

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

Hon'ble Mr. U.D.Chaube

-----Member (A)

CLAIM PETITION NO. 48/DB/2014

V.K.Saxena S/o (Late) Sri R.S. Saxena at Present posted as Member
Commercial Tax Tribunal Uttarakhand Branch, Haldwani, Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand through Chief Secretary, Government of Uttarakhand, Dehradun.
2. Principal Secretary Finance, Government of Uttarakhand, Dehradun.
3. Principal Secretary (Karmik) Government of Uttarakhand, Secretariat, Dehradun.

.....Respondents

Present: Sri M.C.Pant, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiya, Ld. P.O.
for the respondents.

JUDGMENT

DATED: SEPTEMBER 16, 2014.

(Justice J.C.S. Rawat, (Oral))

1. This is a petition filed by the petitioner for seeking the following relief:-
“In view of facts and reasons stated in foregoing paras, the petitioner most respectfully prays for the following relief:-
(i) To issue direction or order directing to the respondents to treat the “Very Good” and “Good” entries as upgraded to “Out Standing” and “Very Good” and correct the same of the

petitioner and to upgrade all the downgraded entries awarded in the A.C.R. of the petitioner for the year of 2009-10 and 2012-13 taking into consideration the law laid down by the Apex Court in the case of Dev Dutt Vs. Union of India, 2008 (8) SCC which was also upheld by the Full Bench of the Apex Court in case of Sukhdev Singh Vs. Union of India and other reported in (2013) 9 SCC 566 and in view of the representation made by the petitioner after calling the entire records from the respondents.

(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. In nutshell the petitioner was a Sales Tax Officer, later on designated as Assistant Commissioner, Sales Tax, on the basis of the competitive examination of the Civil Services conducted by the Public Service Commission in the undivided State of U.P. The petitioner, thereafter was promoted in the year 2003 as Joint Commissioner, Trade Tax by the Government of Uttarakhand and consequently after getting relieved from the State of U.P., joined in the State of Uttarakhand in the year 2003. Again the petitioner was promoted on the post of Member, Appellate Commercial Tax Tribunal, Branch, Haldwani and he joined this post in the year 2012. The petitioner was eligible for promotion for the post of Additional Secretary, Finance on 1.6.2011 when Sri C.S. Semwal, who was holding the said post, retired from service on 31.5.2011. The petitioner submitted an application seeking certain information about his annual confidential entries for the year 2009-10. Thereafter, it is revealed that the petitioner has got certain entries which affects his benchmark in the promotion. The petitioner filed a writ petition before the Hon'ble High Court bearing No. 401/12 (S.B.) in which the Hon'ble Court directed to the respondents to consider the candidature of the petitioner for being appointed to the post of Additional Secretary, Finance. The petitioner has further alleged that the petitioner was awarded certain entries without communicating him, though those entries were good, but he deserves to a higher graded entries in his character roll. Ld. Counsel for the petitioner also pointed out that the D.P.C. is going to be held very soon and if the petitioner's case was considered on the basis of the un-communicated entries, he will have to

suffer the loss. Ld. Counsel for the petitioner further referred the judgment of the Hon'ble Apex Court rendered in **Sukhdev Singh Vs. Union of India (2013) 9 SCC 566**, in which the Hon'ble Apex Court after considering a number of decisions of Hon'ble Supreme Court has held that in case of the public servant, where he earns the entries in the A.C.R., must be communicated to him within a reasonable period whether it is poor, fair, good or very good entries. This is because non communication of such entry may adversely affect the employee in two ways, viz, if the entry is communicated to him, he may know about the assessment of his work and conduct by the superior which may enable him to improve his work in future and secondly, he would have opportunity of making a representation against his entries. Thus, Ld. Counsel for the petitioner further contended that the representation made by the petitioner to the department is also pending and no heed has been paid to the said representation made by the petitioner.

3. Ld. A.P.O. pointed out that he has not in a position to answer as to whether the A.C.R. has been communicated to the officer/petitioner or not.
4. Ld. Counsel for the petitioner further stressed that if the authorities would have decided the representation, the facts narrated by the petitioner would have been verified. The respondents are in hurry to hold the D.P.C. for Addl. Secretary (Finance) without deciding the representation. Hence this petition has been filed.
5. In view of the above we feel that the respondents be directed to decide the representation before holding the D.P.C. In view of the above, we feel that the petitioner's representation is pending and no heed has been paid to the said representation. The respondents are directed to decide the representation before holding the D.P.C. for the post of Additional Secretary, Finance and in addition, the claim petition of the petitioner be also treated as a representation and the respondents will decide it in the light of the observations made by the Court within a period of one month or before holding the D.P.C. whichever is earlier.'

ORDER

The petition is disposed of accordingly. Ld. Counsel for the petitioner requested for the copy of the judgment today itself. Let the copy be issued today itself to the Ld. Counsel for the parties. The Ld. A.P.O. will make the copy of the claim petition available to the respondents.

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: SEPTEMBER 16, 2014
DEHRADUN

VM