

**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. 75/DB/2020

Mayan Pal Singh Verma s/o Late Sri Amir Singh, aged about 59 years, presently attached in the office of Engineer-in-Chief and Head of Department office, Public Works Department, Yamuna Colony, Dehradun.

.....Petitioner.

VS.

1. State of Uttarakhand through Additional Chief Secretary, Public Works Department, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Secretary, Disaster Management, Govt. of Uttarakhand -cum-Project Director, Uttarakhand Disaster Recovery Project (World Bank Aided), Uttarakhand, Secretariat, Subhash Road, Dehradun.
3. Project Manager, Uttarakhand Disaster Recovery Project (World Bank Aided), Fourth Floor, Hyundai Building, Bypass Road, Dehradun.
4. Engineer-in-Chief and Head of Department office, Public Works Department, Yamuna Colony, Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents No. 1 & 4..

Sri S.K.Jain, Advocate, for Respondents No. 2 & 3.

JUDGMENT

DATED: JUNE 07, 2023

Justice U.C.Dhyani (Oral)

RELIEFS CLAIMED

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

- “i) To issue an order or direction to quash the order passed by Respondent No.1. of rejection of representation (Order No. 718/III(1)/2009 (31/Sa./2013 dated 03.06.2020) .
- ii) To issue order or directions to expunge entries written by Respondent No.3 & 2 (Reviewing and Accepting Officers respectively) from Petitioner's ACR of 1-4-2018 to 30-12-2018 period.
- iii) To issue order or directions to treat and consider ACR from 1-4-2018 to 20-12-2018 as 'Excellent'.
- iv) To issue order or directions to review 24-4-2020 DPC.
- v) To issue order or directions to grant notional promotion to the Petitioner from 24-4-2020 (from date of promotion of Juniors) along with all the consequential benefits.
- vi) To issue any other suitable order or directions which the Honorable Tribunal deems fit and proper in the circumstances of the case.
- vii) Award the cost of the petition to the petitioner.”

PETITIONER'S VERSION

2. Facts, which are necessary for adjudication of present claim petition, are as follows:

2.1 At the time of filing the claim petition, the petitioner was attached to the office of Engineer-in-chief and Head of the Department, Public Works Department, Yamuna Colony, Dehradun. Respondent No.1 (Competent authority) *vide* letter dated 12.02.2020 communicated his ACR from 01.04.2018 to 20.12.2018 (Copy of letter dated 12.02.2020: Annexure- A 3). On perusal of copy of ACR, petitioner came to know that the Chief Engineer, Uttarakhand Disaster Recovery Project (World Bank aided), Dehradun, (Reporting Officer) awarded entry of 'Excellent' category (09 months) to the petitioner, which was reduced to 'Good' category by Respondent No.3,

(Reviewing Officer). As per the ACR form, weightage of Reviewing Officer's marks was 80% and weightage of Reporting Officer's marks was 20%. As per this weightage, Respondent No.3 calculated overall grading 5.8 marks, which amounted to just 'Good' category. The Respondent No.2 (Accepting Officer) only wrote 5.8 marks and signed without writing anything else. Thus, category of petitioner was reduced to 'Good' by Respondents No. 2 & 3 from 'Excellent' awarded by Reporting Officer. (Copy of ACR from 01.04.2018 to 20.12.2018: Annexure- A 4).

2.2 The petitioner sent his representation with covering letter dated 19.02.2020 to Respondent No.1 (Copy: Annexure- A 5). In his entry in this ACR, Respondent No.3 has only written two remarks . Reply to both of these remarks was given in the representation, as following:

" In the first remark Respondent No.3 (Reviewing Officer) had written *"Appraisee did not comply the instruction given by letter No. 861/02 E/2018 dated 11-05-2018 for submitting report after field inspection of slow progress works under UDRP, which is not expected from an officer"*. To this Petitioner replied in representation *"Undersigned Complied to the instruction given by Letter No. 861/02 E/2018 dated 11-05-2018 (Copy enclosed) and submitted the compliance Report by Letter No. 1293/02/E dated 29-06-2018 (Copy enclosed)"*.

2.3 Submission of Compliance Report proves that Petitioner did the given work and complied to these instructions. Thus clearly, beyond any doubt first remark of Respondent No.3 (Reviewing Officer) is wrong and false.

