

**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. 151/DB/2019

Vinay Kumar s/o Shri Chandra Dutt Tyagi aged about 50 years presently working and posted on the post of Accountant in the office of Chief Treasury Officer, District Treasury, Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Finance, Government of Uttarakhand, Secretariat, Dehradun, Uttarakhand.
2. Director, Directorate Treasury & Finance Services Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun, Uttarakhand.
3. Chief Treasury Officer, Department of Chief Treasury Officer, Roshnabad, District Haridwar.
4. District Magistrate/ Collector, District Haridwar.

.....Respondents.

Present: Sri L.K.Maithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 22, 2021

Justice U.C.Dhyani (Oral)

Present claim petition has been filed by the petitioner for following reliefs:

“(i)To quash the impugned order No. 4049 of dated 28.09.2018 passed by the respondent no.2 (Annexure: A-1).

(ii) To issue an order or direction to the concerned respondents to revive the previous promotion order dated 15.02.2003 of respondent no.4, (Annexure No.A-3 of the petition) by which the petitioner was promoted to the post of Accountant since 09.08.2002 and accordingly modify the promotion order dated 10.01.2005 (Annexure No.5 of the petition) with a direction to the respondent to treat the promotion of the petitioner on the post of accountant for all service benefits i.e. seniority, promotion etc. since 09.08.2002.

(iii) Issue any other order or direction which this court may deem fit and proper in the circumstances of the case in favour of the petitioner.

(iv) To award the cost of petition.”

2. The genesis of present claim petition can be traced back to the judgment rendered by this Tribunal on 25.06.2018 in Claim Petition No. 05/DB/2018, Vinay Kumar vs. State & others. Instead of narrating the facts afresh, it will be appropriate to reproduce the whole judgment passed on 25.06.2018 in Claim Petition No. 05/DB/2018, Vinay Kumar vs. State & others, for the sake of understanding the controversy, as under:

“ Present claim petition has been filed by the petitioner for following reliefs:

(i) To issue an order or direction to the concerned respondents to review the previous promotion order dated 15.02.2003 of respondent No.4, (Annexure No. A-3 of the petition) by which the petitioner was promoted to the post of Accountant since 09.08.2002, i.e., the date when the vacancy arose on the post of Accountant due to the promotion of Accountant Sh. Shukh Chand Tyagi to the post of Assistant Treasury Officer and accordingly modified the promotion order dated 10.01.2015 (Annexure No.5 to the petition) with a direction to the respondent to treat the promotion of the petitioner on the post of Accountant for all service benefits, i.e., seniority, promotion etc. since 09.08.2002.

(ii) To issue an order or direction to grant the benefit of IIIrd ACP to the petitioner.

(iii) Issue any other order or direction which this court may deem fit and proper in the circumstances of the case in favour of the petitioner.

(iv) To award the cost of petition.

2. Facts, giving rise to present claim petition, are as follows:

Petitioner was substantively appointed on the post of Assistant Accountant on 02.01.1990 at Haridwar. *Vide* order dated 06.08.2002, seven Accountants were promoted to the post of Assistant Treasury officer. As a consequence thereof, seven posts of Accountants fell vacant in District Treasury, Haridwar. Consequent upon the promotion of the

Accountants, petitioner, along with two other Assistant Accountants were granted promotion *w.e.f.* 09.08.2002, i.e., the date of promotion of Accountants to the post of Assistant Treasury Officer, by respondent No. 4 *vide* office order dated 15.02.2003.

Sri Sukh Chand Tyagi, who, *vide* office order dated 06.08.2002, of respondent No.2, was promoted from the post of Accountant to the post of Assistant Treasury Officer, was reverted to the post of Accountant *vide* order dated 22.04.2003, on the basis of some charges levelled against him. Due to reversion of Sri S.K.Tyagi to the post of Accountant, *vide* order dated 03.05.2003, passed by respondent No.4, promotion order dated 15.02.2003 of the petitioner was cancelled. Petitioner was again posted as Assistant Accountant. Copy of the office order dated 03.05.2003 has been enclosed as Annexure: A 4 to the petition. *Vide* office order dated 10.12.2005, petitioner was promoted to the post of Accountant *w.e.f.* 30.11.2004 by respondent No.4. A copy of promotion order has been brought on record as Annexure: A 5 to the claim petition.

