

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 110/DB/2021

Kamlesh Rani w/o Shri Varun Kashyap aged about 32 years, presently posted as Sub Inspector, EIB (Excise Intelligence Bureau), Headquarters, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through its Principal Secretary (Excise), Civil Secretariat, Dehradun.
2. Commissioner, Excise, Uttarakhand, Gandhi Road, Near Tehsil Chowk, Dehradun.
3. Additional Commissioner Excise (Administration), Uttarakhand, Gandhi Road, Near Tehsil Chowk, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Advocate, for the Petitioner

Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: MAY 24, 2022

Mr. Rajeev Gupta, Vice Chairman(A) (Oral)

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

"a. To issue order or direction directing the respondents to call for records and set aside order dated 02.09.2021 (Annexure A1) vide which the respondent no. 1 has declared the petitioner ineligible for being considered for promotion for the selection year 2019-20.

b. To issue order or direction directing the respondents to count the services of the petitioner when she had her lien in the department towards minimum qualifying service for promotion.

c. To give any other relief fit and proper in the circumstances of the case.

d. To give cost to the petitioner."

2. Brief facts, according to the claim petition are as follows:

The petitioner was appointed on the post of Sub-Inspector, Excise and she joined on this post on 07.11.2013. The petitioner worked on that

post as such till 31.01.2018, and on 01.02.2018, she joined as Child Development Project Officer (CDPO) in ICDS (Women & Child Development Department), which post carries a higher grade pay than the post of Sub-Inspector Excise. Although the petitioner had joined ICDS however, the *lien* of the petitioner was kept on the post of Sub-Inspector. The petitioner, due to certain personal and family reasons, prayed for repatriation to the excise department and based on the NOC received from the Excise Department, she was relieved from ICDS on 09.07.2020 and on the same day, she gave her joining as Sub-Inspector in the Excise Department. After joining Excise Department, she was informed that exercise for promotion to the post of Inspector is going on in the Excise Department. She gave representation for her to be included in the exercise of promotion. The reason for not including her in that exercise is being given that the petitioner has not completed 5 years' minimum qualifying service as per Rule 5(1)(b) of the Uttarakhand Subordinate Excise Service Rules, 2015 (hereinafter referred to as "the Rules of 2015"). Since the petitioner had a *lien* on the post of Sub-Inspector, Excise by no stretch of imagination, can the petitioner be treated as being away from her parent department, which is, the department of Excise. The services of the petitioner have to be counted for the purpose of seniority as well as promotion as if the petitioner had continued all throughout in the parent department. In the present case though the petitioner is being given seniority as if she had continued in the parent department however, the services of the petitioner are not being counted for the purpose of minimum qualifying service for promotion.

The petitioner had earlier filed claim petition No. 99/DB/2020 before this Tribunal, in which short Counter Affidavit was filed on behalf of the respondents. Paras 3 & 4 of this short Counter Affidavit are excerpted as herein below:

"3. That by means of this claim petition no. 99/DB/2020, Kamlesh Rani vs. State of Uttarakhand. The petitioner have sought following prayer:-

Prayer

(i) To issue order or direction directing the respondents to count the services of the petitioner when she had her lien in the department towards minimum qualifying service for promotion.

(ii) To give any order relief fit and proper in the circumstances of the case.

(iii) To give cost to the petitioner.

4. That the above mentioned prayer has been granted to the petitioner by the respondent department itself and accordingly the services rendered by her on the post of Bal Vikas Peryojana Adhikari in the ICDS Department has been declared the qualifying services for the purpose of promotion on the post of Excise Inspector from the post of Excise Sub-Inspector by the Government of Uttarakhand on requisition as sent by the department concerned in accordance with Rule-13 of the Financial Hand Book Vol. II (Part 2 to 4) and accordingly now she has been qualified all the term and condition relating to consideration for promotion on the post of Excise Inspector (Copy of Letter No.118 dated 03.04.2021 is enclosed herewith and same marked as Annexure-C.A R-1) to this affidavit.”

The Annexure C.A-R-1 annexed to this Counter Affidavit also mentioned that under the Chairmanship of Secretary, Excise, Govt. of Uttarakhand on 19.02.2021, the services of the petitioner on the post of CDPO have been decided to be added to the services of Sub-Inspector, Excise under the right of *lien*. Accordingly, the services of the petitioner as Sub-Inspector, Excise have been for more than 5 years and following the decision of the Government, her physical eligibility examination has been got done on 09.03.2021 and the requisition is being sent to the Government. On receipt of this Counter Affidavit, no cause of action was left to the petitioner in the earlier claim petition, which was withdrawn by her on 08.04.2021. It was the submission of learned A.P.O. according to the parawise narrative received by him from the department, at that time, that the relief sought for in the claim petition has been given to the petitioner. The claim petition was, accordingly, dismissed as withdrawn.

