

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

CLAIM PETITION NO. 28/NB/SB/2021

Amar Jeet Singh, s/o Late Sri Datar Singh, presently posted as Assistant Agriculture Officer Grade-II, in the office of the Agriculture and Soil Conservation Officer (Tarikhet) Ranikhet, District Almora, r/o Ramghat Road, New Ambedkar Nagar Qurarsi, Koli, Aligarh, Uttar Pradesh.

.....**Petitioner**

vs.

1. State of Uttarakhand through Secretary, Agriculture, Uttarakhand, Dehradun.
2. Director, Agriculture, Uttarakhand, Dehradun.
3. Joint Director, Agriculture, Kumon Mandal, Haldwani, District Nainital.
4. Agriculture and Soil Conservation Officer, Almora, District Almora.

.....**Respondents**

Present: Sri A.M.Saklani, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: DECEMBER 21, 2022

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

"1) To quash and set aside the screening committee report dated 22.05.2020, so far it relates to the petitioner as well as the order dated 27.05.2020, passed by the respondent no.3.

2) Issue a suitable order or direction, to the respondents to give the IIIrd promotional pay scale carrying grade pay of Rs. 54,00/- on completion of 26 years of services i.e. w.e.f. 12.06.2012 with arrears.

3) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the facts and circumstances of the case.

4) To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury."

2. Brief facts, according to the claim petition are that the petitioner was initially appointed as Assistant Agriculture Officer Grade III by virtue of

an order of appointment dated 12.06.1986 by due process of law. He was promoted on the post of Assistant Agriculture Officer Grade II vide order dated 03.06.1995 and on the basis of recommendation of departmental screening committee, the petitioner was granted II promotional pay scale carrying grade pay of Rs. 4200/- after completion of 16 years service, at present the petitioner is getting grade pay of Rs. 4600/-. As per the notification dated 08.07.2009, the employees, who have not been awarded an adverse entry just 2 years prior to consideration, shall be declared eligible for promotion. The State Government had laid down the parameters and norms for the grant of ACP benefits and as a consequence thereto explanation on certain points has been issued vide letter/order dated 09.03.2019, according to which for the purpose of financial rating if annual entry in any year of 10 years service is below to standard, that year will not be counted for eligibility. The departmental proceeding was initiated against the petitioner, the allegations against him were that he has committed financial irregularities in the year 2010-11. In enquiry the petitioner found not guilty but the disciplinary authorities passed order by which the recovery of Rs. 2,42,205/- has been issued against the petitioner and after admonition the disciplinary proceeding come to an end, against which the petitions filed by the petitioner before Hon'ble Tribunal.

3. It is submitted here that all those annual confidential entries recorded by the respondent was uncommunicated entries except the entry recorded in the year 2011, except the entry recorded in the year 2011, all entries are 'good' and very good the copy of which was received by the petitioner under Right To Information Act.

4. It is relevant to mention here that one Brijbhushan Assistant Agriculture Officer Grade II, Chunnilal Assistant Agriculture Officer Grade II and Veer Sain Assistant Agriculture Officer Grade II were also awarded Adverse entry for the year 2010-11 and departmental proceeding also initiated against them, but they have granted II and III promotional pay scale before the disposal of department enquiry.

5. The petitioner made a several representations to the respondent for granting him IIIrd promotional pay scale carrying grade pay of Rs. 5400/- after completion of 26 years of services with effect from 12.06.2012, but the petitioner was denied the benefit of IIIrd promotional pay scale on the ground of adverse entry against the petitioner in the year 2011.

6. The act of the respondent is discriminatory and arbitrary in nature, the petitioner was awarded "good" and very 'good' entry in A.C.R., all the entries except entry 2011 were awarded 'good' and very good, therefore the petitioner is entitled to get the IIIrd promotional pay scale carrying grade pay of Rs. 5400/- after completion of 26 years service.

7. The petitioner should be given similar treatment as given by the respondent in the case of Brijbhushan, Chunnilal & Veer Sain. The entries in A.C.R. has not been communicated to the petitioner except entry in the year 2011.

8. It has provided that the Annual Confidential Entries are mandatorily required to be communicated to an employee against whom the entries are made in order to enable the employee to get his grievance redressed against the adverse entries by filing the representation, which is statutory in nature in accordance with the Rules, which are framed under the proviso to Article 309 of the Constitution of India, namely "The Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2015. Where the communications are not made to the adverse entries made, against an employee in his service records, it cannot be read against him.

9. It is further stated that if the entries as made in the ACRS, are not communicated, they cannot be read against the delinquent employee and would not create any impediment in grant of service benefits, as soon as the petitioner learnt about the recording of adverse entries against him, he has represented his case by filing a representation, praying for that those entries ought not to be attracted and be read for the purposes for denying

the benefit of third ACP. It has been stated that as per Rule 5 of the said Rules of 2015, which reads as under:-

“5. Report not to be treated adverse- Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Hand-Book, Volume-II, Parts-II to IV. Where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, 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.”

10. It has further been stated that as per Rule 56 of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook Parts II to IV, any un-communicated adverse entry will not be read as adverse entry against an employee to deny a service benefit, same cannot be read against the petitioner for the purposes of denying the benefit of third ACP.

11. The petitioner also relied upon the decisions rendered by the Hon’ble Supreme Court in Dev Dutt Vs Union of India and others, as reported in AIR 2008 SC 2513, Sukhdev Singh Vs. Union of India and others, as reported in AIR 2013 SC 2741.18 and Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and others, reported in AIR 2015 SC 3057. Hence, the petitioner is entitled to get the benefit of IIIrd promotional pay scale w.e.f. 12.06.2012.

