BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

------ Acting Chairman

Hon'ble Mr. Arun Singh Rawat

-------Vice Chairman (A)

CLAIM PETITION NO. 39/DB/2023

1. Bisheswar Prasad S/O Shri Babuelal Gohiwar, Age 44, Directorate of Fisheries, Badashi Grant, Dhaniyar, Raipur Road Dehradun.
2. Vishal Dutta S/O Shri Brahma Dutta, Age 44, Office of District In-charge Fisheries, Bhimtal Nainital.
3. Ramesh Singh Chalal S/O Shri Dayal Singh Chala, Age 40, Office of Assistant Director Fisheries, Vikas Bhawan, Pithoragarh.
4. Manoj Singh Miyan S/O Shri Shiv Prasad Miyan, Age 41, Office of District Incharge Fisheries, Vikas Bhawan, Bageshwar.
5. Tribhuwan Chandra Mourya S/O Shri Ramesh Mauriya, Age 4, Office of Assistant Director Fisheries, Vikas Bhawan, Udham Singh Nagar.
6. Vinod Kumar Yadav S/O Shri Ram Naresh Yadav Age 42, Directorate of Fisheries, Badashi Grant, Dhaniyar, Raipur Road Dehradun.
7. Abhishek Kumar Mishra S/O Late Shri Prem Nath Mishra, Age 39, Office of District Incharge Fisheries, Vikas Bhawan, Pauri.
8. Jai Prakash S/O Shri Rameshwar Dayal Bhaskar, Age 41, Office of Assistant Director Fisheries, Vikas Bhawan, Haridwar.

……Petitioners

vs.

1. State of Uttarakhand through Secretary, fisheries & Dairy, Civil Secretariat, Dehradun.
2. Joint Secretary, Fisheries, Civil Secretariat, Dehradun, Uttarakhand.
3. Director Fisheries, Uttarakhand, Directorate of Fisheries, Bhopal Pani, Dehradun.

……Respondents

Present: Ms. Bhavya Sharma & Sri Imraj Rautela, Advocates,
for the petitioners.
Sri V.P. Devrani, A.P.O. for the Respondents No. 1 to 3.
Sri K.P.Upadhyay, Senior Advocate, assisted by
Sri Hemant Pant (online), & Sri Ankit Rana, Advocates,
for the intervener

JUDGMENT

DATED: OCTOBER 28, 2026

Sri Arun Singh Rawat, Vice Chairman (A)

By means of present claim petition, petitioners seek the following reliefs:

> *1.To issue order or direction to the Respondents to quash the order dated 20.01.2023 (Annexure A 1) vide which the representation of the petitioner has been rejected.*
>
> *2. To issue order or direction to the Respondents to promote the petitioners on the post of Assistant Director Fisheries from the date the DPC recommendations are received by the department.*
>
> *3. Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case.*
>
> *4. Award the cost of the petition to the petitioner against the respondents."*

2. Facts, in brief, are that petitioners are aggrieved with non-issuance of promotion order to the post of Assistant Director, Fisheries, in furtherance of the recommendation of DPC meeting held on 03.08.2022, on the ground that the staff structure needs to be changed and staff posts are needed to be increased at the bottom so as to make the staff structure pyramidical.

2.1 The claim petition is also filed against order dated 20.01.2023, issued by Respondent No.2, by which representation of the petitioners was rejected (Annexure: A 1).

