

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

WRIT PETITION NO 335 (S/B) OF 2020

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 80/NB/DB/2022]

Omkar Nath Kosta, aged about 59 years, s/o Sri Mool Chandra, r/o Government Polytechnic, Shaktifarm, SIDCUL, Sitarganj, District Udham Singh Nagar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Technical Education, Civil Secretariat, Subhash Marg, Dehradun, District Dehradun.
2. Director, Technical Education, Directorate of Technical Education, NCC Blok Campus, Government Polytechnic, Srinagar (Garhwal), Pauri Garhwal-246174.

.....Respondents

Present: Sri Piyush Tiwari, Advocate for the petitioner (Virtual)
Sri Kishore Kumar, A.P.O. for the respondents (Virtual)

JUDGMENT

DATED: NOVEMBER 07, 2022

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 30.08.2022 in WPSB no. 335 of 2020, Omkar Nath Kosta vs. State of Uttarakhand and others, which reads as under:

“Mr. Sandeep Tiwari, learned counsel for the petitioner.

Mr. S.S. Chaudhary, learned Brief Holder for the State.

The relief sought in the writ petition relates to grant of First and Second ACP benefits to the petitioner alongwith interest. The petitioner was serving as the Director of Technical Education prior to superannuation.

The aforesaid relief(s) squarely falls for consideration within the jurisdiction of the Uttarakhand Public Services Tribunal.

Considering the fact that the pleadings in the petition are complete, we direct the Registry to transmit the complete record to the Tribunal, which shall be registered as a Claim Petition and heard accordingly.

We request the Tribunal to endeavour to decide the matter as early as conveniently possible preferably within six months from the first date of listing.

The petition stands disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* Letter No. 12758/UHC/Service (S/B) 2022 dated 09.09.2022 of the Registrar (Judicial) of the Hon'ble High Court. The same has been registered as Claim Petition No. 80/NB/DB/2022.

3. By means of present petition, the petitioner seeks the following reliefs:

- i) *To issue a writ or order or direction in the nature of Mandamus directing the respondent no.2 to grant the 1st and 2nd ACP benefits to the petitioner on completion of 10 & 16 years of service at par with other employees of his department & State Government in terms of Government Order dated 08.03.2011, 30.10.2012 and 01.07.2013.*
- ii) *To issue a writ or order or direction in the nature of Mandamus directing the respondents to pay the entire ACP dues including arrears of ACP benefits with interest @ 9% per annum to the petitioner.*
- iii) *To issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
- iv) *To award the cost of the petition in favour of the petitioner and against the respondents.*

4. The prayer of the petitioner in the instant petition is with regard to grant of 1st and 2nd ACP benefits in terms of Government Order dated 08.03.2011, 30.10.2012 and 01.07.2013 alongwith interest of 9% per annum. Later, petitioner added one more prayer whereby the order dated 15.04.2008 was also challenged wherein although adverse ACR has been expunged but the integrity has not been certified.

5. During the course of hearing Learned Counsel for the petitioner submitted that *vide* order dated 15.04.2008, adverse remarks against the

petitioner were expunged, therefore there is no reason that the integrity should remain uncertified, because the very basis of adverse entry has lost its significance. Further, the Reviewing officer has found petitioner fit for promotion while reviewing his ACR which is available at Annexure No.-1 to rejoinder affidavit. As per Para (6) of ACP G.O dated 08.03.2011, in case of any disciplinary proceeding/penal proceeding, benefit will be applicable in accordance with those rules under which, in above circumstances normal promotion system is governed

6. It has further been submitted on behalf of the petitioner that parawise comments on the representation dated 25.09.2004 against adverse entry was received on 06.11.2004 and accordingly the same is required to be disposed within 120 days *i.e.* by 06.03.2005, but the same was delayed for 3 years 01 month and 9 days. As per Rule 5 of Uttarakhand Government Servant (Disposal of representation against adverse ACR & allied matter) Rules, 2002 (subsequently amended), a representation against an adverse report has to be disposed of in accordance with rule 4 which stipulates 120 days' time limit, failing which such report shall not be treated adverse for promotion, crossing of efficiency bar and other service matter of the Government Servant Concerned.

7. After arguing the petition at some length, Ld. Counsel for the petitioner confined his prayer only to the extent that petitioner may kindly be permitted to file a fresh representation against the order dated 15.04.2008 and respondent no. 1 be directed to consider petitioner's representation, through a reasoned and speaking order, highlighting the above contentions raised by the petitioner at an earliest possible, in accordance with law, to which learned A.P.O. has no objection.

8. Considering the facts of the case and oral submissions made in this behalf, this Tribunal is of the view that innocuous prayer made by learned Counsel for the petitioner is worth accepting.

9. Without prejudice to rival contentions, the petition is disposed of, by giving liberty to the petitioner to make a fresh representation within 04

weeks of receipt of certified copy of this order and then, respondent no.1 shall pass a reasoned and speaking order on the same, within 08 weeks of receipt of representation, alongwith presentation of certified copy of this order.

10. Needless to say that the decision so taken shall be communicated to the petitioner soon thereafter.

11. It is made clear that the petitioner will have liberty to file claim petition, in accordance with law, on the basis of fresh cause of action, if any, which may arise upon the decision on his representation.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: NOVEMBER 07, 2022
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