
(2003) 10 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 1312 (S/S) of 2003

Khyali Ram

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1)

Citation : (2004) 1 UPLBEC 24

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : B.S. Khanka, for the Appellant; B.D. Kandpal, for the Respondent

Judgement

Rajesh Tandon, J.—Heard Sri B.S. Khanka, learned Counsel for the petitioner and Sri B.D. Kandpal, learned Standing Counsel.

2. By means of this writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to give charge/joining to the petitioner on the post of Kanungo/Revenue Inspector according to the promotion order dated 1/2.9.2003.

3. Brief facts giving rise to the writ petition are that the petitioner is a Senior Patwari and belongs to Schedule Caste category in the District Almora but, he was not promoted for the post of Revenue Inspector/Kanungo. Therefore, he has filed an appeal before the Commissioner, Kumaon Mandal, Nainital on 5th June, 2003. The petitioner has prayed in the appeal that he may be promoted as his juniors (Schedule Caste) have been promoted. It was stated that in the final seniority list, the number of the petitioners were 125 and for the promotion 18% reservation was given to the Schedule Caste candidates. The petitioner, therefore, is entitled for the promotion.

4. On appeal filed by the petitioner a fresh seniority list was prepared, vide order dated 1st/2nd September, 2003 passed by the District Magistrate, Almora.

5. There are 17 posts of Patwari/Revenue Inspector/Kanungo according to the seniority list, which has been filed by way of Annexure-4 to the writ petition.

6. Both the parties have agreed that in the light of the order dated 1st/2nd of September, 2003 direction may be given for deciding the representation of the petitioner so far as the joining of the petitioner on the promotional post is concerned.

7. Learned Counsel for the petitioner has argued that the petitioner has already handed over the charge of Patwari Range Mashi, Almora to the Patwari Incharge Setapani on 16.9.2003, in pursuance of the order of Tehsildar Bhikiyasain dated 12.9.2003. On 16th September, 2003, the petitioner has been asked to join the post of Kanungo in pursuance of the order dated 1st/2nd September, 2003, Annexure-4 to the writ petition.

8. A perusal of the order of promotion shows that the petitioner was promoted as Kanungo for a period of 89 days. The order of promotion shows that from his original post, the petitioner is promoted on the post of Revenue Inspector/Kanungo.

9. The petitioner has brought to the notice of the Court that due to the pendency of the Writ Petition No. 1079/2003, Madan Ram Arya, Supervisor Kannungo v. Commissioner, Kumaun Division and Ors., the promotion order of the petitioner dated 1st/2nd September, 2003 has not been complied with as will appear from the following order :--

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10. A perusal of the order dated 18th September, 2003 in writ petition of Madan Ram Arya, shows that the following order was passed in Writ Petition No. 1079 (S/S) of 2003, Madan Ram Arya v. The Commissioner, Kumaun Division and others :--

"Admit.

Learned Standing Counsel prays for and is allowed three weeks" time to file counter-affidavit on behalf of respondents 1 and 2.

Issue notice to respondent No. 3.

List after three weeks.

In the meantime, the petitioner shall be given appointment if he is selected against the reserved post according to roster. Until further orders the petitioner's status shall not be disturbed."

11. So, far as the petitioner is concerned, the petitioner was promoted on the vacant post on the basis of his own seniority fixed by the District Magistrate on an appeal filed by the petitioner.

12. The petitioner has been directed on 12th September, 2003 to hand over the charge of Patwari. In pursuance thereof the petitioner has handed over the charge of Patwari but has not been accommodated in the promotional post.

13. Promotion is a part of Article 16 of the Constitution of India. Article 16(1) read as under :--

"Article 16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

14. The petitioner has made a representation on 22.9.2003 (Annexure-8 to the writ petition), but in spite of his representation, the petitioner has not been handed the charge of the promotional post.

15. The petitioner has argued that he is ready to join at any place, suffice to observe that the petitioner will be at liberty to place his representation before the authorities.

16. The authorities concerned, therefore, are directed to consider the case of the petitioner so far as it relates to the joining of the promotional post of Revenue Inspector/Kanungo, if otherwise the petitioner fulfills the criteria of promotion as contained in the order of promotion dated 1st/2nd September, 2003.

17. The authorities concerned shall consider the same in accordance with law within a period of three weeks from the date of filing of the certified copy of this order.

18. With the aforesaid observations, the writ petition is disposed of.

19. There will be no order as to costs.