

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 36/NB/DB/2022

Dr. Sunil Katiyar (Male), a/a 59 years, S/o Sri Harish Chandra, presently working as Professor (Botany), Govt. Degree College, Tanakpur, District Champawat.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Higher Education, Govt. of Uttarakhand at Dehradun.
2. Director of Higher Education, Government of Uttarakhand, Haldwani, District Nainital.
3. Principal, Govt. Degree College, Tanakpur, District Champawat.

.....Respondents

Present: Sri B. D. Upadhyay, Senior Advocate, assisted by
Sri Sunil Upadhyay, Advocate for the petitioner
Sri Kishore Kumar, Ld. A.P.O. for the
respondents

JUDGMENT**DATE: NOVEMBER 21, 2022****HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A) (Oral)**

This claim petition has been filed seeking the following reliefs:-

- “1. To direct the respondent No. 2 and 3 to reconsider the annual confidential report pertaining to the year 2014-2015, 2016-17 and 2019-20 in accordance with law and recommend his matter to the respondent No. 1 for promotion on the post of Principal of the Degree College.
2. Any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.”

2. In short, the petitioner has requested for upgradation of his annual confidential entries for the year 2014-2015, 2016-17 and 2019-20, which were not communicated to the petitioner. He obtained the entries through Right to Information Act (R.T.I). He represented against the annual confidential reports for these years, but such representations were not accepted by the Director, Higher Education (Respondent No. 2) and vide letter No. 5199/Degree Seva/2020-21 dated 17.10.2020 the Director informed the Principal of the Government Degree College, Tanakpur, District Champawat, who had forwarded the representations of the petitioner to the Director, Higher Education, that according to Government orders the amendments could be made within the concerned years by Reviewing and Accepting Officers and there is no provision for amending the Annual Confidential Reports of earlier years.

3. C.A./W.S. has been filed by the respondent No. 1 mainly submitting that the petitioner should have applied or should have been

vigilant enough to go through the A.C.R. records. The negligence on the part of the petitioner to timely inspect the documents and failing in the duty to do so, cannot be now forced on the answering respondents, that too, after the passage of several years specially when the hierarchy of officials in the ambit for reviewing ACR have retired.

4. In his R.A., the petitioner has referred to Uttarakhand Govt. Servants (Disposal of Representation and Allied Matter against the Adverse, Good/Satisfactory, Very Good, Outstanding ACR Entries) Rules, 2015 (hereinafter referred as 'Rules of 2015') which make it obligatory on the part of the authority awarding annual entries to communicate the same to the concerned employee within 60 days, failing which such entry shall not be considered for the purpose of the promotion and other connected matters. There is no provision for an employee to inspect the Annual Confidential Report awarded to him and when such entries were not communicated to the petitioner, there was no question of submitting representations against these entries to the higher authority.

5. We have heard the learned Counsel for the parties and perused the record.

6. Learned Senior Advocate for the petitioner argued that when the petitioner was not promoted in December 2020 then he asked for copies of his ACRs under R.T.I. and only subsequently, he could make representations against the entries for the year 2014-2015, 2016-17 and 2019-20.

7. Learned Senior Advocate for the petitioner further argued that the department is not inclined to consider the representations of the petitioner against these entries for the year 2014-2015, 2016-17 and 2019-20 and, therefore, such entries should be ignored while considering his promotion.

8. Rule 4 of Rules of 2015 provides that any entry in totality, whether it is 'Adverse', 'Satisfactory', 'Good', 'Very Good', 'Outstanding' shall be communicated to the concerned officer/employee, within 60 days after the entry is given. The employee against whom adverse, satisfactory, good, very good entry has been recorded is entitled to make a representation to the authority one rank above to the Accepting Authority within 45 days from the date of communication of the entry. The competent authority after receiving the representation of the employee shall send it within 7 days, for the comments/reports to the authority which wrote these remarks. This remark giving authority, should send his comments/reports to the Accepting Authority within 45 days after receiving the representation. Subsequently, within 120 days, the Competent Authority shall consider the representation of the employee and comments/reports of remark making authority, and shall either (1) reject the representation or (2) expunge the adverse report wholly or partially or (3) upgrade the satisfactory, good, and very good entry with a reasoned and speaking order. Such order passed shall be communicated to the government servant. Rule 5 of Rules of 2015 provides that where the representation has not been decided as per Rule 4 then such adverse entry should not be treated as adverse for the purpose of promotion or other service benefits of the employee.

After obtaining the copies of ACRs through R.T.I., the petitioner has made representations against the entries for the year 2014-2015, 2016-17 and 2019-20.

9. The Tribunal observes that the respondents No. 1 & 2 should now consider the representations of the petitioner within a reasonable time and, if after such consideration any of the entries is upgraded, then to take action according to Rule 6 of the Rules of 2015 which reads as below:-

“6.The effect of upgradation of Fair/Satisfactory, Good, Very Good Reports-Where after considering the representation against the Fair/Satisfactory, Good, Very Good report the competent authority passes the order to upgrade such entry then, if where at the time of promotion due to such reports the concerned employee has been found ineligible or deprived from any other service benefits, then after upgradation of entries, he shall be reconsidered for promotion and other service benefits and if found eligible the notional promotion and other service benefits shall be provided from the date of the promotion of his juniors.

In respect of change of category of entry the competent authority shall pass speaking orders.”

[Emphasis supplied]

10. The Tribunal, therefore, directs the respondents No. 1 & 2 to consider the representations of the petitioner against the entries of the years 2014-2015, 2016-17 and 2019-20 within 120 days from the date of this order and pass suitable reasoned and speaking orders on the same and, if any of these entries is upgraded, to take further action in the next two months about promotion of the petitioner from the date of promotion of his juniors by holding a review D.P.C. Needless to say that if the respondents do not take any decision on the representations of the petitioner, such entries deserves to be ignored while considering the promotion of the petitioner from the date of promotion of his juniors.

11. With the above directions, the claim petition is disposed of. No orders to as costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATE: NOVEMBER 21, 2022

NAINITAL

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