

**BEFORE UTTARAKHAND PUBLIC SERVICE TRIBUNAL,  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman(A)

**CLAIM PETITION 95/B/DB/2023**

Mrs. Manju Bisht, (Female) aged about 55 years, W/o Mr. H.S. Bisht,  
R/o Village and P.O. Danpur, Rudrapur, Distt. Udham Singh Nagar.

.....**Petitioner**

**Vs.**

1. State of Uttarakhand through Secretary, School Education, Dehradun.
2. Director, Elementary Education, Nanoorkhera, Dehradun.
3. Deputy Director, Elementary Education, Nanoorkhera, Dehradun.

.....**Respondents**

Present: Sri Piyush Tiwari, Advocate, for the petitioner.  
Sri Kishore Kumar, A.P.O. for the State respondents.  
Sri Jagdish Bisht, Advocate, for respondents no. 2 and 3

**JUDGMENT**

**DATED: APRIL 16, 2025**

**HON'BLE SRI A.S.RAWAT, VICE CHAIRMAN (A)**

Present claim petition has been filed for seeking the following reliefs:

- (i) *To quash the impugned order dated 13-03-2023 passed (Annex. No. 1) by the respondent no.3, as also the decision of the Directorate to promote the petitioner as Principal Assistant, communicated vide letter date 17-02-2023 (Annexure No. 1).*
- (i) *To issue direction to the respondents to allow the petitioner to join the vacant post of Chief*

*Administrative Officer available with the Department at the office of the BEO Gadarpur or at G.G.I.C. Haldwani, considering her serious medical condition which is restricting her movements,*

*(ii) To issue any other order or direction that this Hon'ble Tribunal thinks fit in the facts and circumstances of the case.*

*(iv) To award the costs in favour of the Petitioner.*

2. Brief facts of the case are as under:

2.1 The petitioner was appointed in the erstwhile Basic Shiksha Parishad vide Order dated 25-07-1989 passed by A.E.D. (Basic), Kumaun Mandal, Nainital, on the post of Junior Clerk, and she joined her services on 03-08-1989. After creation of the State of Uttarakhand, the members of the erstwhile Basic Shiksha Parishad, who were residing in the State of Uttarakhand, became the members of the Education Department of the new State.

2.2 Earlier, the petitioner had invoked the jurisdiction of Hon'ble High Court through WPSS 1607 of 2019 claiming appropriate seniority by counting her service in the Basic Shiksha Parishad, including the promotion to the post of Senior Administrative Officer from the date her junior had been promoted. The said petition was allowed vide Judgment dated 15.07.2020. In compliance of the order of the Hon'ble High Court, the respondent no. 2 had passed order dated 24.06.2021 promoting the petitioner notionally on the post of Chief Administrative Officer transferring to the office of the Block Education Officer, Syalde District Almora.

2.3 However, before the promotion order dt. 24-06-2021 could be passed, the petitioner met with an accident in the office premises and suffered a fracture in her vertebrae, diagnosed in August 2020, and is still undergoing treatment. It considered her serious medical condition and advised her to avoid prolonged journey and prolonged sitting, apart from regular follow-up and treatment. Prior to the aforesaid, the petitioner had been referred to the Medical Board vide letter dt. 05-07-

2022 of the Medical Health and Family Welfare Directorate, Dehradun, pursuant to which she appeared before the medical board.

2.4 Having diagnosed of the aforesaid serious medical ailment and having been advised to restrain her movement, the petitioner requested the respondent authorities to grant extension of her joining the promotional post vide letter dt. 15-07-2021 pursuant to which, the petitioner is still continuing to work in the post of Senior Assistant at the Block Education Officer, Haldwani.

2.5 The serious ailment of the petitioner has still not subsided and on a recent medical check-up at the Shushila Tiwari Medical College the petitioner has again been advised for further medical tests/ examinations. Owing to her medical condition, the petitioner is unable to join her promotional post at Syalde, District Almora, however, when the petitioner had been informed that the post of Senior Administrative Officer was falling vacant at Haldwani, pursuant to which, the petitioner has represented to the office of the Respondent no. 2, on 30-08-2022, for considering her to join the aforesaid vacant post, owing to her medical condition.

2.6 The Medical Board, vide its certificate dt. 01-09-2022 also stated that the services of the petitioner were governed by the provisions of the Uttar Pradesh Basic Education Act, 1972, and the Rules framed thereunder.

2.7 The respondents have neither taken any action on the aforesaid representation nor have they given any response to the same, ignoring the medical condition of the petitioner, however, vide letter dt. 27-12-2022 received by the petitioner in February 2023. The respondents alleged that the petitioner is forgoing the promotional post of Chief Administrative Officer and also threatening the petitioner of appropriate action against her, if she ignores the decision of the respondents.