2.2 Petitioners are presently posted as Senior Inspectors, Fisheries, in the various districts of the State of Uttarakhand. Services of the petitioners are governed by the Uttaranchal Fisheries (Gazetted) Service Rules, 2006 (for short, Rules of 2006). Part II Rule 4 of such rules provides for the strength of the cadre. Rule 5(4) defines source of recruitment of Assistant Director, Fisheries. All the petitioners have completed five years of minimum qualifying service and are eligible to be promoted. The criteria for promotion is seniority subject to rejection

of unfit. Rule 14 (Part V- Procedure for recruitment), lays down the criteria for determination of vacancies. In the Fisheries Department of Uttarakhand, a total of 219 posts were sanctioned earlier, in which 07 posts of Assistant Director, Fisheries, Group-B were approved, out of which there was a provision to fill up 50% posts, *i.e.* 03 posts by direct recruitment, and 50% posts from Senior Inspector, Fisheries, *i.e.* 04 posts by promotion. In view of the shortage of officers/ employees in the department, the Directorate of Fisheries Department felt the need to enhance the number of posts to sustain the increased workload. Proposal to increase the posts in the structure of fisheries Department was sent to the Government, in which the Government was requested to approve 20 new posts of Assistant Director, Fisheries, Group-B.

2.3 Under the departmental proposal, a total of 37 posts of various cadres were approved *vide* G.O. dated 13.05.2022. In this G.O., sanction was given for 18 new posts of Assistant Director, Fisheries. G.O. was issued on 13.05.2022 (Annexure: A 4).

2.4 A requisition for promotion of eligible candidates on the post of Assistant Director, Fisheries, Group-B was sent to the Public Service Commission, Haridwar. The date of DPC was fixed by the Public Service Commission for promotion of 09 personnels, on which the DPC could not be held at that time, as the Secretary, Fisheries was busy with some official work. Finally, the DPC was held on 03.08.2022.

2.5 Public Service Commission, Haridwar, *vide* letter dated 12.08.2022 sent its recommendation for promotion of 09 Senior Inspectors, Fisheries as Assistant Director, Fisheries (Annexure: A 5). No action was taken on the recommendation of the petitioners. The petitioners represented to the respondents on 13.10.2022. When there was no response, the petitioners approached the Hon'ble High Court by filing WPSB No. 681/2022, Vishal Datta and others vs. State of Uttarakhand and others. The Hon'ble High Court was pleased to direct the respondents to decide the representation of the petitioners (Annexure: A 6). Petitioners' representation has been rejected *vide* order dated 20.01.2023, on the ground that the staff structure needs

to be changed and till the time the staff structure is not changed, the promotion orders cannot be issued (Annexure: A 1).

2.6 While rejecting the representation of the petitioners, Respondent No.2 failed to appreciate that the rights of the petitioners for promotion have already accrued and accrued right cannot be taken away with subsequent change. When the DPC was convened, the game had already begun and the rules for the game cannot be changed subsequently. Change of staff structure amounts to review, which power is not available with the respondents.

2.7 The claim petition is supported by the affidavit of Sri Vishal Dutta, Petitioner No. 2. Relevant documents which have been filed along with the claim petition, are as follows:

2.8. Order dated 20.01.2023, rejecting the representation of Sri Vishal Datta, Petitioner No. 2 has been brought on record as Annexure: A 1. Copy of Rules of 2006 has been filed as Annexure: A 2. Breakup of sanctioned posts has been given in letter dated 03.10.2017 (Annexure: A 3). Staff structure in Fisheries Department has been reorganized *vide* letter dated 13.05.2022 (Annexure: A 4). Chairman, Public Service Commission; Secretary, Fisheries, Govt. of Uttarakhand; Director, Fisheries, Uttarakhand, constituted DPC on 03.08.2022. Letter dated 12.08.2022 (Annexure: A 5) has been issued by the Secretary, Uttarakhand Public Service Commission, Haridwar. Copy of minutes of DPC has also been enclosed as Annexure: A 5 (*colly*). 11 Senior Inspectors, Fisheries made a joint representation to Director, Fisheries on 14.10.2022 (Annexure: A 6). Order dated 13.12.2022 passed by the Hon'ble High Court in WPSB Bi, 681/2022 has been brought on record as Annexure: A 6 (*colly*).

3. The claim petition has been contested on behalf of the respondents. Ld. A.P.O. has filed Counter Affidavit of Respondent No.1, which has been sworn and verified by Sri Rajendra Kumar Bhatt, Joint Secretary Fisheries, Govt. of Uttarakhand, Dehradun.

