

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 14/DB/2013**

Smt. Geeta Rana, W/o Shri Janak Raj Rana, R/o 136, Dharawali,  
Mohebewala, District Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Fisheries, Govt. of Uttarakhand, Dehradun,
2. Director/Secretary, Fisheries, Secretariat, Uttarakhand, Dehradun,
3. Deputy Director, Fisheries Development Agency(Abhikaran) Badasi Grant Dhanyadi Raipur Road, Dehradun,
4. Joint Director, Fisheries, Badasi Grant, Dhanyadi, Raipur Road, Dehradun.

.....Respondents

Present: Sri V.P.Sharma, Counsel,  
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.  
for the respondents

**JUDGMENT****DATE: JULY 06, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. The present claim petition has been filed for seeking the following relief:

*“(i) To issue order or direction to the respondents to quash the impugned order dated 30.8.2011 and its consequential orders passed on appeal and revision dated 29.5.2012 and dated 5.3.2013,*

*(ii) Any other relief which the Hon’ble Court may deem fit and proper in the circumstances of the case.*

*(iii) To award cost of this petition to the petitioner.”*

2. The relevant facts in brief are that the petitioner, who is Chief Assistant in the Directorate of Fisheries, Department of Fisheries, Government of Uttarakhand, was given a “special adverse entry” on 30.08.2011 to be kept in her Character Roll for the year 2011-12 (Annexure : A-1). The adverse entry was made a part of the Annual Confidential Report for the year 2011-12. This special adverse entry was given on following two grounds:

(i) The petitioner made undue delay in issuing the Last Pay Certificate (LPC) in respect of Shri Saket, Fisheries Inspector, Haridwar.

(ii) The petitioner failed to handover the charge of the Store of the State Fisheries Development Agency to the concerned employee after her reversion to the parent department, i.e., the Directorate of Fisheries in 2007 in spite of many reminders by the concerned authorities.

3. The petitioner made a representation against the Adverse Entry to the Director, Fisheries, Department of Fisheries, Government of Uttarakhand, Dehradun on 13.09.2011 (Annexure: A-2). The representation of the petitioner dated 13.09.2011 which was received by the Department on 13.09.2011 itself was decided by the Director, Fisheries on 29.05.2012 (Annexure: A-22). The Appellate Authority by its order modified the Adverse Entry given on 30.08.2011. The first part of the entry was dropped and the second part of the entry was retained partly. It would be appropriate to reproduce this order dated 29.05.2012(Annexure: A-22).

“कार्यालय निदेशक मत्स्य, उत्तराखण्ड, देहरादून ।

संख्या-378 /स्था0/पी0 एफ0/2012.13 दिनांक: 29 मई, 2012

कार्यालय ज्ञाप

आज दिनांक 28-5-2012 को श्रीमती गीता राणा, मुख्य सहायक मत्स्य निदेशालय, देहरादून को उनके प्रत्यावेदन दिनांक 13-09-2011 के क्रम में व्यक्तिगत सुनवाई का अवसर दिया गया ।

इस प्रकरण में पत्रावली पर उपलब्ध अभिलेख एवं व्यक्तिगत सुनवाई के समय श्रीमती गीता राणा के मौखिक कथनों के प्रतिपरीक्षणोपरान्त प्रत्यावेदन का निस्तारण निम्नानुसार किया जाता है:—

- 1— प्रस्तर—1 पर प्रत्यावेदन स्वीकार किये जाने योग्य है, अतः यह अंश विलुप्त किया जाता है ।
- 2— प्रस्तर —2 पर प्रत्यावेदन आंशिक रूप से ग्राह्य है, क्योंकि चार्ज दिये जाने में विलम्ब का औचित्य प्रतीत नहीं होता है । अनुस्मारक भेजे जाने की आवश्यकता नहीं होनी चाहिये थी, यदि गीता राणा समय से चार्ज हस्तगत कर देती । अतः भविष्य हेतु सचेत किया जाता है । इस सीमा तक प्रतिकूल प्रविष्टि बनी रहेगी ।