However, the respondents went back from their stand that they had taken before this Tribunal and issued the impugned letter dated 02.09.2021 (Annexure: A1), which states that the petitioner has not completed 5 years of necessary qualifying service on the post of Sub-Inspector, Excise and, therefore, she cannot be included in the eligibility list. Retracting from their own Counter Affidavit filed before this Tribunal is an act of contempt punishable as per law.

Hence, the present claim petition.

3. Counter Affidavit has been filed on behalf of the respondents stating that there is a break in the services of the petitioner on the post of Sub-Inspector, Excise and she has reported in the Excise Department on 09.07.2020 after a span of 2 years and 6 months, as such the petitioner shall become eligible for promotion to the post of Inspector (Excise) after completion of 5 years of continuous and satisfactory service in the year 2025 as per Rules. Rule 5 of the Rules of 2015 reads as under:

“5(1)(a).....

5(1)(b) 25% by promotion from amongst such appointed Sub-Excise Inspectors, who have completed 5 years service as such on the 1st day of year of recruitment;”

The respondents initiated to consider promotion from Sub Inspector (Excise) to Inspector (Excise) who have completed 5 years of continuous service as Sub-Inspector (Excise). The petitioner has not completed 5 years' regular service as Sub-Inspector (Excise), her name was not on the proposed list.

The respondents examined the matter in depth in the light of express provision of the Rules and rejected the requisition of the petitioner to include the services done in the ICDS *vide* impugned letter dated 02.09.2021. The matter was also subsequently referred to the Additional Secretary, Finance, who has clarified that the period spent in ICDS shall not be included while counting for requisite number of years of service for Inspector (Excise).

5. Rejoinder Affidavit has been filed on behalf of the petitioner stating that the *lien* of the petitioner was always with the parent department *i.e.* Excise Department. When a person has a *lien*, the person is holding that post substantively. The contents of para 9 of the Counter Affidavit are wrong and contrary to the affidavit filed by the respondents in Claim Petition No. 99/DB/2020. The Service Rules were in existence even when the respondents had submitted the earlier affidavit in claim petition No. 99/DB/2020. How can respondents plead lack of knowledge when the respondents themselves had filed short counter affidavit accepting the

contentions of the petitioner. It is also surprising that the file noting enclosed as Annexure CA-R-1 is of later date than the impugned order. Wonder if the impugned order was passed without any consultation and now the notings are being made to suit the impugned order.

6. We have heard learned Counsel for the parties and perused the record.

7. Rule 5(1)(b) of the Rules of 2015 provides for promotion from amongst Sub-Excise Inspectors, who have completed 5 years of service as such on the 1st day of year of recruitment. Had the petitioner not joined on the post of CDPO in between, she would have satisfied the condition of this Rule of 5 years' service as S.I. Excise. She has however, maintained her *lien* on the post of S.I. Excise all throughout. The noting of the Finance Department as referred to in the Counter Affidavit states that the services rendered in the department can be added only for the benefit of pay protection, while, according to the Departmental Service Rules, the qualifying service on the concerned post must have been completed. As such, the services rendered in the earlier department cannot be added for the qualifying service.

8. We posed this question to learned A.P.O. that if the petitioner had all throughout continued in the Excise Department and if she had gone on long leave during this period and the remaining period had been less than 5 years, would she have become ineligible for promotion. Learned A.P.O. agreed that in that case, she would not have been ineligible for promotion, as leave would have been sanctioned while she was working in the same department. On the same analogy, if services have been rendered in other department while maintaining *lien* on the post in the parent department, the Tribunal finds no reason, why such period should be considered as break in service. We also posed to learned A.P.O. to inform us if there is any express provision in the Financial Hand Book which prohibits the counting of such service against the post on which the *lien* is held; the reply was that Financial Hand Book only provides for pay

protection. Understandably, the Financial Hand Book is silent on this question. Moreover, the seniority of the petitioner has also been retained and given from the date of her initial appointment in the excise department.

9. The respondent department in its earlier Counter Affidavit filed in Claim Petition No. 99/DB/2020 had categorically admitted that the request of the petitioner has been accepted, while Annexure: A1, the impugned order dated 02.09.2021 states that the petitioner has not completed 5 years of necessary qualifying service as Sub-Inspector, Excise and, therefore, she cannot be included in the eligibility list. Drawing analogy from the case when an incumbent could proceed on leave and still be eligible, even if there is break in 5 years' continuous service and the remaining period is less than 5 years, we find it appropriate to apply the same principle in the case of the petitioner. The same is also substantiated by the averments made in the earlier affidavit of the respondent department in Counter Affidavit filed in Claim Petition No. 99/DB/2020 and our observations made in para 7 & 8 as above.

10. We therefore, hold that the petitioner is eligible for being considered for promotion in the selection year 2019-20 and she will be deemed to have completed 5 years' necessary qualifying service as on the 1st day of the selection year. Annexure: A1 is hereby set aside and the claim petition is hereby allowed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 24, 2022
DEHRADUN
KNP