3.1 In Para 6 of such C.A., it has been mentioned that the services of the petitioners are governed by the Uttaranchal Fisheries (Gazetted) Service Rules, 2006. Rule 5 has been mentioned in para 6 of the C.A. Government decided to restructure the existing staff pattern *vide* order dated 13.05.2022 and created additional 18 new posts of Assistant Director, Fisheries in additions to 07 earlier posts, as such total posts of Assistant Director, Fisheries were 25. (G.O. dated 13.05.2022 is filed as : Annexure: A 4). In the same paragraph *i.e.* Para 6, reference of quota prescribed in the Rules has been given as 13 posts for promotion and 12 posts for direct recruitment. Reference of minutes of DPC has also been given in the same paragraph. Petitioners moved a representation, which was decided by the respondent authorities under the direction of the Hon'ble High Court. Objections from different stakeholders were invited for finalization of pyramidic structure. The posts, which were created *vide* order dated 13.05.2022, have been superseded by subsequent order dated 10.01.2023. No promotion can be granted to the petitioners on such posts, which are not existing at present.

3.2 Merely because the names of the petitioners have been recommended by the DPC, the same does not confer vested right for promotion to the petitioners. Letter dated 20.01.2023 regarding revision of departmental structure has been filed as Annexure: A 1. Letter dated 13.05.2022 is also to the same effect. Copy of the note-sheet has been brought on record as Annexure: CA- R 1.

3.3 Another C.A. has been filed on behalf of Respondent No. 3 by Sri Promod Kumar Shukla, Deputy Director (Administration), Fisheries Directorate, Uttarakhand, Dehradun. Relevant documents have also been filed along with such C.A.

3.4 Copy of letter dated 19.05.2022 (Annexure: CA-R 4) has been brought on record to show that requisition was sent for direct recruitment of Assistant Director, Fisheries, for the selection year 2021-22.

3.5 With the Counter Affidavit filed on behalf of Respondent No. 3, many documents have been enclosed, which have already been made available in the file of the Tribunal, on behalf of the petitioners.

4. Rejoinder Affidavits against both the Counter Affidavits, along with relevant documents, have been filed on behalf of the petitioners reiterating the same facts which have been mentioned in the claim petition. Some more documents have been filed by the petitioners. A reference for those documents may be given, as and when so required, by the Tribunal, while discussing the merits of the case.

5. An impleadment application has been filed on behalf of Uttarakhand Fisheries Inspector Association through its President Sri Aamod Nautiyal, along with affidavit and a document [Annexure: A 1] for impleading the Association as Respondent No.4. Sole document, which has been filed with the impleadment application is a letter issued by Sri Rajendra Kumar Bhatt, Joint Secretary, which has been addressed to Under Secretary, Chief Minister Office, Section -1, on 20.09.2023, mentioning therein that the posts of Assistant Director, which were increased, were not since filled up, therefore, such posts ceased to exist. In other words, increased posts of Assistant Director, Fisheries did not exist as on 20.09.2023.

6. Objections on impleadment application and Miscellaneous Application were filed on behalf of the petitioners. After hearing Ld. Counsel for the parties, the Tribunal passed an order on impleadment application and objections thereon on 03.12.2024, as under:

> “An impleadment application has been filed on behalf of Uttarakhand Fisheries Inspector Association (for short, 'Association') for arraying them as respondent no. 4 in the claim petition.
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> An affidavit of Sri Aamod Nautiyal has been filed in support of impleadment application.
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> One document has also been filed along with the same.
>
> Objections have been filed on behalf of the petitioner, which is supported by the affidavit of Sri Bisheswar Prasad.
>
> Learned A.P.O., who is representing respondents no. 1 to 3, seeks and is granted time up to 17.12.2024 to file C.A./ W.S. on behalf of respondent no. 2.