उपरोक्तानुसार एतद्द्वारा श्रीमती गीता राणा, मुख्य सहायक का प्रत्यावेदन निस्तारित किया जाता है ।

(आर०सी०पाठक)  
निदेशक, मत्स्य  
उत्तराखण्ड, देहरादून ।

पत्रांक 378/स्था०/पी०एफ०/2012-13 उक्त दिनांकितः

प्रतिलिपि:—

1. श्रीमती गीता राणा, मुख्य सहायक, मत्स्य निदेशालय, देहरादून ।
2. सम्बन्धित कर्मचारी की व्यक्तिगत पत्रावली हेतु(अभिलेखार्थ) ।

(आर०सी०पाठक)  
निदेशक, मत्स्य  
उत्तराखण्ड, देहरादून ।”

4. The petitioner also filed revision against the order dated 29.5.2012 on 27.6.2012 (Annexure: A-5). The revision was also rejected on 05.03.2013(Annexure: A-6).

5. The petitioner in the claim petition has given her explanation in detail mentioning various correspondence

between her and the department and stated that it was none of her fault in not handing over the charge. She has also alleged that the then Deputy Director of the Fisheries Development Agency became bias against her and as a result, the Adverse Entry was issued by the Director, Fisheries on 30.08.2011. It has also been stated in the petition that the Adverse Entry was given by the Director, Fisheries who is the Appellate Authority and not the Punishing Authority. It has also been alleged that no inquiry was conducted and no opportunity of hearing was given to the petitioner. The petitioner has prayed to quash the impugned orders (Annexure: A-1, Annexure: A-22 and Annexure: A-6 mainly on above grounds.

6. Respondents have opposed the claim petition and it has been stated in the Written Statement that the special adverse entry has been given to the petitioner as per Rules. The special adverse entry was modified after the representation of the petitioner and one part of it was dropped. There was no biasness against her. Director, Fisheries who is the appointing authority was competent authority to give adverse entry. The whole proceedings are as per rule and law and the petitioner has not been deprived of any legal right. Finally, it has been stated in the W.S. that there is no merit and the petition is liable to be dismissed.

7. Learned counsel for the petitioner has also filed the Rejoinder in which the same points have been reiterated and elaborated which have been stated in the claim petition.

8. We have heard learned counsel for the petitioner and learned APO and also perused all record carefully.

9. Before proceeding further, we think it appropriate to state the Rule position regarding 'Adverse Entry'. The State Government has framed 'The Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002'. Rule 4 and 5 of the said Rules are reproduced below:

“4. (1) *Where a report in respect of a Government Servant is adverse or critical, wholly or in part, hereinafter referred to as adverse report, the whole of the report shall be communicated in writing to the Government Servant concerned by the accepting authority or by an officer not below the rank of reporting authority nominated in this behalf by the accepting authority, within a period of 90 days from the date of recording the report and a certificate to this effect shall be recorded in the report.*

(2) *A Government Servant may, within a period of 45 days from the date of communication of adverse report under sub-rule (1) represent in writing directly and also through proper channel to the authority one rank above the accepting authority hereinafter referred to as the competent authority, and if there is no competent authority to the accepting authority itself, against the adverse report so communicated:*

*Provided that if the competent authority or the accepting authority, as the case may be, is satisfied that the Government Servant concerned had sufficient cause for not submitting the representation within the said period, he may*

*allow a further period of 45 days for submission of such representation.*

*(3) The competent authority or accepting authority, as the case may be, shall, within a period not exceeding one week from the date of receipt of the representation under sub-rule (2), transmit the representation to the appropriate authority, who has recorded the adverse report, for his comments, who shall, within a period not exceeding 45 days from the date of receipt of the representation furnish his comments to the competent authority of the accepting authority, as the case may be:*

*Provided that no such comments shall be required if the appropriate authority has ceased to be in, or has retired from, the Service or is under suspension before sending his comments.*

*(4) The competent authority or the accepting authority, as the case may be, shall, within a period of 120 days from the date of expiry of 45 days specified in sub-rule (3) consider the representation alongwith the comments of the appropriate authority, and if no comments have been received without waiting for the comments, and pass speaking orders--*