Sri S.K.Tyagi being aggrieved against his reversion order dated 22.04.2003, filed writ petition before Hon'le High Court of Uttarakhand. Such writ petition was allowed. In compliance of judgment and order dated 23.11.2010, Sri Tyagi was reinstated on the post of Assistant Treasury Officer *w.e.f.* 22.4.2003, i.e., the date when Sri Tyagi gave his joining on the post of Accountant, consequent upon his reversion. Since the promotion order dated 15.02.2003 of the petitioner was cancelled due to reversion of Sri Tyagi from the post of Assistant Treasury Officer to the post of Accountant and writ petition of Sri Tyagi was allowed by Hon'ble High Court of Uttarakhand, therefore, date of promotion of the petitioner should be reviewed, according to petitioner. It should be from 09.08.2002, although the petitioner was promoted in due course *w.e.f.* 30.11.2004. Petitioner suffers loss in his seniority. He moved a representation to the department, which was decided *vide* order dated 15.10.2015 (placed as Annexure: A 9). Since desired relief was not granted to the petitioner, therefore, he has filed present claim petition.

3. It is the submission of Ld. Counsel for the petitioner that since promotion order dated 15.02.2003 of the petitioner was cancelled by respondent No.2, *vide* office order dated 03.05.2003 due to reversion of Sri Tyagi from the post of Assistant Treasury Officer to Accountant and the reversion of Sri Tyagi has been reviewed by the department in terms of order dated 23.11.2010 of Hon'ble High Court of Uttarakhand, therefore, the petitioner is entitled to be promoted from 09.08.2002, instead of 30.11.2004.

4. It is not a case in which petitioner was denied promotion. It is a case in which he was already promoted to the post of Accountant. He is admittedly junior most in the list of eligible candidates of Assistant Accountants, who were to be promoted to the post of Accountant. If he is given promotion from an earlier date, no one else would be adversely affected. The facts of the instant case are peculiar, as if the petitioner was to swim or sink with Sri S.C.Tyagi. It was like a musical chair or see-saw game. When Sri Tyagi was promoted, one post of Accountant fell vacant. Petitioner was also promoted, when Sri Tyagi was reverted, petitioner's promotion was also cancelled. Sri Tyagi took recourse to writ jurisdiction and succeeded. He was placed appropriately as Assistant Treasury Officer. Petitioner too was promoted to the post of Accountant, but only on 30.11.2004. Here justice could not be meted out to him. It is a case in which both Sri Tyagi and petitioner were promoted. Whereas, with the intervention of Hon'ble High Court, Sri Tyagi was promoted again *w.e.f.* the same date on which he was promoted earlier, but similar treatment was not given to the petitioner. In other words, petitioner was promoted, but

his promotion order was cancelled because of the reversion of Sri Tyagi, who, although was granted promotion with the intervention of Hon'ble Court and the petitioner was also granted promotion *w.e.f.* 30.11.2004, but his earlier order of promotion dated 15.02.2003 was not revived. It requires to be emphasized here that when petitioner was promoted *vide* order dated 15.02.2003, he was granted promotion *w.e.f.* 09.08.2002. Same relief was not granted to the petitioner on a subsequent occasion. Whereas the department was benevolent in promoting the petitioner from a previous date on earlier occasion, no such spirit was shown on subsequent occasion while promoting the petitioner on the same post. The facts and circumstances warrant that he ought to have been granted promotion *w.e.f.* 09.08.2002, instead of 30.11.2004 and hence, it is a case of review. In other words, order impugned should be reviewed by the reviewing authority, in the same manner, in which the case of Sri S.C.Tyagi was reviewed by the competent authority.

5. It may be pointed out, at this stage, that the representation of the petitioner was not decided on 15.10.2015, in the manner it ought to have been decided. It was mentioned therein that since Sri Tyagi was promoted on the basis of Hon'ble Court's order, therefore, the petitioner may also obtain similar order from the Court, if he so desires. This Court is, therefore, of the opinion that, clearly it is a case in which order impugned should be reviewed by the competent authority, considering the peculiar facts and circumstances of the case. Petitioner's destiny, it appears, was tagged with the destiny of Sri Tyagi and since Sri S.C.Tyagi has obtained the desired relief with the intervention of Hon'ble Court, therefore, in the considered opinion of this Tribunal, petitioner is also entitled to such relief [with the intervention of this Tribunal].

6. Such relief can be granted to the petitioner under Rule 14 of the Uttarakhand Government Servants Discipline and Appeal Rules, 2003, which runs as below:

"14. Review-The Governor may, at any time, either on his own motion or on the representation of the concerned Government Servant review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order or any material error of law occurred which has the effect of changing the nature of the case."

7. It will be worthwhile to mention here that the case of the petitioner has already been recommended by Chief Treasury Officer, Haridwar, *vide* letter dated 18.11.2015, (Annexure: A 11). Petitioner made a representation to Director Treasuries on 18.11.2015 that his promotion may be made effective *w.e.f.* 30.08.2002, (sic) which should be read as 09.08.2002, in place of 30.11.2004.