12. Counter Affidavit has been filed on behalf of respondents mainly stating that the A.C.R. of the petitioner for year 2010-11 has been recorded unsatisfactory and the integrity is doubtful and the petitioner has not given any representation for deletion of such entry to the competent authority, therefore, the entry is effective for said period. *Vide* Notification dated 9th January 2013 of the Govt. of Uttarakhand, in exercise of powers under *proviso* to Article 309 of the Constitution of India, the State Government framed the Rules known as “Uttarakhand (Outside the purview of Public Service Commission) Procedure for Selection for promotion in Govt. Services Rules, 2013.” Rule 3(4) provides that any one of the ACR Entry of the last 05 years, otherwise the integrity

of any personnel is doubtful; such personnel will not be considered suitable for promotion. Therefore, the petitioner, Sri Amar Jeet Singh was not declared suitable for the Illrd financial upgradation Grade pay of Rs. 5400/- on 12.06.2022. The petitioner was suspended by the Agriculture Directorate vide order dated 22.02.2022. In the year 2011-12 and 2012-13 (from 22.01.2012 to 09.09.2013), the disciplinary proceedings against him remained in force as per order no.6033 dated 09.09.2013. The petitioner was imposed recovery of Rs. 242205/-, which pending till date. The entries after the year 2013-14, are good. As per G.O. dated 09.03.2019, if the annual entry of any one year out of 10 years of qualifying service is less than the standard, the that year will not be included in calculation for eligibility. The petitioner, being employee of Matrix level-7, the due entries are less than the standard for admissibility of financial upgradation, therefore, was not considered eligible. The petitioner has not deposited the recovery amount of Rs. 242205/- in spite of the orders.

13. The Government of Uttarakhand *vide* notification dated 28.04.2015 issued "Uttarakhand Government Servants (Disposal of Representation and Allied matters against the Adverse, Good, Satisfactory, Very Good, Outstanding, ACR entries) Rules, 2015 (hereinafter referred to as the 'Rules of 2015'). These rules came into effect on 28-04-2015. Hence the petitioner cannot claim to be considered due to non-communication of ACR entries. Before 28.04.2015 there was no notification regarding the communication of good/satisfactory, very good, outstanding ACR entries. The petitioner is asking to upgrade the ACR of year 2010-11 due to non-communication of ACR but the Rules of 2015 came into force on 28.04.2015. Before the Rules of 2015, there was no system of communication of Good/Satisfactory, Very Good, Outstanding ACR entries. The petitioner's ACR entries belong to the years 2010-11 and 2011-12, when there was no rule for making representation against the Good/ Satisfactory, Very Good, Outstanding ACR entries. The Rules of

2015 are not applicable in year 2010-11 and 2011-12. Hence, the petitioner is not entitled to receive any benefit of these rules.

14. Rejoinder affidavit has been filed by the petitioner denying the contents of the Counter affidavit and reiterated the averments made in the claim petition. It has been stated that the adverse entries were never communicated to the petitioner, hence in accordance with the rules, as well as in accordance with the judicial precedence, the un-communicated entries can never be read against the petitioner in considering his claim for grant of promotional pay scale. It has further been stated that petitioner has not been given an opportunity of hearing to file representation against the entries recorded against the petitioner in ACR. The petitioner cannot be ignored by taking into consideration un-communicated Annual Confidential Reports for the reporting year, remaining entries of the petitioner being very good, he is entitled to be considered fit for promotion.

15. Learned Counsel for the petitioner has prayed for the desired relief in view of the judgments rendered by Hon'ble Apex Court in of Dev Dutt vs. Union of India (*supra*) and Sukhdev Singh vs. Union of India & ors (*supra*). Learned A.P.O., on the other hand, submitted that the Rules of 2015 were framed only in 2015, and were notified on 28.04.2015. Therefore, there was no requirement of communicating all the entries of the ACR to the petitioner.

16 The observations of Hon'ble Apex Court in Dev Dutt vs. Union of India (*supra*) in paras 47 and 48 of the decision assume significance. These observations are reproduced herein below for convenience:

"47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993- 94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is

promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment."

[Emphasis supplied]

17. The observations of the Hon'ble Apex Court in Sukhdev Singh vs. Union of India (*supra*), are also important and are reproduced herein below for convenience:

"8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

10. Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law."

[Emphasis supplied]"

18. The case laws cited in Dev Dutt (*Supra*) and Sukhdev Singh (*supra*), lay down the requirement of communication of entries to the employees so that they can make timely requests for upgradation of the same and if the employee is deprived of such opportunity, such entries though, they may not be adverse as such, but being of lower grade can affect the service prospects of the employee.

19. 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.

20. After obtaining the copies of ACRs through R.T.I., the petitioner has made representations against the entries for the year 2010-11.

21. The Tribunal observes that the respondent 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]

22. The Tribunal, therefore, directs the respondents to consider the representations of the petitioner against the entries of the year 2010-11 within 120 days from the date of this order and pass 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 granting 3rd Promotional pay scale carrying the grade pay of Rs. 5400/- from the date of his entitlement on completion of 26 years of services. 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 3rd Promotional pay scale carrying the grade pay of Rs. 5400/- from the date of his entitlement on completion of 26 years of services.

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

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: DECEMBER 21, 2022

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