> The Association is interested in contesting the claim petition. The response of respondent-State and Association appears to be the same. The State Govt. is there to protect Association's cause. The State Govt. and the Association are for pyramidic structure. Petitioner's contention is that since their case has been recommended by the DPC, they should be promoted to the next higher post. The State is espousing the cause of Association. No useful purpose would be served by impleading the same as party-respondent no. 4 at this stage. If at any time, it is felt by the Tribunal that Association is necessary party or proper party, the same may be considered at an appropriate time. The Association may however permitted to intervene in the matter.
>
> In short, 'intervention' is permitted to the Association.
>
> Impleadment application is disposed of by permitting the Association to intervene at the time of hearing.
>
> ……."

7. We have heard the Learned counsel for the petitioners, intervener association and the Learned APO and gone through the records submitted by the parties.

8. Ld. Counsel for the petitioners submitted written arguments and also argued the case before the Tribunal. He submitted that the petitioners are eligible for the promotion to the post of the Assistant Director Fisheries as per the Uttaranchal Fisheries (Gazetted) Service Rules 2006. The department vide G.O. No. 295 dated 13.05.2022, created 18 posts of Assistant Directors. So, 9 posts of the promotion quota were vacant. The department sent a proposal for selection of ADF for these posts and UKPSC constituted DPC which recommended all the nine candidates for the post of the Assistant Director Fisheries. Now the department authority cannot say there are no vacancies available for the promotion on the date of the DPC i.e. 03.08.2022 and on the date of the commission's recommendation i.e. 12.08.2022, vacancies existing but subsequent expiry date 28.02.2023 cannot operate retrospectively. The reason no vacancy exists is denial of the promotion to the petitioners and overlooking the rights of the petitioners. The creation of the post vide order dated 13.05.2022 has been issued with the concurrence of the Finance and Personnel department, Cabinet and the Chief minister. This is clear from the note-sheets related to the creation of the posts and nowhere in the entire process the issue that the cadre structure is unbalanced, has not arisen. Vide impugned order dated 20.01.2023, it has-been informed

that the cadre structure is to be pyramidical, this “restructuring” idea originated from the letter dated 23.06.2022 of Shri Ravindra Jugran and letter date 26.02.2023 of Shri Kashi Singh Airy which have no locus standi in the matter. But the restructuring exercise proposed in 2022 has not been completed yet as revealed from the letter dated 08.10.2026 despite the time of two months fixed by the Tribunal vide order dated 08.8.2026 in Claim petitions 91/DB/2026 decided on 31.08.2022 and the claim petition no 147/DB/2023 decided on 08.04.2026, the vacancies existing before the change must be filled as per the old rules. This has been affirmed by the Hon’ble Apex Court in the matter of *Y.V. Rangaiah* applies and this principle applies in the present case also.

8.1 Ld. Counsel for the petitioners has further argued that the respondents had ample time to issue orders for promotion of petitioners, the issue of the lapse of the posts has not been raised in the order dated 20.01.2023 which has been passed before 28.02.2023. This shows that the posts lapsed because the respondents did not fill them. The temporary sanctions are accorded in the beginning for creation of the posts, which are subsequently made permanent. The posts which are once approved by the cabinet and which was collective decision, cannot be abolished without cabinet decision. There are many decisions made by the Hon’ble Courts in the similar matters, some of the decisions are as under :

In *P.N. Premachandran Vs. State of Kerala (2004) 1 SCC 245* the Hon’ble Supreme Court has held that the employees cannot suffer for the administrative lapse of the state for no fault of others and upheld the retrospective promotion.

In the case Union of India Vs Hemraj Singh Chauhan (2010) 4 SCC 290, the Hon’ble Supreme Court held that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right under Article 16 and that the State must act as a model employer.

The *Hon'ble High Court of Himachal Pradesh in Subhash Chander Vs State of H.P., 2026 HHC :40635* held: granting the promotion from the year of vacancy with arrears and 6% interest, rejecting the State's reliance on prospective promotions instructions and *Hon'ble Division Bench of Telengana High Court in Union of India Vs. M Nooka Raju , W.P. No. 24453 of 2016 (decided on 13.12.2024)* upheld retrospective promotion from the date of eligibility, holding the department's reasons for delay to be neither valid nor convincing.