2.8 The petitioner replied vide her representation dt. 22-02-2023, reiterating her medical conditions and also informing the department that she had already deposited the medical reports and certificates, as required from her, vide letter dt. **27-12-2022. A copy of the reply/ representation dt. 22-02-2023** (Annexure No. 11). The petitioner further informed that a post of Chief Administrative Officer was vacant in the office of the Block Education Officer, Gadarpur, District Udham Singh Nagar.

2.9 To the utter surprise of the petitioner, she was served with a letter dt. 17-02-2023 (Annexure no. 1 above), whereby it was informed that since she had not joined her promotional post, the Directorate had decided to give her promotion on the post of Head Assistant.

2.10 The respondent no. 3 has passed another inhuman and illegal demotion order dt. 13-03-2023 (Annexure No.1 above), whereby the petitioner has been maliciously given promotion to a lower post of Head Assistant, which is in- fact her demotion from the post of Chief Administrative Officer.

2.11 The aforesaid order dt. 13-03-2023 is blatantly illegal, arbitrary and inhuman, inasmuch as, the same has been passed by completely ignoring the medical condition of the petitioner, which has also been certified by the Medical Board. The impugned order dt. 13-03-2023 also suffers from another illegality of being violative of the judgment and order dt. 15-07-2020 passed by the Hon'ble High Court in WPSS 1607 of 2019. However, the same has been inhumanly ignored and has not been replied till date.

2.12 Prior to approaching this Hon'ble Tribunal, the petitioner had preferred a writ petition no. 120 of 2023 (S/B) Before the Hon'ble High Court, wherein vide order dt. 27-04-2023 the Hon'ble High Court has directed the petitioner to approach the to this Tribunal.

2.13 The action of the respondents amounts to denying her the benefit of her promotional post, is arbitrary, illegal and contrary to the provisions of the Act.

3. Respondents have filed the Counter affidavit and the facts of the Counter Affidavit are as under:

3.1 मा० उत्तराखण्ड उच्च न्यायालय, नैनीताल में योजित रिट याचिका सं० 1607/एस०एस०/2019, मंजू बिष्ट बनाम उत्तराखण्ड राज्य व अन्य में पारित निर्णय दिनांक 15-07-2020 के अनुपालन में याची को बेसिक शिक्षा परिषद में नियुक्ति तिथि से वरिष्ठता तथा परिणामी लाभ देते हुए निदेशालय के आदेश संख्या: सेवार्यें दिनांक 24 जून, 2021 के द्वारा कमश: प्रधान सहायक, प्रशासनिक अधिकारी, वरिष्ठ प्रशासनिक अधिकारी तथा मुख्य प्रशासनिक अधिकारी के पदों पर नोशनल पदोन्नति प्रदान करते हुए उन्हें अनुमन्य श्रेणी के कार्यालय खण्ड शिक्षा अधिकारी, स्याल्दे, अल्मोडा में मुख्य प्रशासनिक अधिकारी के रिक्त पद पर पदस्थापित किया गया। याची द्वारा उक्त पदोन्नति को स्वीकार नहीं किया गया तथा एक वर्ष बाद अपने नोशनल पदोन्नति स्थल को संशोधन किये जाने हेतु प्रत्यावेदन दिया गया, जिसे उत्तराखण्ड राज्याधीन सेवाओं में पदोन्नति का परित्याग (Forgo) नियमावली 2020 की धारा (3) के आलोक में स्वीकार करना सम्भव नहीं था। याची का प्रकरण पुनः विभागीय पदोन्नति समिति के समक्ष रखा गया था, किन्तु पदोन्नति समिति द्वारा याची की गोपनीय आख्या (वर्ष 2020-21 एवं 2021-22) प्राप्त न होने के कारण लिफाफा बन्द रखा गया। याची को उक्त वर्षों की गोपनीय आख्या उपलब्ध कराने हेतु अवगत कराया गया। याची की गोपनीय आख्या प्राप्त होने पर वरिष्ठ प्रशासनिक अधिकारी से मुख्य प्रशासनिक अधिकारी के पदों पर चयन वर्षधर्ती वर्ष 2022-23 की विभागीय पदोन्नति समिति की बैठक में पात्र कार्मिकों की सूची के साथ याची का प्रकरण भी प्रस्तुत किया गया था।

3.2 याची वर्तमान में वरिष्ठ सहायक के पद पर कार्यरत् है तथा भर्ती वर्ष 2022-23 में वरिष्ठ प्रशासनिक अधिकारी से मुख्य प्रशासनिक अधिकारी के पदों पर विभागीय पदोन्नति समिति की बैठक के समय याची वरिष्ठ प्रशासनिक अधिकारी के पद पर कार्यरत् नहीं थी। अतः याची को वरिष्ठ सहायक पद से सीधे मुख्य प्रशासनिक अधिकारी के पद पर पदोन्नति प्रदान नहीं की जा सकती है। उत्तराखण्ड राज्याधीन सेवाओं के अन्तर्गत लिपिक वर्गीय संवर्ग के पदों पर

