
(2014) 10 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 503 of 2014

Mahendra Singh Adhikari

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2014) 10 UK CK 0006

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Sachin M.S. Mehta, Advocates for the Appellant; T.P.S. Takuli, Brief Holder, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—The petitioner is a Class III employee in Collectorate, Almora. He has not been promoted from the post of Junior Assistant to Senior Assistant in the promotional exercise undertaken in the year 2013. Aggrieved, he has filed the present writ petition before this Court. The Rules which are applicable in the case of the petitioner are known as "Determination of Eligibility Period for Promotion to the Posts of Ministerial Grade Cadre Rules, 2011, which were notified on 01.06.2011, wherein Rule 4(4) reads as under:--

"Senior Assistant.--Such substantively appointed Junior Assistants, who, on the first day of the selection year, have completed minimum 06 years of service as such, will be promoted on the basis of seniority subject to rejection of unfit.""

The petitioner, however, has not been promoted and the reason given in the counter affidavit for not promoting the petitioner is that for promotion from the post of Junior Assistant to Senior Assistant are that the new Rules, known as "Uttarakhand (Outside the Purview of Public Service Commission) Selection Procedure for Promotion under the State Services Rules, 2013" have been framed which came into force in the year 2013 i.e. w.e.f. 9th January, 2013. As per Rule 3 (3) of amended Rules of 2013, only such persons will be considered fit for promotion who have been awarded four "Good" or higher entries out of the

last five entries.

2. The last five entries are between the years 2008 to 2013 i.e. 2008-09, 2009-10, 2010-11, 2011-12, 2012-13. For the years 2009-10 and 2010-11, petitioner has been awarded "Good" entries. For the year 2011-12 and 2012-13 petitioner has been awarded "Very Good" entries and for the year 2008-09, the entry of the petitioner is unavailable. Thus, only two entries of the petitioner were looked into, consequently he could not be promoted.

3. The petitioner has admitted that the Rules have been amended in 2013 but he says that principle of natural justice and fair play demands that the entries which adversely affect the chance of promotion of a government servant, such entries must be communicated to the concerned employee in time. Admittedly this has not been done in the present case.

4. The petitioner in support of his contention has placed reliance upon the judgment of Dev Dutt Vs. Union of India (UOI) and Others, . The relevant paragraph 44 of the judgment reads as under:--

"We, therefore, direct that the "good" entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment".

5. The Hon'ble Apex Court while dealing with the case held that in the principle of natural justice and fair play all entries whether "poor", "fair", "average", "good" or "very good" in the annual confidential report of a public servant must be communicated to him within a reasonable period so that he can make a representation for its upgradation. The similar view was also expressed by the Hon'ble Apex Court in the case of Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others, .

6. It is an admitted position that the entries on the basis of which the petitioner has not been considered were never communicated to the petitioner, though these are not adverse entries, yet they adversely affect the chance of promotion of the petitioner. In all fairness such entries ought. to be communicated to the petitioner.

7. It is also an admitted fact that when the entries were awarded, the rule of promotion was the seniority subject to rejection of unfit. Therefore, in the opinion of this Court, the petitioner has been wrongly denied promotion. The Court has been informed that at present two posts are still lying vacant in the

department.

8. In view thereof, the writ petition is allowed. A mandamus is issued to the respondents/State authorities to promote the petitioner on the post of Senior Assistant, if the petitioner is otherwise qualified from the date when other persons junior to the petitioner were promoted pursuant to the promotion exercise in question.

9. Let the needful be done within a period of six weeks from the date of production of certified copy of this order. No order as to costs.