

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

Present: Hon'ble Mr. Rajendra Singh

.....Acting Chairman

Hon'ble Mr. A.S. Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 71/NB/DB/2025

Hem Chandra Joshi, aged about 59 years, S/o Shri Harish Chandra Joshi, R/o Bajrang Vihar, Near Lord Krishna School, PO Kathgharia, Haldwani, District Nainital.

..... **Petitioner**

Vs.

1. State of Uttarakhand through its Principal Secretary, Finance, Government of Uttarakhand, Secretariat, Dehradun.
2. Principal Secretary, Personnel Department, Government of Uttarakhand, Secretariat, Dehradun.
3. The Uttarakhand Commercial Tax Tribunal, through its Chairman, Near Hotel Sundar Palace, Niranjapur, Majra, Dehradun.

.....**Respondents**

Present: Sri Pulak Raj Mullick, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: APRIL 20, 2026

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

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

“(i) To quash the order dated 19.05.2017, issued by the respondent no. 3 (on the strength of the communication received by respondent no. 3 from respondent nos. 1 & 2

vide their respective GO's dated 24.04.2017 r/w GO dated 17.02.2016, reserving Nil vacancies in the post of Chief Administrative Officer of Commercial Tax Tribunal) i.e. dismissing the representation dated 03.05.2017 of the petitioner.

(ii) To direct the respondents, to retrospectively promote the petitioner, to the post of Chief Administrative Officer (on the strength of Notification dated 09.04.2015 r/w Office Memorandum dated 26.07.2016 both issued by respondent no. 2, in accordance with the recommendation dated 26.03.2016, issued by the respondent no. 3), with consequential benefits of seniority, pay fixation, arrears, as applicable on account of the retrospective promotion of the petitioner.

(iii) To pass any other order/ grant any other consequential relief, as expedient in law, deemed fit and proper, on the facts & circumstances of the case.”

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

2.1 Petitioner is presently posted as Senior Administrative Officer in the office of Uttarakhand Commercial Tax Tribunal, Haldwani Bench. The petitioner was appointed as "Junior Assistant", on 20.09.1988 and consequently posted to the Dehradun Bench of the U.P. Sales Tax Tribunal on 04.10.1988; whereafter, the petitioner was transferred to Haldwani Bench during September, 2001. The petitioner has since been working in the said Commercial Tax Tribunal for the last 37 years.

2.2 Consequent to the promulgation of Uttarakhand VAT Act, 2005. the name of the said Tribunal was amended to read as "Uttarakhand Commercial Tax Tribunal" (respondent no. 3), with Principal Bench of the said Tribunal at Dehradun; and second Bench at Haldwani (District Nainital) respectively.

2.3 The Additional Secretary, Personnel Department, Govt. of Uttarakhand, issued a notification dated 09.04.2015, for determination of eligibility period for Promotion (Amendment) Rules, 2015, which substituted the Promotion (Amendment) Rules, 2011, which lays down the promotion criteria from 'Senior Administrative Officer' to 'Chief Administrative Officer' that a Senior Administrative

Officer should have completed, at least one year of service on the post of "Senior Administrative Officer"; and would also have completed at least 25 years of service in the said Tribunal.

2.4 Three-member committee under the aegis of the Chairman, Commercial Tax Tribunal, Dehradun (respondent no. 3), unanimously resolved vide order dated 26.03.2016, that the petitioner (who was then designated as "Senior Administrative Officer"), was eligible for promotion to the post of "Chief Administrative Officer" qua the amended staffing pattern pyramid; and was also therefore eligible to be covered in the Pay Band of Rs. 15600-39100 Grade Pay Rs. 5400.

2.5 The petitioner, on the strength of the GO dated 09.04.2015 read with Office Memorandum dated 26.03.2016 (issued by the Chairman, Uttarakhand Commercial Tax Tribunal) read with Office Memorandum dated 26.07.2016, issued by respondent no. 2 namely, the Principal Secretary, Department of Personnel, Government of Uttarakhand, represented to the respondent no. 3, vide representation dated 03.05.2017; that the petitioner was eligible to be promoted as Chief Administrative Officer, inasmuch as, he had completed one year of service, at the post of "Senior Administrative Officer"; qua his promotion order dated 26.03.2016; and on the date of his application, he had also completed a service with the Commercial Tax Department; which was about "28 years 6 months" (i.e. more than 25 years minimum cap); so he was eligible (on the basis of Excellency), to be promoted to the post of "Chief Administrative Officer" qua the notification 09.04.2015, issued by the Secretary, Personnel Department, Government of Uttarakhand. However, the office of the Principal Secretary (Finance), Government of Uttarakhand, through its Secretary (respondent no. 1); meanwhile, had appraised the Chairman, Uttarakhand by a Commercial Tax Tribunal, Dehradun (respondent no. 3) communication dated 17.02.2016 and dated 24.04.2017; that

