

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. 45/SB/13

Surendra Singh Kalkholi S/o Late Sri Harak Singh Kalkholi Age about 57 yrs, Presently posted as Finance Officer, District Rural Development Authority, Haridwar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Finance Department, Subhash Road, Dehradun.
2. Director, Treasury and Finance Service, Uttarakhand, 23 Lakshmi Road, Dehradun.

.....Respondents.

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondents.

JUDGMENT

DATED: FEBRUARY 20, 2015.

(Hon'ble Justice J.C.S. Rawat, Chairman)

1. This claim petition has been filed for seeking following relief:-

“It is, therefore most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to:-

- A. Issue order or direction to quash the impugned order dated 19.10.2011, 22.02.2013 and 24.08.2013 along with its effect and operation also along with all consequential proceedings based on the impugned order after calling entire record from the respondents declaring the same against the rules and law and also to hold that the same has of no consequence in view of Rules regarding disposal of adverse entry.

- B. Issue order or direction to the respondents to consider the case of the petitioner for all benefits of service had it been the impugned order was never in existence along with all consequential benefits.
 - C. Issue appropriate order or direction suitable in the nature to award damages and compensation to the petitioner for malicious and malafied act of the respondents, by which the petitioner is facing grave mental agony and financial hardship and the amount of the damages and compensation which may be quantified by this Hon'ble Tribunal and further be directed to the respondents the amount to be recovered from the salary of the erring officer.
 - D. Issue any other suitable direction or order as this Hon'ble Tribunal may deem fit in the circumstances of the case.
 - E. Award costs of the claim petition to the petitioner.”
2. In brief the petitioner's case is that he was posted and transferred by Respondent No.1 vide order dated 11.8.2009 as Treasury Officer, Narendra Nagar and he had to join as Treasury Officer on 1.9.2009 after retirement of Sri Virendra Kumar Bacheti, Treasury Officer, Narendra Nagar. He was transferred to the post of Finance Officer, School Education, Narendra Nagar before completing two years on the said post. The petitioner made a representation against the transfer order alleging therein that the transfer order is violative to the Government order and the petitioner has been transferred from the post of Treasury Officer, Narendra Nagar to the post of Finance Officer, School Education, Narendra Nagar, however he had not completed two years on the said post, the order is violative to the Government policy, hence he requested to cancel the said transfer order. On receipt of this letter, the Director of Treasuries took a note and a show cause notice was issued to him in which it was alleged that the petitioner has alleged in his notice that the letters addressed to the Secretary, Government of Uttarakhand clearly indicates that he had made allegations that the department is trying to give mental torture and agony to the petitioner and the transfer order is in utter violation of the Government order. The main point which is alleged in the show cause notice that in the year 2011 the District Magistrate ordered that he should handover his charge to Km. Neetu

Bhandari, newly appointed Treasury Officer, but in violation of the said order the petitioner handed over the charge of the Treasury Officer to Assistant Treasury Officer and proceeded on leave, as such he has flouted the order of the Director. Thereafter the impugned adverse entry was awarded to the petitioner. He preferred an appeal to the Secretary, Government of Uttarakhand who instead of hearing the said representation/ appeal, referred it to a higher officer, Principal Secretary, Finance, the Respondent No. 1, who rejected the appeal. Thereafter, a revision petition was submitted before the competent authority which was also rejected. The petitioner has challenged the said adverse entry on the ground that it is violative of the Article 14 & 16 of the Constitution of India and also violative of the provision of Article 311. The impugned order has been passed mechanically without applying the mind by the authority while awarding the adverse remark. The petitioner was posted as Finance Officer, School Education, Narendra Nagar and he had not completed three years as Treasury Officer at the time of the transfer. Thus, this order of adverse entry smells arbitrariness and bias. No enquiry has been conducted in this matter and no time, date and place of holding the enquiry was informed to the petitioner. The petitioner has been punished by imposing an adverse entry in the annual confidential report and the procedure adopted to such punishment is against the provision of law.

