BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIUBUNAL
BENCH AT NAINITAL

Present: Hon'ble Mr. Rajendra Singh,

……………..Vice Chairman (J)

Hon'ble Mr. A.S.Rawat,

……………..Vice Chairman (A)

CLAIM PETITION NO. 116/NB/DB/2021

Santosh Kumar Singh Khetwal, (Male) aged about 38 years, S/O Late Sri Diwan Singh Khetwal, presently serving as Junior Assistant (Accounts Cadre), in the office of District Horticulture Officer, Bageshwar, District Bageshwar.

………..Petitioner

Vs.

1. State of Uttarakhand, through its Secretary, Department of Horticulture, Government of Uttarakhand, Dehradun.
2. Director, Horticulture and Food Processing, Uttarakhand, Udhyan Bhawan, Chaubatia, Ranikhet District Almora.
3. District Horticulture Officer, Bageshwar.
4 Secretary, Finance Department, Government of Uttarakhand, Dehradun.

…………Respondents

Present: Sri Bhagwat Mehra, Advocate for the petitioner.
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: NOVEMBER 10, 2025

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

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

> *"A. To set aside the impugned communication dated 02-03-2020 issued by the Respondent No. 2 (Annexure No. I to the Compilation No. 1).*
>
> *B. To declare the impugned action of the Respondents in the matter, as arbitrary and illegal.*
>
> *C. To direct the Respondents, particularly Respondent No. 2 to consider and adjust/absorb the petitioner in Accounts Cadre, of Horticulture and Food Proceeding Department Directorate, Uttarakhand from due date, and also keeping in view the similar benefit given to similarly situate persons namely Sri Manoj Kandpal and Sri Sanjay Sati.*

D. To direct the Respondents to grant all consequential benefits to the petitioner.

E. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

F. To allow the claim petition with cost.

2. Brief facts of the case are as under:

2.1 The petitioner was appointed on compassionate grounds on the post of Junior Assistant under Directorate Cadre, vide order dated 21.11.2006 by the Respondent No. 2. The petitioner joined on 29-11-2006 and completed about 15 years of continuous satisfactory service in the Directorate Cadre. Since the petitioner belongs to Commerce background and even, he was B.Com Second year pass and was directed to discharge the duties of Account Section/Accounts related works ever since his appointment as per directions issued by Respondent No. 2.

2.2 The respondent No. 2 transferred the petitioner vide order dated 14.07.2007 to the office of Respondent No. 3 without changing his cadre. The State of Uttarakhand issued a detailed G.O. dated 13.07.2007 relating to filling up the posts connected with accounts matters. In Animal Husbandry Department, two persons namely Sri Himanshu Mathpal and Sri Suresh Chandra Pant, somewhat identical to the petitioner were promoted vide order dated 25.05.2010 to the post of Assistant Accountant. Thereafter, in April, May, 2012, these persons vide order dated 29-06-2012, were promoted to the next higher post of Accountant.

2.3 The petitioner completed his B. Com Final year in the year 2013 from Kumaun University after due permission from the department. Thereafter, he made representation dated 14.08.2013 to the Respondent No. 2 requesting to consider him for absorption/adjustment in Accounts Cadre, which was duly forwarded by the Respondent No. 3. The petitioner again submitted a representation on 21.11.2013 to the Respondent No. 2 stating therein that under RTI Act, the Respondent No. 2 vide letter dated 04.01.2014 inter-alia informed at point no. 4 that as per the government order dated

13.07.2007, the feeding cadre for promotion to the post of Assistant Accountant is now not the Assistant Accounts Clerk and the same is to be filled by direct recruitment as per government order dated 13.07.2007. In reply, the respondent No. 2, admitted that the post of Assistant Accountant was to be filled only by way of direct recruitment on or after 13.07.2007, however, the fact of the matter is that the Respondent No. 2 appointed two persons on the post of Assistant Account Clerk namely Sri Manoj Kandpal and Sri Sanjay Sati w.e.f. 01.08.2007. A detailed appeal under RTI Act was preferred in the matter before the Respondent No. 2 on 06.03.2014, which was disposed of by the Respondent No. 2 in a very vague and evasive manner vide letter dated 11.03.2014 without giving any reply to the points raised in the appeal, particularly regarding Sri Manoj Kandpal and Sri Manoj Sati.

