SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			SPA/57/2018 State Of Uttarakhand and another --Appellants **Versus** Mahendra Kumar Yadav --Respondent **Hon'ble Manoj Kumar Tiwari, A.C.J.** **Hon'ble Subhash Upadhyay, J.** Mr. Sachin Mohan Singh Mehta, Standing Counsel for the appellants. No representation for the respondent. 2. This Intra-Court appeal is directed against the final order dated 29.03.2017 passed by learned Single Judge in Writ Petition (SS) No. 1176 of 2010. By the said order, the authorities were directed to consider case of the writ petitioner for promotion to the post of Tax and Revenue Superintendent against vacancies which were available between 2004-2009 and also to give him promotion with consequential benefits, if he is found suitable for promotion. The impugned order is reproduced below for ready reference: "The petitioner was discharging the duties of Tax Inspector. According to the averments made in the petition, the petitioner was found eligible and qualified for promotion in the year 1999. However, as per promotion order dated 23.06.2009, to the post of Tax and Revenue Superintendent. The petitioner has no fundamental right to be promoted, but definitely he has a right to be considered for promotion. Learned counsel for the petitioner also submits that the posts were lying vacant between the years 2004-09. Accordingly, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for promotion to the post of Tax and Revenue Superintendent against the vacancies, which were available between 2004-2009 and if found suitable for promotion, be promoted and granted all

consequential benefits."

3. Learned counsel for the appellants submits that writ petitioner (respondent herein) was appointed as Tax and Revenue Inspector in erstwhile State of Uttar Pradesh on the recommendation of U.P. Public Service Commission on 20.03.1999; upon creation of separate State, he was relieved from State of U.P. and joined in State of Uttarakhand on 29.11.2004; in the year 2001, certain persons were promoted from the post of Tax and Revenue Inspector to the next higher post of Tax and Revenue Superintendent, therefore petitioner in his writ petition claimed promotion as Tax and Revenue Superintendent w.e.f 2001.

4. Learned State Counsel submits that since the persons who were promoted in 2001 and in subsequent years were all senior to respondent, therefore the direction to promote respondent against the vacancies which were available between 2004-2009 is unsustainable.

5. State Counsel further submits that a mandamus has been issued by learned Single Judge to promote the petitioner with retrospective effect, if he is found suitable for promotion, which is creating difficulties for the authorities.

6. Learned State Counsel has drawn our attention to para 5 of the counter affidavit filed on behalf of the State Government before the writ Court. Para 5 of the said

counter affidavit is reproduced below:

"5. That in reply to the contends of paragraph nos. 19 to 34 of the writ petition, the submissions made in brief history of this affidavit are reiterated. As submitted earlier, the petitioner joined the services as Tax & Revenue Inspector in the pay scale of Rs. 3200-4900 on 1st April 1999. The contention of the petitioner that he was entitled for the promotion w.e.f. 1st August 2001 is, as such, misconceived. Thus, the petitioner cannot be granted promotion from the back date. It is relevant to submit here that no person junior to the petitioner was promoted prior to the petitioner."

7. Although, rejoinder affidavit was filed by the respondent; however, statement made in the counter affidavit that no person junior to the petitioner was promoted has not been denied.

8. Promotion with retrospective effect can be claimed only when a person junior to the respondent was promoted earlier by invoking next below rule. Since that is not the case here, therefore direction issued by learned Single Judge to promote the petitioner against a vacancy of the year 2004-09, if he is otherwise found suitable is interfereble.

9. We, accordingly, modify the order dated 29.03.2017 by providing that the authorities shall examine the claim of the respondent and he shall be entitled to promotion from a deemed date. only if someone junior to him was promoted earlier.

(Subhash Upadhyay, J.) (Manoj Kumar Tiwari, A.C.J.)

31.10.2026

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MAHINDER SINGH