3. The respondents have filed the written statement and refuted all the allegations made in the claim petition. It has been alleged in the written statement that the petitioner was posted as Finance Officer, School Education from the post of Treasury Officer, Narendra Nagar in the same premises and in the same city. Km. Neetu Bhandari was posted as Treasury Officer on 2.9.2011. Instead of handing over charge to Km. Neetu Bhandari, petitioner handed over the charge to Assistant Treasury Officer and proceeded on leave. Thereafter he made a representation to the Director, Treasuries on 29.8.2011 against his posting and he did not join the said new posting. When he proceeded on leave, a show cause notice was issued to him. After submission of the explanation dated

29.9.2011, rejecting the said explanation and after going through all the record of the petitioner about his conduct, a special adverse entry was awarded to him. The petitioner's conduct was not in accordance with law. The respondents have prayed that the petition may be rejected with cost.

4. We have heard learned counsel for the parties and perused the record.
5. The petitioner was awarded the following adverse entry:-
 “आपने हठधर्मिता वाला आचरण करते हुए उच्च/ सक्षम अधिकारी के आदेशों की अवहेलना की है । अपने आचरण को सही सिद्ध करने हेतु स्पष्टीकरण पत्र में जो तथ्य लिखे गये हैं वे मूल नियमों एवं सरकारी सेवक आचरण नियमावली के प्रतिकूल है । अतः आपके इस कृत्य की घोर निन्दा करते हुए आपको वर्ष 2011-12 में प्रतिकूल प्रविष्टि देते हुए संसूचित की जाती है ।”
6. Ld. Counsel for the petitioner contended that the special adverse censure entry to the petitioner, which amounts to the punishment and procedure for the minor punishment, has not been adopted by the respondents. Ld. Counsel for the petitioner further contended that the petitioner was illegally transferred without completing his term within two years of his posting and as such the order is violative and liable to be quashed. Ld. Counsel for the petitioner further contended that the Director, Treasuries was not competent to award the special adverse entry and he further contended that the petitioner was working under the District Magistrate of the district; the District Magistrate was competent to award the adverse entry to the petitioner. Ld. Counsel for the petitioner further contended that the special adverse entry awarded by the respondents to the petitioner is arbitrary and as a result of bias. Ld. Counsel for the respondents refuted the contention and contended that the petitioner was transferred in a routine manner by the Director and the grounds of arbitrariness and biasness with the petitioner have not been shown in the claim petition. The transfer policy is an administrative order; it has no force of law and it cannot be enforced before the Court of law. The special adverse entry, on an incident is awarded against an officer or official about his act which is not consistent to the Rules and Regulations. Ld. Counsel for the respondents further contended that the State Government has formulated the guidelines to

award special adverse entry and the said guidelines have to be adhered by the officer who has awarded the adverse entry to the petitioner. The satisfaction recorded by the Director, Treasuries is not open to a judicial review unless it is arbitrary and against the law.

7. Before dealing with the respective submissions of the Ld. Counsel for the parties, we will first like to analyze the scope and purpose and object of the adverse remark. The adverse remark in the regular character roll or special entries are awarded to the employees with the intention to the general assessment of work performed by them and which is used to be considered in the comparative merit when question of promotion, confirmation etc. arises. The annual confidential remark or special remark shows the merit and demerit of the employee. The question of giving an opportunity to a Government servant before awarding the special adverse entry does not arise because it is based on the record which is available in the office. If the special adverse remark does not contain specific instance and were, therefore, contrary to the Rules and cannot be sustained. The rules do not provide for that an opportunity should be given to the employees before awarding any special entry/entries. It is obligatory on behalf of the State to communicate the said adverse remark/special adverse remark to the employee so that he can make a proper representation and he can seek his redressal before the Court. Thus, the safeguard has been provided to the employees after awarding a special entry. The guidelines which were referred by the Ld. A.P.O. while granting adverse remark, there is no need to give him the show cause notice but in this case the petitioner was given a show cause notice and thereafter he submitted his reply/explanation and thereafter this entry was awarded. It is not true if show cause notice has been given to the petitioner, it will amount to a punishment. The respondents have erred on the right side before awarding adverse entry, giving a show cause notice is in addition to the rules and as such they did not violate any principle of law. It is well settled principle of law that this Tribunal while deciding the claim petition against the adverse entry, cannot look into the merits of the case and cannot re-appreciate the subjective