in terms of the amended staffing pattern pyramid; the post of Chief Administrative Officer was Nil (with a Pay Band from Rs. 15600-39100 Grade Pay Rs. 5400). Therefore, on the strength of the direction serviced by the office of respondent no. 1 to respondent no. 3; the respondent no. 3, had no option but to dismiss the application of the petitioner dated 03.05.2017; sharing the information, that the Govt. of Uttarakhand vide their Govt. orders dated 24.04.2017 r/w the GO dated 17.02.2016 (which had notified the Amended Staffing Pattern), did not allocate any post of "Chief Administrative Officer" in Commercial Tax Tribunal; and as such the representation of the petitioner dated 03.05.2017 was without merits; and accordingly the same is dismissed.

2.6 The staffing pattern pyramid, as disclosed in the G.O. dated 24.04.2017 are being computed below:

Sl. No.	Designation	Staffing pattern (in %)	Percentile	Actual posts available as per amended pattern	Posts allotted in GO dated 24.04.2017
1.	Junior Assistant	32%	3.84	04	05
2.	Senior Assistant	28%	3.36	03	03
3.	Principal Assistant	18%	2.16	02	02
4.	Administrative Officer	8%	0.96	01	01
5.	Senior Administrative Officer	8%	0.96	01	01
6.	Chief Administrative Officer	6%	0.72	01	NIL
Total				12	12

2.7 The petitioner obtained various information under the Right to Information Act, 2005, to delve into the policy decisions taken by the Govt. of Uttarakhand, before they passed the GO dated 17.02.2016 and 24.04.2017.

2.8 The criteria of eligibility of the promotion of Senior Administrative Officer to Chief Administrative Officer, which had earlier been notified vide G.O. dated 09.04.2015; had under Rule 4(1) mandated that only such Senior Administrative Officers; who had completed atleast one year of service as Senior Administrative Officers, would be considered for promotion as Chief Administrative Officer, whose total service in the Subordinate clerical cadre exceeds 25 years, which consideration would be based on Excellency basis. However, vide amendment to the said G.O. dated 09.04.2015, the said criteria was further relaxed vide G.O. dated 13.12.2023, in which the minimum service in clerical cadre criteria of 25 years, was amended to read 22 years and that too on Seniority basis.

2.9 Petitioner, acting with due diligence, first invoked the writ jurisdiction of the Hon'ble High Court of Uttarakhand by filing Writ Petition (S/B) No. 563 of 2021. By order dated 29.07.2025, the Division Bench disposed of the writ on the ground of alternative statutory remedy lying before this Tribunal and reserved liberty to approach this forum, and expressly recorded that the petitioner "shall be entitled to claim benefit of Section 14 of the Limitation Act for excluding the time spent in pursuing remedy before this Court."

2.10 The petitioner is therefore challenging the dismissal order no. 186/2017 dated 19.05.2017, issued by the respondent no. 3 read with letter dated 17.02.2016 & 24.04.2017, issued by office of respondent no. 1.

3. The claim petition has been contested on behalf of the respondents. C.A. has been filed by Assistant Registrar, Commercial Tax Tribunal, Uttarakhand, Dehradun, mainly stating the following:

3.1 आदेश दिनांक 19-05-2017 द्वारा याची के मुख्य प्रशासनिक अधिकारी के पद पर पदोन्नति हेतु प्रस्तुत प्रार्थना पत्र दि० 03-05-2017 को उत्तराखण्ड

के शासनादेश सं०-293/2017/33(100)XXVII (08)/01 दिनांक 24-04-2017 के परिपेक्ष्य में सारहीन होने के कारण अस्वीकार कर दिया गया था। उत्तराखण्ड शासन द्वारा अधिकरण में मुख्य प्रशासनिक अधिकारी का पद सृजित नहीं किया गया है अतः याची के प्रार्थना पत्र को नियमानुसार ही अस्वीकार किया गया है।