2.4 In the second remark Respondent No.3 (Reviewing Officer) had written *"He did not contribute to the progress of project & was not found useful for the completion of the project so he was relieved from the project vide letter No. 2848/2 E/2018 dated 17-12-2018"*. To this Petitioner replied in representation *"Undersigned first of all complied with the instruction and at once joined in Engineer in Chief and Head of Department Office Dehradun. Undersigned replied to Letter No. 2848/2 E/2018 dated 17-12-2018 (copy enclosed) in tabular form vide letter No. 01/Camp- Dehradun dated 07-01-2019 (Copy enclosed)*. In this Letter each and every objectionable point was answered logically and rationally. Reviewing Officer (Project Manager) was requested to provide proof for his allegations. He never provided these,

proving thereby that his allegations were false, contrary to facts and motivated by *mala fide* intentions. Enclosures in this Letter of undersigned are copy of drawings in Technical Sanctions. Plan of any road can be drawn only after doing Plane Table Survey (or Total Station Survey). Even the most Expert Engineer can not sketch plan of Road by free hand as has been done in these Technical Sanctions. Calculation of cost of widening of Roads by these free hand sketches is financial irregularity. Cost of widening increased many times due to this. This proves that in the name of Project Mode, financial irregularity was done in these Technical Sanctions. This caused loss to Government".

The answer clearly, beyond any doubt proves that second remark of Respondent No.3 (Reviewing Officer) is also wrong and false.

2.5 During pendency of the representation, the Secretary, P.W.D., Respondent No.1, conducted DPC for promotion on 24.04.2020. In this DPC, name of the petitioner was at Sl. No.1, but due to 'Good' category entry in the ACR, petitioner's marks came to only 7.25, which were less than 08 marks, required for promotion. So, the petitioner was not promoted and his juniors were promoted on 24.04.2020 (Copy of DPC proceedings: Annexure- A 6).

COUNTER VERSION

3. Counter Affidavit has been filed by Sri Rajendra Singh, Senior Staff Officer, Engineer-in-Chief and HOD, Public Works Department, Dehradun on behalf of all the respondents. Rejoinder affidavit thereto has also been filed.

3.1 Largely, the material facts contained in the claim petition are admitted, but in the Counter Affidavit, efforts have been made to justify the departmental action with reasons as to why the petitioner could not be considered for promotion in the DPC. Respondents also relied upon the same set of Rules which have been relied upon by the petitioner.

PETITIONER'S SUBMISSION

4. It is the submission of Ld. Counsel for the petitioner that if category of petitioner in this ACR (from 01.04.2018 to 20.12.2018) was not reduced to 'Good' by Reviewing Officer and Accepting officer from 'Excellent',

awarded by the Reporting Officer, marks of the petitioner would have been 8.00 marks (minimum required for promotion), and the petitioner would have been promoted. Thus, petitioner was not promoted in this DPC conducted on 24.04.2020 due to reduction of category of his ACR from 'Excellent' to 'Good' by Reviewing Officer and Accepting Officer. Respondent No.1 rejected the representation of the petitioner *vide* order dated 03.06.2020.

4.1 It is also the submission of Ld. Counsel for the petitioner that on perusal of this rejection order of representation, it is revealed that the Respondent No.1 rejected the representation of the petitioner without commenting on it and without giving any reasons, which is in violation of Rules 4 (5) of the Uttaranchal Government Servants (Disposal of Representation against adverse, fair/satisfactory, good, very good, excellent Annual Confidential Reports and Allied Matters) Rules, 2015 (hereinafter referred to as Rules of 2015) Rule 4(5) reads as below:

“4 (5) 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 (4) consider the representation along with 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.
- (c)

*Hindi version of the same is: '*Saksham Prdhikari Sakaran Aadesh Parit Karega*'.

4.2 The information obtained by the petitioner from the competent authority under RTI Act has been enclosed as Annexure: A 7 to the claim petition. On perusal of it, the petitioner found that reasons for rejection of representation are also not there in the file. The Respondent No.1 just wrote *vide* letter dated 14.05.2020 to Accepting Officer, to send his comments on the representation (Annexure: A 8). Petitioner found that the Accepting Officer replied *vide* letter dated 19.05.2020 to the letter of Competent Authority, Respondent No.1, (Annexure: A 9). On perusal of letter dated 19.05.2020 of Respondent No.2, petitioner found that Respondent No.2 did

not offer comments on the representation and thus he did not take cognizance of anything written by petitioner in his representation. Petitioner applied for the documents under RTI Act, but he was informed that no record or file exists in the office of Respondent No.2 (Accepting Officer) regarding this case. Petitioner appealed against this information, but in the decision of this appeal, it was informed that no record or file exists in the office of Respondent No.2 (Copy of correspondence under RTI Act: Annexure- A 10).

4.3 It is further submitted by Ld. Counsel for the petitioner that no comments on representation of the petitioner were made either by Respondent No.1 (Competent Authority) or by Respondent No.2 (Accepting Officer). Thus, the representation of the petitioner was rejected without the comments of any authority/ officer.

4.4 The petitioner moved application to Respondent No.1 for reconsideration of his representation, which was followed by reminder, but till now Respondent No.1 has not done anything on such representation, which was followed by reminders.