satisfaction of the competent authority awarding the adverse entry. This Court while assessing the angle of the adverse entry on the side of judicial review, is only competent to see the manner and mode of awarding the special adverse entry. While making the judicial review of the special adverse entry, it is the settled position of law that the Court first see that the entry has been communicated to the concerned officer/official or not or whether the adverse report is tinted with malafide and biased exercise of power by the competent authority. Judicial review of the adverse entry can also be made if the person, who had awarded the adverse entry, was not competent to award such entry to the officer/official and the said entry violates the principle of natural justice and statutory provisions of law. In the light of the above settled principles we will have to examine this case.

8. Now we will see the respective contentions of the petitioners one by one; the first and the foremost contention of the petitioner that the petitioner was posted as Treasury Officer, Narendra Nagar, Tehri in the year 2009 and thereafter he was transferred to the post of Finance Officer, School Education, Narendra Nagar, Tehri in the year 2011 within two years after his posting as Treasury Officer, Narendra Nagar, Tehri. The petitioner had a three years' term as a Treasury Officer, Narendra Nagar, Tehri according to the Government policy, (Annexure-14 to the R.A.). The said Government order contained that the Class-II employees posted at one district, should not be transferred before three years from the same district. Now it is to be seen that there is no quarrel that the petitioner was transferred from the post of Treasury Officer, Narendra Nagar, Tehri to the post of Finance Officer, School Education, Narendra Nagar, Tehri in the same district and in the same city. The policy filed along with the claim petition clearly indicates that any officer of Class-A and Class –B posted in any district, generally should remain minimum for a period of three years and maximum of five years at the said station. The guidelines are as follows:-

“तैनाती की सामान्य अवधि :-

प्रशासनिक आधार पर किये गये स्थानान्तरणों को छोड़कर तैनाती की अवधि निम्नवत निर्धारित की जाती है:-

- (i) समूह क एवं ख के अधिकारियों के लिए विभिन्न स्थानों में एक जिले में समस्त पदों को सम्मिलित करते हुए तैनाती की अवधि, सुगम क्षेत्र के लिए सामान्यतः 03 वर्ष परन्तु अधिकतम 05 वर्ष होगी । दुर्गम क्षेत्रों में सामान्यतः अवधि 02 वर्ष एवं अधिकतम 05 वर्ष होगी । एक जिले में तैनात अधिकारी को पुनः उसी जिले में 05 वर्ष से पूर्व किसी भी दशा में तैनात नहीं किया जायेगा । अपवाद स्वरूप उक्त अवधि 03 वर्ष होगी ।”

9. Now it is to be seen whether the Director, Treasuries has violated the said direction of the Government and such direction is enforceable by the Court. This direction has been issued as an executive order by the Court. When an officer or employee joins the service in any of the department, he is the whole time Government servant at the disposal of the Government which pays him and he may be employed in any manner required by the proper authority. A Government servant, who joins the Government service, may be the subject of transfer from one place to another. The employee of the Government had no vested right to remain posted at one place or the other or in one post or the other. He is liable to be transferred from one post to the other post of the equal salary of the same cadre. The executive order has no statutory force, if any such execution order has been violated, the employee has no legal right to challenge it before the Court or the Tribunal. It is for the department to consider their executive order while passing the orders. But that executive order cannot be enforced by the Court or the Tribunal. This matter has come up before Hon'ble Apex Court on several occasions. In the case of **Union of India Vs. S.L. Abbas 1993(4) SCC357**, the Hon'ble Apex Court has held that transfer is the incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the Government on the subject. The said guidelines issued on the executive side, however

does not confer upon the Government employee a legally enforceable right. The Hon'ble Apex Court in **Major General J.K. Bansal Vs. Union of India and others 2005 (7) SCC 227** has held that the employee has no enforceable right in violation of the executive order. It has been held in Para 9,10,11 & 12 by the Hon'ble Apex Court:-

“ In **Mrs. Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532**, the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under: -

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department....."