8.2 It has also been argued on behalf of the petitioners that the respondents vide letter dated 08.10.2026 informed that the intention of the department is to restructure the cadre and get the benefits of the promotions to the petitioners but the posts on which the petitioners have been recommended for the promotion are the vacancies of the year 2021-22, so they should be given promotion from date of their recommendations by the UKPSC. The petitioners have been deprived of seniority as well as the further promotional avenue. Some of them will be superannuating in the near future and they will retire without getting promotions. In the proposal for the restructuring the cadre there will be 13 posts of the Asstt. Directors and 03 posts will be available for premotion of the petitioners which will defeat the accrued rights of the petitioners. In view of the above the claim petition is liable to be allowed.

9. Ld. A.P.O. argued and submitted the written arguments also. He has submitted that the service conditions of the petitioners are governed by the Uttaranchal Fisheries (Gazetted) Service Rules, 2006. They are seeking promotion to the post of Assistant Director (Fisheries) (ADF). Under Rules 4(1) and 4(2) of the Rules of 2006, the Government is empowered to determine the strength of the service and the number of posts in each category. Rule 5(4) provides that 50% of the ADF posts are to be filled by promotion from amongst substantively appointed Senior Fisheries Inspectors who fulfil the prescribed eligibility conditions, including five years of service, while

the remaining 50% are to be filled through direct recruitment. Rule 23(2) originally provided for seven ADF posts.

9.1 Vide Government Order dated 13 May 2022, the Government sanctioned 37 additional posts in various categories, including 18 additional ADF posts. These posts were sanctioned only up to 28.02.2023 and were liable to be abolished even earlier. Consequently, the total number of ADF posts considered under the restructuring exercise became 25, comprising seven original posts and 18 additional posts. Applying the 50:50 recruitment quota, 13 posts were earmarked for promotion and 12 for direct recruitment. In its letter dated 12 August 2022, the Uttarakhand Public Service Commission recorded that four promotion-quota posts had already been filled and nine vacancies remained.

9.2 Further Ld. A.P.O. has argued that the Uttarakhand Public Service Commission conducted a Departmental Promotion Committee (DPC) meeting on 03.08.2022 and recommended eligible Senior Fisheries Inspectors for promotion to the post of ADF. The petitioners submitted a representation dated 13.10.2022 seeking implementation of the DPC recommendations and subsequently filed Writ Petition No. 681/2022 (SB), Vishal Datta and Others v. State of Uttarakhand and Others. By order dated 13.12.2022, the High Court directed the State Government to consider and decide their representation on its merits within four weeks. Meanwhile, the Government initiated restructuring the organization to align it with the proposed pyramid structure. By Government Order dated 10.01.2023 (Annexure: 8 to the C.A.), the restructuring process was initiated, and the Director of Fisheries was required to submit a revised proposal with proper justification. The Government subsequently declined to issue promotion orders at that stage on the ground that the additional posts had not been reorganized in accordance with the proposed structure. The Respondents maintain that the petitioners' representation was disposed of by a reasoned order in compliance with the High Court's directions. Only seven original ADF posts are presently available, and all seven are filled, no

additional ADF posts are currently sanctioned or available. The earlier sanctioned 18 additional posts were temporary and abolished on 28.02.2023 as they were not extended further. The department vide communication dated 08 October 2026, pursuant to the Tribunal's order dated 10 September 2026 in Claim Petition No. 39/DB/2023, submitted that the process of restructuring the organization is still underway.

9.3 Learned APO has also submitted that the DPC recommendation does not automatically confer an absolute right to promotion. He referred the judgment in *State of Odisha v. Sreepati Ranjan Dash,* dated 18 May 2026.