RESPONDENTS' SUBMISSION

5. Ld. A.P.O. has made frantic efforts for justifying the departmental action. In his arguments, he has relied upon the same set of Rules which have been relied upon by the petitioner and which have been relied upon by Sri Rajendra Singh, Senior Staff Officer, Engineer-in-chief and HOD, Public Works Department, Dehradun, in his Counter Affidavit (for respondents).

5.1 Ld. A.P.O. also submitted that, on the basis of averments contained in C.A./W.S., the claim petition is liable to be dismissed. According to Ld. A.P.O., the representation of the petitioner has rightly been rejected. The Accepting Officer has rightly accepted the opinion expressed by the Reviewing Officer. Ld. A.P.O. also submitted that when the representation was given by the petitioner, the Accepting Officer has given cogent reasons for accepting the opinion/ comments given by the Reviewing Officer.

REPLIES BY PETITIONER

6. In reply , Ld. Counsel for the petitioner submitted that the Accepting Officer has simply endorsed the opinion expressed by the Reviewing Officer, without elaborating and without giving the reasons raised by the petitioner in his representation.

7. According to Ld. Counsel for the petitioner, the Accepting Officer has neither discussed nor spoken anything on the replies given by the petitioner, in response to the entries made by the Reviewing Officer, in representation dated 19.02.2020 (Annexure: A 5).

RULE POSITION

8. Whether Annexure: A-5 conforms to the requirement of Rule 4(5) or not? If not, what are the shortcomings? What will be the consequences of such non-compliance?

Rule 4 (5) of the Rules of 2015, provides for the following:

“4.....

(5) *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 (4) consider the representation along with 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.*

(c)

Rule 5 of the Rules of 2015 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.”

Rule 6 of the Rules of 2015 reads as follows:

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.

9. In the instant case, the petitioner was given 'Outstanding' entry. The Reviewing Officer did not agree with the same and awarded him 'Good' entry. The Accepting Authority accepted the same. Petitioner moved a representation in respect of his 'Good' entry. In his representation dated 19.02.2020 (Annexure: A-5), the petitioner gave para-wise replies to the comments of the Reviewing Officer. The Accepting Officer disposed of the representation *vide* order dated 03.06.2020 (Annexure: A-1) by a speaking order.

10. The contention of Ld. Counsel for the petitioner is that the order passed by the Accepting Authority on 03.06.2020 (Annexure: A-1) is not a reasoned order and, therefore, the consequences given in the Rule 5 shall follow. In other words, according to Ld. Counsel for the petitioner, such report shall not be treated adverse for the purpose of promotion, crossing of Efficiency Bar and other service matters of the petitioner.

11. The submission of Ld. A.P.O., representing Respondents No. 1 & 4 and Ld. Counsel for Respondents No. 2 & 3 is that the Accepting Authority has passed a speaking order by affirming the entry given by the Reviewing Officer. According to Ld. A.P.O., the Accepting Authority has passed reasoned order by rejecting the representation of the petitioner.

12. The Rule provides that the Accepting Authority shall pass a speaking order (*Sakaran Aadesh*) on the representation of the employee/officer. Perusal of Annexure: A-1 would indicate that Annexure: A-1 is surely a speaking order. Although, detailed reasons have not been given in it, but it is definitely a speaking order (*Sakaran Aadesh*), inasmuch as it refers to the entry given by the Reviewing Officer. The Accepting Authority concurs with the opinion of Reviewing Officer.

13. By no stretch of imagination, it can be said that Annexure: A-1 is not a speaking order. It is true that elaborate reasons have not been given by the Accepting Authority to the detailed replies given by the petitioner in his representation, but that is surely, not the requirement of the Rules (as has been argued by Ld. Counsel for the petitioner). The requirement of the Rule is that the Accepting Authority shall pass a speaking order (*Sakaran Aadesh*), which has definitely been done in the instant case.

14. This Tribunal is not expected to go into the reasoning of those reasons or merits of those reasons, for, it is sufficient that the Accepting Authority has passed speaking order (*Sakaran Aadesh*). The Tribunal is also not expected to go into the sufficiency or adequacy of those reasons, for, the same is never the intention of Rule 4(5) of the Rules of 2015. The Tribunal cannot substitute its own discretion for the discretion exercised by Ld. Accepting Authority below. It cannot usurp the discretion of such authority. It can only go into the judicial decision making process and not into the decision in exercise of its jurisdiction. In *Sharp vs. Wakefield*, 1891 AC 173, 179, Lord Halsbury has observed as under:

‘Discretion’ means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the Rules of reasons and justice, not according to private opinion. According to law and not humor. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

15. No interference is called for in the order dated 03.06.2020 (Annexure: A-1), passed by the Accepting Authority, Respondent No.1. Petitioner is not entitled to any relief. The claim petition, therefore, fails and is dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 07,2023
DEHRADUN

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