In **Union of India and others vs. S.L. Abbas AIR 1993 SC 2444**, the respondent was working at Shillong in the office of Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under: -

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

11. Similar view has been taken in **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and another (2001) 8 SCC 574**, wherein it has been held that no Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the appellate authorities substituting their own decision for that of the management.

12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The Courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

10. Thus, the petitioner's contention that he cannot be transferred from the post of Treasury Officer, Narendra Nagar only on the ground that he had been transferred within three years, is not an enforceable right and he cannot resist the transfer order on that basis.

11. The Hon'ble Supreme Court has held the transfer orders can be challenged on the ground that it is violative of any statutory provision or the malafide committed by the competent authority. Ld. Counsel for the petitioner could not demonstrate that there is any statutory provision for the same except the executive policy, which has been discussed above. The petitioner has challenged in his claim petition that the petitioner's transfer from Treasury Officer, Narendra Nagar, Tehri to Finance Officer, School Education, Narendra Nagar, Tehri has been made arbitrarily and with biased attitude. In the representation, which was submitted to the Director against his transfer, it was alleged that his transfer has been done by the Director only to cause mental agony and coercion to him. The said word “मानसिक उत्पीड़न”, used in the representation, denotes that he wanted to make malafide against the Director. There can be no quarrel nor it could be seriously disputed on behalf of the petitioner that the allegation of personal bias or malafide exercise or misuse of power

cannot be looked into by the Tribunal nor can be expressed the view in relation thereto without any opportunity to controvert the same to the person against whom such allegations are made. It is also one of the facets of the principle of 'audi alteram partem' that no one should be condemned unheard. It has been held in a catena of the decisions that allegations of personal malafides cannot be entertained unless the person against whom such allegations are made, is impleaded as a party to the petition. [**Purushottom Kumar Jha 2006(9) SCC 458 (See)**]. In this case bias has been alleged against the Director, Treasuries Sri Sharad Chand Pandey, who awarded the entry. He has not been arrayed as a party in his personal capacity. Apart from that the petitioner himself has said in later correspondence that if any wrong words have been chosen by him, for that he extends his apologies. Thus, this transfer order is not actuated with malafide and bias.

12. Now we have to analyze that the petitioner has alleged that the post of the Treasury Officer is higher in rank and grade than the post of Finance Officer, School Education. The said contention of the petitioner has been dealt with in the written statement filed by the respondents and they have emphatically stated in their counter affidavit that the post of Finance Officer, School Education is of the same pay scale which the petitioner was drawing and was of the same cadre. This fact has been incorporated in Para 6 of the W.S. The petitioner in his rejoinder affidavit has dealt the para 6 of the C.A. and he has not denied this fact specifically. Moreover, he has said the contents of Para-6 of the C.A. are wrong and not admitted because the representation of the petitioner was set aside without applying mind. It is settled principle of law that if the said fact mentioned in the claim petition/C.A./W.S. is said to be not admitted and denial of pleadings has not been specifically denied and dealt with, it shall be deemed to be admitted. Thus, in view of the said principle, the post of the petitioner and the post for which he has been transferred, were of equal rank and equal pay. It also transpired from the record that the petitioner was holding the said pay scale, which has been mentioned in Para-6 of the C.A., by the proceedings of the D.P.C.,

which has been filed by the petitioner before this Tribunal. It is apparent that the post to which the petitioner has been transferred, is not lower in rank and the pay scales are same, as such the transfer order is not liable to be challenged on this ground before the Tribunal.