2.4 On the request of the petitioner, his qualification was duly corrected to B.Com. The Respondent No. 2 posted back the petitioner in Directorate and the Respondent No. 3 vide letter dated 28.07.2016 relieved the petitioner.

2.5 The competent authority vide order dated 10.01.2017 sanctioned benefit of First ACP to the petitioner on completion of 10 years continuous satisfactory service w.e.f. 29.11.2016. Thereafter, vide order dated 17.01.2017, the pay of the petitioner was re-fixed. Thereafter on 07.04.2017, the petitioner submitted a representation with a request that if aforesaid two persons namely Shri Manoj Kandpal and Sri Sanjay Sati are being considered for their absorption in Accounts Cadre, in that case, the petitioner's services be also absorbed in Accounts Cadres as both the aforesaid persons are much junior to the petitioner.

2.6 The government vide order dated 03.11.2016, restructured the cadre of the Horticulture Department. As many as 30 posts of Assistant Accountant in the Grade Pay of Rs. 2800/- and 15 posts of Accountant in the Grade Pay of Rs. 4200/- have been created. The respondent No. 2 thereafter, sent a detailed letter on 24.06.2017 to the

Respondent No. 1 by stating that against the aforesaid 15 sanctioned posts of Accountant, only 06 persons are working while against the aforesaid 30 sanctioned posts of Assistant Accountant, no one is working/posted. It was further stated in the said letter that earlier as per government order dated 11.08.983 issued by State Government, the promotion exercise was undertaken to fill up the post of Accounts Cadre also by way of the peculiar facts and circumstances of the Horticulture Department, the ministerial employees who are having B.Com qualification and who are having 03 years experience of Accounts works, may be promoted/absorbed/adjusted against the post of Assistant Accountant.

2.7. The Respondent No. 1 vide letter dated 13.04.2018 disapproved the action of the Respondent No. 2 in appointing aforesaid Sri Manoj Kandpal vide order dated 26.07.2017 on the post of Assistant Account Clerk (Surplus) being contrary to government order dated 13-07-2007. However, it was further decided that if the aforesaid persons namely Sri Manoj Kandpal fulfils all qualifications within 07 years from his appointment on compassionate grounds, then he can be absorbed/adjusted on the post of Assistant Accountant.

2.8 After coming to know about the aforesaid order dated 13-04-2018, two detailed representations dated 18-05-2018 and 08-06-2018 were submitted to the Respondent No. 1 and 2 seeking the same benefit. The Respondent No. 4 in the meeting dated 24-04-2019, asked all the Head of Department to furnished the information relating to working of Accounts Cadre and employees discharging duties in the said cadre. As such letter dated 24-05-2019 was issued in the matter and a consequential letter was issued by the Respondent No. 2 on 27-05-2019 to his subordinates. In response to the same, the Respondent No. 2 sent the required information to the Respondent No. 4 in which it was categorically mentioned that petitioner is discharging duties of Accounts related work/Accounts Cadre for the last more than 10 years.

2.9 Thereafter, vide reply dated 25-06-2019, the Respondent No. 3, also informed the petitioner under RTI Act, about the duties of the

Assistant Accountant and it was also informed to him that he is discharging all the duties which are assigned to the post of Assistant Accountant. The petitioner vide application dated 14-01-2020 under RTI Act, sought information relating to appointment of aforesaid persons namely Sri Manoj Kandpal and Sri Sanjay Sati. On 16-01-2020, the petitioner again submitted detailed representation to the Respondent No. 2. Vide reply dated 01-02-2020 under RTI Act, the Respondent No. 2 furnished the desired information to the petitioner.