8. District Magistrate, Haridwar/ Director, Treasuries, Dehradun are, accordingly directed to review the order impugned dated 15.10.2015 in the light of observations made by this Tribunal hereinabove.

9. The same is directed to be reviewed at an earliest possible but not later than 8 weeks of presentation of certified copy of this order along with fresh representation enclosing a copy of letter dated 18.11.2015 (Annexure: A 11), written by Chief Treasury Officer, Haridwar to Director Treasuries, Dehradun.

10. Petitioner does not press Relief No. II relating to grant of 3rd ACP to him, at this stage, and only to be agitated at an appropriate stage, if required, in accordance with law. Such liberty is granted to him."

3. In compliance of Paragraphs No. 8 & 9 of the order dated 25.06.2018, the representation of the petitioner was decided by Director, Treasury, Pension and Entitlement, Dehradun *vide* Office Order dated 28.09.2018 (Annexure: A-1). The representation of the petitioner was dismissed. Petitioner has assailed Annexure: A-1 in present claim petition and has sought other reliefs also.
4. Ld. A.P.O. has submitted that the claim petition is barred by limitation. Ld. Counsel for the petitioner, on the other hand, submitted that Office Order dated 28.09.2018 (Annexure: A-1) was received by the petitioner in December, 2018 [*Ref: Para No. 3 of the affidavit of the petitioner filed with the delay condonation application*]. The claim petition has been filed on 28.11.2019. The time period for filing the claim petition in this Tribunal is one year. The order dated 28.09.2018 should have been challenged before this Tribunal on or before 28.09.2019, but the petitioner has stated, in his affidavit, that copy of the impugned order was received by him in December, 2018 and in the objections filed by the respondents (to the delay condonation application) the said fact has not been controverted. It has not been stated as to when the order dated 28.09.2018 was delivered to the petitioner, therefore, the Tribunal should accept the version of the petitioner that he received copy of Annexure: A-1 in December, 2018. In the objection to the delay condonation, emphasis has been given on 'other facts' which could have been relevant, had the same been agitated by the respondents in the first round of litigation, which was not done. No such challenge was thrown and, therefore, the judgment rendered on 25.06.2018 does not find mention about the delay in first round of litigation. In view of the above, the Tribunal is inclined to accept the submission of Ld. Counsel for the petitioner that the claim petition has been filed within one year of receipt of the copy of the order impugned. The claim petition is, accordingly, held to be within time.
5. Ld. A.P.O. further submitted that Sri Sukh Chand Tyagi was granted benefit on the basis of judgment dated 23.11.2010, whereby his reversion order from ATO to Accountant was

set aside by the Hon'ble High Court of Uttarakhand. Petitioner of present claim petition was reverted on 03.05.2003 from the post of Accountant to Assistant Accountant and such order has not been set aside by any Court. The judgment of Sri Sukh Chand Tyagi, therefore, will not be helpful to the present petitioner.

6. It has been stated in the Office Order dated 28.09.2016 (Annexure: A 1), which is issued by Director, Treasuries, Pension and Entitlement, that since it was clarified by the Directorate *vide* letter dated 15.01.2016, in response to letter dated 18.11.2015 of the Chief Treasury Officer, that after having considered the representations of the petitioner, he has already been given pay scale of Accountant *w.e.f.* 30.11.2004, and no change can be done by the Directorate in the orders passed by the appointing authority, therefore, petitioner cannot be given pay scale of the Accountant *w.e.f.* 30.08.2002.
7. It has also been mentioned in Annexure: A1 that the judgment rendered by Hon'ble High Court of Uttarakhand in WPSB No. 88/2004, Sukh Chand Tyagi vs. State of Uttarakhand and others on 23.11.2010, is applicable only to Sri Sukh Chand Tyagi, therefore, such benefit cannot be given to the petitioner and other Accountants.
8. Further, according to Annexure: A 1, the benefit of pay scale cannot be given to anyone in the ratio of 80:20 with retrospective effect after coming into force of Uttarakhand Treasury Subordinate Service Rules, 2003. In the written statements, filed on behalf of the respondents, the contents of Annexure: A 1 have been reasserted. It appears that Respondents No. 2 to 4, while deciding the representation of the petitioner as per directions dated 25.06.2018 of this Tribunal, did not pay any heed to the observations made by the Tribunal while deciding the Claim Petition No. 05/DB/2018, on such date. The Tribunal thinks it appropriate to reproduce paragraphs 4 and 5 of the judgment dated 25.06.2018 again, at the cost of repetition. Instead of mentioning the substance of above noted paragraphs, it will be better if those two paragraphs are produced *verbatim* to bring home the point that the Tribunal did not desire what the respondents have perceived and acted upon. Paras 4 and 5 are as follows:

“ 4. It is not a case in which petitioner was denied promotion. ***It is a case in which he was already promoted to the post of Accountant.*** He is admittedly junior most in the list of eligible candidates of Assistant Accountants, who were to be promoted to the post of Accountant. ***If he is given promotion from an earlier date, no one else would be adversely affected.*** The facts of the instant case are peculiar, as if the petitioner was to swim or sink with Sri S.C.Tyagi. It was like a musical chair or see-saw game. When Sri Tyagi was promoted, one post of Accountant fell vacant. Petitioner was also promoted, when Sri Tyagi was reverted, petitioner’s promotion was also cancelled. Sri Tyagi took recourse to writ jurisdiction and succeeded. He was placed appropriately as Assistant Treasury Officer. Petitioner too was promoted to the post of Accountant, but only on 30.11.2004. Here justice could not be meted out to him. It is a case in which both Sri Tyagi and petitioner were promoted. Whereas, with the intervention of Hon’ble High Court, Sri Tyagi was promoted again *w.e.f.* the same date on which he was promoted earlier, but similar treatment was not given to the petitioner. In other words, petitioner was promoted, but his promotion order was cancelled because of the reversion of Sri Tyagi, who, although was granted promotion with the intervention of Hon’ble Court and the petitioner was also granted promotion *w.e.f.* 30.11.2004, but his earlier order of promotion dated 15.02.2003 was not revived. It requires to be emphasized here that when petitioner was promoted *vide* order dated 15.02.2003, he was granted promotion *w.e.f.* 09.08.2002. Same relief was not granted to the petitioner on a subsequent occasion. Whereas the department was benevolent in promoting the petitioner from a previous date on earlier occasion, no such spirit was shown on subsequent occasion while promoting the petitioner on the same post. The facts and circumstances warrant that he ought to have been granted promotion *w.e.f.* 09.08.2002, instead of 30.11.2004 and hence, it is a case of review. In other words, order impugned should be reviewed by the reviewing authority, in the same manner, in which the case of Sri S.C.Tyagi was reviewed by the competent authority.

5. It may be pointed out, at this stage, that the representation of the petitioner was not decided on 15.10.2015, in the manner it ought to have been decided. ***It was mentioned therein that since Sri Tyagi was promoted on the basis of Hon’ble Court’s order, therefore, the petitioner may also obtain similar order from the Court, if he so desires.*** This Court is, therefore, of the opinion that , clearly it is a case in which order impugned should be reviewed by the competent authority, ***considering the peculiar facts and circumstances of the case. Petitioner’s destiny, it appears, was tagged with the destiny of Sri Tyagi and since Sri S.C.Tyagi has obtained the desired relief with the intervention of Hon’ble Court, therefore, in the considered opinion of this Tribunal, petitioner is also entitled to such relief [with the intervention of this Tribunal].***”

[Emphasis supplied]

9. It will be appropriate to mention at this stage that Tribunal’s judgment dated 25.06.2018 has not been assailed by the respondents before Hon’ble High Court. Since it was acted upon, although not in the spirit in which it was written, therefore, the same has attained finality. Annexure: A 1 is, even though not in violation of judgment dated 25.06.2018, but certainly not in compliance of or consistent with

the said order. Also, the reasoning given in Annexure: A 1 runs contrary to the reasoning given in Office Memorandum dated 15.02.2003, issued by D.M., Haridwar (Annexure: A 3), Office Memorandum dated 03.05.2003, issued by D.M., Haridwar (Annexure: A 4) and summary of disposal of representations of Accountants by Chief Treasury Officer, Haridwar *vide* Office Order dated 15.10.2015 (Annexure: A 9).

10. This Tribunal had already expressed its opinion in its judgment dated 25.06.2018 passed in Claim Petition No. 05/DB/2018. It appears that Tribunal's opinion was not taken in the right earnest by Respondents No.2 to 4, and that is why the representation of the petitioner was dismissed *vide* Office Order dated 28.09.2018 (Annexure: A 1). In the aforesaid discussion, this Tribunal has again given its opinion as to why the petitioner is entitled to the pay scale of Accountant *w.e.f.* 09.08.2002, instead of 30.11.2004, with other service benefits. This opinion is now converted into directions.
11. Order as above.
12. The claim petition thus stands disposed of, but with no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 22,2021
DEHRADUN