*(a) rejecting the representation; or*

*(b) expunging the adverse report wholly or partly as he considers proper.*

*(5) .....*

*(6) .....*

*(7) .....*

*(8) .....*

*(9) .....”*

*5. 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. In the Government Order No. 1712/Karmik-2/2003 Dated 18<sup>th</sup> December, 2003, paragraph 16 deals with the case of special adverse entry given during the course of any year. This paragraph prescribes that the procedure for disposal of the representation against such special adverse entry will be same which is prescribed for normal adverse entry. The para 16 of the said G.O. is reproduced below:

“16. कभी-कभी विशेष अनुकूल या प्रतिकूल प्रविष्टि किसी घटना/कार्य विशेष के सम्बन्ध में दी जाती है। विशेष प्रविष्टि अंकित करने के बारे में ठीक वही प्रक्रिया अपनायी जायेगी जो सामान्य वार्षिक प्रविष्टि अंकित करने हेतु अपनायी जाती है, किन्तु यह ध्यान में रखा जाना चाहिए कि ऐसी विशेष प्रविष्टि किसी घटना/कार्य विशेष के सम्बन्ध में ही हो तथा इसमें सामान्य मूल्यांकन न किया गया हो। यदि ऐसी विशेष प्रविष्टि प्रतिकूल हो तो उसे संसूचित करने तथा उसके विरुद्ध प्राप्त प्रत्यावेदन के निस्तारण के सम्बन्ध में वही प्रक्रिया अपनायी जाय जो सामान्य प्रतिकूल प्रविष्टियों के सम्बन्ध में अपनायी जाती है। विशेष प्रविष्टियां आलोच्य वर्ष में किसी भी समय आवश्यकतानुसार दी जा सकती हैं किन्तु यह प्रयास किया जाना चाहिए ऐसे अवसर बहुत कम और कभी-कभी अत्यावश्यक स्थिति में ही सामने आये। सामान्य तौर पर ऐसे मामलों का समावेश वार्षिक प्रविष्टि में ही किया जाना अधिक उपयुक्त होगा।”



11. Perusal of above Rules makes it clear that Sub-Rule 4 of Rule 4 provides that the representation against the adverse entry is to be decided within a period of 120 days from the date of expiry of 45 days specified in Sub-Rule 3 of Rule 4. Rule 5 of the said Rules provides that if 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 purpose of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned.

12. When the case in hand is examined in the light of Rule position as above, we find that admittedly the representation against the adverse entry was given by the petitioner on 13.09.2011. Since the adverse entry was given by the Director, Fisheries and the representation was also disposed of by him, the requirement of 45 days for the comments was also not there. The representation against the adverse entry was disposed of on 29.5.2012 (Annexure: A-22 reproduced in para 3 of this order). Thus, it is clear that the representation against the adverse entry was decided after more than 8 months which is much beyond the limit of a period of 120 days prescribed under Sub-Rule 4 of Rule 4 of the said Rules. Since the representation against the adverse entry was not disposed of in accordance with Rule 4, such report shall not be treated adverse for any service matter of the petitioner as prescribed under Rule 5 of the said Rules. Thus, in our view, as the representation against the adverse entry has not been disposed of in accordance with Rules and therefore,

the adverse entry given to the petitioner cannot sustain and it is therefore, non-est.

13. In the light of discussion made in paragraphs 9, 10, 11 and 12, we do not find it necessary to deal with other points raised by the counsel for the petitioner and the learned APO.

14. For the reasons stated above, the claim petition deserves to be allowed.

### **ORDER**

The petition is hereby allowed. The impugned orders dated 30.8.2011 (Annexure: A-1), 29.5.2012 (Annexure: A-22) and 05.03.2013 (Annexure-A-6) are set aside. Impugned Adverse remark entered in the Character Roll of the petitioner be expunged within a period of two months from today. No order as to costs.

*Sd/-*

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

*Sd/-*

**D.K.KOTIA**  
VICE CHAIRMAN (A)

DATE: JULY 06, 2015  
DEHRADUN

KNP