2.10 Sri Manoj Chandra Kandpal was appointed on compassionate ground much after the petitioner i.e. on 26-07-2007. While Sri Sanjay Sati was appointed on 19-10-2007. The name of the post of Sri Sanjay Sati was thereafter, changed vide order dated 29-10-2009. It further appears that the aforesaid persons namely Sri Manoj Kandpal approached the Hon'ble Uttarakhand High Court by filing Writ Petition No. 4065 of 2018 with a prayer to adjust and promote him on the post of Assistant Accountant. The said writ petition was disposed of by the Hon'ble Uttarakhand High Court vide the judgment dated 26-08-2019 with a direction to the department to consider the case of Sri Manoj Kandpal for absorption/ promotion on the post of Assistant Accountant and other consequential reliefs, as per law.

2.11 The Respondent No. 1 issued a letter on 31-10-2019 by stating that there is no legal impediment in adjustment of Sri Manoj Kandpal on the post of Assistant Accountant. As such it was directed to comply the said order, as per advice of the Law Department. It further appears that thereafter, a meeting was convened on 13-01-2020 by the Respondent No. 2 and vide order dated 27-01-2020, Sri Manoj Kandpal was adjusted against the post of Assistant Accountant w.e.f. 07-08-2014. Thereafter the petitioner again submitted a representation on 10-02-2020 to the Respondent No. 2. Ultimately the Respondent No. 2 vide letter dated 02-03-2020 virtually rejected the request of the petitioner by stating that the benefit given to Sri Manoj Kandpal cannot be extended to the petitioner and services of the petitioner will be adjusted in future.

2.12 Thereafter, vide letter dated 05.09.2020, the respondent No. 2 asked for option from all the clerical employees who are working against supernumerary posts and appointed on compassionate grounds, to be merged/absorbed/adjusted either in Directorate Cadre or District Cadres/Subordinates Offices Cadre. Since the petitioner was appointed in Directorate Cadre as such, he submitted his option for absorption in Directorate Cadre. It further appears that some employees of Directorate Cadre challenged the aforesaid process before this Hon'ble Tribunal by way of Claim Petition No. 75/NB/DB/ 2020 (Surendra Singh Jalal and others Vs. State of Uttarakhand and others) and in which an interim order was passed by this Hon'ble Court on 07-01-2021, which is still operating. As such the Respondent No. 2 vide order dated 26-04-2021 inter-alia adjusted/absorbed the petitioner in the office of Respondent No. 3, subject to final decision by this Hon'ble Court in the aforesaid case of Sri Surendra Singh Jalal.

3. C.A./W.S. has been filed on behalf of the respondents contending therein that-

3.1 The petitioner was appointed as a dependent of a deceased person to the post of Junior Assistant (Supernumerary) in the Directorate of Horticulture and Food Processing, Udyan Bhawan, Chaubatia on 29/04/2006. He was transferred to the District Horticulture Officer's office in Bageshwar on his request. In the event of a vacancy in the district cadre, he was adjusted against the vacant post at the District Horticulture Officer, Bageshwar (where the plaintiff was working as a dependent of the deceased) by order dated 26.04.2021. Thus, on the date of appointment, the petitioner was not appointed against a clearly vacant post of Junior Assistant. On the basis of available record, there are no adverse facts against the petitioner that would affect his working and the respondent no. 2 did not assign any accounting work to him.

3.2 The posts of Junior Accounts Clerk and Senior Accounts Clerk, as specified in the Government Order dated 11.08.1983, were abolished by Government Order dated 13.07.2007 and on that date, the Junior Accounts Clerk and Senior Accounts Clerk previously appointed in the department had been promoted to the posts of Assistant Accountant. Therefore, the department need not to accommodate the previously appointed Junior Accounts Clerk and Senior Accounts Clerk to the posts of Assistant Accountant. On 29.11.2006, the educational qualification of the petitioner was only Intermediate, and on that basis, he was appointed on the post of Junior Assistant (Supernumerary). The department submitted a proposal to accommodate junior assistant employees with B.Com./M.Com qualifications in the accounting cadre, which was rejected by the government. Regarding the other departments mentioned by the petitioner, the Additional Director of Animal Husbandry Department has mentioned B.Com (Accountancy). Those departments, where Accounts cadre was not formed, in the pursuance of the advice of the Finance Department, took action to adjust Junior Assistants whose qualification was B.Com/M.Com/Accountancy to the post of Assistant Accountant. Whereas in the Horticulture Department, Accounts cadre was already formed separately. In such a situation, instead of taking action for adjustment, the Horticulture Department referred the matter to the Government, which was rejected by the Government through letter no: 1150 dated: 16.11.2009.

