

(2019) 03 UK CK 0029

In the Uttarakhand High Court

Case No : Writ Petition (S Of S) No. 1086 Of 2013

Shashi Kumar Saini

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Uttarakhand Government Servants (Disposal Of Representation Against Adverse Annual Confidential Reports And Allied Matters) Rules, 2002 — Rule 5

Citation : (2019) 03 UK CK 0029

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Ravi Babulkar, N.P. Sah, B.D. Kandpal

Final Decision : Disposed Off

Judgement

Manoj K. Tiwari, J

1. By means of present writ petition, petitioner has sought following reliefs:-

(i) Issue a writ, rule order or direction in the nature of certiorari calling for the records and quashing the rejection of objection of the petitioner vide final seniority list dated 16.05.2013 so far it relates to the petitioner.

(ii) Issue a writ, rule, order or direction in the nature of mandamus commanding and directing the respondent no. 1 & 2 to promote the petitioner against the selection year 2002-03 on the post of Excise Inspector and to give notional promotion to the petitioner from the selection year 2002-03.

(iii) Issue a writ, rule, order or direction in the nature of mandamus commanding and directing the respondent no. 1 to re-determine the seniority of petitioner vis a vis, direct recruits and accordingly re-place or re-adjust him above direct recruits in the final seniority list dated 16.05.2013 (Annexure No. 9) reckoning his seniority from the selection years 2002-03.

2. According to the petitioner, he was given regular appointment as Sub

Inspector, Excise on 29.08.1990; there is 10% quota available to Sub Inspector, Excise for promotion to the post of Excise Inspector under the U.P. Subordinate Excise Service Rules, 1992 (hereinafter referred to as 'the Rules'); there is no qualifying service prescribed for promotion to the post of Excise Inspector. According to him, a Departmental Promotion Committee was constituted in the year 2006 to supply 13 vacancies by promotion on the post of Excise Inspector, out of which 06 were to be filled by promoting Excise Sub Inspectors. Out of these 06 vacancies, one was of selection year 2002-03, three vacancies were of selection year 2003-04 and two vacancies were of selection year 2004-05.

3. According to the petitioner, he was eligible to be considered for promotion to the post of Excise Inspector against vacancy of selection year 2002-03, however, his claim was not considered on account of instructions issued by the State Government vide letter dated 07.04.2006, whereby Public Service Commission (hereinafter referred to as 'the Commission') was directed not to consider petitioner's claim for promotion till decision on his representation against an adverse entry recorded during report year 2004-05.

4. Learned counsel for the petitioner has referred to the communication dated 19.04.2006 issued by the Commission to the State Government, which contains a note, in which it is stated that in view of instructions received from the State Government, petitioner's claim for promotion against vacancy of selection year 2002-03 shall be considered after decision on his representation against the adverse entry. A perusal of the said communication further reveals that all the vacancies of selection year 2003-04 and 2004-05 were carried forward for want of eligible candidates, in other words, no one was recommended for promotion from the post of Sub Inspector, Excise to the post of Excise Inspector by the Departmental Promotion Committee held on 07.04.2006. The said communication further reveals that four persons were recommended for promotion from the post of clerk to the post of Excise Inspector against total seven vacancies and result of one clerk was kept in a sealed cover on account of pendency of departmental proceedings.

5. Learned counsel for the petitioner further submits that an adverse entry recorded against the petitioner during reporting year 2004-05 could not have been taken into account while considering his claim for promotion against vacancy of selection year 2002-03. In support of this submission, he has placed reliance upon paragraph no. 26 of Office Memorandum No. 1801/Personnel-2/2002 dated 23.06.2003 issued by Personnel Department of the State Government. Paragraph 26 of aforesaid Office Memorandum provides that if a common promotion exercise is held for vacancies arising during more than one selection year, then service record up to the selection year against which a government employee is to be considered alone would be taken into account.

6. Learned counsel for the petitioner further submits that petitioner's representation against adverse entry recorded during reporting year 2004-05 was expunged by the State Government vide order dated 07.11.2008. Thus,

according to him, expunction of the adverse entry will relate back and it shall be deemed that there was no adverse entry ever recorded in petitioner's service record. Thus, according to him, petitioner became entitled to be considered for promotion against vacancy of selection year 2002-03.

7. It transpires that subsequently another D.P.C. was constituted, which held its meeting on 18.11.2009, which recommended petitioner for promotion against vacancy of selection year 2007-08 and ultimately petitioner was promoted as Excise Inspector vide order dated 04.12.2009. Presently, he is serving as Excise Inspector. He is claiming promotion against vacancy of selection year 2002-03 on the ground that he was wrongly denied right to be considered for promotion by the earlier D.P.C. held on 07.04.2006. According to him, he made representations claiming promotion against vacancy of 2002-03 from due date i.e. date of promotion of ministerial employees to the post of Excise Inspector in terms of recommendation of the D.P.C. held on 07.04.2006.

8. From the aforesaid conspectus of facts, it is apparent that petitioner was denied right to be considered for promotion in the year 2006 on the sole ground that there is an adverse entry, which was recorded against him during reporting year 2004-05. There is no dispute that against the said adverse entry, petitioner had made a representation, which was pending at the relevant point of time. Rule 5 of the Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 provides that in case representation is pending against an adverse report, then such report is not to be treated adverse for the purpose of promotion etc. In view of this rule position, it was unjust on the part of the respondents not to consider petitioner's claim for promotion in the year 2006. In the same selection, respondents had kept result of one ministerial employee in sealed cover on account of pendency of disciplinary proceedings, which was the right thing to do, however, petitioner's claim for promotion was altogether ignored on account of one adverse entry, which was subsequently expunged. Rule 5 of the Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 is extracted below:-

"5. Report not to be treated adverse.- Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Hand=book, Volume -II, Parts-II to IV. Where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purpose of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned."

9. Thus, non consideration of petitioner's claim for promotion in the year 2006 has resulted in miscarriage of justice to him. The communication issued by Commission on 19.04.2006 indicates that criteria for promotion to the post of Excise Inspector was seniority subject to rejection of unfit, therefore, in the absence of any adverse material, petitioner could have been recommended

against the vacancy of selection year 2002-03.

10. Learned counsel for the petitioner points out that the ministerial employees recommended by the DPC held on 7.04.2006 were promoted on 03.06.2006, while petitioner was promoted in the year 2009 pursuant to recommendation of subsequent DPC. Thus, petitioner's promotion got delayed by three years for no fault of his.

11. In the aforesaid circumstances, the writ petition is disposed of with a direction to respondent nos. 1 & 2 to hold review DPC for considering petitioner's claim for promotion to the post of Excise Inspector from due date. The review DPC shall be constituted within ten weeks from the date of production of certified copy of this order. This Court has considered prayer no. 2 alone, therefore, petitioner shall be at liberty to agitate other issues before appropriate forum.