पदोन्नति हेतु पात्रता अवधि का निर्धारण (संशोधन), नियमावली, 2015 यथा संशोधन 2016 के प्रस्तर 4 में निम्नलिखित व्यवस्था है—

4 (1) मुख्य प्रशासनिक अधिकारी मौलिक रूप से नियुक्ति ऐसे वरिष्ठ प्रशासनिक अधिकारी, जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में न्यूनतम 1 वर्ष की सेवा पूर्ण कर ली हो तथा अधीनस्थ पदों पर कम से कम 25 वर्ष की सेवा पूर्ण की हो, में से अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता के आधार पर पदोन्नति द्वारा।

4 (4) प्रधान सहायक मौलिक रूप से नियुक्ति ऐसे वरिष्ठ सहायक, जिन्होंने भर्ती के वर्ष के प्रथम दिवस को इस रूप में न्यूनतम 3 वर्ष की सेवा पूर्ण कर ली हो तथा अधीनस्थ पदों पर कम से कम 10 वर्ष की सेवा पूर्ण की हो, में से अनुपयुक्त को अस्वीकार करते हुए ज्येष्ठता के आधार पर पदोन्नति द्वारा।

3.3 मा० उच्च न्यायालय उत्तराखण्ड के निर्णय के अनुपालन में याची को नोशनल पदोन्नति दी जा चुकी थी, किन्तु याची द्वारा तत्समय पदोन्नति पद पर निर्धारित समयान्तर्गत कार्यभार ग्रहण न कर उक्त पदोन्नति को स्वीकार नहीं किया गया, जिसके लिए याची स्वयं दोषी है। समयान्तर्गत कार्यभार ग्रहण न करने के कारण उत्तराखण्ड राज्याधीन सेवाओं में पदोन्नति का परित्याग (Forgo) नियमावली 2020 के अनुसार उक्त पदोन्नति आदेश समाप्त हो चुका था। याची वर्तमान में वरिष्ठ सहायक के पद पर कार्यरत है एवं उत्तराखण्ड राज्याधीन सेवाओं के अन्तर्गत लिपिक वगीय संवर्ग के पदों पर पदोन्नति हेतु पात्रता अवधि का निर्धारण (संशोधन), नियमावली, 2015 यथा संशोधन 2016 नियमावली के प्रस्तर 4 (4) के अनुसार वरिष्ठ सहायक से प्रधान सहायक पद पर पदोन्नति हेतु निर्धारित अर्हता पूर्ण करती हैं।

3.4 विभागीय पदोन्नति समिति की संस्तुति दिनांक 19-06-2023 के कम में निदेशालय के पत्र दिनांक 26-06-2023 के द्वारा याची सहित कुल 107 कार्मिकों को काउंसिलिंग में निर्धारित तिथि 28-06-2023 को निदेशालय में प्रतिभाग हेतु बुलाया गया, जिसमें याची उपस्थित नहीं हुयी। तदोपरान्त याची को निदेशालय के आदेश दिनांक 28-06-2023 के द्वारा वरिष्ठ सहायक से प्रधान सहायक के पद पर अनुमन्य सुगम श्रेणी के कार्यालय उप शिक्षा अधिकारी चम्पावत, में पदोन्नति पर पदस्थापित किया गया। याची को नोशनल पदोन्नति दिनांक 24 जून, 2021 को दी जा चुकी थी, जबकि याची द्वारा प्रस्तुत राज्य मेडिकल बोर्ड से निर्गत प्रमाण पत्र 01-09-2022 का है। याची द्वारा रिट याचिका में अपने उपचार के जो पत्र संलग्न किये गये हैं वह भी उनके पदोन्नति आदेश

दिनांक 24 जून, 2021 के काफी बाद के है। याची उक्त अवधि में मुख्य प्रशासनिक अधिकारी के पद पर कार्यभार ग्रहण कर सकती थी, इससे स्पष्ट है कि याची द्वारा जानबूझकर पदोन्नति के पद पर कार्यभार ग्रहण नहीं किया गया। याची द्वारा मा० न्यायालय को भ्रमित करने का प्रयास किया जा रहा है। निर्धारित समयान्तर्गत याची द्वारा कार्यभार ग्रहण न करने के कारण उक्त पदोन्नति आदेश समाप्त हो चुका था। अतः याची पर उत्तराखण्ड राज्याधीन सेवाओं में पदोन्नति का परित्याग (Forgo) नियमावली 2020 के प्राविधान लागू होने के कारण पदोन्नति संशोधन नहीं किया गया।