3.4 It is stated that the respondent no. 3 permitted the petitioner to appear in the examination with a condition that no claims would be entertained against the department. Since the petitioner passed the B.Com. third-year examination on personal basis, based on the permission granted with above restriction, the petitioner was entitled to no future qualification enhancement. The petitioner submitted a representation on 14.08.2013 to the Controlling Authority and respondent no. 3, which was forwarded to Defendant No. 2 for necessary action. Since the Government Order dated 13.07.2013, required a B.Com. or Postgraduate Diploma in Accountancy and an O-Level Certificate in Computer Operation, with a computer speed of 5,000 key depressions per hour.

3.5 The G.O. dated 11.08.1983 provides for Intermediate Course (with Accountancy) for Junior Accounts Clerk. Since The petitioner was appointed on 29.11.2006, he did not fulfil the provisions at that time. Therefore, he was appointed as Junior Assistant (Supernumerary) and later on adjusted in Junior Assistant (General Cadre). At time of appointment, Mr. Manoj Kandpal's educational qualification was M.Com., which was above the minimum qualification, hence he was appointed as Junior Accounts Clerk. Till the date of appointment of Shri Kandpal i.e. 01.08.2007, the Department had not received the G.O. dated 13.07.2007, which was received by respondent no. 2 through letter 24.08.2007 of the Additional Director, Accounts and Entitlements, Uttarakhand, Dehradun and in compliance with the judgment dated 26.08.2019 passed in the writ petition no. 4065/SS/2018 Manoj Kandpal vs State of Uttarakhand and others, Shri Kandpal was promoted to the post of Assistant Accountant. As far as Shri Sanjay Sati is concerned, Shri Sati was appointed as Junior Assistant (Supernumerary) and later on he was adjusted to the post of Junior Assistant. Shri Kandpal joined the post of Junior Accounts Clerk, whereas the petitioner and Sanjay Sati accepted the post of Junior Assistant (Supernumerary) without any objection at that time and joined the post of Supernumerary and later the adjustment order of Junior Assistant was also accepted.

3.6 It is further contended that as far as the question of doing accounting work in the establishment of respondent no. 2 is concerned, the petitioner was not allotted the work of accounting in the establishment of respondent no. 2, nor have the records been presented by the petitioner as evidence. In the absence of any provision in the Government Order regarding adjustment of Junior Assistants working in the department who have passed B.Com./ M.Com, a proposal for relaxation in the Government Order was sent to respondent no.1 through letter dated 24.06.2017 and again as per the requirement of Hon'ble Minister, a proposal was sent to respondent no.1 through letter 05.07.2018.

3.7 It is further contended that only one person who was appointed on the post of Junior Accounts Clerk was adjusted on the post of Assistant Accountant with effect from 27.01.2020 by the order of respondent no. 2 in the light of the decision dated: 26.08.2019 passed by the Hon'ble High Court. of Uttarakhand, Nainital in writ petition 4065/SS/2018 and the Hon'ble High Court in its decision has said Mr. Kandpal has passed M.Com, he fulfils the conditions contained in G.O. 11.08.1983, which makes him eligible for adjustment/promotion to the post of Assistant Accountant. Mr. Kandpal was adjusted to the post of Assistant Accountant on the basis of the recommendation of the committee constituted, whereas the petitioner has already been adjusted to the post of Junior Assistant. Mr. Kandpal's case was considered in compliance with the decision of the Hon'ble High Court, while the petitioner’s case was different.

