years 2 months of service as Administrative Officer presuming that he would have been promoted as Administrative Officer w.e.f. March 2012 in which post he was actually promoted notionally w.e.f. 30.03.2012 vide order dated 29.06.2019 (Annexure 3 to the writ petition). Therefore, it is wrong to say that the petitioner did not complete 02 years of substantive service as Administrative Officer on 28.05.2016. In reply to the averment made in the counter affidavit that the petitioner is not eligible for promotion as Administrative Officer it is stated that said fact is so noted in the minutes of DPC because at that stage the case of the petitioner for promotion from Head Assistant to Administrative Officer and also as Senior

Administrative Officer was kept under sealed cover procedure due to the pendency of the vigilance department's case against the petitioner and after his clear acquittal from the court of law he was promoted as Head Assistant w.e.f. 02.04.2009.

9) Heard learned counsel for the parties and perused the counter affidavit, rejoinder affidavit & other documents brought on record.

10) Learned counsel for the petitioner would argue that the petitioner was prosecuted in respect of offences punishable under Section 7/13(1)(d) read with Section 13(2) of Prevention of Corruption Act in the court of Special Judge (Vigilance), Dehradun in S.S.T. no. 48 of 2007. During the pendency of said Special Sessions Trial, a DPC was held on 28.05.2016 for promotion to the post of Sr. Administrative Officer, in which seven officials, including one official who was senior to petitioner, were promoted to the post of Sr. Administrative Officer vide order dated 31.05.2016. Learned counsel would further argue that the case of the petitioner was not considered for promotion to the post of Sr. Administrative Officer, despite the fact that he was senior to the six officials who got promotion to the said post. It is contended that one post of Sr. Administrative Officer should have been kept vacant for the petitioner in the DPC and only six officials were required to be promoted on the basis of seniority subject to rejection of unfit, but the same was not done. It is further contended that the rule of keeping the name of the petitioner under sealed cover was clearly not followed in the DPC though the same was mandatory. Learned counsel for the petitioner argued that after the acquittal of the petitioner from the court

of law, he was promoted as Head Assistant w.e.f. 02.04.2009. and thereafter to the post of Administrative Officer, but his claim for promotion to the post of Sr. Administrative Officer was rejected. It is vehemently argued that the petitioner became due for promotion on the post of Sr. Administrative Officer w.e.f. 31.05.2016 on the basis of seniority which has to be read along with promotion order of juniors as shown in order dated 31.05.2016.

11) Per contra, learned counsel for the respondents would submit that no such post of Senior Administrative Officer is vacant at present and, as such, petitioner cannot be promoted to the post of Sr. Administrative Officer.

12) To this, learned counsel for the petitioner drew attention of this Court towards a letter dated 04.07.2019 written by respondent no. 2 wherein he himself has recommended to respondent no. 1 to promote the petitioner to the post of Sr. Administrative Officer w.e.f. 30.05.2016 on the basis of 'next below rule'. Learned counsel for the petitioner contended that said letter specifically states that at the time when juniors to the petitioner were promoted one post of Sr. Administrative Officer was not kept vacant for the petitioner and thus the petitioner cannot be denied promotion on the said post for no fault of his.

13) Perusal of the letter dated 04.07.2019 would reveal that second respondent had requested to first respondent to keep one post vacant of Chief Administrative Officer in abeyance so as to enable the department to promote the petitioner on the post of

Sr. Administrative Officer, but the same was not given due consideration for the reasons best known to the first respondent. Furthermore, the judgment and order dated 19.03.2019 passed by Special Judge (Vigilance / Anti-corruption) whereby the petitioner has been acquitted of the charges framed against him had attained finality and, therefore, the petitioner is entitled for all the due promotions w.e.f. the date from which his juniors were promoted.

14) It is settled proposition of law that the petitioner cannot be punished for the fault of the department for not keeping one post of Sr. Administrative Officer reserved for him under the sealed cover procedure.

15) Admittedly, the petitioner was not at fault as trial was going on against him and subsequently he was exonerated of all the charges framed against him giving him benefit of doubt and thereafter he was granted notational promotions to the post of Head Assistant and Administrative Officer in the office of the second respondent, as such, the petitioner is fully entitled to be promoted to the post of Sr. Administrative Officer. Therefore, in view of this Court, after the acquittal of the petitioner, he is fully eligible to be promoted as Sr. Administrative Officer w.e.f. 31.05.2016 on the basis of 'next below rule', as also keeping in view the fact that juniors to the petitioner were already promoted.

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16) Having considered the pleadings of the parties as well as the documents brought on record,

this Court is convinced that the respondents cannot deprive the petitioner his promotion to the post of Sr. Administrative Officer for which he is fully entitled as the petitioner cannot be faulted on the ground that the respondent authority has not adopted the sealed cover procedure at the time of conducting DPC for promotion on the said post.

17) In view of the above, the writ petition stands allowed. A writ of mandamus is issued directing the first respondent to consider the case of the petitioner for promotion to the post of Senior Administrative Officer in the office of the second respondent from the date the petitioner was eligible to be promoted on said post i.e. 31.05.2016 and on which date the persons junior to the petitioner were granted promotion, on the basis of 'next below rule', within a period of three months from the date of production of certified copy of this order before said authority.

18) No order as to costs.

(Lok Pal Singh, J.)

Dt. December 30, 2020.
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