3.5 याची को निदेशालय के पत्र संख्या 22317, दिनांक 17 फरवरी, 2023 के द्वारा अवगत कराया गया कि मा० न्यायालय के आदेश के अनुपालन में आपको वरिष्ठता एवं नोशनल पदोन्नति का लाभ प्रदान किया जा चुका है तथा पदोन्नति के उपरान्त पदोन्नत पद पर कार्यभार ग्रहण न करने हेतु आप स्वयं उत्तरदायी हैं। वर्तमान में प्रचलित नियमावलियों के आलोक में याची को प्रधान सहायक के पद पर पदोन्नति प्रदान किये जाने का निर्णय निदेशालय स्तर पर लिया गया है। विस्तृत उल्लेख उपरोक्त प्रस्तर में किया गया है। याची को नियमानुसार वरिष्ठ सहायक से प्रधान सहायक के पद पर पदोन्नति दी गयी है। याची द्वारा समयान्तर्गत पदोन्नति पद पर कार्यभार ग्रहण नहीं किया। विस्तृत उल्लेख उपरोक्त प्रस्तरों में किया गया। अतः याची के विरुद्ध किसी भी प्रकार की मनमानी, अन्यायपूर्ण व नियमविरुद्ध कार्यवाही नहीं की गयी है। अतः याचिका खारिज किये जाने योग्य है।

4. R.A. has also been filed by the petitioner and the contents of the written statement have been denied and has reiterated the averments made in the claim petition.

5. Supplementary affidavit has also been filed on behalf of the petitioner citing judgments of Hon'ble Apex Court in support of her claim.

6. We have heard the Learned Counsel for the parties and went through the documents also.

7. Learned Counsel for the petitioner submitted a written argument also and pleaded that the petitioner being handicapped has been deprived of promotion as the respondents instead of posting her

to the place she requested, has been demoted to the lower post without her foregoing the promotion. The petitioner is disabled and is entitled to the benefits as per the provisions of the Right of Persons with Disability Act 2016, Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act 1995. The respondents have overlooked the provisions and revoked her promotion order, this act of the respondents is inhuman and against the provisions of aforesaid Acts. Learned Counsel for the petitioner has cited following judgements of the Hon'ble Apex Court, in terms of the statutory obligations on the employer in relation to the disabled employee:

- (i) Kunal Singh vs. Union of India (3003) 4 SCC 524
- (ii) Bhagwan Das vs. Punjab State Electricity Board (2008) 1 SCC 579
- (iii) Ravinder Kumar Dhariwal vs. Union of India 2021 SC online SC 1293.

Learned Counsel for the petitioner further submits that petitioner is now prepared to join the post of Chief Administrative Officer at Syalde, Almora, as she has recovered from her injury. Accordingly, the petitioner confines her prayer to a request that her representation dated 17.03.2023 (Annexure-12/P.56-57), made pursuant to the order dated 27.12.2022, seeking promotion to the post of Chief Administrative Officer, may kindly be considered.

8. Learned A.P.O. pleaded that the petitioner has been transferred on promotion, but she did not join instead she requested for her posting at Haldwani. As she did not join the place of posting, her promotion order was cancelled and she was retained at her present place of posting. The claim petition cannot be entertained as per the provisions of the Uttar Pradesh Tribunal Act 1976, where the matter related to the transfer are not within the jurisdiction of the Tribunal. The claim petition is liable to be dismissed.

9. Based on the arguments of the parties and the records placed, we find that in compliance of the order dated 15/07/2020 of the Hon'ble High Court of Uttarakhand at Nainital in the writ petition No



1607/SS/2019, the petitioner has been given notional promotions on the posts of Head Asstt., Administrative Officer, Senior Administrative Officer and Chief Administrative officer. She was posted in the vacant post of Chief Administrative Officer in the Office of the Block Education Officer at Syalde, Almora on 24/06/2021. She did not join the post till one year and requested for change the place of posting of notional promotion, which the respondents could not accept as per the prevailing rules. In fact, the medical certificate she has submitted is of 1/9/2021 and the medical prescriptions she submitted are of much after 24/06/2021. The petitioner did not join the post within stipulated time and as per rule the posting order could not be amended also.

10. The respondents cancelled the promotion order of the petitioner and further promoted her on the post of Head Assistant and transferred her. Since the matter is related to transfer on promotion of the petitioner, the Tribunal has no authority to entertain the case within the provisions of U.P. Public Services Tribunal Act, 1976. The claim petition is liable to be dismissed on the ground of extra jurisdiction, however, the petitioner is at liberty to plead her case/submit representation to the appropriate forum.

### ORDER

The claim petition is hereby dismissed. No order as to costs.

RAJENDRA SINGH  
VICE CHAIRMAN (J)

A.S.RAWAT  
VICE CHAIRMAN (A)

*DATED: APRIL 16, 2025*  
*DEHRADUN*  
*KNP*