3.8 Separate adjustment orders were issued for vacant posts in the Directorate/District Cadre, which the petitioner accepted. If the petitioner did not accept the adjustment order, he should have challenged it in the competent Hon'ble Court and submitted representation to the competent authority, which he did not do. Every department is required to follow the policy set by the government in light of existing/prevailing service rules and government orders. Since the petitioner is not covered by the existing/prevalent service rules, his case was not considered. Once a policy has been followed by an employee, it is not appropriate to claim a policy other than that which is not applicable to the petitioner. The present petition filed by the petitioner is based on false and misleading facts, which is liable to be dismissed.

4. R.A. has also been filed by the petitioner denying the contents of the C.A./W.S. and again reiterated the averments as mentioned in the claim petition. 5. A supplementary affidavit has also been filed on behalf of the petitioner. He has annexed an order dated 9.11.2022 with the Supplementary Affidavit, showing that the similarly situated persons like petitioner have been promoted to the next higher post of Assistant Account Officer from the post of Accountant. Learned A.P.O. has also

filed Supplementary Affidavit, in compliance of the query of the Tribunal dated 19.11.2024, whether the petitioner is still working and discharging the duties in accounts section, in which, it has been stated by the respondents that the petitioner is presently discharging the work in the budget section, audit section, income expenditure, balance sheet and accounts approval section in the establishment and earlier also he had discharged the above work.

5. We have heard Learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner argued that the petitioner was appointed on compassionate ground on the post of Junior Asstt. and at the time of appointment, he was B.Com 2^{nd} year pass. He completed B.Com in the year 2013 after taking permission from the department. He requested the respondents to appoint him as a Asstt. Accountant. He was regularly dealing with accounts related matter in his office ever since his appointment. One person Mr Manoj Kandpal, who was also appointed as a Junior Clerk was later on appointed as Asstt. Accounts Clerk and further on promotion as Asstt. Accounts also. The department has restructured the Cadre of Horticulture department and created posts of Asstt. Account and Accountant in the Accounts cadre. The department carried out promotional exercise to fill up the post of the accounts cadre. The names of the persons working in the department who have completed 3 years of the service and also hold graduate degree in the Commerce for the post of Junior Asst were to be considered, but the proposal did not materialise. Even department of Animal husbandry also appointed eligible persons from the general cadre to the Accounts cadre. In view of the above the impugned order dated 02.03.2020 may be set aside and the claim petition is liable to be allowed.

7. Learned A.P.O. argued that the petitioner was appointed as the Junior Asstt. on compassionate ground as he did not have the requisite qualification and he was not appointed as Asstt. Accounts Clerk. Although the department has restructured the accounts cadre but the

appointment at the lowest level is through direct recruitment only. The petitioner is not eligible for absorption in the accounts cadre as per the existing rules. The claim petition is liable to be dismissed.

8. Based on the arguments of the parties and the available record, we find that the petitioner was appointed as a Junior Clerk in the Department of Horticulture. He was not B.Com at the time of appointment. He completed the B.Com. while in the service. So, at the time of appointment, he was not eligible for direct appointment to the post of Asstt. Accounts Clerk at the time of initial appointment. The department has restructured the accounts cadre and framed the rules for the recruitment at various levels. The appointment to the lowest level, Asstt. Accountant is through direct recruitment only. But department at one point of time intended for lateral entry of the eligible persons from the Clerical cadre to the Accounts cadre. This move of the department did not materialise so far and the petitioner also applied for the same. The petitioner has claimed that he has been dealing with the accounts related works even since his appointment. This fact has also been substantiated by respondents by filing supplementary affidavit.

9. In view of the above, the respondents may reconsider the petitioner for absorption in the accounts cadre, as he holds B.Com degree and have experience of dealing with the accounts related works since his appointment.

10. Accordingly, the claim petition is disposed of. No order as to costs.

RAJENDRA SINGH	**A.S.RAWAT**
VICE CHAIRMAN (J)	VICE CHAIRMAN (A)

DATED: NOVEMBER 10, 2025
DEHRADUN
KNP