9.4 Ld. A.P.O. argued that the 07 original ADF posts are filled, the 18 additional posts were sanctioned earlier for a limited period, and do not exist now. In view of the above the claim petition is liable to be dismissed.

10. Ld. Counsel for the Intervener association submitted written arguments and argued before the Tribunal. He submitted the petitioners have no enforceable right to promotion merely on the basis of the DPC recommendations, particularly when the recommendations were never approved by the competent appointing authority. The Government vide order No. 295 dated 13.05.2022 sanctioned 37 additional posts, including 18 posts of Assistant Director Fisheries, only on a temporary basis up to 28.02.2023, unless abolished earlier. Since these posts were neither extended nor renewed, they automatically lapsed on 28.02.2023. The State Government, through its communication dated 20.09.2023, also confirmed that the posts had ceased to exist. Accordingly, in the absence of valid and subsisting sanctioned vacancies, no direction can be issued for promotion against posts that have already lapsed.

10.1 Ld. Counsel for the Intervener further contends that the cadre structure of the Fisheries Department had become top-heavy and administratively unviable, with 25 posts of Assistant Director

against 28 posts of Senior Fisheries Inspector and 62 posts of Fisheries Inspector. Such an arrangement would adversely affect the promotional avenues of the 62 Fisheries Inspectors represented by the Intervener Association. The State Government consciously decided on 18.01.2023 to halt promotions and restructure the cadre into a balanced hierarchical arrangement. A revised proposal dated 18.04.2026, envisaging 70 Fisheries Inspectors, 30 Senior Fisheries Inspectors and 13 Assistant Directors, corresponding to one Assistant Director per district, is stated to be under inter-departmental consideration.

10.2 Ld. Counsel for the Intervener relies upon Shankarsan Dash v. Union of India, (1991) 3 SCC, Union of India v. K.V. Jankiraman, (1991) 4 SCC 109, and S.B. Bhattacharjee v. S.D. Majumdar, (2007) 10 SCC 513, to contend that inclusion in a select list or recommendation by a DPC does not confer an indefeasible right to promotion, which becomes enforceable only in accordance with the applicable rules and upon approval by the competent authority. Reliance is also placed upon *State of Himachal Pradesh v. Raj Kumar, (2023) 3 SCC 773*, which, according to the Intervener, clarifies that there is no universal rule requiring vacancies to be filled under the rules or cadre structure prevailing when they arose, and that employees have no vested right to promotion against past vacancies when the State undertakes cadre restructuring. The judgments in *the State of Punjab v. Arun Kumar Aggarwal, (2007) 10 SCC 402, Union of India v. Pushpa Rani, (2008) 9 SCC 242, and P.U. Joshi v. Accountant General, Ahmedabad, (2003) 2 SCC 632*, are also relied upon to assert that cadre restructuring, creation or abolition of posts, and the determination of promotional avenues fall within the domain of the executive, in which judicial interference is limited.

10.3 Ld. Counsel further submits that the judgments relied upon by the petitioners, namely Subhash Chand v. State of Himachal Pradesh and T. Nagaraju v. Sri Rajeshwar Tiwari, are distinguishable, as those cases concerned different circumstances involving existing

substantive vacancies, statutory service rules or seniority-related issues, whereas the present case concerns temporary posts that had lapsed and a policy decision to restructure the cadre. Reliance is also placed upon *All India Judges' Association (III) v. Union of India, (2002) 5 SCC 247*, to emphasize the importance of maintaining a rational pyramidical cadre structure, with an adequate foundational cadre and progressively fewer posts at higher supervisory levels.

10.4 The DPC recommendations did not confer any vested right to promotion upon the petitioners; the temporary posts of Assistant Director Fisheries had lapsed on 28.02.2023; and the State Government was justified in withholding approval of the recommendations in view of the proposed cadre restructuring. It is, therefore, submitted that the reliefs sought by the petitioners are legally unsustainable and that the claim petition deserves to be dismissed.

11. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the Uttarakhand Public Service Commission constituted DPC, in which petitioners have been recommended for promotion to the 09 posts of the Assistant Directors. But the respondents' authorities did not approve the recommendations and instead issued an order that the posts will lapse on 28.02.2023. The department has taken a plea that the restructuring of the department will be carried out and after that the promotions will be done. The number of posts which will be available for promotion after the restructuring, will be 03 only and 03 persons from among those recommended by the UKPSC may be considered for the promotion. During the course of arguments, it came to the knowledge of the Tribunal that the one post of director, two of Joint director and one post of the deputy director are lying vacant, so two more posts from promotion quota will be available for promotion for the petitioners and still three people will be left out.

11.1 The department has taken almost 04 years and the process of restructuring is still going on. It shows the indifference of the department in the career advancement of the employees. Fisheries

can be one of the sub-sectors which may contribute to the employment generation in the State but without having the motivated work force this is difficult to achieve.

11.2 The respondents were given two months' time earlier to complete the restructuring process, but the situation has not changed despite the direction of the Tribunal. There is clear manifestation of inordinate delay in completing in restructuring of the department which has deprived the petitioners from promotion for last four years.

11.3 Admittedly, the petitioners are Senior Fisheries Inspectors fully eligible under Rule 5(4) of the Uttaranchal Fisheries (Gazetted) Service Rules 2006. Their eligibility has never been disputed by the Respondents. The vacancies were real and sanctioned. G.O. No. 295 dated 13.05.2022 created 18 posts of Assistant Director, by the Department's own requisition No. 5908 dated 19.05.2022, 09 posts in the promotion quota were vacant. The convening of the DPC and its recommendation, are conclusive proof that the vacancies existed. The existence of a clear vacancy is, therefore, the foundational and jurisdictional fact upon which the entire selection process rests and in its absence, no requisition could have been sent and no DPC could have been held.

11.4 In the present case the Respondents themselves determined and certified the vacancies at every stage, as under:

(a) the Director, Fisheries, by requisition No. 5908 dated 19.05.2022, certified that of 13 posts in the promotion quota 04 were filled and 09 were vacant;

(b) the Secretary forwarded the said requisition to the Commission by letter No. 321 dated 02.06.2022;

(c) the Commission's letter No. 172 dated 12.08.2022 records, on the basis of the information furnished by the Government, the derivation of the vacancies and expressly states the 'Number of Vacant Posts: 09' for selection year 2021-22; and

(d) the Government's own letter dated 08.10.2026 admits that the DPC was held on 03.08.2022 'against 09 of the 18 posts created by G.O. No. 295 dated 13.05.2022.

11.5 The selection process was completed in accordance with law: the DPC met on 03.08.2022 under the Chairman of the Public Service Commission, with the Secretary and Director of Fisheries as members, and found all candidates suitable; the Commission recommended them by letter No. 172 dated 12.08.2022. The Department itself certified to the Commission that no litigation, stay or representation was pending. Nothing adverse to any Petitioner has ever been alleged. The issue of the promotion order was therefore a ministerial act which the Respondents were bound to perform.

11.6 The only reason given in the impugned order dated 20.01.2023 is that the structure is to be reconsidered and made pyramidal. Nothing in the Service Rules of 2006 or in the G.O. dated 13.05.2022 makes promotion conditional on a future restructuring. The record shows the restructuring idea originated in letters from persons outside the service i.e. Shri Ravindra Jugran (dated 23.06.2022) and Shri Kashi Singh Airy(dated 26.07.2022) - who had no locus in the matter. Rule 3 of the Uttar Pradesh Rules of Business, 1975, provides that the political executive sets general standards, civil servants handle specific appointments/ promotion to keep public employment fair and free from political favoritism, political interference in recruitments/ promotions hurts public trust, lowers work quality and weakens institutions. If the association of employees of Fisheries department had grievances against the ongoing promotional exercise, then it could have made representations to the Head of the Department i.e., Director or to the Secretary of the concerned department through proper channel. The facts of present case are peculiar. Here, promotion exercise commenced on 02.06.2022 and DPC meeting was held on 03.08.2022 and the Commission gave recommendations on 12.08.2022. The subsequent expiry of the sanction on 28.02.2023 cannot operate retrospectively to erase vacancies that existed. The

plea of 'no vacancy' is thus not a denial of the existence of vacancies at the relevant time, but merely a consequence of the Respondents' own failure to issue the appointment orders within the currency of the sanction. Such a self-created situation cannot be set up to defeat the rights of selected candidates.