13. The petitioner has alleged that the Director, Treasuries passed an illegal transfer order because he had no right to pass the said order. The clearance of the transfer should have been obtained from the higher authority as is evident from the communication filed by the petitioner. The respondents have filed Annexure-R-9 to the Counter Affidavit in which the Governor has specifically delegated the rights of transfer of Class-II officers of Finance and Accounts Services to the Director, though this order is of 1984 passed by the erstwhile State of U.P. but it is applicable in this State unless and otherwise it has been revised, rescinded or cancelled. Thus, the transfer order was not invalid on that ground also.

14. As we have also quoted the relevant portion of the executive order in which the petitioner is claiming to be retained for three years in Narenda Nagar, Tehri itself, this clause itself provides that a person, who is posted in one district, shall remain in the same district including all the posts for a period of three years and maximum up to five years. Thus, the calculation is to be made about the place of posting in one district, the petitioner, though transferred, but in the same city and in the same district. Thus, the petitioner cannot say that the competent authority has violated the guidelines issued by the Government.

15. The petitioner has alleged that the Director, Treasuries was not competent to award the special adverse entry to the petitioner. The petitioner had been working under the control of District Magistrate and as such the forwarding officer of the entry is the Chief Treasury Officer of the Treasury of the district and D.M. is the reviewing officer and Director is the final authority. The petitioner has filed a Government order dated 9.4.2010 along with an application on 9.12.2014. It is apparent from the perusal of this Government order that this process is only applicable in the case of annual entries awarded to the officers of the Finance and

Accounts Services. In this case the impugned entry is not an annual entry, so the principle as enumerated in this Government order is not applicable. Ld. Counsel for the petitioner could not demonstrate from the record that how this Government order is applicable to the case of the special adverse entry awarded to the employees during the course of the year. The petitioner has further alleged in the rejoinder affidavit that the impugned order was passed by the Director, who was not competent authority; the competent authority was the appointing authority of the petitioner and the Collector according to the general procedure of Treasury (Annexure-A-16 to the R.A.). The petitioner has specifically referred Para 1040 which reads as follows:-

“1040. Entries to be recorded every year- The entry in respect of every Government servant should be recorded each year well in time. But if it is not possible to make an entry in his character roll in a certain year, a certificate to this effect indicating the reasons should be given in his character roll for that year. It is a judicial principle that unless there is an adverse appraisal in respect of the work and conduct of an officer in his character roll, his work and conduct cannot be treated to be unsatisfactory. On this basis if no entry has been recorded in the character roll of an official for a particular year and a certificate to this effect is available in his roll, his work and conduct for that year will be considered to be satisfactory.”

16. The petitioner has also alleged that Para 1042 provides that all the entries of the district officers, would be awarded by the District Magistrate which runs as follows:-

“1042. Entries by District Magistrate in respect of officers connected with planning and development.- The District Magistrate will record annual entries in respect of all district level officers (except those of the Police Department) connected with planning and development. This entry will be in addition to that given by a departmental reporting officer and it will not be open to the reviewing or accepting officer to make any judgment on it. If more than one district falls within the jurisdiction of a district level officer, the entry will be recorded by the District Magistrate concerned in respect of their districts. The entry of the District Magistrate will be confined to the contribution of the

officer in the successful implementation of the district plans, his general reputation for integrity and his behavior with the public. The assessment in regard to the technical work of the officer will be made by the departmental officers. In the event of an adverse entry being given by the District Magistrate, a representation against it will be made to the Commissioner on whose recommendation a decision will be taken by government in the administrative department.”

