

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman(A)

CLAIM PETITION NO. 03/NB/DB/2024

Yogesh Kumar Kukshal, Fireman (Male) aged about 38 years, S/o Shri
Ashok Kumar Kukshal R/o Police Fire Station, Khatima District Nainital.

.....**Petitioner**

Vs

1. State of Uttarakhand through Principal Secretary, Home, Government of Uttarakhand, Dehradun.
2. Inspector General of Police, Kumaun Region, Nainital, District Nainital.
3. Deputy Inspector General of Police, Fire & Emergency Services, Police Headquarters, Uttarakhand, 12 Subash Road, Dehradun
4. Senior Superintendent of Police, Udham Singh Nagar, District Udham Singh Nagar.

.....**Respondents**

Present: Sri Piyush Tiwari, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: JULY 18, 2025

Hon'ble Sri A.S.Rawat, Vice Chairman (A)

By means of present claim petition, the petitioner seeks the following reliefs:

“i) To quash the impugned order dated 17.08.2023 issued by respondent no.3 being Annexure No.-1 to this claim petition.

ii) To direct the respondents to promote the petitioner from the post of Fireman to Leading Fireman from the date when his junior was promoted to the rank of Leading Fireman, and restore his consequential seniority for further promotion.

iii) To issue any other or further, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iv) Award cost of the petition.”

2. Brief facts of the case are that-

2.1 The petitioner was working as a Fireman at Fire Station Sitarganj, District Udham Singh Nagar. In year 2019 an allegation was leveled against the petitioner that on 09.11.2019, the petitioner posted objectionable contents through WhatsApp, which was purported to have the potential to adversely affect the law and order situation.

2.2 A preliminary inquiry was conducted by the respondent authorities, wherein it was concluded that it was not proved that alleged message was posted by the petitioner.

2.3 Respondent no.4 issued a show cause notice dated 20.04.2020. The petitioner, on receiving the show cause notice, promptly submitted the reply on 05.05.2020, categorically denying the allegations.

2.4 The respondent no.3 without considering the fact that the charges were not substantiated in the preliminary enquiry and without adequately examining and discussing the petitioner's reply, issued an order dated 12.6.2020 awarding the punishment of censure entry in the character roll of the petitioner.

2.5 Feeling aggrieved by order dated 12.6.2020 passed by respondent no.3, the petitioner preferred a statutory appeal before the respondent no.2 under Section 20 of Uttarakhand Police Act, 2007.

2.6 The respondent no.2 although mentioned the grounds taken by the petitioner in the appeal, but neither the same has been considered nor discussed and without considering and discussing the same, vide order dated 01.8.2020 rejected the appeal preferred by the petitioner.

2.7 The petitioner preferred Writ Petition No. 223 of 2021 (SS) Fireman 41 Yogesh Kumar Kuksal vs. State of Uttarakhand & others before Hon'ble High Court of Uttarakhand challenging the impugned order dated 12.06.2020 & 01.08.2020. The Hon'ble High Court vide judgment and order dated 25.2.2021 dismissed the petition on the ground of alternative remedy to approach before the learned Public Service Tribunal. The petitioner filed claim petition, which was decided by this Tribunal vide order dated 17.10.2022, wherein it was observed that since in the inquiry, it has not been provided/proved that the petitioner himself posted/forwarded the said message therefore, the punishment awarded to the petitioner is not in consonance with the facts and circumstance of the case and is without evidence on record. The Tribunal set aside the punishment order dated 12.06.2020 issued by respondent no. 4 and appellate order dated 01.08.2020 issued by respondent no.2, with further direction to expunge the censure entry recorded in the character roll of the petitioner.

2.8 The competent authority complied with the Judgment dated 17.10.2022 and expunged the punishment of "Censure" vide order dated 30.11.2022. Since no action has been taken for considerable period of time, as such, the petitioner submitted a representation dated 16.01.2023 to promote him to the next higher post. The respondent No 3 vide order dated 17.08.2023 intimated that it has been decided that the petitioner cannot be promoted in terms of promotion procedure for the years 2020-21. No reason has been assigned that on what grounds, the promotion has been stopped.