3.2 उत्तराखण्ड शासन की अधिसूचना दिनांकित 09-04-2015 में मुख्य प्रशासनिक अधिकारी के पद पर पदोन्नति हेतु पोषक पद की अर्हता का प्राविधान किया गया है ना कि यह व्याख्या/प्राविधान किया गया है कि किसी विभाग विशेष में मुख्य प्रशासनिक अधिकारी का पद सृजित न होने पर भी कार्मिक के द्वारा मात्र अर्हता के आधार पर पदोन्नति का दावा किया जा सकता है। उत्तराखण्ड शासन के कार्मिक विभाग की अधिसूचना सं०-90/XXX(2)/2016-30(51) 15 दिनांक 16-07-2016 द्वारा उत्तराखण्ड राज्य के राजकीय विभागों में मिनिस्ट्रीयल संवर्गीय स्टाफिंग पैटर्न को प्रतिशत गणना के अनुसार संशोधित किया गया है जिसके अनुसार मुख्य प्रशासनिक अधिकारी का गणनात्मक प्रतिशत 2 से बढ़ाकर 6 किया गया है।

3.3 कार्यालय अभिलेख के अनुसार अधिकरण के आदेश दिनांक 26-3-2016 के द्वारा तीन सदस्यीय समिति की संस्तुति के कम में याची की पदोन्नति प्रशासनिक अधिकारी के पद से वरिष्ठ प्रशासनिक अधिकारी के पद वेतन बैंड 9300-34800 ग्रेड वेतन 4800 पर उनके कार्यभार ग्रहण करने की तिथि से एक वर्ष की परिविक्षा अवधि पर की गयी है।

3.4 याची के द्वारा उत्तराखण्ड शासन के कार्मिक अनुभाग के कार्यालय ज्ञाप दिनांक 26-07-2016 के परिपेक्ष्य में मात्र उनकी मुख्य प्रशासनिक अधिकारी के पद पर पदोन्नति हेतु पोषक पद की अर्हता पूर्ण करने के फलस्वरूप मुख्य प्रशासनिक अधिकारी के पद पर पदोन्नति किये जाने का अनुरोध किया गया था। किंतु उत्तराखण्ड शासन के वित्त अनुभाग-8 के द्वारा जारी शासनादेश दिनांक 24-04-2017 द्वारा इस अधिकरण के अधिष्ठान में मिनिस्ट्रीयल संवर्ग में संशोधित पैटर्न लागू किया गया है जिसमें मुख्य प्रशासनिक अधिकारी का पद सृजित नहीं किया गया है।

3.5 शासन द्वारा लागू नियमावलियों/ शासनादेश के कम में ही याची को उनके सम्पूर्ण सेवाकाल में चार पदोन्नति दी जा चुकी है। यह कहना कि उनके साथ सौतेला व्यवहार किया गया, गलत है। किसी विभाग विशेष में किस वेतनमान में कितने पद सृजित किये जाने हैं यह निर्णय विभाग विशेष की आवश्यकताओं और परिस्थितियों/ कार्यशैली के आधार पर शासन स्तर पर ही लिया जाता है।

3.6 अधिकरण के पत्र दिनांक 03-10-2016 के द्वारा कार्मिकों के हित में पदोन्नति के अवसर पैदा करने की हितदृष्टि से शासन को प्रस्ताव भेजा गया था जिसके कम में शासन के शासनादेश दिनांक 24-04-2017 द्वारा अधिकरण में मिनिस्ट्रीयल संवर्ग के संवर्गीय ढाथों का पुनर्गठन कर दिया गया था, जिसमें मुख्य प्रशासनिक अधिकारी का पद सृजित न होने के कारण अधिकरण के कार्मिकों की पदोन्नति की हितदृष्टि से गणितीय आकलन के आधार पर 72 को 1 माने जाने के आधार पर मुख्य प्रशासनिक अधिकारी का पद सृजित किये जाने हेतु शासन के समक्ष विभागीय प्रस्ताव प्रस्तुत किया गया था। विभाग द्वारा शासन के समक्ष प्रस्ताव प्रस्तुत किये जाने का अर्थ यह नहीं है कि पद स्वीकृत माना जायेगा जिसके सापेक्ष पदोन्नति की जा सकती हो। पद स्वीकृत किया जाना अथवा न किया जाना शासन का नीतिगत निर्णय है। बिना पद स्वीकृत हुए किसी भी विभाग द्वारा उस पद पर पदोन्नति की प्रक्रिया प्रारम्भ नहीं की जा सकती है। अधिकरण अभी 'मूल्य वर्धित कर अधिनियम 2005' के अन्तर्गत चल रहा है, जिसका राज्य कर विभाग से प्रशासकीय सम्बन्ध नहीं है और राज्य कर विभाग एक अलग विभाग है। दोनों ही विभागों के विभागाध्यक्ष अलग-अलग हैं।