17. Perusal of the Rule makes it clear that it is applicable only regarding the district level officers in respect of planning and development. The Treasury is not connected with the above work. Thus, the Rules are also applicable only for the annual entries to be awarded not for special entries. Petitioner has also filed Annexure 16 to the R.A., which runs as under:-

“Under Treasury Rule 4(2), the Treasury shall be under the general charge of the Collector, who may entrust the immediate executive control to a Treasury Officer subordinate to him, but may not divest himself of administrative control. The Collector shall be responsible for the proper observance of the procedure prescribed by or under these rules and for the punctual submission of all returns required from the Treasury by the Government, the Board of Revenue, the Directorate of Treasuries and Accounts, the Directorate of Financial Statistics, the Accountant General and the Reserve Bank of India. Subject to the provisions of this rule, the respective responsibilities of the Collector and Treasury Officer for business of the Treasury shall be such as may be defined in accordance with such rules as the Government in finance Department may approve, after consultation with the Accountant General.”

The petitioner’s contention was that the Collector was the only person who could have awarded him the special adverse entry. Ld. A.P.O. contended that these Rules are only applicable to the cases where the only annual entries are to be given. The supervisory control of a Treasury may be with the D.M. but the Administrative control of the Treasury Officer and officers is upon of the Director, Treasuries. Director, Treasuries is the Head of the Department and administrative order’s compliance in all the matters has to be looked into by him or the Government. Thus, the entry, which has been awarded, was given by the Director, Treasuries, being the Administrative Head of the Department as

such he was competent. We completely agree with the contention of Ld. A.P.O. and we do not find any substance in the allegation of the petitioner. It can be summarized that the supervision of Treasury is on the Treasury Officer and the D.M. and the administrative control over the officers, staff and the Treasury is on the Director, Treasuries.

18. The petitioner has further alleged that without any inquiry, the special adverse entry has been awarded to him. When we go through the record, it is not a case where a punishment has been awarded, the employee or the officer is always amenable to the advice of his superiors and as we have pointed out earlier, if they are not amenable to the advice or they are not amenable to the orders issued by them, they can be awarded the special entry for the incident. The petitioner was transferred but he did not obey the order of transfer and it is apparent from the record and from the correspondence, the petitioner has himself stated in one of the letters filed along with the claim petition (Annexure-8) that Km. Neetu Bhandari wrote to him a letter along with a letter of Headquarter on 25.8.2011 and asked for the charge and the petitioner said to her that he would leave the charge when he will receive the original order of the Director and he stated that he has not received the original order of the Director, Treasuries regarding his transfer and thereafter he has admitted that he has proceeded on casual leave on 30.8.2011 only for one day, after handing over the charge to the Assistant Treasury Officer. The petitioner was aware about the transfer order and in spite of that he left the station. Annexure- R-1 is the letter of Km. Neetu Bhandari to the Director how she was not handed over the charge. It is also apparent from Annexure-9 that the petitioner himself has admitted that he sent a representation to the Government on 29.8.2011, it is apparent from the perusal of the representation as well as from his letter Annexure-A-9 to the Claim petition, that he was aware about his transfer, he made the representation and thereafter he proceeded on leave handing over the charge to the Assistant Treasury Officer. Perusal of the record reveals that principle of Res ipsa Laqtor is applicable in this case, meaning thereby the circumstances and the

things speak itself. So this correspondence and annexures filed along with the claim petition, rejoinder affidavit and the counter affidavit reveal that the respondent was justified in awarding the special adverse entry to the petitioner. The question is whether the respondents should have conducted the departmental inquiry in this case or not? These two things could not be confused with each other. It is the subjective satisfaction of the competent authority either to award a special adverse entry for an incident and leave the matter to end. If the competent authority feels it comes within the purview of misconduct and he should be punished by way of minor punishment or the major punishment, he may conduct the regular departmental inquiry. In case of the minor punishment, only show cause notice is required and thereafter special censure entry is awarded to the delinquent. In this case also the show cause notice has been given and thereafter the special adverse entry has been awarded. As such the principle of natural justice has been adhered to.

19. In view of the above discussion, the petition is liable to be dismissed.

ORDER

The claim petition is dismissed. No order as to costs.

(U.D.CHAUBE)
MEMBER (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: FEBRUARY 20, 2015
DEHRADUN

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