

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 41/DB/2020

Sanjay Kumar Singh, s/o Sri Kishan Singh, aged about 50 years, Project Director, District Rural Development Agency, Uttarkashi, r/o 126, Doon Vihar, Jakhan, Rajpur Road, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Additional Chief Secretary/ Secretary, Rural Development, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun
2. Commissioner, Rural Development, Uttarakhand, Pauri.
3. District Magistrate, Dehradun.
4. Chief Development Officer, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Advocate, for the Petitioner.

Sri V.P.Devrani, A.P.O., for the State Respondents.

JUDGMENT

DATED: DECEMBER 09, 2022.

Sri Rajeev Gupta, Vice Chairman(A) (Oral)

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

a) To declare that the show cause notice dated 12.12.2013 issued by the respondent no.4 (Annexure: A-5) and special adverse entry dated 05.02.2014 (Annexure: A-1) awarded by the respondent no.3, are without jurisdiction and passed in utter disregard of the rules thus illegal and void in the eyes of law..

b) To quash the impugned order dated 05.02.2014, 04.06.2014, 02.08.2016 and 29.06. 2020 (Annexure Nos. A-1, A-2, A-3 and A-4) with its effect and operation with a declaration that petitioner cannot be deprived from the promotion to the post of Project Director on the basis of such illegal orders.

c) To issue an order or direction to the respondents to review the D.P.C. dated 02.01.2016 and consider the petitioner for promotion on

the post of Project Director since the date of promotion of junior persons Sri Sardar Singh Sharma along with all consequential service benefit.

d) Any other relief which the court may deem fit and proper in the circumstances of the case.

e) Cost of the petition be awarded to the petitioner. ”

2. Facts of the case in brief, are that the claim petitioner was working as District Development Officer, Dehradun when a Special Adverse Entry was given to him by Collector (District Magistrate), Dehradun vide order dated 05.02.2014 (Annexure: A-1). Petitioner’s representation against this adverse entry was rejected by the Secretary, Rural Development Department vide his order dated 04.06.2014 (Annexure: A-2). The petitioner again filed a review application, which was rejected by the Rural Development Department vide Office Memorandum dated 02.08.2016 (Annexure: A-3) and the Special Adverse Entry was kept as it is. Due to this Special Adverse Entry, the petitioner was not promoted and his junior was promoted to the post of Project Director. The petitioner gave a representation that he should be promoted from the date of promotion of his junior, which has been rejected vide Office Memorandum dated 29.06.2020 (Annexure: A-4)

3. We have heard Ld. Counsel for the parties and perused the record.

4. The claim petition was admitted, subject to limitation. The Tribunal observes that the prayer to quash the orders dated 05.02.2014, 04.06.2014 and 02.08.2016 is time barred in view of Clause (b) to sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976, which reads as below:

“(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-

(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

.....”

5. Though Ld. Counsel for the petitioner has vehemently argued that the Collector did not have the power to order such adverse entry and the same also could not have been given to him by way of punishment, as he is not the disciplinary authority of the District Development Officer, the Tribunal need not go into this examination as any consideration on the legality of these orders by this Tribunal is time barred.

6. Ld. Counsel for the petitioner has argued that the impugned O.M. dated 29.06.2020 (Annexure: A-4) needs to be set aside as the impugned adverse entry cannot be read against the petitioner. A perusal of the O.M. dated 29.06.2020 shows that in the Departmental Promotion Committee (for short, D.P.C.) held on 19.01.2017, the petitioner was classified in the 'unfit' category, because of this adverse entry, while the person junior to the petitioner was promoted in this D.P.C. dated 19.01.2017. The Govt. Order No. 737/ Personnel-2/2003 dated 11.06.2003 stipulates notional promotion from the date of promotion of the junior, provided that the D.P.C. should have found the concerned Govt. Servant to be 'fit' for granting notional promotion. As the petitioner was not found fit by the D.P.C. at that time, therefore, granting notional promotion to the petitioner from the date of promotion of the junior is not possible according to the Rules.

7. The contention of Ld. Counsel for the petitioner is that the impugned adverse entry should not have been read against the petitioner as it was not recorded as per Rules and it was beyond the jurisdiction of the Collector to award such entry. Ld. Counsel for the petitioner has further argued that the Annual Confidential Report for the same year, i.e. 2013-14 of the petitioner is of 'Outstanding' category, which has been filed at Pg. Nos. 60 and 61 of the paper book. If the annual report of 05 years were to be considered by the DPC, then this outstanding entry for the same year 2013-14 should also have been considered by the D.P.C.

8. Ld. Counsel for the petitioner has further argued that neither the Collector had the power to grant such adverse entry nor it was communicated/decided as per the provisions of the Uttaranchal Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules of 2002 (for short, Rules of 2002). As per Rule 5 of the Rules of 2002, 'such report shall not be treated adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned'.

9. Considering the facts of the case, the Tribunal feels it proper that a review D.P.C. may be held for considering the case of the promotion of the petitioner from the date his junior was promoted, after taking a suitable decision at the Government level about the effect of A.C.R. of the petitioner for the year 2013-14, which is 'Outstanding', as recorded by the Reporting Officer(Chief Development Officer) and in the same year the Collector has also ordered a 'Special Adverse Entry' to be recorded in the A.C.R. of the petitioner, against which the petitioner has raised certain legal contentions, which this Tribunal is unable to adjudicate as the same is time barred.

10. The petitioner will make a representation to the Govt. as to why this Special Adverse Entry should not be read against him in the D.P.C., on which the Govt. will take suitable decision by passing a reasoned and speaking order and thereafter hold review D.P.C.. With these directions, the claim petition is disposed of. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: DECEMBER 09, 2022
DEHRADUN.

VM