2.9 The act of respondent no.3 violative of the precedent set by Hon'ble High Court vide Judgment dated 27.10.2021 in WPSS No.393/2019 in the matter of Dinesh Singh Rana Vs State of

Uttarakhand and others and Judgment dated 07.06.2023 in claim petition No 47/NB/DB/2023 titled Shyam Lal Vishwakarma Vs State of Uttarakhand and others.

3. The claim petition has been opposed by the respondents by filing C.A./W.S. It has been contended that regarding the matter of promotion from Fireman to Leading Fireman and Fire Service Driver for the year 2020-21, Fireman No. 41, Yogesh Kumar Kuksal, who was appointed in 2019 at Fire Station Sidkul, Udham Singh Nagar, on 09.11.2019, an objectionable video '*Door Hatao Allah Wala Kyon Janm Bhumi Ko Ghera Hai*' was posted on WhatsApp group. As a result, thereof, an adverse entry was made against the petitioner vide order D-24/2020 dated 12-06-2020. Against this adverse entry, the petitioner filed a claim petition No. 15/NB/SB/2021 before Hon'ble Tribunal, which was decided vide order dated 17.10.2022. In compliance of the decision of the Tribunal dated 17-10-2022, the adverse entry was quashed on 30-11-2022. During the promotion process from Fireman to Leading Fireman Fire Service Driver in the year 2020-21, the then departmental selection committee, in view of the pending claim petition no. 15/NB/SB/2021 filed by Fireman 41- Yogesh Kumar before this Tribunal against the penalty imposed on him in 2020, recommended that the promotion result of Fireman 41 Yogesh Kumar be kept in sealed cover, under the provisions contained in Clause 17(*Chh*) of the Uttarakhand Fire Service and Emergency Services Subordinate Officers/Employees Service (Amendment) Rules, 2021. It was further recommended that the sealed cover of the concerned employee be opened only after the final decision in the matter.

Based on the recommendation of the then departmental selection committee and after due consideration, the sealed envelope containing the promotion result of Fireman (41) Yogesh Kumar to the post of Leading Fireman, dated 21-04-2023, was opened by the newly constituted selection committee. Upon re-evaluation of the previous committee's recommendation in the sealed envelope, and in

accordance with Clause 17(*Chh*) of the Uttarakhand Fire and Emergency Services Subordinate Officers/Staff Service (Amendment) Rules, 2021, as well as the Uttarakhand Government's order No. 1595/Personnel-2/2002 dated 13-05-2003 regarding procedures for sealed envelope selections in promotions of State Govt employees, it was decided at the headquarters level that the said Fireman cannot be promoted to the post of Leading Fireman based on the promotion process conducted in the year 2020-21.

4. R.A. has been filed on behalf of the petitioner denying the contentions made in the W.S. and has reiterated the averments made in the claim petition. It is further submitted that the promotion of the petitioner was solely withheld due to the imposition of the Censure entry. However, once, the said penalty was quashed, the ground for denying promotion ceased to exist. Therefore, there remains no justification for withholding the petitioner's promotion any further.

5. We have heard learned Counsel for the petitioner and learned A.P.O. and perused the records.

6. Learned Counsel for the petitioner argued that the promotion case of the petitioner was kept in the sealed cover in the year 2020-21, as there was an appeal filed by the petitioner in the Uttarakhand Public Service Tribunal against the penalty of censure awarded by the respondent authorities. The penalty of censure was ordered to be expunged by the Tribunal and accordingly the respondents complied the order and expunged the penalty of Censure. The petitioner represented to the Respondents to consider his case for the promotion which was rejected by the respondents on the ground that he was not found suitable by the DPC in the meeting held on 02.06.2021. The argument of the petitioner is that his case for promotion was kept in the sealed cover by the DPC in its meeting and this has been submitted by the respondents also. The respondents, instead of holding the review DPC to consider the case of the petitioner, informed that the petitioner was not found eligible for the promotion by the DPC in the year 2020-21. He has requested to direct the

petitioners to hold the review DPC to consider promotion of the petitioner from the post of Fireman to Leading Fireman.