Hon'ble High Court for the State of Telangana at Hyderabad in *W.P. No.24453 of 2016, Union of India, through its Secretary, Department of Agriculture, Cooperation and Farmers Welfare, Govt. of India and others vs. M.Nooka Raju and another*, has observed that- "*it is settled principle that the administrative lapse and delay on the part of employer, an employee cannot be made to suffer for no fault of an employee, who was fully eligible and qualified for the next promotion*."

11.7 We are of the considered opinion that promotion exercise cannot legally be stalled or delayed solely due to interference from persons outside the service. Service jurisprudence mandates that promotion process must follow statutory rules in force, ensuring fair and equal consideration of eligible persons, as per mandate of Articles 14 and 16 of the Constitution of India. Available vacancies are governed by statutory rules in vogue at the time when consideration takes place and delaying promotion exercise purposely to defeat the right of eligible and entitled employees can be examined by Courts/Tribunals and if it is found arbitrary or *mala fide*, then necessary intervention can be made.

11.8 The Hon'ble Supreme Court in *Union of India and another vs. Hemraj Singh Chauhan and others reported in (2010) 4SCC 290*, expressed its view that the constitutional obligation is cast upon the employer to perform its role and the right of eligible employees to be considered for promotion is virtually a part of their fundamental right, guaranteed under Article 16 of the Constitution of India. Relevant paragraphs of the judgment read as under:

> *"35. The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government*

and the State Government are to act as model employers, which is consistent with their role in a Welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

37. In Government Branch Press and Anr. vs. D.B. Belliappa - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason".

38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy."

In Subhash Chandra vs. State of Himanchal Pradesh in CWPOA No. 952 of 2019, Hon'ble High Court of Himanchal Pradesh observed that a coordinate Bench of Himanchal Pradesh High Court, in CWP(T) No. 3747 of 2008, after considering the judgment passed in Hemraj Singh Chauhan's case (*supra*) has held that since the vacancies were available in the year 1987, the case of the petitioner in that case was required to be considered from that year and not from 1995. The relevant paragraph of the judgment reads as under:

"3. In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court, the petitioner has right to be considered for promotion in accordance with law. Since the vacancies were available in the year 1987, the case of the petitioner was required to be considered from this year and not from 1995. In view of this, the instructions relied upon by the respondents, i.e. Annexure R-1 are also not applicable in the instant case. Their Lordships of the Hon'ble Supreme Court have also held in the judgment cited hereinabove that the employee cannot be permitted to suffer if the delay is attributable to the employer."

11.10 In view of the above, here the DPC was held in time and the Commission recommended the petitioners for promotion, the

department simply did not issue the order. It is crystal clear that in case there is no fault on the part of an employees and further if there is any delay on the part of the employer after recommendations of the DPC, they cannot be penalized for the same and once the vacancies were available and the employees were also eligible, they deserve to be promoted from the date recommendations of DPC are received in the department. Hence the claim petition is liable to be allowed and the impugned order dated 20.01.2023 is liable to be quashed. The petitioners are entitled to get notional promotion from the date the recommendations of DPC are received by the department.

ORDER

The claim petition is allowed. The impugned order dated 20.01.2023 is quashed. The respondents are directed to promote the petitioners to the post of Assistant Director Fisheries, notionally from the date the recommendations of the DPC are received by the department. Such promotions shall be made by the respondents within one month of presentation of certified copy of this order before them. No order as costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE:OCTOBER 28, 2026.
DEHRADUN

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