3.7 उत्तराखण्ड शासन द्वारा जारी शासनादेशों/नियमावली के आधार पर याची को समय-समय पर वित्तीय/प्रोन्नति के लाभ दिये गये हैं और जहाँ तक मुख्य प्रशासनिक अधिकारी के पद पर पदोन्नति का प्रश्न है, उनके द्वारा अधिकरण के अध्यक्ष महोदय के समक्ष एक प्रार्थना पत्र दिनांकित 03-5-2017 प्रस्तुत किया गया था जिसे सारहीन होने के कारण दिनांक 19-05-2017 को अध्यक्ष महोदय द्वारा निरस्त कर दिया गया था। इसके उपरांत याची के द्वारा अधिकरण में अथवा अधिकरण के उक्त आदेश दिनांक 19-5-2017 के बिरुद्ध शासन के समक्ष स्तर पर कोई भी प्रत्यावेदन प्रस्तुत नहीं किया गया है।

4. Rejoinder affidavit has been filed by the petitioner against the counter affidavit filed by respondent no. 3, reiterating the facts contained in the claim petition.

5. Heard learned Counsel for the parties and perused the record.

6. Learned counsel for the petitioner argued that the petitioner has already put more than 28 years of the service and is posted as Senior Administrative Officer. He fulfills the eligibility criteria for the

promotion on the post of Chief Administrative officer, but for want of sanctioned post of the CAO, he has not been promoted so far.

7. The cadre structure as per the guidelines of the Govt. has 2% posts of the cadre earmarked for the CAO in all the departments. Government vide OM dated 09.04.2015 amended the rules for promotion for the post of CAO from SAO and vide OM dated 16/07/2016 approved the restructuring of the ministerial cadres in the Government departments and fixed the percentage of the CAO posts from 2 percent to 6 percent. The change on the percentage has increased the number CAO posts in most of the departments. The Commercial Tax Tribunal also submitted the proposal to increase the post of CAO from 0 to 1 but the Govt. did not accept the request despite several reminders citing how the cadre restructuring has increased posts of CAO in many departments. The petitioner could not be promoted due to non-availability of post of CAO, whereas the employees of the other departments of similar seniority have been promoted on the posts of the Chief Administrative Officer (CAO). In view of the above, the impugned order dated 19.05.2017 is liable to be quashed and the petitioner is liable to be promoted on the post of the CAO.

8. Learned APO argued that there is no post of CAO in the Commercial Tax Tribunal due to which the petitioner could not be promoted. The ministerial cadres of the many departments have been already restructured, and post of CAOs were created there, as it was mandated that the post of the CAO existing before restructuring will be included in the revised posts. The ministerial cadre strength of other departments larger than the Tribunal were given the additional posts of CAO. The Government did not approve the proposal for increasing the post of CAO in the Tribunal. Hence the petitioner cannot be promoted to the post of CAO due to non-availability of sanctioned post of CAO. The petitioner has already got 4 promotions against three mandated by the Government and

there was no step-motherly treatment meted out to him. Hence, the Claim petition is liable to be dismissed.

9. Based on the arguments of the parties and perusal of the record, the Tribunal finds that the Principal Secretary, Personnel Govt of Uttarakhand increased the posts of CAO from 2% to 6% and also decided that in the department where the posts of CAO already exist will be adjusted against the increased posts of CAO. The departments which the petitioner cites to stake his claim for the post of CAO have larger ministerial cadres and also had the post of the CAO already there. The Govt. did not approve the post of the CAO against 12 posts of the ministerial cadre in the Commercial Tax Tribunal. Since there is no post of CAO sanctioned in the Tribunal the petitioner cannot be promoted. Hence the petitioner cannot claim for the promotion and the claim petition is liable to be dismissed.

ORDER

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

RAJENDRA SINGH
ACTING CHAIRMAN

A.S. RAWAT
VICE CHAIRMAN (A)

DATED: APRIL 20, 2026
DEHRADUN
KNP/RS