7. Learned A.P.O. argued that the respondent authorities have opened the sealed cover and found that the petitioner was not found eligible for promotion as he did not fulfill the criteria set for promotion for the year 2020-21. This has been informed to the petitioner by the impugned order by the respondents.

8. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the penalty of censure awarded to the petitioner was ordered to be expunged by the Tribunal vide judgment dated 17.10.2022. The promotion case of the petitioner was kept in the sealed cover by the DPC in the year 2020-21. The reason for keeping the case of the petitioner in the sealed cover was the appeal pending against the censure entry awarded to the petitioner before this Tribunal. The respondents instead of holding the review DPC to consider the case of the petitioner for promotion rejected the representation and intimated the decision of the then DPC meeting held on 02.06.2021. The respondents should have held the review DPC and considered the case of the petitioner which was kept in the sealed cover and then communicated the outcome. The following judgements of the Hon'ble Supreme Court, Hon'ble High Court of Uttarakhand at Nainital and this Tribunal also support the view:-

A. Hon'ble Supreme Court in the matter of Union of India & others Vs K.V.Jankiraman and others (1991) 4 SCC, 109, has held in para 22, which is as under:

22. This sentence is preceded by the observation that when the employee is completely exonerated on the conclusion of the disciplinary/court proceedings, that is, when no statutory penalty, including that of censure, is imposed, he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. This direction in the Memorandum has also to be read along with the other direction which follows in the next subparagraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the

penalty of censure at least, should be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings".

B. In Writ Petition No (S/S) No 393 of 2019, Dinesh Singh Rana vs State of Uttarakhand & Others, the relevant paras of the judgement are as under:

"

5. Since petitioner's claim for promotion was not considered only on account of punishment of censure given to him on 08.11.2013, therefore, in view of the judgment rendered in WPSB No. 19 of 2018, respondents were under a duty to consider his claim for promotion. After the said judgment, petitioner made a representation for his promotion, which has been rejected by the impugned order.

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8. It is settled position in law that no one can take benefit of his own wrong, therefore, respondents cannot be permitted to deny promotion to the petitioner for a wrong committed by them. Thus, this Court has no hesitation in holding that rejection of petitioner's representation by respondent no. 3 is unsustainable in the eyes of law.

9. In such view of the matter, the writ petition is allowed and the impugned order dated 27.10.2018 passed by respondent no. 3 is quashed. Respondent no. 3 is directed to re-consider petitioner's representation claiming promotion, in accordance with law, within six weeks' from the date of production of certified copy of this order."

C. Judgement of the Uttarakhand Public Service Tribunal in the Claim petition No 47/NB/DB/2023 in the matter of Shyam Lal Vishwakarma Vs State of Uttarakhand and Others:

"19. The petition is decided in terms of the decision rendered by Hon'ble High Court on 27.10.2021 in writ petition no. 393 (S/S) of 2019, Dinesh Singh Rana vs. State of Uttarakhand and others. When DPC was held, petitioner's result ought to have been kept in a 'sealed cover' during pendency of his Appeal/ Revision. His juniors were promoted on 31.08.2020. Although the petitioner has been given promotion during pendency of present petition

but he has been given promotion from subsequent date and not from due date when his juniors were promoted (on 31.08.2020). The petitioner, in the peculiar facts of the case, deserves to be considered for promotion from the date his juniors were promoted by holding a review DPC, as if the adverse entry was never in existence.”

9. We hold that the respondents should hold review DPC to consider the case of the petitioner for promotion from the post of Fireman to Leading Fireman in respect of the year 2020-21 as the adverse entry of “Censure” in his ACR have been ordered to be expunged by the Tribunal and the same has been complied by the respondents also. In view of the facts of the case and above-mentioned judgements of the Hon’ble Courts. The impugned order dated 17/8/2023 is liable to be quashed and the Claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned order dated 17/08/2023 is hereby quashed. The respondents are directed to hold Review DPC to consider the case of the petitioner for promotion from the post of Fireman to the post of Leading Fireman for the year 2020-21, within two months of presentation of certified copy of the judgement. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: JULY 18, 2025
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