

**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. 44/SB/2013**

Mahendra Singh S/o Shri Sudagar Singh Age about 52 years, presently posted as Incharge Forest Ranger, Narendra Nagar Civil Soyam Range, Narendra Nagar.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Forest Department, Subhash Road, Dehradun.
2. Chief Conservator of Forest, Garhwal Circle Uttarakhand, Pauri Garhwal.
3. Divisional Forest Officer, Upper Yamuna Forest Division, Badkot, Uttarkashi.
4. Dy. Conservator of Forest, Yamuna Circle, Dehradun.

.....Respondents

Present: Sri V.P.Sharma, Counsel  
for the petitioner.  
Sri Umesh Dhaundiyal, A P.O.  
for the respondents.

**JUDGMENT**

**DATED: AUGUST 07, 2015**

**(DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN(A))**

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

*“A. Issue order or direction to quash the impugned order dated 13.05.2013 along with its effect and operation also along with all consequential proceedings based on the impugned order after calling entire record from the respondents declaring the same against the rules and law and also to hold that the same has of no consequence in view of Rules regarding disposal of Adverse entry.*”

*B. Issue order or direction to the respondents to consider the case of the petitioner for all benefits of service had it been the impugned order was never in existence along with all consequential benefits.*

*C. Issue appropriate order or direction suitable in the nature to award damages and compensation to the petitioner for malicious and malafied act of the respondents, by which the petitioner is facing grave mental agony and financial hardship and the amount of the damages and compensation which may be quantified by this Hon'ble Tribunal and further be directed to the respondents the amount to be recovered from the salary of the erring officer.*

*D. Issue any other suitable direction or order as this Hon'ble Tribunal may deem fit in the circumstances of the case*

*E. Award costs of the claim petition to the petitioner."*

2. The relevant facts in brief are that the petitioner who was Incharge Forest Range Officer at Civil Soyam Range in the Forest Department of the Government of Uttarakhand was given "Adverse Entry" for the year 2011-12

3. The main part of the adverse entry was as under:-

"निगरानी बीट में एक ही स्थल पर एक माह की अवधि के अंदर 17 (सत्रह) देवदार वृक्षों का भारी संख्या में कटान होने के बावजूद कोई सूचना न देना, मुलजिम्ओं पर कार्यवाही न करना, अवैध पातन रूकवाने में पूर्णतया असफल रहना इनकी भूमिका को संदेहजनक दर्शाता है। इस कारण इनको वन संरक्षक यमुना वृत्त द्वारा कार्यालय सम्बद्ध किया गया।"

"सत्य निष्ठा रोकी जाती है।"

4. The whole annual entry for the year 2011-12 was communicated to the petitioner on 13.05.2013 (Annexure: A-1). The petitioner made a representation against the adverse entry to the appropriate authority on 24.05.2013. Admittedly, the representation has not been decided till date. It would be appropriate to reproduce para 11 of the Written Statement filed on behalf of Respondent Nos. 1 to 4 as under:-

"यह कि याचिका के प्रस्तर 4.9 में वर्णित कथन के क्रम में अवगत कराना है कि वादी द्वारा दिनांक 24.05.2013 को अपना प्रत्यावेदन मुख्य वन संरक्षक, गढ़वाल, उत्तराखण्ड, पौड़ी को दिया गया जो कि उनके कार्यालय में दिनांक 28.05.2013 को प्राप्त हुआ। उक्त प्रत्यावेदन वन संरक्षक, यमुना वृत्त, उत्तराखण्ड, देहरादून को जांच हेतु दिनांक 18.06.2013 को भेजा गया। उक्त प्रत्यावेदन वन संरक्षक, यमुना

वृत्त, उत्तराखण्ड, देहरादून द्वारा दिनांक 02.07.2013 को प्रभागीय वनाधिकारी, अपर यमुना वन प्रभाग, बड़कोट को आख्या देने हेतु भेजा गया था। उक्त प्रत्यावेदन के साथ संलग्नक न होने के कारण पुनः संलग्नक उपलब्ध कराने हेतु पत्र लिखा गया था। अब संलग्नक प्राप्त होने के उपरान्त प्रत्यावेदन सम्बन्धित अधिकारी को आख्या देने हेतु प्रेषित किया गया है।

5. The petitioner in the claim petition has challenged the adverse entry on several grounds.
6. Respondent Nos. 1 to 4 have filed joint written statement and opposed the claim petition.
7. The petitioner has also filed the rejoinder and reiterated the same points which have been stated in the claim petition.
8. We have heard learned A.P.O. on behalf of respondent Nos. 1 to 4. Ld. Counsel for the petitioner was granted opportunities and adjournments many times for hearing but it was not availed. However, the learned counsel for the petitioner has filed the written submissions. We have gone through all the record carefully.
9. Before going into the merit of the case, 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 8 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. 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.

11. When the case at hand is examined in the light of Rule Position in Para 9 above, we find that admittedly the representation against the adverse entry was made by the petitioner on 14.5.2013. Admittedly, the representation was received in the office of the competent authority on 28.5.2013. Admittedly, the representation has not been decided till date though more than two years have elapsed. Thus, it is clear that the representation against the adverse entry has not been disposed of in accordance with sub rule 4 of Rule 4 of the said Rules.
12. Since the representation against the adverse entry has not been decided till date and Rule 4 of the said Rules has not been complied with, the 'annual entry' given to the petitioner for the year 2011-12 shall not be treated adverse for any service matter of the petitioner as prescribed under Rule 5 of the said Rules. In our view, as the representation against the adverse entry has not been disposed of in accordance with Rules, the adverse entry given to the petitioner for the year 2011-12 cannot sustain and it is, therefore, non-est.
13. In the light of discussion made in paragraphs 9 to 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 order dated 13.5.2013( Annexure: A-1) is set aside. Adverse Remarks entered in the character roll of the petitioner be expunged within a period of three months from today. No order as to costs.

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

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

DATED: AUGUST 07, 2015  
DEHRADUN

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